

**Reserved on : 17.01.2024**  
**Pronounced on : 12.03.2024**



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12<sup>TH</sup> DAY OF MARCH, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.26295 OF 2023 (GM-FC)

**BETWEEN:**

... PETITIONER

(BY SRI. NAGARAJ N. R., ADVOCATE)

**AND:**

... RESPONDENTS

(BY SMT. LATHA G., ADVOCATE FOR R1)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE ORDERS DATED 28.07.2023 PASSED BY THE HONBLE III ADDL. PRINCIPAL JUDGE, FAMILY COURTS, BANGALORE ON I.A NO. 3 FILED UNDER ORDER XXVI RULE 10-A OF CPC ANNEXURE-H.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 17.01.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

**ORDER**

The petitioner is knocking at the doors of this Court in the subject petition calling in question an order dated 28-07-2023 passed by the III Additional Principal Judge, Family Court, Bengaluru on I.A.No.III filed by him under Order XXVI Rule 10A of the CPC in M.C.No.5481 of 2022.

2. Heard Sri N.R. Nagaraj, learned counsel appearing for the petitioner and Smt Latha G, learned counsel appearing for respondent No.1.

3. The facts, in brief, germane are as follows:-

The petitioner and 1<sup>st</sup> respondent are husband and wife respectively and the 2<sup>nd</sup> respondent is the father-in-law of the petitioner. The petitioner and the 1<sup>st</sup> respondent got married on 26-11-2020. Several grievances and disputes arose between the two and on 28-01-2021 it is alleged by the petitioner that the wife permanent moves to her parents house along with her clothing and has not returned back to the petitioner till date. The respondent/wife on 14-06-2022 registers a complaint before the K.P. Agrahara Police Station for offences punishable under Section 498A of the IPC r/w Sections 3 and 4 of the Dowry Prohibition Act. The Police, after investigation, have filed a charge sheet against the petitioner/husband in C.C.No.38114 of 2022. After the complaint was filed by the 1<sup>st</sup> respondent/wife, the petitioner files a petition seeking annulment of marriage before the jurisdictional Family

Court on the ground of cruelty in M.C.No.5481 of 2022. The issue in the *lis* does not concern merit of the claim of the petitioner or defense of the wife. The petitioner files an application before the concerned Court in I.A.No.III in M.C.No.5481 of 2022 to refer the wife to a Board of Psychiatrists at NIMHANS for medical examination. The application was filed on 15-03-2023. The wife files her objections appending several documents to demonstrate that she was not mentally unsound as was alleged by the petitioner for her to be sent for medical examination to NIMHANS. The application was not considered by the concerned Court favourably in favour of the petitioner. Therefore, he is before this Court calling in question the said action of the concerned Court keeping I.A.No.III in abeyance.

4. The learned counsel appearing for the petitioner submits that he has evidence of the wife not being in sound mind as at the out-patient examination at Victoria Hospital it is the assessment of the doctor that her mental age is 11 years and 8 months and has only borderline intelligence. He would seek to contend that this is the prime reason for annulment of marriage. If she is not of sound

mind and appropriate intelligence and is not of 18 years old girl, the marriage itself is void. Therefore, the respondents have together cheated the petitioner in marriage. It is his further contention that the wife has admitted to consuming of certain medicines/drugs from the age of 13 years. Therefore, all these factors should have weighed the concerned Court to refer the wife to NIMHANS for a detailed psychiatric medical examination.

5. Per contra, the learned counsel representing the 1<sup>st</sup> respondent/wife would vehemently refute the submissions to contend that the petition is filed not seeking annulment of marriage on unsound mind of the wife. It is filed on the ground of cruelty. The learned counsel would submit that she has placed plethora of documents before the concerned Court to demonstrate that the 1<sup>st</sup> respondent is a singer, a teacher and is now attending Government Polytechnic for Women to continue her studies and has also passed several technical examinations and would question the petitioner that if a lady has these traits it is unimaginable as to how she is unsound mind or her mentally age is 11 years and 8 months. She would submit that the petitioner is trying to seek divorce on these

grounds by referring the matter to NIMHANS and getting the stamp of unsound mind put on the 1<sup>st</sup> respondent/wife.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

7. The relationship between the petitioner and the 1<sup>st</sup> respondent is not in dispute. The wife registering a crime on 14-06-2022 in Crime No.105 of 2022 alleging harassment and torture by the husband is a matter of record. The Police after investigation have filed a charge sheet and the matter is pending in C.C.No.38114 of 2022. The petitioner, after the wife registers the crime in Crime No.105 of 2022, files a petition before the concerned Family Court under Section 13(1)(ia) of the Hindu Marriage Act, 1955 which is for grant of divorce on the ground of cruelty. In the said petition, the application is filed by the petitioner seeking reference of the 1<sup>st</sup> respondent/wife to the NIMHANS. The ground on which it is sought as found in the application is as follows:

".... ....

