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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 06.03.2019

DELIVERED ON : 05.04.2019

CORAM

**THE HONOURABLE MRS. JUSTICE R. THARANI**

C.R.P. (PD) (MD) No. 2445 of 2015

and

M.P. (MD) No. 1 of 2015

V. Geetha

.. Petitioner/Respondent/Respondent

Vs.

S. Balakumar

.. Respondent/Petitioner/Petitioner

**Prayer :** This Civil revision petition is filed under Article 227 of the Constitution of India, to call for the records relating to the fair and decreetal order passed in I.A.No.110 of 2015 in H.M.O.P.No.246 of 2012 on the file of the Additional Sub Court, Karur dated 03.07.2015 and set aside the same.

|                |                    |
|----------------|--------------------|
| For Petitioner | : Mr.S.Manikandan  |
| For Respondent | : Mr.E.K.Kumaresan |

**ORDER**

Heard Mr.S.Manikandan, learned counsel appearing for the petitioner and Mr.E.K.Kumaresan, learned counsel appearing for the respondent.

2.This Civil Revision Petition has been filed against the order passed in I.A.No.110 of 2015 in H.M.O.P.No.246 of 2012 dated 03.07.2015 on the file of the Additional Sub Court, Karur.

3.The petitioner herein is the respondent and the respondent herein is the petitioner in the H.M.O.P. The respondent herein has filed H.M.O.P.No.246 of 2012. In that petition, the respondent has filed a petition in I.A.No.110 of 2015 for a prayer of medical examination of the petitioner by a Psychiatrist. The petition was allowed by the trial Court. Against the order, the petitioner has come forward with this revision petition.

4.On the side of the petitioner, it is stated that merely on the basis of the statement of the husband, the trial Court has ordered for psychological test for the petitioner which is unwarranted. The allegation put forth by the respondent against the



petitioner is that she could not welcome any guest and she was not able to cook. Though the respondent has questioned the mental equilibrium of the petitioner, he has not made the petitioner to be represented by a next friend. If the allegation of the respondent is trustworthy, the respondent should have mentioned the petitioner as represented by her next friend. At the time of trial, the Court can access the mental capacity of the petitioner and if needed, the Court can send the petitioner for psychological test. Without filing any documents, just believing the words of the respondent, the trial Court has ordered for psychological test which is against the right of privacy under Article 21 of the Constitution of India.

5. On the side of the respondent, it is stated that the husband has filed a petition for divorce on two grounds. One is for the suppression of the material facts and the next one is for mental cruelty. It is stated that the mother of the revision petitioner is working as a Nurse and the father of the petitioner is working as a Pharmacologist. Both of them are well aware of the low I.Q., level of the petitioner and the I.Q., of the petitioner is insufficient to lead a normal life. This suppression of facts amounts to mental cruelty and to prove mental cruelty, suppression of facts is to be proved and a test by the Psychiatrist will help the Court to decide the issue.

6. The learned counsel appearing for the respondent relied on the Judgment passed by this Court in the case of **Sharda v. Dharmpal** reported in **2003 (2) Supreme 962**, which reads as follows:

"81. The matter may be considered from another angle. In all such matrimonial cases where divorce is sought, say on the ground of impotency, schizophrenia...etc. normally without there being medical examination, it would be difficult to arrive at a conclusion as to whether the allegation made by his spouse against the other spouses seeking divorce on such a ground, is correct or not. In order to substantiate such allegation, the petitioner would always insist on medical examination. If respondent avoids such medical examination on the ground that it violates his/her right to privacy or for a matter right to personal liberty as enshrined under Article 21 of the Constitution of India, then it may in most of such cases become impossible to arrive at a conclusion. It may render the very grounds on which divorce is permissible nugatory. Therefore, when there is no right to privacy specifically conferred by Article 21 of the Constitution of India and with the extensive interpretation of the phrase "personal liberty" this right has been read into Article 21, it cannot be treated as absolute right. What is emphasized is that ~~legislations on this right have to be imposed and particularly where two competing interests clash. In~~ matters of aforesaid nature where the legislature has



conferred a right upon his spouse to seek divorce on such grounds, it would be the right of that spouse which comes in conflict with the so-called right to privacy of the respondent. Thus the Court has to reconcile these competing interests by balancing the interests involved.

83. It is, however, axiomatic that a Court shall not order a roving inquiry. It must have sufficient materials before it to enable it to exercise its discretion. Exercise of such discretion would be subjected to the supervisory jurisdiction of the High Court in terms of Section 115 of the Code of Civil Procedure and/or Article 227 of the Constitution of India. Abuse of the discretionary power at the hands of a Court is not expected. The Court must arrive at a finding that the applicant has established a strong *prima facie* case before passing such an order.

85. So viewed, the implicit power of a court to direct medical examination of a party to a matrimonial litigation in a case of this nature cannot be held to be violative of one's right of privacy."

7. On the side of the respondent, it is argued that an adverse inference to be taken against the petitioner as the petitioner is refusing for psychological test. On the side of the petitioner, it is further stated that the Judgment referred by the respondent is regarding a case filed by the wife to prove the impotency of her husband and that case is different from the facts of this case.

8. It is seen that the respondent/husband has not taken a plea of insanity. The ground raised by him is the low I.Q., Level of the petitioner. Though the respondent/husband claim that the petitioner has low I.Q., and is incapable of running a normal life, he has not made her to be represented by a next friend. The respondent has filed a petition against the petitioner in her individual capacity. The trial has not commenced. After the trial and examination of the petitioner, there is a chance for the Judicial Officer to verify as to the necessity of a psychological test and if the trial Court finds any such necessity, the trial Court may pass necessary orders as per law. Merely on the bare allegation raised by the husband, the trial Court has allowed this petition and this petition is to be dismissed in the interest of justice.

9. In the above circumstances, this Court deems it fit to set aside the order passed by the trial Court and to allow this petition. Accordingly, this Civil Revision Petition is allowed by setting aside the order passed in I.A.No.110 of 2015 in H.M.O.P.No.246 of 2012 dated 03.07.2015 on the file of the



Additional Sub Court, Karur. No Costs. Consequently, M.P.(MD)No.1 of 2015 is closed.

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Sd/-

Assistant Registrar

Sub Assistant Registrar(CS )

mrn

To

The Additional Sub Judge, Karur.

1 CC to M/s.R.SUNDAR SRINIVASAN, Advocate ( SR-59219[F] dated 05/04/2019 )

+1 CC to M/s.K.SURESH, Advocate ( SR-59386[F] dated 05/04/2019 )

C.R.P. (PD) (MD) No.2445 of 2015

**05.04.2019**

**DS/ /SAR- (22.04.2019) 4P 4C**