

HIGH COURT OF MADHYA PRADESH : JABALPUR**WRIT PETITION No.8308/2013**

Smt. Veenita Bai

Vs.

Dinesh Kumar

Shri Brahmendra Pathak, learned Counsel for the petitioner.

Shri Rakesh Kumar Chourasia, learned Counsel for the respondent.

Present : Hon'ble Shri Justice K.K. Trivedi

O R D E R**(18/03/2015)**

By this writ petition under Article 227 of the Constitution of India, the petitioner who is non-applicant before the Court of District Judge, Harda, in a divorce petition filed by the respondent, has come before this Court against the impugned order dated 07.03.2013 by which on an application made by the respondent/husband, the petitioner has been directed to go to the Medical College, Indore, for the purpose of getting the medical examination of the petitioner done to ascertain whether she is suffering from any mental disorder or not. It is contended that the respondent herein filed the suit for grant of divorce under Section 13 of the Hindu Marriage Act, 1955 against the petitioner on various allegations specifically alleging that the petitioner is suffering from epilepsy. For the said purpose and proof of the said allegations, certain documents have been placed on record by the respondent/husband. These allegations made by the respondent have been specifically denied by the petitioner by filing a written

statement alleging that in fact respondent has deserted the petitioner/wife in the month of August, 2011 and since even after making efforts, the respondent has not permitted the petitioner to enter the matrimonial home and in fact was not willing to admit the petitioner as his legally married wife. On a false allegation that the petitioner is suffering from such mental disorder, the suit for divorce has been filed. It is very categorically contended in the special pleadings that the petitioner was not suffering from such mental disorder. On the other hand, for creating the evidence when petitioner was taken to the hospital by the respondent himself, all medical reports were given in favour of the petitioner.

2. The respondent though has produced certain documents before the Trial Court but allegedly just to create an evidence, moved an application before the Court asking permission to send the petitioner herein for medical examination at Indore and to get the expert opinion on the said medical examination. Such a prayer made by the respondent was opposed by the petitioner on the ground that she was taken to the expert, certain tests were conducted, the reports were sent to the District Medical Board and opinion was given that there were no signs that the petitioner was suffering from any such mental disorder. Only with a motive to get the evidence created to prove such a false allegation made in the suit, the respondent has moved the application, therefore, the same may be dismissed. Since the said application has been allowed by the Trial Court, the writ petition is required to be filed.

3. The respondent by filing an application for vacating the stay, has placed on record certain documents. The medical certificate and certain test reports have been filed.

It is contended in the application that keeping in view the reports submitted by the Medical Officers and the experts, it was necessary to get the petitioner medically examined thoroughly and to obtain reports in that respect. By placing reliance in certain documents, it is said that even before filing of the suit, a complaint in the police was made by the respondent and this indicates that in fact application made by the respondent was not an afterthought, rather to get the issue decided in appropriate manner such a prayer was made. It is contended that in terms of the various pronouncements of law, the petitioner is required to be put to medical examination and, therefore, application was not filed by the respondent with any ulterior motive to create evidence. It is, thus, contended that the Trial Court has rightly appreciated all these facts and has properly decided the application of the respondent, therefore, the writ petition is liable to be dismissed being misconceived.

4. Heard learned Counsel for the parties at length and perused the record.

5. It is not in dispute that the proceedings initiated by the respondent are to be tried as a civil suit. It is to be seen from the pleadings in the application for divorce that the allegations were made that the petitioner herein was suffering from epilepsy even before the marriage and this fact was disclosed by the petitioner herein to the respondent after the marriage. Certain incidents have been mentioned by the respondent and the allegation was made that petitioner was visiting her parents every month for the purposes of bringing the medicines for the said ailment. It is the allegation made in the application by the respondent that he took the petitioner herein to the doctors, get her examined and the doctors have opined that the petitioner

was suffering from mental disorder. If that was the situation, the respondent was required to prove all those facts by adducing the evidence. Since it was stated that the respondent was not having good financial condition to get the petitioner treated, though he has tried his best, these aspects were required to be proved by the respondent himself. The burden of proving such allegation was on the respondent with full force because the petitioner herein has specifically denied all those allegations in her written statement filed before the Trial Court.

