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WP-4819-2012

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE

ON THE 21st OF SEPTEMBER, 2026WRIT PETITION No. 4819 of 2012*SMT.SADHNA @ PRIYA**Versus**SANTOSH KUMAR OJHA*

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Appearance:

Shrii Madhur Bhargava - Advocate for petitioner.

Shri Ajay Singh Rathore - Advocate and Shri Satya Prakash Singh -

Advocate for respondent.
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ORDER

The present petition under Article 227 of the Constitution of India has been preferred by the petitioner assailing the order dated 02.07.2012 passed by the learned District Judge, Ashoknagar in Case No.46-A/11 HMA, whereby an application preferred by the respondent under Section 151 of the Code of Civil Procedure seeking medical examination of the petitioner came to be allowed.

The short facts of the case are that the marriage between the petitioner and respondent was solemnized on 28.04.2004 at Ashoknagar and the parties resided together till 15.07.2011. Thereafter, the respondent instituted proceedings for divorce under Section 13 of the Hindu Marriage Act alleging cruelty on the part of the petitioner. The petitioner filed her written statement denying the allegations and expressed her willingness to reside with the



respondent. The parties led their respective evidence and the evidence of the petitioner was also closed. The matter was thereafter fixed for final arguments. At that stage, on 22.06.2012, the respondent moved an application under Section 151 CPC seeking medical examination of the petitioner, primarily referring to the allegation that she had undergone operations on three occasions. The petitioner opposed the said application. The learned Court below, however, by the impugned order dated 02.07.2012, allowed the application and permitted the respondent to have the petitioner medically examined. The aforesaid factual sequence is borne out from the pleadings and chronological events placed on record.

Learned counsel appearing for the petitioner submits that the impugned order is wholly unsustainable in law and on facts. It is contended that the application for medical examination was moved only after the evidence of both the parties had already been concluded and the case had reached the stage of final arguments. According to learned counsel, the respondent, neither in the original petition for divorce nor in his evidence, had laid any foundation for seeking medical examination of the petitioner. It is further submitted that the respondent sought to introduce a new factual aspect through an application filed at the stage of arguments, i.e. the alleged operations had taken place prior to the marriage, although such a plea was not specifically pleaded or established by evidence.

Learned counsel for the petitioner further submits that there is no material on record indicating either the nature of the alleged ailment or the particular medical issue which was required to be established through such



examination. No witness examined by the respondent had stated that the petitioner had undergone three operations prior to the marriage, nor any such suggestion was put to the petitioner or her witnesses. It is urged that the medical examination, in the facts of the case, would amount to permitting the respondent to collect evidence after conclusion of the trial, which cannot be permitted merely on the basis of a belated application.

It is also submitted that the allegation regarding the petitioner having undergone operations, even if assumed to be correct, by itself does not constitute any independent ground for grant of divorce under the Hindu Marriage Act. Learned counsel submits that the petitioner had undergone treatment for her appendix after marriage and the relevant medical documents were already within the knowledge and possession of the respondent. It is, therefore, contended that the direction for medical examination was unnecessary, vague and amounted to an unwarranted exercise of jurisdiction by the Court below.

Learned counsel for the petitioner has placed reliance upon the judgment of the Hon'ble Supreme Court in **Sharda Vs. Dharampal**, (2003) 4 SCC 493, and submits that although the matrimonial Court possesses power to direct medical examination in an appropriate case, such power is not to be exercised mechanically and the applicant must place sufficient material before the Court and establish a strong prima facie case. In the said judgment, the Hon'ble Supreme Court has specifically cautioned that the Court should not permit a roving inquiry and there must be sufficient material before it for exercise of such discretion. The conclusions recorded



by the Hon'ble Supreme Court make it clear that the power to direct medical examination is to be exercised where there is a strong *prima facie* case and sufficient material on record.

Per contra, learned counsel appearing for the respondent has opposed the petition and supported the impugned order. It is submitted that the respondent had instituted the matrimonial proceedings alleging cruelty and had specifically pleaded that the petitioner had undergone operations and, on account of the alleged physical condition, had declined to maintain normal matrimonial relations with him. According to learned counsel, the medical examination was sought only with a view to place the relevant medical facts before the matrimonial Court and to enable it to arrive at a proper and just conclusion on the allegations raised in the matrimonial proceedings.

Learned counsel for the respondent further submits that the power of the matrimonial Court to direct medical examination is not dependent upon the existence of an express provision in the Hindu Marriage Act and that such power can be exercised under the inherent jurisdiction of the Court. It is contended that medical evidence is relevant where the physical or mental condition of a spouse has a bearing upon the matrimonial dispute and the Court ought not to prevent a party from obtaining relevant expert evidence merely on the ground that the application was filed during the course of the proceedings.

Learned counsel for the respondent has placed reliance upon the judgment of the Hon'ble Supreme Court in **Samar Ghosh Vs. Jaya Ghosh**, (2007) 4 SCC 511; 2007 (3) Supreme 26, particularly the principles



governing mental cruelty. It is submitted that the Hon'ble Supreme Court has recognized that persistent conduct, refusal of marital relations without sufficient justification, studied neglect and conduct which causes mental agony may, depending upon the facts and circumstances of a particular case, constitute mental cruelty. The Hon'ble Supreme Court has also emphasized that the question of cruelty has to be examined on the cumulative facts and circumstances of each case.