6. *I affirm that there had been a panchayath at the house of the first respondent some time during the month of February 2021 in regard to the abnormal behavior of the first respondent with me and my family after the marriage. There were quite a few elders from both the sides and discussed the behavior of the first respondent openly in her presence. She openly told elders that she has been having psychiatric health issues for last thirteen years and she has been taking heavy drugs for the same. She promised that she would be a normal human being only after the complete cure of the health issues which she has been suffering. But, the elders assured her that there has been no visible health issues for the first respondent. It is only created by her for her own reasons in her mind. The elders thereafter, suggested to take her to a psychiatric hospital for her treatment. It was only thereafter, I took her to the Victoria Hospital, Bangalore. Her sister Nikhitha also accompanied her to the hospital. She was registered as an out-patient to the Department of Psychiatry at Victoria Hospital under No.2021/064/0002612. The doctors assessed the first respondent after taking the complete history both from the first respondent and also her own sister and came to the **conclusive diagnosis that the first respondent has been mentally under-aged i.e. her mental age assessed at 11 years 8 months with borderline intelligence while her physical age is of about 26 years. The doctors advised for further investigations and also follow-up. But, the first respondent never turned up and she has taken complete shelter at her parents house.***
7. *I affirm that I made several attempts to get her to the hospital subsequently, but her parents totally refused to send her. The first respondent never responded in any manner. She is continued to be with her parents ever since. On 13.05.2021, the sister of the first respondent and her father took her officially from the abode of the petitioner herein after giving an undertaking/ writing in regard to her leaving my abode permanently in which she and her father along with her sister admits her drug addiction and also her mental disorder. Earlier to this*

*day, she had already taken her jewelry and some of her clothing to her parents' house. This fact was specifically intimated to the father and the sister of the first respondent on that day. The efforts made by me to get her back for the psychiatric treatment were futile.*

*Wherefore, I respectfully pray that this Hon'ble Court be pleased to allow the accompanying application and positively refer the first respondent herein for medical examination by a Board/team of PSYCHIATRISTS at NIMHANS, Bangalore for examining her in detail, in respect of her mental disorder/ mental under-age and also her addiction to psychotropic drugs right from her 13<sup>th</sup> year of age and to evaluate her mental maturity for entering into marital relationship apart from her physical capability, in the interest of equity and justice."*

This application was opposed by the respondents by bringing in plethora of documents. The paragraphs that are germane in the objections read as follows:

".... ....

*13. The Respondents submit that since she was suffering from fever often she was even restricted take medicines for the fever. When she was suffering from fever the Petitioner took the Respondent No.1 to the Psychiatry Department in the Victoria Hospital and got her tested and manipulated with Reports and got the said report stating that she mentally underaged etc. and sent her to her parents' house by stating that they will call her back after some time. But they never called her back and she is with the parents from 13.05.2021. The Respondent No.1 came empty handed from the matrimonial house.*

*14. The Respondents further submit that the Respondent No. 1 is a talented girl. She had discontinued her studies due to the marriage, and after coming back to the parents house*



*she succeeded in passing out the II P.U.C exams. [The copy the II PUC Marks card is hereby produced for the kind perusal of this Hon'ble Court as Document No.1]*

*15. The Respondents submit that the Respondent No.1 is a singer, and she pursuing her talent with famous singers in the state and participates in many singing events and gained accolades and certificates from the organizers. [The Photos of the Respondent No.1 participating the events is hereby produced for the kind perusal of this Hon'ble Court as Document No.2 series and the Copies of Certificates of participations is hereby produced as Document No.3 series)*

*16. The Respondents submit that on the advice of the elders and well wishers she continued her studies and now she is studying in the Government Polytechnic for Women, Bengaluru as a student of the I year ADFT course and excelling in her studies. [The copy of the indentivity card of the Respondent No.1 is hereby produced for the kind perusal of this Hon'ble Court as Document No.4].*

*17. The Respondents submit that when such being the circumstances the application filed by the Petitioner and averments made in the accompanying affidavit goes to show that the Petitioner is intended to spoil the life and future of the Respondent No.1 and the application is filed with other such malafide intentions."*

The concerned Court keeps the application filed by the petitioner in abeyance by the following order:

".... ....

