

(1964) 01 GUJ CK 0013
In the Gujarat High Court

Chanda and Others

APPELLANT

Vs

Ramanlal Manjula Patel

RESPONDENT

Date of Decision : 13-01-1964

Acts Referred:

Lunacy Act, 1912 — Section 38, 41, 41, 62, 62

Citation : (1964) 5 GLR 531

Hon'ble Judges : P.M. Bhagwati, J

Bench : Single Bench

Judgement

P.M. Bhagwati, J.—The short question that arises on this appeal is whether the Court hearing an application under the Indian Lunacy Act 1912 can make an order u/s 41 requiring the alleged lunatic to attend for the purpose of being personally examined by the Court before making an order of inquisition u/s 38 or Section 62. The respondent in this appeal made an application to the City Civil Court Ahmedabad u/s 62 for declaring his brother Devendra Manjula a lunatic on the ground that the latter was of unsound mind and incapable of managing himself and his affairs. On the application a notice was issued to Devendra Manjula but he did not appear. Instead the mother and other brothers of Devendra Manjula appeared and filed objections contending that the application was not bona fide and that Devendra Manjula was neither of unsound mind nor incapable of managing himself and his affairs. The respondent thereupon preferred an application to the Court for personal examination of Devendra Manjula. The application was obviously made u/s 64 read with Section 41 and the relief sought was that the mother and other brothers of Devendra Manjula who are appellants in the appeal should be directed to produce Devendra Manjula for being personally examined by the Court. The application was opposed by the appellants. The main ground on which the opposition was founded was that the Court had no power to make an order requiring Devendra Manjula to be produced in Court for the purpose of being personally examined before the making of an order of inquisition. The learned Judge of the City Civil Court who heard the application came to the conclusion that u/s 41 the Court

could at any time require the alleged lunatic to attend for the purpose of being personally examined by the Court and that the power to do so was not a power which could be exercised only after an order of inquisition was made against the alleged lunatic. In this view of the matter the learned Judge allowed the application and directed the appellants to produce Devendra Manjural in Court for his personal examination by the Court. The appellants being aggrieved by this order preferred the present appeal in this Court.

2. Now at the outset Mr. S.B. Vakil learned advocate appearing on behalf of the respondent conceded that the order made by the learned Judge was not justified in so far as it directed the appellants to produce Devendra Manjural in Court for being personally examined by the Court. So long as Devendra Manjural was not adjudged to be a lunatic it could not be presumed that he had no volition of his own and that the appellants were in a position to produce him in Court. The order directing the appellants to produce Devendra Manjural in Court proceeded on the assumption that Devendra Manjural was a lunatic but this very assumption constituted the matter to be adjudicated upon by the Court. Mr. S.B. Vakil also pointed out that u/s 41 the only order which could be made by the Court was to require the alleged lunatic to attend for the purpose of being personally examined by the Court and that the terms of that section did not authorize the Court to direct any person to produce the alleged lunatic in Court. Mr. S.B. Vakil therefore stated that the only order which should have been made by the Court on the application of the respondent was to require Devendra Manjural to attend for the purpose of being personally examined by the Court and that was the form in which he sought the order from this Court. Mr. Arun H. Mehta learned advocate appearing on behalf of the appellants however contended that even an order in this form could not be made by the Court in the present case since no order of inquisition was as yet made by the Court and that the power to require the alleged lunatic to attend the Court for the purpose of being personally examined could not be exercised by the Court until the order of inquisition was made. This position was contested by Mr. S.B. Vakil on behalf of the respondent and the question which therefore arose for determination was whether on a true construction of Section 41 the Court can make an order requiring the alleged lunatic to attend the Court for the purpose of being personally examined before the making of an order of inquisition.