Learned counsel for the respondent has also relied upon the judgment of the Hon'ble Supreme Court in **Ramesh Chandra Agrawal Vs. Regency Hospital Limited & Others**, (2009) 9 SCC 709, to contend that where a matter involves a medical or scientific issue, expert evidence can be relevant and the Court may require the assistance of medical expertise for arriving at a reliable conclusion. It is submitted that the law of evidence recognizes the relevance of expert opinion where the issue lies beyond the ordinary knowledge and experience of the Court.

Heard learned counsel for the parties and perused the record.

The controversy in the present petition is confined to the legality of the order by which, after conclusion of the evidence of the parties and at the stage of final arguments, the petitioner has been directed to undergo medical examination at the instance of the respondent.

There can be no quarrel with the proposition laid down by the Hon'ble Supreme Court in **Sharda Vs. Dharampal** (*supra*) that a matrimonial Court does possess the power, in an appropriate case, to direct a party to undergo medical examination. The Hon'ble Supreme Court has, however, equally



made it clear that such power is discretionary and is not to be exercised for the purpose of permitting a roving inquiry. The Court must have sufficient material before it and the applicant must establish a strong *prima facie* case before such an intrusive direction is issued.

Tested on the aforesaid parameters, this Court finds that the necessary foundation for exercise of such jurisdiction is conspicuously absent in the present case. The respondent's application was moved after the evidence of both parties had already been concluded and the matter had been fixed for final arguments. The record, as placed before this Court, does not disclose any material from which it could be inferred that a medical examination of the petitioner was necessary for determination of any issue already framed and being tried by the matrimonial Court.

More importantly, there is no material available on record to establish that the respondent had ever asked the petitioner to accompany him to a doctor or to undergo any medical treatment or examination and the petitioner had refused to do so. In the absence of such material, the subsequent application seeking compulsory medical examination cannot be treated as a necessary consequence of any proved conduct of the petitioner.

The allegation regarding the petitioner having undergone three operations also does not, by itself, furnish sufficient foundation for directing her medical examination. The petitioner had specifically disputed the nature and relevance of the alleged operations and had contended that the relevant medical treatment had taken place after marriage and that the respondent himself was aware of the same. The respondent, instead of establishing the



relevant facts through the evidence already available to him, sought medical examination of the petitioner after the conclusion of the evidence. Such an exercise, in the facts of the present case, would effectively permit the respondent to fill up the lacuna in his evidence.

The reliance placed by learned counsel for the respondent upon **Samar Ghosh Vs. Jaya Ghosh (supra)** does not advance the case of the respondent so far as the validity of the impugned order is concerned. The said judgment explains the broad parameters within which the allegation of mental cruelty is to be examined and emphasizes that the conduct of the parties has to be considered cumulatively and in the backdrop of the facts of each case. The said principles cannot dispense with the requirement of establishing a factual and evidentiary foundation for an order directing compulsory medical examination.

Likewise, the judgment in **Ramesh Chandra Agrawal Vs. Regency Hospital Limited & Others (supra)** deals with the relevance and evidentiary value of expert medical opinion where a genuine medical or scientific issue arises for determination. The said judgment does not lay down that a party can, as a matter of course, be subjected to medical examination in the absence of sufficient foundational material. In fact, the principle that expert evidence becomes relevant where the issue is beyond the ordinary knowledge of the Court does not eliminate the requirement that the necessity and relevance of such evidence must first be demonstrated.

In the present case, the learned Court below, while allowing the application, has not recorded any specific finding as to what particular



medical issue required determination, what material already existed on record warranting such examination, or in what manner the proposed examination was connected with an issue which the respondent had already pleaded and proved through his evidence. The impugned order, therefore, does not disclose the requisite application of mind to the parameters governing exercise of such discretionary power.

The stage at which the application was filed is also of considerable significance. Once the parties had completed their evidence and the matter had reached the stage of final arguments, permitting a medical examination without demonstrating exceptional necessity would cause serious prejudice to the petitioner and would enable the respondent to collect additional evidence in support of a case which had already been tried on the basis of the pleadings and evidence brought before the Court.

This Court is conscious of the fact that medical evidence may, in an appropriate matrimonial proceeding, materially assist the Court in determining an issue concerning the physical or mental condition of a spouse. However, the power to obtain such evidence cannot be converted into a means for conducting a roving or fishing inquiry. The safeguards emphasized by the Hon'ble Supreme Court in **Sharda Vs. Dharampal (supra)** are required to be observed, particularly where the proposed direction affects the personal liberty and bodily autonomy of a party to the matrimonial proceedings.

On an overall consideration of the material available on record, this Court is of the considered view that the respondent failed to place sufficient



material before the learned Court below so as to constitute a strong prima facie case warranting a direction for medical examination of the petitioner. The impugned order, therefore, suffers from material irregularity and cannot be sustained.

Accordingly, the present petition is **allowed**. The order dated 02.07.2012 passed by the learned District Judge, Ashoknagar in Case No.46-A/11 HMA, whereby the application preferred by the respondent under Section 151 CPC seeking medical examination of the petitioner was allowed, is hereby **set aside**. Consequently, the application filed by the respondent seeking medical examination of the petitioner stands dismissed. The matrimonial proceedings shall proceed further in accordance with law on the basis of the pleadings and evidence already available on record.

Petition stands **allowed**.

(MILIND RAMESH PHADKE)
JUDGE