
(2015) 01 BOM CK 0084

In the Bombay High Court

Case No : Criminal Writ Petition No. 113 of 2014

Aleixo Arnolfo Pereira

APPELLANT

Vs

Joao C. Pereira

RESPONDENT

Date of Decision : 12-01-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 144, 2, 482
Homoeopathy Central Council Act, 1973 — Section 2
Indian Medical Council Act, 1956 — Section 2
Mental Health Act, 1987 — Section 2(h), 2(i), 2(j), 2(k), 2(l)

Citation : (2016) ALLMR(Cri) 198 : (2015) 1 BomCR(Cri) 542

Hon'ble Judges : U.V. Bakre, J.

Bench : Single Bench

Advocate : Sebastian Vales, for the Appellant; Valmiki Menezes, Advocates for the Respondent

Final Decision : Disposed off

Judgement

U.V. Bakre, J.—Heard Mr. Vales, learned Counsel for the petitioner and Mr. Menezes, learned Counsel for the respondent no. 1.

2. Rule. Rule made returnable forthwith. By consent, heard forthwith.

3. By this petition filed under Article 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure (Cr.P.C.), the petitioner has prayed for quashing and setting aside the order issuing notice to him through his next friend and notice to respondent no. 2 to file reply in the Criminal Case No. 702/OA/MA/14/E, passed by learned Judicial Magistrate, First Class at Margao (J.M.F.C., for short) and also for quashing the application dated 29/09/2014 seeking reception order under Section 20 of Mental Health Act, 1987 (M.H. Act, for short) as also the said Criminal Case No. 702/OA/MA/14/E.

4. The respondent no. 1 has filed the said application under Section 20(4) read with Section 22 of M.H. Act which has been registered as Criminal Case No. 702/

OA/MA/14/E. The respondent no. 1 has alleged as under : Upon the directions of the J.M.F.C. at Margao dated 19/09/2013 in Crime No. 48/2013 registered at Colva Police Station, upon the complaint of Ex-Sarpanch of Majorda, Miss Laxmi Gonsalves, the petitioner was examined by a panel of Doctors appointed by Dean of Goa Medical College, Bambolim and report was prepared and submitted before the J.M.F.C. after examining the petitioner on 20/09/2013 at Hospicio Hospital, Margao. As per the said medical report, the petitioner has been found of necessity of being quarantined in the Institute of Psychiatric and Human Behaviour (IPHB) for his mental disposition. As such, wife of the petitioner is made party as respondent no. 1 to defend the rights of the petitioner. The petitioner has been filing false complaints and attacking innocent persons in the village of Utorda, Majorda and Calata and criminal cases are registered against him (The respondent no. 1 has named altogether 11 crimes registered at various police stations against the petitioner). The petitioner is presently out on regular bail granted by J.M.F.C., Margao under the terms and conditions dated 21/09/2013 which are openly being violated by the petitioner which shows that he suffers from mental disability necessitating urgent action in the matter. After the submission of medical report by a panel of Doctors and on 17/10/2013 at about 5.25 p.m., the petitioner made an attempt on the life of Silvestre Vaz. It is also stated that said Silvestre Vaz filed representations before the Assistant Director of Transport, South Goa, Margao requesting the Transport Department to revoke/suspend the driving licence of the petitioner, but no action has been taken against him and the petitioner continues to drive his cars in a rash and negligent manner thereby posing vivid threat to the lives of innocent public members using the said public road. The petitioner has now begun continuously circulating derogatory, defamatory, intimidating, character assassinating SMSs and Emails in the society in the name of his mother Lilia Martins Pereira against the respondent no. 1 and his family members and complaints have been filed, in this regard. On 12/06/2014, the petitioner made an attempt to run over his vehicle over Ex- Sarpanch Laxmi Gonsalves, due to which F.I.R. No. 93/2014 has been registered. The petitioner also went to attack the Manager of Corporation Bank, Utorda Branch namely Shri Shivanand Gaunkar, due to which F.I.R. No. 92/2014 has been registered. The respondent no. 1 had filed an application before the Collector, South Goa, Margao under Section 144 of Cr.P.C. The Additional Collector, vide letter dated 04/09/2014, informed the respondent no. 1 that he could seek an efficacious remedy under the provisions of M.H. Act. Therefore, the respondent no. 1 is filing the present application. The respondent no. 1 prayed that an appropriate reception order be passed directing Verna Police to take the petitioner into custody and admit him at IPHB, Bambolim. The respondent no. 1 further prayed that the Verna Police be directed to confiscate and/or attach mobile phones, laptops and other electronic devices found in possession and registered in the name of the petitioner. The respondent no. 1 also prayed to appoint the wife of the petitioner, namely Maria do Carmo Barros Pereira as guardian to take care/monitor the activities of her husband.