*Respondents filed their objection for IA No.3, claiming that since beginning the family members of the petitioner is very cruel and hostile towards the respondent No.1. The petitioner and his family members used to find fault in each and every act of the respondent No.1 like cooking, washing clothes, household work and they refused even to have food*

*cooked by her. They imposed restrictions for each and every act of the respondent No.1 and produced the photographs, II PUC marks card and other documents to show that the respondent No.1 is a talent student and she completed her II PUC examination, she is a singer and very talented person. On the advise of the elders and well wishers she continued her education and now she is studying in Government Polytechnic for Women as a student of I year ADFT course and she is excelling in her studies.*

*Heard the arguments of both sides and perused the records.*

*The petitioner filed this petition u/sec. 13 (1) (ia) of Hindu Marriage Act, on 5-9-2022. After the appearance of the respondent before the court the matter was referred to mediation and mediation report received as matter not settled. At this stage, the petitioner came up with IA No.3 seeking for referring the respondent No.1 to the Medical Examination Board, NIMHANS, Bengaluru to determine her mental age. Admittedly, the marriage of the petitioner and respondent No.1 is an arranged customary marriage and respondent No.1 participated in the rituals of the ceremony. The marriage photograph has been produced before the court and it shows her active participation in the rights and rituals of marriage ceremony. The photographs and II PUC marks card of the respondent produced before the court shows that the respondent No.1 is a very active and talented person and she participated in several cultural completion and received certificates from different organizations. The documents produced before the court by the respondent prima-facie shows that she is pursuing her education and she received various awards, certificates from different organization.*

*Considering the documents produced before the court by the respondent, IA No.3 filed by the petitioner is kept in abeyance till the completion of evidence of both the parties."*

The concerned Court holds after perusal of the documents that the respondent has been a student of music and the documents

produced would further demonstrate that she has participated in several cultural competitions, received certificates from different organizations and she is now pursuing her education in Government Polytechnic. Based on these materials, the concerned Court keeps the application in abeyance to be revived after completion of evidence. The husband rushes to this Court against the said order.

8. The strength on which the petitioner claims that the wife is of unsound mind is a sort of admission by the 1<sup>st</sup> respondent/wife.

The admission reads as follows:

"From:  
D.S.Madhushree,

*I am having steroids Tablets from last 13 years (before maturity) so I am facing the problems like (Memory loss, hungry, Sleepless, talking at sleep, joint pain, cold, excess of heat, difficult at breathing, hearing problem, long sight, laziness in work, tiredness, migraine headache (right side/left side) back pain, while sleeping beating to my husband, when I am angry, I will ask tablets to my husband when they ignore **I will have unwanted tablets like (650 Dolo, nicip and father-in-laws tablets) giddiness and weakness. So my husband took to hospitals for testing All doctors suggested to Psychiatrist so he took to Victoria Hospital. Doctor suggested to have 30 days course of medicines in birth place place (mother house) Because this medicine has lots of side effects like (whenever sleeping, angriness, attempting when angry so I took decision to have this medicine for 30 days in my mom house. My mom will take care of me and all risk of my health issues. My mom has taken,***

***own risk to have this treatment so my husband father in law and mother in law, they are not responsible if anything happens to me in health issues."***

*(Emphasis added)*

The said note stated to be that of the 1<sup>st</sup> respondent is undated and does not contain to whom it is addressed. But, it is a note on which the petitioner places heavy reliance upon to project that she has confessed that she is taking steroids for the last 13 years. A further document that is put forth is an out-patient slip of Victoria hospital in which the doctor opines that her mental age is 11 years and 8 moths. It reads as follows:

"ವಿಕ್ಷೋಲಿಯಾ ಆಸ್ಪತ್ರೆ ಬೆಂಗಳೂರು  
ಹೊರ ರೋಗಿ ಚಿಕಿತ್ಸಾ ವಿವರ

15/4/2021

***On Binet Kamat test of intelligence, Patients mental age is 11 years 8 months***

*IQ+ 73,*

*Borderline Intelligence*

- sharonR

6/8/-XX Dr.Shankar"

*(Emphasis added)*

All these would be a matter of evidence. This would not *ipso facto* mean that the 1<sup>st</sup> respondent is mentally unsound. The wife has produced plethora of documents to demonstrate that she is highly talented and has been participating in several cultural competitions and has earned several encomiums. A perusal of all of which would clearly indicate that the husband is trying to prepare a platform in his favour for seeking annulment of marriage before the concerned Court. No fault can be found with the impugned order passed by the concerned Court dated 28-07-2023. Reference to medical examination should be an exception and not a norm.

