

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Civil Writ Petition No. 4488 of 2020

Date of Decision: February 18 , 2020.

Harbhajan Singh

..... PETITIONER (s)

Versus

State of Haryana and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Ms. Preeti Singh, Advocate with
Mr. Sunklan Porwal, Advocate,
Mr. Deepak Vema, Advocate and
Ms. Priya, Advocate
for the petitioner.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

This writ petition has been filed by the petitioner seeking medical examination of respondent No.2, his wife.

It is contended that the gender of respondent No.2 is not ascertained as the petitioner's marriage with respondent No.2 was never consummated. Respondent No.2 never cohabited with the petitioner and used to avoid the petitioner at all costs. The petitioner claims to have left for United Kingdom after one month of his marriage on 07.09.2015. Respondent No.2 and her parents are

alleged to have pressurized the petitioner to take respondent No.2 alongwith him to United Kingdom. The petitioner thereafter discussed the problem with his mother and also revealed about non-consummation of his marriage. Both of them suggested a medical examination of the petitioner's wife. However, respondent No.2 refused to accompany the petitioner's mother for medical examination. According to the petitioner, respondent No.2 and her parents though earlier took a stand that she is shy and an introvert, admitted that respondent No.2 is an eunuch. It is contended that in this view of the matter the petitioner, being aggrieved of deceitful solemnization of his marriage with respondent No.2, seeks her medical examination.

Learned counsel for the petitioner vehemently argues that a fundamental right of the petitioner has been violated, therefore, the petitioner is entitled to the relief as claimed in this writ petition. She relies upon the judgments of the Hon'ble supreme Court in Sharda v. Dharmpal (2003) 4 SCC 493 and Lalit Kishore v. Meeru Sharma and another (2009) 9 SCC 433 as well as decision of Jharkhand High Court in Pallavi v. Raj Kamal, AIR 2008 Jhar. 79. It is thus prayed that this writ petition be allowed.

I have heard learned counsel for the petitioner at length and have gone through the file.

Facts which are not disputed are that, proceedings under the Hindu Marriage Act have been initiated by the petitioner seeking divorce/annulment of his marriage with respondent No.2. It is informed that FIR No.63 dated 04.08.2017 under Sections 406/498A IPC stands registered against the petitioner.

Respondent No.2 has filed a petition under Section 125 Cr.P.C. seeking

maintenance from the petitioner. It is relevant to note, at this stage, that the petitioner had filed an application in the proceedings under Section 125 Cr.P.C. for a direction to respondent No.2 to undergo a medical test from PGI, Chandigarh to ascertain her gender as to whether she is a female, a transgender or eunuch. The said application was dismissed by the learned Judicial Magistrate First Class, Ludhiana vide order dated 10.08.2018 attached as Annexure P6 with this petition. It is relevant to refer to para 4 of the said order dated 10.08.2018, which reads as under:-

“4. The petitioner in order to support her claim has produced on record the copy of compromise dated 10.12.2016 wherein no fact has been mentioned with regard to the gender of the petitioner. Further, she has also produced on record the examination conducted at CMC and Hospital, Ludhiana dated 25.04.2017, Sanjivni Hospital, Ludhiana dated 04.12.2016 and Didar Heart Beat Diagnostic dated 25.04.2017 and 19.01.2018 wherein it has been specifically mentioned that the gynecological examination of Pooja is completely normal and that her marriage has not been consummated.”

Learned counsel for the petitioner has fairly stated that the said order was not subjected to any challenge by the petitioner and that arrears of maintenance are also due towards respondent No.2. She however submits that the factum of order dated 10.08.2018 not being challenged, is not sufficient to deny the relief claimed by the petitioner in this writ petition.

However, I am unable to agree with the contentions raised by learned counsel for the petitioner. Reference by learned counsel to the judgments as mentioned in the foregoing paras is of no avail to the petitioner. This is so for the

reason that the question before the Hon'ble Supreme Court in Sharda's case (supra) was whether a party to divorce proceedings can be compelled for a medical examination. It has been held by the Hon'ble Supreme Court that the matrimonial court has the power to order medical examination of a party. It is further observed by the Hon'ble Supreme Court in the said case that a court shall not order a roving inquiry and that the court must have sufficient material before it to enable it to exercise its discretion and such discretion would be subjected to the supervisory jurisdiction of the High Court in terms of Section 115 CPC and/or Article 227 of the Constitution of India. Similarly, the other two judgments are also of no avail to the petitioner in the peculiar facts and circumstances of this case. Learned counsel has also relied upon the judgment of the High Court of Kerala in Tessy James v. The Director General of Police, Thiruvananthapuram and others, 2018(3) RCR (Crl.) 587. The said case arises out of a writ of habeas corpus filed by the mother of the detinue. Medical examination of the detinue i.e., the son of the petitioner therein was directed as it was alleged that he was a psychiatric patient. The said judgment too is not relevant for adjudication of the present case.

Mere reference by learned counsel to the ultrasound report of respondent No.2 attached as Annexure P2, wherein it is mentioned that the patient did not give her consent for a transvaginal scan, can definitely not constitute sufficient material to persuade this Court to direct a medical examination of respondent No.2 as sought at this stage. Respondent No.2 in the said report, is stated to be a twenty one (21) years old female. It is pertinent to note that the petitioner has even chosen not to attach all the documents as

mentioned in para 4 of order dated 10.08.2018 passed by the learned Judicial Magistrate First Class, Ludhiana. The said documents were not furnished even during the course of arguments despite opportunity being afforded during hearing as well. It cannot be said that the petitioner in the present proceedings has been able to establish the standard of evidence required for directing such medical examination. Reference in this regard can gainfully be made to the judgment of the Hon'ble Supreme Court in **Justice K.S.Puttuswamy v. Union of India 2019 (1) SCC 1**, wherein the right to privacy has been delineated upon.

Keeping in view the peculiar facts and circumstances of the case, where in the aftermath of a matrimonial dispute, various proceedings are pending between the parties including those under the Hindu Marriage Act. I do not find any ground, whatsoever to interfere and order medical examination of respondent No.2, at this stage.

In this view of the matter, this writ petition is dismissed with no order as to cost.

Needless to say, the petitioner is at liberty to avail the remedy/remedies as may be available to him in accordance with law for the relief sought in this petition.

February 18 , 2020.
'om'

(LISA GILL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No