

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10738 OF 2019

Sachin Ganpatrao Jadhav	...Petitioner
Vs.	
Vasudha @ Rupali Sachin Jadhav	... Respondent

Mr.Umesh H. Pawar for the Petitioner.
Mr.Nikhil N. Pawar for the Respondents.

CORAM : C.V. BHADANG, J.

DATE : 18 AUGUST 2022

P.C.

. Rule made returnable forthwith. The learned counsel for the Respondent waives service. Heard finally by consent of parties.

2. The challenge in this Petition at the instance of the Petitioner-Husband is to the order dated 25 June 2019 passed by the learned Civil Judge Senior Division, Islampur in HMP No.28 of 2018, below Exhibit-22. By the impugned order the learned Trial Court has refused to direct the Respondent-Wife to subject herself for medical examination.

3. The aforesaid Petition is filed by the Petitioner against the Respondent for dissolution of marriage on the ground that the Respondent is suffering from Schizophrenia. According to the Petitioner, shortly after their marriage, he noticed that the mental condition of the Respondent, is not stable and an evaluation of the mental condition, made before the Pschygolgist Mr.Kapil Lalit on 21 July 2017 and as per the report submitted by him the Respondent was disclosed to have symptoms of depression with psychotic symptoms or schizoaffective disorder. It is submitted that the Petitioner is seeking dissolution of marriage solely on the ground of the mental illness of the Petitioner.

4. Reliance is placed on the decision of the Supreme Court in *Sharda V/s. Dharmpal*¹, in order to submit that the Supreme Court, in similar circumstances has held that such a direction to compel a party to a medical examination is not violative of Article 21 of the Constitution of India. The learned counsel has also placed reliance on a 'short case record' of the Petitioner, from the Government Hospital, Sangli, wherein expert had advised follow up for psychological evaluation and 'Rorsachach test'.

5. The learned counsel however did not dispute that the decision of the Supreme Court was not brought to the notice of

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the Trial Court. Even sofar as the short case record from the Government Hospital, Sangli is concerned it was not filed before the Trial Court.

6. The learned counsel for the Respondent submitted that the Application has rightly been rejected as the Petitioner has not even led any evidence in the matter and there is no *prima facie* material to show that the Respondent is suffering from mental illness. The learned counsel pointed out that the Respondent was serving in Kusumgandh English Medium School, Islampur and the experience certificate dated 26 February 2021 is produced on record.

7. In reply it is submitted by the learned counsel for the Petitioner that the certificate is for the period from 1 June 2020 till 26 February 2021 during which period on account of the Covid-19 pandemic the schools were closed. He therefore, submitted that no reliance can be placed on the experience certificate.

8. I have considered the submissions made. It can be seen that the Petition for dissolution of marriage filed by the Petitioner, is solely based on the alleged mental illness of the Respondent. According to the Petitioner, the Respondent is suffering from Schizophrenia for which reliance is placed on the

psychological tests done by Psychologist Dr. Kapil Lalit and short case record from the Government Hospital, Sangli.

9. The Supreme Court in Sharda (Supra) has held thus in paragraph Nos.76 to 78.

“76. 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 some limitations 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.

77. If for arriving at the satisfaction of the Court and to protect the right of a party to the lis who may otherwise be found to be incapable of protecting his own interest, the Court passes an appropriate order, the question of such action being violative of [Article 21](#) of the Constitution of India would not arise. The Court having regard to [Article 21](#) of the Constitution of India must also see to it that the right of a person to defend himself must be adequately protected.

78. 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.”

10. It can thus be seen that although the Supreme Court has held that such an order directing the party to undergo medical examination, is not violative under Article 21 of the Constitution of India, the Court shall not order a roving enquiry and must have sufficient material before it for exercise of its discretion.

11. As noticed earlier the Petitioner has neither brought the judgment in *Sharda* (Supra) to the notice of the learned Trial Court nor the case record from the Government Hospital, Sangli was before the Trial Court, when the impugned order was passed.

12. Considering the overall circumstances, in my view it would be appropriate if the learned Trial Court reconsiders the Application on its own merits and in light of the rival submissions made and the decision of the Supreme Court in *Sharada's* case. Such a course of action would enable the parties to produce further documents, if any, in order to *prima facie* show

mental condition of the Respondent on the basis of which the Trial Court can pass appropriate order after hearing the parties.

13. In such circumstances, the Petition is partly allowed.

14. The Application at Exh-22 is restored to file, for deciding it afresh in accordance with law and in light of the observations made herein.

It will be open for the parties to produce documents in support of their rival contentions on Application Exhibit-22 before the Trial Court.

15. The rival contentions of the parties on merits are left open.

16. The Trial Court shall decide the Application (Exh-22) as expeditiously as possible and preferably within a period of two months from the receipt hereof.

Rule is partly made absolute, with no order as to costs.

C.V. BHADANG, J.