

THE HON'BLE Ms. JUSTICE B. S. BHANUMATHI

Civil Revision Petition No.1067 of 2022

ORDER:

This revision is filed under Article 227 of the Constitution of India is directed against the order, dated 25.05.2022, dismissing I.A.No.436 of 2018 in O.P.No.107 of 2016 on the file of the Judge, Family Court, Kurnool, filed under Section 75E and Section 151 CPC read with Section 45 of the Indian Evidence Act, 1872, to direct the respondent to undergo medical examination by Dr. G. V. Krishna, Urologist Gowri Gopal Hospital, Rtd. Professor, Medical College, Kurnool, and Dr. Chandra Sekhar Reddy, Psychologist, Government General Hospital, Kurnool, or any competent doctor to assess his status of potency and to give scientific opinion regarding the potency of the respondent in respect of consummation of marriage.

2. Heard *Sri Vivekananda Virupaksha*, learned counsel for the petitioner and *Sri V. Surya Kiran Kumar*, learned counsel for the respondent.

3. The facts of the case are as follows:

The petitioner filed main petition to annul the marriage, dated 20.04.2016, between the petitioner and the respondent and also for grant of damages/compensation of Rs.1 crore to the petitioner,

besides direction for return of dowry of Rs.6,00,000/- with interest at 18% per annum from the date of the petition till the date of payment and also for grant of Rs.1,00,000/- towards marriage expenses and costs of the petition.

4. The petitioner is a senior Medical Officer from 2010 and was also a Medical Officer since 2006 in the Government Unani Hospital, Kurnool. The respondent is a former MLA of Kodumur and at present, he is an active politician affiliated to a political party in the State of Andhra Pradesh. According to the petitioner, the marriage of the petitioner with the respondent took place on 20.04.2016 and the marriage was not consummated owing to the impotency of the respondent. Further, the petitioner alleged the misbehavior of the respondent, viz., physically harassing her and also demanding her to bring additional dowry, besides dowry in cash and gold ornaments already given.

5. The petition was opposed by the respondent by filing his counter denying the marriage and claiming that on 14.06.2016, the family members of both parties decided to celebrate the marriage of the petitioner and the respondent and that the marriage was not performed owing to the conduct of the petitioner which the respondent could know thereafter only and both of them expressed

unwillingness for the marriage, but later, the petitioner filed criminal cases and this petition for annulment of marriage etc to blackmail for money due to her greed.

6. The petitioner filed I.A.No.436 of 2018 to prove her case with scientific evidence. The petition was opposed mainly on the ground that when there is no marriage and there is no relationship of wife and husband, the petition lacks merit.

7. After hearing both parties, the trial Court dismissed the petition making the observations regarding the proof of marriage and also stating that the matter is coming up for arguments and at this fag-end of the stage of the proceedings, the petition was filed.

8. Having been aggrieved by the order, this revision petition was filed.

9. Learned counsel for the petitioner submitted that the relief claimed by the petitioner is within the jurisdiction of the trial Court and that the ground taken by the revision petitioner can be decided only by the opinion of an expert. In this regard, he placed reliance on the decision of the Supreme Court in **Sharda v. Dharmpal**¹ and

¹ AIR 2003 SC 3450

a decision of the then Andhra Pradesh High Court in **G.Venkatanarayana v. Kurupati Laxmi Devi**².

10. On the other hand, learned counsel for the respondent vehemently contended that without there being any evidence of the alleged marriage, granting the relief claimed by the petitioner amounts to collection of evidence which has no relevance. He further submitted that the evidence so far placed by the petitioner would only show the ceremony of betrothal, but not marriage as alleged. He further stated that the decision in **Sharda** (1 supra) has no application to the present case as there was no dispute of marriage in that case whereas in this case, the marriage itself is denied.

11. In respect of the grant of the relief claimed by the petitioner in the main proceeding, she has to establish not only the marriage, but also the ground pleaded for the main relief. Whatever evidence is required, that can be adduced only during the course of enquiry and the evidence of one fact is not supposed to be lead after proof of the other. It is a matter of appreciation of evidence after the trial is concluded, as to whether the petitioner is able to prove the marriage or not.

² AIR 1985 AP 1

12. In **Sharda** (1 supra), at para No.86, the Supreme Court held as follows:

“86. To sum up, our conclusions are

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.”

13. At this juncture, *prima facie* evidence to prove the marriage only can be seen. Both parties have shown the pleadings, evidence, lapses of other side in order to substantiate one’s own version. All that need not be dealt with, in detail, at this juncture. Since, as per the decision of the apex Court in **Sharda** (1 supra), a matrimonial Court has power to order a person to undergo medical test, it cannot be contended that the relief cannot be granted in the present merely because the marriage was denied. Of course, the petitioner has approached seeking the relief at a belated stage, but that alone cannot be a ground to reject the relief which can be otherwise granted. Therefore, to secure all that material evidence

to enable the Court to decide the matter on merits, by imposing some terms, the trial Court ought to have allowed the petition, but it failed to exercise its jurisdiction.

14. In the result, the Civil Revision Petition is allowed setting aside the order, dated 25.05.2022, passed by the Judge, Family Court, Kurnool, in I.A.No.436 of 2018 in O.P.No.107 of 2016. Consequently, I.A.No.436 of 2018 is allowed. The trial Court is directed to determine the hospital to which the respondent can be referred.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

B. S. BHANUMATHI, J

21.08.2023
RAR