5. The learned J.M.F.C., Margao took cognizance of the said application which came to be registered as Criminal Case No. 702/OA/MA/14/E. The learned J.M.F.C., Margao ordered issuance of notice to the petitioner through his next friend and notice to the Police Inspector, Verna Police Station for his reply.

6. The petitioner has alleged as under:-

He is a passion driven vigilant and socially active member of the society and the coastal warrior and has filed several petitions before this Court as also before the National Green Tribunal raising environmental issues and has contributed immensely for protection of the coastal environment. The petitioner had noticed the status of illegal structures in Survey No. 37/1 and filed an application dated 14/03/2014, under Right To Information, Act to the Member Secretary, GCZMA for seeking the documents with respect to the said illegal structure. The applicant, therefore, came to know that GCZMA had decided to drop the show cause notice issued to Ligorio Pereira, father of respondent no. 1 in respect of illegal construction of the residential house carried out in Survey No. 37/1 of Utorda village consisting of two floors in CRZ III without permission from GCZMA. On 04/06/2014, the petitioner represented to the Member Secretary, GCZMA that the order deciding to drop the show cause notice is contrary to law and needs to be reviewed and upon the same being done, strict action should be taken against the said Ligorio Pereira in accordance with the provisions of CRZ notifications of 1991 and 2011 and in accordance with the powers vested upon GCZMA vide order of reconstitution of MoEF dated 22/07/2013. The GCZMA, after perusing the complaint dated 04/06/2014 and finding merits in the said complaint, issued show cause notice/notice of personal hearing dated 05/09/2014 to Ligorio Pereira and said Ligorio Pereira, vide reply dated 20/08/2014, duly signed by the respondent no.1, being his son and attorney, questioned the locus of the petitioner and made wild and baseless allegations against the petitioner. The respondent no. 1, thereafter, filed false and frivolous application, under Section 144 of the Cr.P.C. alleging that the petitioner is mentally sick and seeking direction to admit him at the Institute of IPHB, Bambolim, Goa. The said application was filed on 10/07/2014 before the Collector, South Goa, Margao immediately after the petitioner having filed the complaint dated 04/06/2014. Acting on the said complaint of respondent no. 1 filed in collusion with his father, the Superintendent of Police, South Goa, without any proper verification, issued report to the Additional District Judge synchronizing with the above false statement of the respondent no. 1. Under the dictates of the Superintendent of Police, Verna Police Inspector on 19/07/2014, without any verification, submitted false report to the additional District Magistrate stating that the petitioner gets pleasure in harassing innocent people and in maintaining pressure on the Government officials by filing false and baseless allegations against them. The order granting medical examination of the petitioner was passed ex-parte behind the back of the petitioner when his bail application was rejected and when he was admitted in the Hospicio Hospital. As per the order of Doctor V.N. Jindal, Dean, Panel of Doctors, not specialised in