3. In order to determine this question it is necessary to refer to the scheme of the Act. Considerable reliance was placed by Mr. Arun H. Mehta on the scheme of the Act in support of his contention that an order u/s 41 could only follow an order of inquisition but the scheme of the Act far from supporting the contention of Mr. Arun H. Mehta clearly goes against it. A reference to Part III of the Act shows that there are two sets of provisions under which an application in lunacy can be made. An application in lunacy in Presidency towns is governed by Chapter IV while an application in lunacy outside Presidency towns is governed by Chapter V. In the present case I am concerned with an application in lunacy outside Presidency towns and the provisions which therefore call for

consideration are the provisions contained in Chapter V though I may point out that so far as the present question is concerned there is no difference at all between the position obtaining in respect of an application in lunacy in Presidency towns and the position obtaining in respect of an application in lunacy outside Presidency towns. Section 52 is the first section in Chapter V and it provides that whenever any person not subject to the jurisdiction of any of the Courts mentioned in Section 37 (which deals with the jurisdiction of the High Courts of Bombay Madras and Calcutta in relation to applications in lunacy in Presidency towns) is possessed of property and is alleged to be a lunatic the District Court within whose jurisdiction such person is residing may upon application by order direct an inquisition for the purpose of ascertaining whether such person is of unsound mind and incapable of managing himself and his affairs. When an application is made u/s 62 for adjudging a person to be a lunatic the Court has to decide whether it will throw out the application in limine or whether it will make an order directing an inquisition for the purpose of ascertaining whether such person is of unsound mind and incapable of managing himself and his affairs. If the Court is satisfied on a consideration of the material placed before it that no case has been made out the Court will dismiss the application in limine but if the Court is satisfied that there is a prima facie case which calls for investigation the Court will make an order directing an inquisition. Now an order directing an inquisition into a man's state of mind is a very serious thing see *Saraj Basini Debi Vs. Mohendra Nath Bhaduri and Others*, and such an order will not therefore be made by the Court unless the Court is satisfied about the making of such an order on adequate material. The Court may for this purpose consider the material which is placed on record by the applicant or may even personally examine the alleged lunatic. Very often a personal examination of the alleged lunatic would be most desirable for it would be of considerable assistance to the Court in deciding whether there is any prima facie case which calls for investigation by an inquisition. However convenient and useful though this power be it may in many cases be difficult to secure attendance of the alleged lunatic for the purpose of his personal examination by the Court. The alleged lunatic may not appear in response to the notice issued by the Court and the Court may be helpless in the matter unless power is conferred on the Court to require the attendance of the alleged lunatic. This power I find, has been conferred on the Court by Section 41 which is made applicable to proceedings in lunacy outside Presidency towns by reason of Section 64. Section 64 as its marginal note shows deals with regulation of proceedings of District Courts in the matter of applications filed u/s 62 and provides that the provisions of Sections 40, 41 and 42 shall regulate the proceedings of the District Court in the matter of such applications. The Court can therefore even in respect of an application made u/s 62 require the alleged lunatic to attend for the purpose of being personally examined by the Court and personally examine the alleged lunatic for the purpose of satisfying itself whether there is a prima facie case which requires to be investigated by the making of an order of inquisition. 4 Mr. Arun H. Mehta however contended that the power of the Court u/s 41 requiring the alleged

