



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12217 OF 2025

D [REDACTED] W/o N [REDACTED] S [REDACTED]
[REDACTED]
[REDACTED]

Tal- Sakri, Dist. Dhule.

..Petitioner
(Original Respondent)

Versus

N [REDACTED] s/o N [REDACTED] S [REDACTED]
[REDACTED]

Nardana, Tal. Shindekheda, Dist. Dhule.

..Respondent
(Original Petitioner)

Ms. Rutuja L. Jakhande, Advocate for Petitioner.
Mr. H. V. Tungar, Advocate for Respondent.

...
CORAM : S. G. CHAPALGAONKAR, J.
DATED : 15th APRIL, 2026.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. By consent of parties, matter is taken up for final hearing at the admission stage.
2. The present Writ Petition takes exception to order dated 02.08.2025 passed below Exhibit-16 by learned Civil Judge Senior Division, Dhule in HMP No.314/2024, whereby application filed by respondent for examination of petitioner through expert psychiatrist has been allowed.
3. The respondent instituted proceeding under Section 13 (1) (ia)(ib) and (iii) (a) & (b) of Hindu Marriage Act seeking decree of

divorce on ground that petitioner-wife is incurably of unsound mind or suffering from mental disorder. The petitioner filed written statement and denied averment in petition and took plea that she is mentally sound and not suffering from any mental illness or disorder in terms of sub-clause (iii) of sub-section (1) of Section 13 of Hindu Marriage Act. Eventually, respondent filed application below Exhibit-16 seeking direction to refer petitioner for medical examination to find out her mental and physical status, particularly in light of pleading in petition. The Trial Court after considering rival submissions, allowed application and directed petitioner to remain present for medical examination before expert psychiatrist in Civil Hospital, Dhule and call confidential report of examination.

4. Ms. Rutuja Jakhande, learned Advocate appearing for petitioner submits that Trial Court has mechanically passed order for medical examination of petitioner through expert psychiatrist. There is no material to *prima facie* indicate that petitioner ever suffered psychological disorder or unsoundness of mind. Except for bare assertions of petitioner, there is nothing on record to indicate that expert opinion is necessary as to her psychological or mental condition. In support of her contentions she relies upon observations of Karnataka High Court at Bengaluru in case of *Sri*.

Jaganath A. S. Vs. Smt. Madhushree D. S. (Writ Petition No.26295/2023 decided on 12.03.2024).

5. Per contra, Mr. Tungar, learned Advocate appearing for respondent submits that Court is empowered to call for report of medical examination to satisfy as to existence of grounds as contemplated under Section 13(1)(iii) of Hindu Marriage Act. The respondent-husband took specific plea in petition about physical and mental condition of petitioner-wife. To bring truth on record, medical examination is necessary. In support of his contentions he relies upon observations of this Court in case of ***Sushma w/o Umesh Kanpathak Vs. Umesh s/o Vijayrao Kanpathak***¹ and observations of Supreme Court in case of ***Sharda Vs. Dharmpal***².

6. Having considered submissions advanced by learned Advocates appearing for respective parties and on perusal of material placed into service, it can be observed that respondent-husband took plea that petitioner's behaviour was abnormal. She was never ready for physical relationship after marriage. She was secretly under medication. Her parents also suppressed her mental illness. The aforesaid allegations are denied by petitioner-wife. The impugned order depicts that learned Judge simply observed that in light of provisions under Order XXXII Rule 15 of Code of Civil Procedure, Court can get aid of medical expert to

¹ 2018(1) Mh.L.J. 51.

² 2003 (3) SCR 105.

determine if person is of unsound mind or not. Therefore, medical report is necessary to assist Court to draw conclusion about mental condition of opponent. In case of *Sharda Vs. Dharmpal* (supra) an issue was referred for consideration before Supreme Court as to “*whether party to divorce proceeding can be compelled to medical examination.*” In concluding paragraph no.85, Supreme Court held that “*matrimonial Court has power to order person to undergo medical test and passing of such order by Court would not be in violation of right to personal liberty under Article 21 of Constitution of India.*” It is further observed that “*Court should exercise such power, if applicant has strong prima facie case and there is sufficient material before Court. If despite order of Court, respondent refuses to submit himself or herself for medical examination, Court will be entitled to draw adverse inference against him/her.*”

7. In light of aforesaid observations, it cannot be disputed that matrimonial Court possesses sufficient powers to direct medical examination in case decree for divorce under Section 13(1)(iii) of Hindu Marriage Act is sought. In such cases, it is burden of petitioner to establish that unsoundness of mind of respondent is incurable, or that mental disorder is of such a kind and to such an extent that petitioner cannot reasonably be expected to live with his or her spouse. The medical evidence for arriving at such

finding would be of considerable assistance. However, that does not mean that Court shall casually pass order directing medical examination without satisfying itself as to existence of ground on basis of evidence tendered into service. If such an order is casually passed without there being *prima facie* material indicating existence of ground for reference to medical examination, it would be an abuse of discretionary power at the hands of Court.

8. The impugned order nowhere suggests that Court has applied its mind to pleadings and material on record, or has satisfied itself as to existence of grounds for referring petitioner for medical examination. In such case, it is expected that petitioner shall *prima facie* establish, by leading evidence, that there is material to hold that medical examination of respondent–spouse is necessary to determine whether he/she suffers from requisite degree of unsoundness of mind or whether same is incurable. The impugned order is bereft of sufficient reasons. In that view of matter, impugned order cannot be sustained in law.

9. In result, Writ Petition is allowed in terms of prayer Clause (B).

10. Needless to state here that, respondent shall be at liberty to reiterate his prayer for medical examination of petitioner after leading necessary evidence to establish *prima facie* case for such

reference. In case respondent files fresh application and puts on record necessary material, Trial Court shall be at liberty to reconsider such prayer and pass well reasoned order either accepting or rejecting prayer for reference.

11. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/April-2026

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