treating any mental illness, was constituted to examine the petitioner. These doctors did not report any mental disorder or mental retardation. Even otherwise, the said report is illegal. The respondent no. 1 made wild and reckless allegations in the application dated 10/07/2014 filed before the Collector to declare the petitioner as mentally sick person and to refer him to the IPHB for medical treatment. The application dated 10/07/2014 was rejected by the Collector, South Goa. In total abuse of the process of law, the respondent no. 1 filed frivolous complaint dated 29.09.2014, before the J.M.F.C., who took cognizance by exercising improper jurisdiction. 7. Mr. Vales, learned Counsel for the petitioner read out the provisions of Sections 2(h), 2(i), 2(j), 2(k), 2(l), 2(q), 20 and 21 of the M.H. Act. He submitted that the respondent no. 1 has no locus standi to file such an application since he is neither relative of the petitioner nor has any type of relationship with him. He pointed out that the report of the committee of the Medical Practitioners is dated 20/09/2013, whereas the application filed by the respondent no. 1 is dated 29/09/2014. He submitted that the application has been filed only to take revenge against the petitioner since the petitioner had filed complaints against the father of the respondent no. 1. He questioned as to how the report of the Committee of Doctors, which was filed in the Cr. No. 48/1013, arising out of F.I.R. lodged by Laxmi Gonsalves came in the hands of the respondent no. 1 and how the same can be relevant, in the present case. He, therefore, submitted that the proceedings are a complete abuse of the process of law and hence, should be quashed. Learned Counsel relied upon the following judgments :

(i) Ms. Asha Shamandas Bajaj and Mrs. Kamla Shamandas Bajaj Vs. Mrs. Meeran Borwankar Special Inspector General of Police and Others,

(ii) Dhariwal Tobacco Products Ltd. and Others Vs. State of Maharashtra and Another,

(iii) Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others,

(iv) Anoop and others Vs. Vani Shree, [2014 (2) HLR 315]

8. On the other hand, Mr. Menezes, learned Counsel for the respondent no. 1, submitted that M.H. Act is not a penal law and, therefore, Section 482 of Cr.P.C. is not attracted. Learned Counsel submitted that only a notice has been sent to the petitioner for filing reply and considering the parameters of Article 227 of the Constitution of India, the present petition is not maintainable. He read out the preamble of M.H. Act. He urged that there is no provision in the M.H. Act prohibiting any third person to file an application under Section 20 of M.H. Act. He pointed out that three medical practitioners have given one opinion and, therefore, there was substantial compliance of the provisions of law. He urged that the applicant can file a reply before the J.M.F.C. and get appropriate orders, if entitled and exercise of extraordinary jurisdiction by this Court is not warranted. He, therefore, urged that the petition be dismissed.

9. I have gone through the entire material on record. I have considered the

arguments advanced by the learned Counsel for the parties and the judgments relied upon by the learned Counsel for the petitioner.

10. Before proceeding with the merits of the matter, it would be advantageous to know the relevant provisions of the M.H. Act.

11. Section 2(h) of the M.H. Act defines "Magistrate" as under :

"Magistrate" means,-

(1) in relation to a metropolitan area within the meaning of clause (k) of section 2 of the Code of Criminal Procedure, 1973 (2 of 1974), a Metropolitan Magistrate;

(2) in relation to any other area, the Chief Judicial Magistrate, Sub-Divisional Judicial Magistrate or such other Judicial Magistrate of the first class as the State Government may, by notification, empower to perform the functions of a Magistrate under this Act.

(b) Section 2(i) of the M.H. Act defines Medical Officer as under :

"Medical Officer" means a gazetted medical officer in the service of Government and includes a medical practitioner declared, by a general or special order of the State Government, to be a medical officer for the purposes of this Act. (c) Section 2(j) of the M.H. Act defines Medical Officer in charge as under :

"Medical Officer in charge", in relation to any psychiatric hospital or psychiatric nursing home, means the medical officer who, for the time being, is in charge of that hospital or nursing home. (d) Section 2(k) of the M.H. Act defines Medical Practitioner as under :

"Medical Practitioner" means a person who possesses a recognised medical qualification as defined-

(i) in clause (h) of section 2 of the Indian Medical Council Act, 1956 (102 of 1956), and whose name has been entered in a State Medical Register, as defined in clause (k) of that section;

(ii) in clause (h) of sub-section (1) of section 2 of the Indian Medicine Central Council Act, 1970 (48 of 1970), and whose name has been entered in a State Register of Indian Medicine, as defined in clause (j) of sub-section (1) of that section; and

(iii) in clause (g) of sub-section (1) of section 2 of the Homoeopathy Central Council Act, 1973 (59 of 1973), and whose name has been entered in a State Register of Homoeopathy, as defined in clause (i) of sub-section (1) of that section.

