



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-3923-2024 (O&M)
Date of Decision: 16.09.2024

GAURAV SHUKLA @ SHARMA

... .PETITIONER

Vs.

AMBIKA DEVI

... .RESPONDENT

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr.G.S. Sandhu, Advocate, for the petitioner.

DEEPAK GUPTA, J.

Wife (*respondent herein*) filed petition under Section 12(1) clause (a) of the Hindu Marriage Act, 1955 to declare marriage with the husband (petitioner herein) as a nullity on the ground of impotency of the husband. Husband denied allegation of impotency.

2. The wife moved an application for direction to the Medical Superintendent, PGI (Department of Urology) Chandigarh for conducting medical test/examination to assess the status of impotency/medical check-up of the husband (*petitioner herein*) as to whether he can do sexual intercourse with her.

3. That application has been allowed by the trial Court by way of impugned order dated 14.03.2024, which has been assailed by the husband before this Court on the grounds that he cannot be compelled to undergo the medical test and further that there was no proof regarding his impotency inasmuch as wife had not even deposed to that effect before the Court so far.

3. The impugned order would reveals that trial Court has referred to Judgment of Hon'ble Supreme Court in ***Sharda Vs. Dharampal, (SC), Law Finder Doc Id#33268***, wherein following conclusions have been drawn by Hon'ble Supreme Court: -

1. A Matrimonial Court has the power to order a person to undergo medical

test.

2. Passing of such an order by the Court would not be in violation of the right to personal liberty under Article 21 of the Indian Constitution.
3. However, the Court should exercise such a power if the applicant has a strong prima facie case and there is sufficient material before the Court. If despite the order of the Court, the respondent refuses to submit himself to medical examination, the Court will be entitled to draw an adverse inference against him.”

4. In view of the legal position as above, when the annulment of marriage is sought on the ground of impotency of the husband, the Court is within its power to order the husband to undergo the medical test. The same does not amount to infringement of the ‘right of privacy’ under Article 21 of the Constitution of India.

5. As such, finding no merit in the present petition, the same is hereby dismissed.

16.09.2024
Vivek

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned? Yes

Whether reportable? No