9. The learned counsel for the petitioner has placed heavy reliance on the judgment of the Apex Court in the case of **SHARDA v. DHARMPAL**<sup>1</sup>. In the said judgment at paragraph-81 the Apex Court holds as follows:

“.... ....”

**81.** *To sum up, our conclusions are:*

*1. A matrimonial court has the power to order a person to undergo medical test.*

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<sup>1</sup> (2003) 4 SCC 493

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.***

*(Emphasis supplied)*

The Apex Court holds that the matrimonial Court has the power to order a person to undergo medical test. Passing such an order would not be in violation of Article 21 of the Constitution of India. However, it should be exercised only if there is a strong *prima facie* and sufficient material to direct such test. Therefore, it is not the law that once such an application is filed it should be straight away accepted and matter should be referred for such test. There should be strong *prima case* ground and sufficient material. The sufficient material, in the case at hand, is against the petitioner. The material would indicate that, if the allegation that wife's mentally age is 11 years and 8 months is true, then the documents of singing and other participations in a competition cannot be of a person whose mental age is 11 years and 8 months. Even otherwise, the Court

has only kept the application in abeyance to be revived at a later point in time.

10. It becomes apposite to refer to a Division Bench judgment of Madhya Pradesh High Court, which on similar circumstances, declined to accept the reference of the wife to medical examination. The Division Bench in **ALKA v. AJAYKANT**<sup>2</sup> holds as follows:

“....                    ....                    ....

**9. While advancing the submission about the nature and extent of the unsoundness of mind, Ms. Sudha Dwivedi, learned counsel for the petitioner, has cited a judgment of Madras High Court reported as AIR 1975 Madras 285, R. Lingaraj v. Parvati, wherein the Single Judge of the Madras High Court while analyzing the provisions of Lunacy Act, 1912, has observed that the unsoundness of mind of a person, is one stage, which make him totally unsuited to manage himself and his affairs and such incompetency is directly referable and attributable to the incapacity of his mind. The Court has further analyzed the effect of the inability of a witness to answer the questions relating to a particular sign/system of measurements by finding that the incapacitation of such faculty would not be a sign of unsoundness of mind. This judgment of the Madras High Court has taken into consideration a judgment of the Allahabad High Court, which is reported as AIR (36) 1949 Allahabad 449Joshi Ram Krishan v. Mst. Rukmini Bai, wherein the Allahabad High Court, while examining the provisions of Lunacy Act, has found that an order declaring a person to be of unsound mind and incapable on that account of managing his affairs, is an order of a very serious**

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<sup>2</sup> 2010 SCC OnLine MP 63

*character, because it has an effect of disqualifying him from using his own property in the manner he desires and placing a drastic check on his rights and privileges which, as a normal individual he would be entitled to enjoy. Here also the Court, while evaluating the effect of the failure of a person in making arithmetical calculations, has found that the person would not be of unsound mind and incapable of managing affairs. Both these judgments cited at the bar are based on a sound medical opinion given and obtained during the course of hearing of those matters, but here is a case where the necessity of subjecting the spouse to the medical examination alone has been placed in the forefront and as such these judgments, except for laying down broad principles on those topics, could not render any assistance to the petitioner, for propounding her submissions.*

... ..

**14.** *While considering the oral submissions of the counsels for the petitioner and the respondent, this Court has observed from the perusal of the impugned order that the Family Court has not taken into account a very important aspect of the matter that there exists no previous history of the alleged ailment/mental disorder of the wife and no medical prescription or medical record was produced by the husband and in absence of these documents, merely on the strength of the plain averments of the reply/written statement of the husband, it was difficult for the Court to draw inferences about the correctness of the allegations of the husband, for prima-facie reaching a conclusion about the necessity of ordering for the medical examination of the wife, more particularly when no affidavits of independent witnesses were filed, in support of the aforesaid allegations/submissions on behalf of the husband, but it seems that in view of the solitary conduct of shouting by the wife in Court, at the time of the recording of the statement had influenced the mind of the Family Court for drawing an impression that the lady is suffering from some mental disorder. Had this been the impression of the Court, the Family Court could itself should have felt the necessity of collecting the evidence, with a view to satisfy itself about the mental condition of the wife, but a perusal of the order nowhere strengthens this belief that the Court has permitted*



