



2025:CGHC:1413

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRR No. 16 of 2025**

1 - Sandeep Sharma S/o Shri Mohar Singh Sharma Aged About 32 Years Occupation Business (Wrongly Mention In Impugned Order) R/o Station Road Barpali, P.S. Urga, Tahsil And District- Korba, Chhattisgarh

... Applicant**versus**

1 - Smt. Anita Sharma W/o Sandeep Sharma Aged About 29 Years R/o Jindal Transport Nagar, Patrapali, Thana-Kotarroad, Tahsil- District- Raigarh, Chhattisgarh

... Respondent(s)

For Applicant : Mr. Aniket Verma, Advocate

For Respondent(s) :

Hon'ble Shri Justice Arvind Kumar Verma, Judge**Order on Board****09/01/2025**

1. The present Criminal Revision is filed under Section 19(4) of the Family Courts Act, 1984 against the order dated 15.10.2024 whereby the learned Judge, Family Court has rejected the interim application under Section 144 of BNSS, 2023.

2. Brief facts of the case is that on 02.07.2024, the respondent has filed an application under Section 144 of BNSS, 2023 before learned Family Court, Raigarh bearing Case No. Cr.M.J.C. No. F 102/2024 seeking maintenance of Rs. 20,000/- per month. The aforementioned case is currently pending at the evidence stage before the learned Family Court, Raigarh. The husband and the respondent wife solemnized their marriage on 30.04.2023 in accordance with the Hindu rites and customs traditionally observed in their community. After the marriage ceremony, the couple began their marital life and resided together at the applicant's family residence, located in Barpali, within Uрга Tehsil, District- Korba, C.G. The respondent told her father and other family members that the applicant is impotent. Based on this accusation, she categorically refused to establish a marital relationship or cohabit with her husband.
3. Learned counsel for the applicant contended that the learned Family Court, Raigarh erred in rejecting the applicant's prayer for a virginity test of the respondent.
4. I have heard learned counsel for the applicant and perused the record with utmost circumspection.
5. On perusal of record it transpires that on 02.07.2024, the respondent has filed an application under Section 144 of BNSS, 2023 before learned Family Court, Raigarh bearing Case No. Cr.M.J.C. No. F 102/2024 seeking maintenance of Rs. 20,000/- per month. The aforementioned case is currently pending at the

evidence stage before the learned Family Court, Raigarh. The husband and the respondent wife solemnized their marriage on 30.04.2023 in accordance with the Hindu rites and customs traditionally observed in their community. After the marriage ceremony, the couple began their marital life and resided together at the applicant's family residence, located in Barpali, within Uрга Tehsil, District- Korba, C.G. The respondent told to her father and other family members that the applicant is impotent. Based on this accusation, she categorically refused to establish a marital relationship or cohabit with her husband. Also, in the application for interim maintenance submitted by the applicant herein, a request has been made by the applicant for virginity test of the respondent because no sexual intercourse has been done between the husband and wife and alleged that his wife is having an illicit relationship with her brother-in-law (जीजा) whereas the present respondent has made an application stating that the present applicant is impotent due to which after marriage no sexual relationship has been made between the parties.

6. The Hon'ble Supreme Court in **State of Jharkhand Vs. Shailendra Kumar Rai (2022) 14 SCC 299** para 71 has held that

“71. any person who conducts the “two-finger test” or per vaginum examination (while examining a person alleged to have been subjected to a sexual assault) in contravention of the directions of this Court shall be guilty of misconduct.”

7. The Hon'ble Delhi High Court in **Sr. Sephy Vs. CBI and others 7 February, 2023** has held in para 92 as under:

“92. The virginity test conducted on a female detainee, accused under investigation, or in custody, whether judicial or police, is declared unconstitutional and in violation of Article 21 of the Constitution which includes right to dignity.”

8. Therefore, the contention of the petitioner to conduct the virginity test of the respondent/wife is declared unconstitutional and in violation of Article 21 of the Constitution which includes the right to dignity of the women.
9. Article 21 of the Constitution of India not only guarantees the right of life and personal liberty but also right to live with dignity, which is crucial for women. No woman can be forced to conduct her virginity test. It is the violation of fundamental right guaranteed under Article 21. It has to be borne in mind that Article 21 is the **“heart of fundamental rights”**. Moreover, it is a basic right of a female to be treated with decency and proper dignity and virginity test is a violation of it.
10. The right of personal liberty enshrined under Article 21 of the Constitution of India are non-derogable rights and cannot be tinkered with in any manner. If the petitioner wants to prove that the allegations imposed upon him by the respondent/wife that he is impotent is baseless, then, he can undergo the concerned medical test or he can produce any other evidence in this relevant

connection. He cannot possibly be permitted to subject the wife to undergo her virginity test and fill up the lacuna in his evidence in this regard. Be that as it may, but in any case, granting the permission for virginity test of the respondent would be against her fundamental rights, the cardinal principles of natural justice and secret modesty of a female.

11. It is noteworthy here that allegations made by both the parties against each other are the subject-matter of evidence and a conclusion in this regard can be drawn only after the evidence.
12. Considering the documents available on record, the contentions of the counsels and the law laid down by the Hon'ble Supreme Court in **State of Jharkhand Vs. Shailendra Kumar Rai (supra)** and by the Hon'ble Delhi High Court in **Sr. Sephy Vs. CBI and others(supra)** this Court is of the considered opinion that the order impugned is neither illegal nor perverse and there is no judicial error committed by the trial court.
13. Therefore, the present Criminal Revision deserves to be and is hereby **dismissed** on merits.

Sd/-

(Arvind Kumar Verma)

JUDGE