lunatic to attend for the purpose of being personally examined by the Court can be exercised only after an order of inquisition is made and the main ground on which he relied in support of his contention was that since Section 64 which makes the provisions of Sections 40, 41 and 42 applicable to proceedings in lunacy outside Presidency Towns follows upon Section 62 which provides for the making of an order of inquisition the provisions of Sections 40, 41 and 42 must be held to apply at the stage subsequent to the making of an order of inquisition. Mr. Arun H. Mehta tried to reinforce this argument by pointing out that it was clear from the language of Section 40 that it applied only on the making of an order of inquisition and that similarly Section 41 also applied at that stage and not before. Now it is no doubt true that Section 64 occurs after Section 62 and that Section 40 speaks of notice to be given to the alleged lunatic and to other persons after the making of an order of inquisition but that does not mean that the stage at which the power u/s 41 can be exercised by the Court must also be after the making of an order of inquisition. There is nothing in Section 41 which even remotely suggests that the Court can require the attendance of the alleged lunatic for the purpose of his personal examination only after the order of inquisition is made. The language of Section 41 is wide enough to include exercise of power by the Court at any stage in the course of the proceedings initiated u/s 62. If the intention of the Legislature were that the Court should have power to require the attendance of the alleged lunatic for the purpose of his personal examination only after the making of an order of inquisition the Legislature would have used appropriate language confining the exercise of the power to the stage subsequent to the making of an order of inquisition. But the language used by the Legislature is general in its terms and it would be contrary to all canons of construction to read the section in a narrow and constricted manner and confine its applicability only to one stage of the proceedings namely that subsequent to the making of an order of inquisition. As I have already pointed out above the necessity of making such an order requiring attendance of the alleged lunatic for personal examination may often arise before the making of an order of inquisition and there is no conceivable reason why the Legislature should not have conferred power on the Court to make such an order at that stage. Why should the Court not have the power to require attendance of the alleged lunatic for the purpose of his personal examination before the making of an order of inquisition? An order of inquisition is a serious matter and is it not reasonable that the Court should have the power to personally examine the alleged lunatic before the Court decides to make an order of inquisition? It is quite possible that by personal examination of the alleged lunatic the Court may come to the conclusion that the allegations made by the applicant are unfounded and the Court may decide not to hold an inquisition at all. In many cases the personal examination of the alleged lunatic would be an important factor which might tilt the decision of the Court as regards the holding of an inquisition one way or the other. If therefore the language of Section 41 is wide enough to include power in the Court to require attendance of the alleged lunatic for his personal examination before the making of an order of inquisition I do not see

any reason why I should read the section in the manner in which Mr. Aran H. Mehta wants me to do and limit its applicability to the stage after the making of an order of inquisition.

5. The question which has arisen before me does not appear to have been decided by any decision of any other High Court but the view which I am inclined to take is supported by the observations of the Allahabad High Court contained in Muhammad Yaqab v. Nazir Ahmad 42 All 504 where the learned Judges of the Allahabad High Court said:

An application for an inquisition should ordinarily be supported by affidavit or by examination on oath of the applicant and by a medical certificate of some doctor as to the condition of the alleged lunatic. It would also be desirable in many cases that the Judge should seek some personal interview with the alleged lunatic with a view to satisfy himself that there is a real ground for supposing the existence of an abnormal mental condition which might bring the person within the Lunacy Act.

The following observations of the Lahore High Court in Mt. Teka Devi v. Gopal Das AIR 1930 Lah 289:

Where an application is made to ascertain whether certain persons are of unsound mind by an inquisition the Judge should form his independent judgment upon the point. After examining the parties it may reject the petition in limine if it thinks that no prima facie case for enquiry is disclosed or it may after examining the pleadings of the parties or as a result of its own personal interview with the alleged lunatic come to the conclusion that there are grounds for supposing that the mental condition is such as to bring him within the Lunacy Act. In that case it must order an "inquisition and proceed in the manner prescribed.

also support this view. Mr. Arun H. Mehta relied on a decision of the Calcutta High Court in Saraj Basini Debi v. Mahendra Nath (supra) to which I have already referred but there is nothing in that decision which in any way helps the argument put forward on behalf of the appellants.

In this view of the matter I am of the opinion that an order requiring the alleged lunatic to attend for the purpose of being personally examined by the Court can be made by the Court u/s 41 before making an order of inquisition. The learned Judge was therefore entitled to make an order requiring Devendra Manjula to attend for the purpose of being personally examined by the Court and there will accordingly be an order requiring Devendra Manjula to attend the City Civil Court at such convenient time and place as may be fixed by the City Civil Court for the purpose of being personally examined by the Court. There will be no order as to costs of the appeal.