*the medical examination of the wife for satisfying itself about the mental disorder of the Petitioner.*

*For ready reference, the order passed in maintenance proceedings and the impugned order are quoted hereinbelow;*

**Order in Maintenance Case;**

आवेदिका अलका व उसके साक्षी भगवान दास भार्गव उपस्थित हैं। आवेदिका का प्रतिपरीक्षण श्री नारंग अभिभाषक द्वारा प्रारंभ किया गया। किन्तु साक्षी बयान देते समय काफी उत्तेजित हो गई तथा अनावेदक के अभिभाषक को चिल्ला-चिल्लाकर कहा कि आपकी लड़की के साथ ऐसा होता तो आप क्या करते। साक्षी बयान देने की स्थिति में प्रतीत नहीं होती है, साक्षी काफी उत्तेजित है, इस कारण उसका प्रतिपरीक्षण स्थगित रखा गया। साक्षी को अगली तारीख पर पाबन्द रखा जावे। आवेदिका अगली तारीख पर साक्षी सहित उपस्थित रहे।’

**impugned order:**

‘उभयपक्ष के तर्कों पर विचार किया गया। पूर्व में आवेदक के द्वारा धारा - 45 साक्ष्य अधिनियम का आवेदन पत्र पेश किया गया था, जो दिनांक 6-12-2007 को इस आधार पर निरस्त किया गया कि प्रकरण प्रारंभिक स्टेज पर है और वाद विषयों की रचना नहीं हुई है। चूंकि अब प्रकरण में वाद विषयों की रचना हो चुकी है और वाद विषय क्रमांक 2 इस संबंध में निर्मित किया गया है। अतः इन सब परिस्थितियों में प्रकरण के न्यायपूर्ण निराकरण के लिये वाद विषयों की रचना को देखते हुये अनावेदिका मनोरोगी होने के संबंध में मेडीकल बोर्ड से परीक्षण कराया जाना न्यायोचित प्रतीत होता है।

फलतः आवेदक की ओर से प्रस्तुत आवेदन पत्र स्वीकार किया जाता है। मेडीकल बोर्ड को पत्र लिखा जावे कि अनावेदिका का मनोरोगी होने के संबंध में जांच के लिये कोई तिथि भिजवाने का कष्ट करें, ताकि अनावेदिका को मेडीकल बोर्ड के समक्ष जांच के लिये उपस्थित रहने हेतु निर्देशित किया जा सके।’

... ..  
**16.** *The pleadings of the parties demonstrate that the husband has made oral averments about the self administration of drugs by the wife and concealment of the factum of she being suffering from some disease (not known or disclosed to the husband at the time of the marriage) which had strengthened the belief of the husband that the wife is undergoing some medication which has direct connection with her mental condition, whereas the wife has denied about taking any such medicines relating to the mental disorder, while admitting the fact that she was*

*consuming some medicines relatable to minor ailments like cold and cough and certainly this cannot be treated to be a circumstance creating an impression in the mind of the Court, to warrant appointment of a Medical Board for subjecting the wife to the medical examination, for no known ailment/disorder.*

... ..

**19. The Judgment of the Supreme Court reported as (2003) 4 SCC 493, Sharda v. Dharmpal has taken into consideration the legal right of the spouse for securing divorce under section 13(1)(iii) of the Hindu Marriage Act, 1955, wherein the Court has also affirmed the action of the Court in subjecting the spouse to undergo the medical examination, (while also analyzing the provisions of the Mental Health Act, 1987), however, the Supreme Court has also laid down that this power has to be exercised in relation to such cases alone where there exists a strong prima-facie evidence to order for the medical examination regarding mental disorder of the spouse (and not for giving a tool in the hand of the husband to abuse the process of law). The relevant paragraphs of the Supreme Court judgment are quoted hereinbelow;**

**"32. Yet again the primary duty of a Court is to see that truth is arrived at. A party to a civil litigation, it is axiomatic, is not entitled to constitutional protections under Article 20 of the Constitution of India. Thus, the Civil Court although may not have any specific provisions in the Code of Civil Procedure and the Evidence Act, has an inherent power in terms of section 151 of the Code of Civil Procedure to pass all orders for doing complete justice to the parties to the suit.**

.....

