

**HIGH COURT OF MADHYA PRADESH:JABALPUR**

**SINGLE BENCH:** Hon'ble Mr. Justice Subodh Abhyankar

**MISC. PETITION NO.4820 OF 2018**

Smt. Surbhi Trivedi.

Vs.

Gaurav Trivedi.

-----  
Shri Sampurn Tiwari, learned counsel for the petitioner.

Shri R.K.Sanghi, learned counsel for the respondent.  
-----

**Whether Approved for Reporting:                      Yes.**

**Law Laid Down:** In a matrimonial dispute, if gender of one of the parties is questioned by the other party, it assumes importance and the party raising such issue also has a right to adduce the evidence in this behalf and the other party, to rebut the same. This Court is conscious of the fact that one's sex/gender is one's own business, but when it comes to marriage, the other partner's rights are also closely attached with the same, as it assumes importance to maintain a healthy and peaceful married life, and since he or she also has a fundamental right to life under Article 21 of the Constitution of India, the rights of both the parties are evened out. The plea of violation of privacy or any fundamental right is not tenable.

Significant paragraph Nos. 8 to 9.

-----  
**ORDER**

(Passed on the 4<sup>th</sup> day of October, 2019)

This petition has been filed by the petitioner/  
wife under Article 227 of the Constitution of India against  
the orders dated 16.8.2018 as also order dated 25.9.2018  
passed in Case No.112-A/2017 by the Principal Judge,

Family Court, Jabalpur, whereby the learned Judge, by accepting an application filed by the respondent husband under Section 151 of CPC has directed that the gender of the petitioner be verified by a Government lady doctor and vide order dated 25.9.2018, the petitioner is directed to keep herself available for medical examination on 10.10.2018 before the Dean, Netaji Subhash Chandra Bose, Medical College, Jabalpur.

2. Brief facts of the case are that the marriage of the petitioner-wife and the respondent husband was solemnized on 22.11.2009 at Jabalpur and after sometime a dispute arose between the parties which led to the present petitioner-wife filing an application under Section 9 of the Hindu Marriage Act, 1955 in the Family Court, Jabalpur. A reply to the aforesaid application has also been filed by the respondent along with an application under Section 151 of CPC with a prayer that as the petitioner lacks womanly attributes and is a transgender hence she be examined medically at Netaji Subhash Chandra Bose Medical College, Jabalpur. A reply to the aforesaid application was also filed by the petitioner opposing the same on the ground that the marriage between the parties was solemnized on 22.11.2009 and

since last eight years the husband has never raised this issue before any authority and suddenly he has realized that the petitioner is transgender, which in itself is absurd hence the application is liable to be dismissed. It was further stated that even according to the reply of the respondent they had consummated the marriage, hence the said application being frivolous be dismissed.

3. The learned Judge of the Family Court vide the impugned order dated 16.8.2018 has allowed the said application taking note of the medical papers submitted by the respondent in respect of the petitioner's physical attributes and it is directed that the petitioner shall get herself examine at the Netaji Subhash Chandra Bose Medical College, Jabalpur and its cost shall be born by the respondent only.

4. Learned counsel for the petitioner has vehemently argued before this Court that the learned Judge of the Family Court has lost sight of the fact that the order directing the petitioner to get her gender be examined is in violation of the Articles 20(3) and 21 of the Constitution of India as it also violates her right to privacy. It is further submitted that merely on an application filed by the respondent, it cannot be said that

even *prima facie* case to hold that the petitioner is a transgender, is made out and as such she cannot be compelled to have her femininity determined by way of the medical examination. It is further submitted by the learned counsel for the petitioner that only because the husband himself is an impotent person, hence false allegations have been leveled by him against the petitioner and the application has been filed only to harass her.

5. On the other hand learned counsel for the respondent has opposed the petition and has submitted that no illegality has been committed by the learned Judge of the Family Court in passing the impugned order. It is further submitted that the medical examination of petitioner is necessary to substantiate his defense.

6. Heard the learned counsel for the parties and perused the record.

7. The learned Judge of the Family Court vide its impugned order dated 16.8.2018 has allowed the aforesaid application holding that the medical examination of the petitioner is necessary. In the considered opinion of this Court, no illegality or jurisdictional error has been committed by the learned

Judge of the family Court for the reasons assigned as here under.

8. This Court is of the considered opinion that if any evidence having a nexus with the *lis* between the parties, should be allowed to be produced. In a matrimonial dispute, if gender of one of the parties is questioned by the other party, it assumes importance and the party raising such issue also has a right to adduce the evidence in this behalf and the other party, to rebut the same. This Court is conscious of the fact that one's sex/gender is one's own business, but when it comes to marriage, the other partner's rights are also closely attached with the same, as it assumes importance to maintain a healthy and peaceful married life, and since he or she also has a fundamental right to life under Article 21 of the Constitution of India, the rights of both the parties are evened out. In such circumstances, the plea of violation of privacy or any fundamental right is not tenable.

9. In the judgement rendered by the Coordinate Bench of this Court in the case of **Amol Chavhan Vs. Smt. Jyoti Chavhan, reported as 2012(1) MPLJ 205**, wherein, this Court, in a case where an application was

filed by the wife for medical examination of the husband to ascertain if the husband is impotent or not, has held that the order passed by the trial Court directing the medical test of the husband to ascertain the impotency is just and proper. The relevant para 10 and 11 of the said judgment reads as under:-

**“10.** The Apex Court in the aforesaid judgment has relied on *Sharda vs. Dharmpal*, reported in (2003) 4 SCC 493 to hold that medical examination by experts is permissible to ascertain the truth of the matter. In view of this, question No. 1 deserves to be answered against the petitioner. The Court below took a plausible stand and, therefore, cannot be interfered in this proceeding under Article 227 of the Constitution.

**11.** So far the issue regarding infringement of petitioner's personal or fundamental rights flowing from Article 21 is concerned, in the opinion of this Court, there is no such infringement in a proceeding of this nature, where a question raised regarding impotency of petitioner by the wife, the Court has inherent power to direct the petitioner to undergo medical test.

Reference may also be had to the judgment of the Hon'ble Apex Court in the case of **Dipantia Roy Vs. Ronobroto Roy**, reported in (2015) 1 SCC 365 wherein the DNA of the son was directed to be taken where the allegation was of infidelity of the wife by the husband.

10. Having held in favour of the medical test, this Court is also of the firm opinion that if such rights to defend oneself are used in a manner so as to harass, scandalize or demoralize the other party, the Courts are competent enough to impose heavy cost on the person alleging the same so as to discourage such practice. In view of the aforesaid, in the considered opinion of this Court no case for interference is made out.

11. As a result, petition being devoid of merit is hereby **dismissed**. It is also directed that the petitioner shall be examined as directed by the learned Judge of the Family Court and for this purpose she is now directed to appear before the **Dean, Netaji Subhash Chandra Bose, Medical College, Jabalpur on 14.10.2019 at 11.30 AM**. The report so prepared be furnished to the concerned Court in a sealed envelope for its use in the proceedings.

(Subodh Abhyankar)  
Judge  
04/10/2019

Ansari