(e) Section 2(l) of the M.H. Act defines Mentally ill person as under :

"Mentally ill person" means a person who is in need of treatment by reason of any mental disorder other than mental retardation.

(f) Section 2(q) of the M.H. Act provides that "Psychiatric Hospital" or "Psychiatric Nursing Home" means a hospital or, as the case may be, a nursing home established or maintained by the Government or any other person for the treatment and care of mentally ill persons and includes a convalescent home established or maintained by the Government or any other person for such mentally ill persons; but does not include any general hospital or general nursing home established or maintained by the Government and which provides also for psychiatric services.

(g) Section 2(s) of the M.H. Act provides as under : "Reception order" means an order made under the provisions of this Act for the admission and detention of a mentally ill person in a psychiatric hospital or psychiatric nursing home.

(h) Section 20 of the M.H. Act provides as under :

"20. Application for reception order.- (1) An application for a reception order may be made by-

(a) the medical officer in charge of a psychiatric hospital or psychiatric nursing home, or

(b) by the husband, wife or any other relative of the mentally ill person.

(2) Where a medical officer in charge of a psychiatric hospital or psychiatric nursing home in which a mentally ill person is undergoing treatment under a temporary treatment order is satisfied that -

(a) the mentally ill person is suffering from mental disorder of such a nature and degree that his treatment in the psychiatric hospital or, as the case may be, psychiatric nursing home is required to be continued for more than six months, or

(b) it is necessary in the interests of the health and personal safety of the mentally ill person or for the protection of others that such person shall be detained in a psychiatric hospital or psychiatric nursing home, he may make an application to the Magistrate within the local limits of whose jurisdiction the psychiatric hospital or, as the case may be, psychiatric nursing home is situated, for the detention of such mentally ill person under a reception order in such psychiatric hospital or psychiatric nursing home, as the case may be.

(3) Subject to the provisions of sub-section (5), the husband or wife of a person who is alleged to be mentally ill or, where there is no husband or wife, or where the husband or wife is prevented by reason of any illness or absence from India or otherwise from making the application, any other relative of such person may make an application to the Magistrate within the local limits of whose jurisdiction the said person ordinarily resides, for the detention of the alleged mentally ill person under a reception order in a psychiatric hospital or psychiatric nursing home.

(4) Where the husband or wife of the alleged mentally ill person is not the applicant, the application shall contain the reasons for the application not being

made by the husband or wife and shall indicate the relationship of the applicant with the alleged mentally ill person and the circumstances under which the application is being made.

(5) No person,-

(i) who is a minor, or

(ii) who, within fourteen days before the date of the application, has not seen the alleged mentally ill person, shall make an application under this section.

(6) Every application under sub-section (3) shall be made in the prescribed form and shall be signed and verified in the prescribed manner and shall state whether any previous application had been made for inquiry into the mental condition of the alleged mentally ill person and shall be accompanied by two medical certificates from two medical practitioners of whom one shall be a medical practitioner in the service of Government."

(i) Section 22 of the M.H. Act provides as under :

"22. Procedure upon application for reception order.

- (1) On receipt of an application under sub-section

(2) of section 20, the Magistrate may make a reception order, if he is satisfied that-

(i) the mentally ill person is suffering from mental disorder of such a nature and degree that it is necessary to detain him in a psychiatric hospital or psychiatric nursing home for treatment; or

(ii) it is necessary in the interests of the health and personal safety of the mentally ill person or for the protection of others that he should be so detained, and a temporary treatment order would not be adequate in the circumstances of the case and it is necessary to make a reception order.