**50. We wish to point out that the question as to whether a person is mentally ill or not although may be a subject-matter of litigation, the Court having regard to the provisions contained in Order 32 Rule 15 of the Code of Civil Procedure, section 41 of the Indian Lunacy Act as also for the purpose of judging his**

***competence to examine as a witness may issue requisite directions. It is there not correct to contend that for the aforementioned purposes the Court has no power at all. The prime concern of the Court is to find out as to whether a person who is said to be mentally ill could defend himself properly or not, Determination of such an issue although may have some relevance with the determination of the issue in the lis, nonetheless, the Court cannot be said to be wholly powerless in this behalf. Furthermore, it is one thing to say that a person would be subjected to a test which would invade his right of privacy and may in some case amount to battery; but it is another thing to say that a party may be asked to submit himself to a psychiatrist or a psychoanalyst so as to enable the Court to arrive at a just conclusion. Whether the party to the marriage requires a treatment or not can be found out only in the event, he is examined by a properly qualified psychiatrist. For the said purpose, it may not be necessary to submit himself to any blood test or other pathological tests.***

51. If the Court for the purpose envisaged under Order 32, Rule 15 of the Code of Civil Procedure or section 41 of the Indian Luancy Act can do it suo motu, there is no reason why it cannot do so on an application filed by a party to the marriage.

52. Even otherwise the Court may issue an appropriate direction so as to satisfy itself as to whether apart from treatment he requires adequate protection inter alia by way legal aid so that he may not be subject to an unjust order because of his incapacity. Keeping in view of the fact that in a case of mental illness the Court has adequate power to examine the party or get him examined by a qualified doctor, we are of the opinion that in an appropriate case the Court may take recourse to such a procedure even at the instance of the party to this lis.

53. Furthermore, the Court must be held to have the requisite power even under section 151 of the Code of Civil Procedure to issue such direction either suo motu or otherwise which, according to him, would lead to the truth.”

... ..

**22. Since the husband has made an application under section 45 of the Indian Evidence Act for subjecting his wife to the medical examination by the Medical Board (which may consists of medical expert and psychiatrist), it may certainly offend the legal right of an otherwise capable wife, (so proved during her examination/cross-examination), who is of sound mind and capable to understand the nature of question and the effect of giving correct/incorrect answers and if some of the demeanour of the witness has been found to be unworthy of a quiet and subdued wife, this aberration deserves pardon and not punishment by way of subjecting the wife to an unnecessary examination by the Medical Board. This may not offend a litigant's right of defending herself and it would certainly not curtail the right of a husband in establishing a ground for securing divorce, but it would certainly offend the fundamental human values, which would be demeaning the personality of an individual and the dignity, of a person, who would be unnecessarily subjected to such an examination/test, for which she had not consented or volunteered herself.**

... ..

**25. Therefore while analyzing the factual and legal background of this case as also while considering the Judgment of the Courts, we are of the view that there was no requirement or necessity in the present case for the Family Court to have ordered for the wife to undergo the medical examination, for ascertainment of the existence of the mental disorder or even for ascertainment of the "extent or degree" of the mental disorder, as in both the proceedings pending under section 125 of Criminal Procedure Code and sections 12 and 13 of the Hindu Marriage Act, the petitioner-wife has ably demonstrated that she is a lady of sound mind, having**

*complete knowledge and control of the delicacies of the life and she could not even be labelled as a person, suffering from such disorder of mind, which could warrant even examination by the Medical Board."*

*(Emphasis supplied)*

The Division Bench follows the judgment in **SHARDA** (supra) of the Apex Court and reiterates that there should be strong *prima facie* evidence to order medical examination. In the light of the judgment of the Apex Court and the Division Bench of the Madhya Pradesh High Court, no fault can be found with the order passed by the concerned Court. It is rather unfortunate that by seeking annulment of marriage, the husband has sought to project the wife being of unsound mind, her intelligence is at 11 years and 8 months and seeks to contend that the marriage itself is void and a fraud is being played by the respondents on the petitioner on the score that if the mental age of the wife is not that of 18 years of age, the marriage is void. Such submissions are noted only to be rejected, as the husband has not preferred a petition before the concerned Court invoking mental unsoundness of the wife, but it is on cruelty.

11. For the aforesaid reasons, the petition lacking in merits is dismissed with cost of ₹50,000/- to be payable by the petitioner/husband to the 1<sup>st</sup> respondent/wife.

Bkp  
CT:SS

**Sd/-  
JUDGE**