

SUPREME COURT OF INDIA

Lalit Kishore

Vs.

Meeru Sharma

(Tarun Chatterjee and R.M.Lodha JJ.)

04.08.2009

JUDGMENT

Tarun Chatterjee, J.

1. Leave granted.

2. This is an appeal filed against the judgment and order dated 2nd of December, 2008 in W.P.No.10290 of 2007 of the High Court of Madhya Pradesh at Jabalpur by which the application filed by the husband-appellant for medical examination of his wife-respondent for ascertaining her mental condition was rejected by the Family Court at Jabalpur, which was affirmed by the High Court in W.P.No.10290 of 2007.

3. In our view, the High Court as well as the Family Court was not justified in rejecting the application for medical examination of the wife-respondent. It is difficult to conceive that the Family Court cannot be conferred with jurisdiction to pass an order for medical examination in an appropriate case because when such report is received, that would facilitate the court in giving a positive conclusion on the mental condition of the wife-respondent. It is true that the Hindu Marriage Act or any other law governing the field does not contain any express provision empowering the court to issue direction upon a party in a matrimonial proceeding to compel him to submit herself/himself to a medical examination. But, in our view, it does not preclude the court from passing such an order. The court is always empowered to satisfy itself as to whether a party before it suffers from mental illness or not either for the purpose of taking evidence on the ground for which the matrimonial proceeding was started. It is well settled that the primary duty of the court is to see that the truth comes out. Therefore, although the medical examination for a party is not provided in the Act, even then, the court has complete inherent power in an appropriate case under Section 151 of the Code of Civil Procedure to pass all orders for doing complete justice to the parties to the suit. In *Sharda vs. Dharmpal* [(2003) 4 SCC 493], a three-Judge Bench decision of this Court has taken into consideration the power of the court to allow such application for medical examination of a party in a matrimonial proceeding and observed as under :-

In certain cases medical examination by the experts in the field may not only be found to be leading to the truth of the matter but may also lead to removal of misunderstanding between the parties. It may being the parties to terms.

4. In view of the aforesaid decision of this Court and considering the fact that the report of the medical expert would only be an evidence in the proceeding, we do not find any reason why such application for appointment of a medical expert to examine the wife-respondent cannot be granted.

5. For the reasons aforesaid, the impugned order as well as the order of the Family Court are set aside. The application for appointment of a medical expert for medical examination of the wife-respondent filed at the instance of the husband-appellant is thus allowed.

6. The appeal is thus allowed. There will be no order as to costs.