(2) On receipt of an application under sub-section (3) of section 20, the Magistrate shall consider the statements made in the application and the evidence of mental illness as disclosed by the medical certificates.

(3) If the Magistrate considers that there are sufficient grounds for proceeding further, he shall personally examine the alleged mentally ill person unless, for reasons to be recorded in writing, he thinks that it is not necessary or expedient to do so.

(4) If the Magistrate is satisfied that a reception order may properly be made forthwith, he may make such order, and if the Magistrate is not so satisfied, he shall fix a date for further consideration of the application and may make such inquiries concerning the alleged mentally ill person as he thinks fit.

(5) The notice of the date fixed under sub-section (4) shall be given to the

applicant and to any other person to whom, in the opinion of the Magistrate, such notice shall be given.

(6) If the Magistrate fixes a date under sub-section

(4) for further consideration of the application, he may make such order as he thinks fit, for the proper care and custody of the alleged mentally ill person pending disposal of the application.

(7) On the date fixed under sub-section (4), or on such further date as may be fixed by the Magistrate, he shall proceed to consider the application in camera, in the presence of-

(i) the applicant;

(ii) the alleged mentally ill person (unless the Magistrate in his discretion otherwise directs);

(iii) the person who may be appointed by the alleged mentally ill person to represent him; and

(iv) such other person as the Magistrate thinks fit, and if the Magistrate is satisfied that the alleged mentally ill person, in relation to whom the application is made, is so mentally ill that in the interests of the health and personal safety of that person or for the protection of others it is necessary to detain him in a psychiatric hospital or psychiatric nursing home for treatment, he may pass a reception order for that purpose and if he is not so satisfied, he shall dismiss the application and any such order may provide for the payment of the costs of the inquiry by the applicant personally or from out of the estate of the mentally ill person, as the Magistrate may deem appropriate.

(8) If any application is dismissed under sub-section

(7), the Magistrate shall record the reasons for such dismissal and a copy of the order shall be furnished to the applicant."

12. Thus, it is clearly seen that an application for the reception order has to be made by the Medical Officer in charge of a Psychiatric Hospital or Psychiatric Nursing Home or by the husband of the mentally ill person or by his wife or by any of his relatives and where the husband or wife of the mentally ill person is not the applicant, the applicant should mention clearly the reasons for the application not being made by the husband or wife and should indicate the relationship of the applicant with the alleged mentally ill person. Such an application has to be made in a prescribed form and should be signed and verified in a prescribed manner and has to state whether any previous application was made and has to be accompanied by two Medical certificates from two Medical Practitioners of whom one shall be the Medical Practitioner in the service of Government. Form VIII, under Rule 25 of the State Mental Health Rules, 1990 prescribes the form in which application for reception order is to be

made. The application dated 29.09.2014 is not at all in the prescribed form though Section 20(6) of the M. H. mandates that such application should be in the prescribed form. There is no verification in the prescribed manner. The application is not accompanied by two certificates from two medical practitioners. The contention of the respondent no. 1 that there is report signed by three medical practitioners, has no substance since the said report is dated 20/09/2013, which is more than one year prior to the application dated 29.09.2014 and is only one report, which does not comply with the requirements of Section 21 of the M.H. Act. There is no opinion that the petitioner is suffering from mental disorder of such a nature and degree as to warrant his detention in psychiatric hospital or psychiatric nursing home. It is pertinent to note that the Medical Committee was not constituted for the purpose of the present application, but it was constituted for the purpose of some other case filed by one Ex-Sarpanch, namely Miss Laxmi Gonsalves against the present petitioner. There is no statement in the application whether any previous application had been made for enquiry into the mental condition of the petitioner.

