

Mat suit no.339/2023
CNR no.WBHG01-004314-2023

Order no.19 dated 21.05.2025

Both parties file haziras through their Ld. Advocates. Instant case record is placed before me for passing necessary order in pursuance of one petition filed by the Opposite Side Chayan Das seeking medical examination of his petitioner/wife Sudipta Das to ascertain whether there was any act of coitus in between them to prove cohabitation in between and a written objection filed by the petitioner/wife.

Learned Advocate for the respondent/husband submitted that according to his client, there was cohabitation in between the parties with act of coitus and sexual intercourse on several occasions. The petitioner/wife has come with false allegation that there was never any cohabitation in between as husband and wife. Nullity of marriage cannot stand in absence of medical evidence. With the above submissions, learned Advocate prayed for passing necessary order for the medical examination of the petitioner/wife to settle the controversy. In support of his contention, the case decision of **Sharda Vs. Dharmpal, (2003)4 SCC 493 & Jinsha Jaganath Vs. Ashwin Prakash** dated 20.02.2019 (Kerala H.C.).

Resisting the above application of the respondent/husband, the learned Advocate for the petitioner argued that the parties had never led their conjugal life as husband and wife and there was never any cohabitation in between. They totally denied the claim of the respondent/husband that they cohabited having sexual intercourse and act of coitus. They denied that the petitioner herself withdrawn from the society of her husband and never leaving voluntarily at her parental house. The respondent had filed written statement with counter claim on 03.04.2024 but after a long lapse of more than one year filing the instant petition seeking medical examination of the petitioner for only to harass and vex her. The suit is now at P.H stage and cross-examination of P.W-1/Sudipta Das is done in part. At this belated stage no such petition for medical examination should be considered by the learned court, being a dilatory tactics on the part of the respondent. He closed his part of submission by praying for dismissal of the petition with cost.

He relied the case decisions of **Sandip Kumar Dasgupta Vs. Dipanwita Dasgupta** C.O. no. 3309 and 3310 of 2018 dated 21.06.2019 (Cal. H.C) & **Sandeep Sharma Vs. Anita Sharma**, CRR no. 16 of 2025 dated 09.01.2025 (Chhatisgarh H.C).

The petitioner/wife alleges that though the marriage had taken place under the Special Marriage Act but it was never consummated because of the fact that there was no cohabitation in between them as husband and wife at any point of time and at anywhere. She further alleged that there was no sexual intercourse in between them as there was never ever any cohabitation in between. She prayed for annulment of the marriage by grant of decree of nullity.

Now let us deal with the point of contestation.

The side of the respondent/husband took the plea that there was consummation of marriage as they lived together as husband and wife and there was sexual intercourse during such cohabitation and it is straightly refuted by petitioner.

The prayer for medical examination of the wife has thus become serious and contested issue. This is not a case situation that the petitioner wife alleged impotency of her respondent/husband. Fact remains that claims are conflicted and certainly a serious question of fact. Mere assertion of one party and denial of the another party will not settle the matter. Examination of the evidence in a meritted trial in such a case situation though necessary but cannot exclude the aspect of medical opinion, which is very much relevant and necessary here. The real truth cannot be possible and cannot be discovered without medical evidence. In my opinion, there is no alternative way but to allow the prayer for medical examination of the petitioner/wife, to prove or disprove the allegation of the parties. Allowing such prayer is for the parties of fair adjudication and shall also strike the balance of right to privacy.

In the case of ***Sandip Sharma (Supra)*** the Hon'ble High Court had observed that virginity test should not be conducted upon a woman by violating the fundamental rights guaranteed under article 21 of the constitution. The Hon'ble Court further observed that it is the basic right of the female to be treated with decency and proper dignity and so, virginity test is the violation of it. The impugned order refusing such test was affirmed by the Hon'ble Court, with the observation that it is not illegal and perverse and thereby dismissed the criminal revision.

In the case of ***Sandip Kumar Dasgupta (Supra)***, our own Hon'ble High Court did not accept that virginity test of the married woman be allowed.

In the case of ***Jinsha (Supra)***, the Hon'ble High Court relied upon the judgement of ***Sharda (Supra)***, observed that without medical test, the virginity test cannot be ascertained to settle the dispute whether at all any sexual relationship existed between the parties or not. The Hon'ble Court affirmed the impugned order of the Family Court and thereby dismissed the revision.

In the case of ***Sharda (Supra)***, the Three Judges' Bench of the Hon'ble Supreme Court held that in the case of matrimonial issues, spouses may be directed to undergo medical test, if so required to establish a strong prima facie case of the party who is agitating for such a test. In this judgement the Hon'ble Supreme Court was very much conscious in taking up the matter of right to privacy and the fundamental rights enshrined under article 21 of our constitution.

In light of the above discussions and observation, I have fully relied upon the principles laid down in the case of ***Dhrampal (Supra)*** by the Hon'ble Supreme Court. The case situation on hand coupled with allegations and counter allegations, only after a medical test of the petitioner wife, the dispute can be set at rest.

The petition filed by the respondent/husband is not malafide and it is also not filed to harass the petitioner/wife and also not to drag the litigation. The nullity of the marriage shall stand or not, is more or less subject to medical findings besides evidence to be exchanged during the trial.

Hence, it is,

ORDERED

that the petition filed by the respondent/husband on dated 01.04.2025 is hereby allowed on contest against the petitioner/wife.

The petitioner/wife is to be placed before the Medical Board to be constituted by the Superintendent, Hooghly District Imambara Hospital.

The Superintendent shall constitute the Board with required numbers of doctors as per established medical norms.

There shall be no two fingers test to ascertain virginity of the petitioner woman during her medical examination in light of the guidelines of the Hon'ble Supreme Court of India vide State of *Jharkhand Vs. Shailendra Kumar Rai (2022)14 SCC 299* to avoid possible contempt case against such doctor or doctors.

Let a copy of this order be sent to the Superintendent, Chinsurah Imambara Sadar Hospital for information and compliance.

The petition under reference now stands disposed of.

To 02.07.2025 for compliance and further order.

Dictated & corrected by me

Sd/-
Additional District Judge,
1st Court, Chinsurah
J.O Code WB00753

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