6. To what extent the evidence was made available in this respect by the respondent has to be examined. If the documents filed along with the application for vacating interim stay are looked into, it would be amply clear that the petitioner was taken to the Medical Board even after filing of the suit for divorce. The suit for divorce was filed in the month of November, 2011, the petitioner was examined by the Medical Board on 19.11.2012 and from this it is clear that only this much was said that the petitioner can be referred to the Neuro Physician for the purposes of getting her medically examined. As alleged by the respondent, the EEG test of the petitioner was conducted on 28.02.2011 at Bhopal and in that report nothing was found, rather it was a note made in the said report that normal EEG does not exclude the epilepsy. This being so, the very object of writing a report on 19.11.2012 was not enough to hold that the petitioner was required to be put to such medical examination. Even otherwise it was the responsibility of the respondent to prove such fact and in the course of adducing evidence if it is found by the Trial Court that such medical examination of the petitioner is necessary, order in that respect could be passed. The respondent has not started

his evidence and at that stage it was not to be held that medical examination of the petitioner was necessary.

7. In the case of ***Rekha Ravindra Kumar vs. Ravindra Kumar Ramchandra, 1993 I.L.R. 230***, this Court while dealing with such circumstances has categorically held that the well settled law is that the alleged mental disorder must be proved to be existing on the date the suit was filed. If that mental disorder was not on the date when the claim was made, on that ground alone the decree of divorce cannot be granted. A Division Bench of the Chhattisgarh High Court in the case of ***Khumesh Deshmukh vs. Smt. Padmini Deshmukh, [2010 (5) MPHT 88 (CG)]***, has held that the concept of proof beyond the shadow of doubt is to be applied only in the criminal trials and not to the civil matters and specially not to the matters to such delicate personal relationship, in terms of the law laid-down by the Apex Court in the case of ***Smt. Mayadevi vs. Jagdish Prasad, AIR 2007 SC 1426***. If it was a case of a fraud, it was the duty on the part of the respondent to establish that such fact of mental disorder, though was in existence in the petitioner much before the solemnization of marriage, was deliberately suppressed by the family members of the petitioner to get her married with the respondent. These aspects if are taken into consideration, it would be clear that in case such allegations were made by the respondent, at least he was to establish the case to that extent that in fact a fraud was committed with him by the family members of the petitioner. For that he was not required to obtain a report of subsequent ailment which the petitioner has developed. In fact he was required to prove that right from very beginning the petitioner was suffering from such ailment and for that reason since the marriage is said to be fraudulent one, the same was liable to be declared as null

and void or a decree of divorce was to be granted to the respondent.

8. Nothing is stated in the application so filed by the respondent before the Court below nor such application is placed on record. Even when the Chief Medical and Health Officer, Harda was directed to give such medical report, prima facie it was said that there was no symptoms available in the petitioner to show that she was suffering from Neurological ailment or epilepsy. The Neuro Physician, who has examined the petitioner on earlier occasion, himself could not give a definite opinion about such ailment as is clear from the report placed on record with the I.A. for vacating stay filed by the respondent himself, therefore, it was not open to the Trial Court to direct sending of the petitioner for medical examination. Merely because the petitioner was sent to the medical examination before the Medical Board, for the purpose of creating evidence, the petitioner was not required to be referred to medical examination at Indore. This view has been expressed by the Apex Court in the case of ***Sharda vs. Dharmpal, (2003) 4 SCC 493***, wherein it is held that the power of matrimonial Court is extended for issuance of such direction but that power is to be exercised only if prima facie case is made out and there is sufficient material before the Court, produced by the person claiming such medical examination.

9. In view of the aforesaid discussion, it is clear that the Court below has exceeded in exercise of jurisdiction in allowing the application of respondent by the impugned order. Therefore, the said order cannot be countenance.

10. Accordingly, the writ petition is allowed. The order dated 07.03.2013 directing sending of the petitioner for

medical examination to Indore is hereby quashed. However, the respondent would be free to make appropriate application for such medical examination of the petitioner in case prima facie evidence about the mental disorder or ailment of the petitioner is produced by the respondent in course of adducing evidence. At that stage, if such an application is made, the Trial Court would be free to examine preliminary evidence available on record and decide such application of the respondent on its own merits without being influenced by this order.

11. The writ petition is allowed and disposed of accordingly. However, there shall be no order as to costs.

(K.K. Trivedi)
Judge

Skc