13. The respondent no. 1 is in no way related to the petitioner and there is no force in the contention of the learned Counsel for the respondent no. 1 that any third person can file the application since there is no specific provision prohibiting any one to file an application. Since Section 20 of the M.H. Act prescribes the persons, who can file such an application, no other person can file the same. The respondent no. 1 has no locus standi to file such application. Thus, the learned J.M.F.C. had no jurisdiction to entertain the said application under Section 20(4) of M.H. Act. The J.M.F.C. did not conduct any verification of the application of the respondent no. 1 before as required by Section 22(2) of the M.H. Act, before issuing the impugned order. The learned J.M.F.C. acted in violation of the mandatory provisions of Sections 20, 21 and 22 of the M.H. Act. Hence, the order taking cognizance on the application dated 29/09/2014 is bad in law and nothing but an abuse of the process of law.

14. The petitioner has produced on record various complaints filed by him against Ligorio Pereira, who is admittedly the father of the respondent no. 1. There is great force in the contention of the petitioner that the application was filed by the respondent no. 1 merely to threaten and cause harassment to the petitioner, to desist him from proceeding with the complaints.

15. In the case of "Asha Shamadas Bajaj and another" (supra), the Magistrate had directed that the petitioner no. 1 should be detained for treatment in Regional Mental Hospital, Yerwada, Pune. The petition was entertained by the Court. The question was whether the action taken under the M.H. Act was justified or not. The learned Single Judge of this Court in paragraph 11 of the judgment has observed thus :

"11. Now let us come to the medical examination which was conducted. Even after two days of admission the doctor concerned was not able to make a final diagnosis. But he only stated that Miss Asha Bajaj was suffering from a

psychiatric disorder and according to him she required further observation, evaluation and treatment at the psychiatric hospital urgently. What abnormality he had found were that her talks were irrational and illogical. She was preoccupied to meet the Inspector General of Police and occasionally gave suicidal threats. Her insight and judgment was lacking. Seeing the sequences of events in this case, we have serious doubts about this certificate as well. But we are not going in this proceeding to decide whether the petitioner No. 1 needed medical treatment or not because that is a subject which is left to the Doctor. But the fact of the matter is that respondent No. 1 had some grudge against the petitioner No. 1 and we do not want to judge the issue as to whether the petitioner No. 1 was wrong or respondent No. 1 was wrong. Respondent No. 1 might have had reason to feel harassed, embarrassed by petitioner No. 1. The letters and the SMSs which have been placed on record by respondent No. 1, if are true, could have been a reason for anybody to feel harassed and embarrassed. But that does not mean that the whole machinery could be used to send to petitioner No. 1 to a mental hospital. Therefore, we are of the view that the whole exercise was done to send petitioner No. 1 to the mental hospital with a preconceived plan in which the main role has been played by respondent No. 1 and unfortunately by a Magistrate. If respondent No. 1 had any grievance she could have taken recourse to law and petitioner No. 1 could have been booked for the offences she might have committed. But the course taken by respondent No. 1 was absolutely wrong and was not expected of an Officer of the cadre of respondent No. 1. However, in the facts and circumstances of the case, we do not think it appropriate to pass any order in this regard. The respondent No. 1 is at liberty to take recourse to law, if any, available to her for redressal of her grievances." 16. In the case of "Pepsi Foods Ltd. and another" (supra), the scope of High Court's power to quash criminal proceedings in the exercise of power under Articles 226 and 227 and Section 482 of Cr.P.C. has been discussed. It is observed thus :

"Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused." 17. There is no need to discuss the other citations relied upon by the learned Counsel for the

petitioner. Considering the parameters of Article 227 of the Constitution of India, I am of the view that the present petition deserves to be allowed in the exercise of extraordinary powers of this Court under Article 227 of the Constitution.

18. In the result, the petition is allowed.

(i) The order passed in Criminal Case No. 702/OA/MA/14/E by the learned J.M.F.C. at Margao is quashed and set aside and consequently, the application dated 29/09/2014 seeking reception order under Section 20 of the M.H. Act in respect of the petitioner, is quashed and set aside and the proceedings bearing Criminal Case No. 702/OA/MA/14/E stand dropped.

(ii) Rule is made absolute in the aforesaid terms.

19. The petition stands disposed of accordingly.