

(2005) 09 J&K CK 0020
In the Jammu And Kashmir High Court
Case No : C.I.A. No. 34 of 2005

Murtaza Nasir

APPELLANT

Vs

Nazir Ahmed Wani and Others

RESPONDENT

Date of Decision : 16-09-2005

Acts Referred:

Mental Health Act, 1987 — Section 50, 51, 52, 65, 77

Citation : AIR 2006 J&K 55

Hon'ble Judges : Bashir. A. Kirmani, J

Bench : Single Bench

Advocate : J. Iqbal, for the Appellant; Mufti Mehraj-ud-din and Manzoor A. Dar, for the Respondent

Judgement

Bashir A. Kirmani, J.—Impugned in this appeal is an order of District Judge Budgam dated 17-2-2005 passed in the inquisition proceedings

initiated u/s 50 of the Mental Health Act, where under the learned Judge while modifying an earlier order of 5-2-2004, allowed release of part

pension in favour of the mentally retarded person for the reason that same would be required for her maintenance etc. Ground pleaded is that the

order has been passed mechanically and without providing opportunity of being heard to the appellant, and is totally uncalled-for in over all

circumstances of the matter. During course of arguments, appellant's counsel has, besides reiterating the contents of appeal, argued that in

circumstances of the case the impugned order was passed in total derogation to the facts and law attending the matter, in response where to learned

Counsel for respondents 2 to 5 has contended that appellant has no genuine interest in the well being of the mentally retarded person and is only

interested in her properties etc. Both the counsel have referred to other pending

litigation between the parties.

2. I have heard learned Counsel, gone through the records and considered the matter. It appears that on 31st of Jan. 2004, one Nazir Ahmed

Wani, respondent No. 1 in the instant appeal instituted a petition under Mental Health Act for judicial inquisition in respect of one Wazira Begum,

the mother of present appellant and respondents 2 to 5 and sought appointment of a manager for her properties on the ground that she was

mentally unfit and thereby incapable of taking care of herself or her properties. This was objected to by respondents 2 to 5 mainly on the ground

that said Wazira Begum was not mentally ill and thereby the petition could not be maintained, while first respondent, the appellant before this Court

conceded the petition. On 5-2-2004, the matter came up before the learned trial Judge for consideration and while issuing notices to other side as

also to Wazira Begum aforesaid, he directed maintenance of status-quo regarding all properties existing in the name of Wazira Begum, whereafter

proceedings got stuck in the interlocutory applications filed by contestants without any tangible progress in the main petition. Under impugned

order dated 17th of Feb. 2005, which along with the earlier order is to be deemed to have been passed u/s 65 of the Mental Health Act, learned

trial Judge ordered the aforesaid modification, and hence this appeal.

3. Taken within purview of inquisition proceedings, in strict sense, the controversy is limited to the factum of the mental health of Wazira Begum

and the consequently requisite action relating to her person and properties. But given the texture of pleadings and the litigative zeal of contesting

parties, the conflict of their interest appears to overflow the contours of judicial inquisition relating to alleged mental retardation of Wazira Begum

and touches their visible interest in her properties, which appears to have overlapped the inquisition proceedings with all the shades of conflict

creeping therein causing inordinate delay in disposal thereof. However, apart from the ferocity of argumentation and multiplicity of proceedings

pending elsewhere, the question involved in the present appeal, in simple terms, is whether the modification in the earlier order of 5-2-2004

ordered by learned trial Judge vide interim order dated 17-2-2005 was proper in given circumstances of the case. Plainly the answer has to be in

affirmative, because in any case, the alleged mentally retarded person would

naturally require some part of her pension for maintenance and in that much, the District Judge was right, even though he would perhaps have acted more correctly, had he devised a method to assure that part pension so released was not misused by any of the parties. The only aspect that appears to be an agitating factor is that the modification was ordered without notice to other parties who had already entered appearance by then which appears to be bad because the matter being contested to the hilt, any order having bearing on the subject matter modifying a previously accepted order should not have been passed without a proper hearing.

4. But for that the impugned order does not appear to be wholly misplaced, and accordingly, the appeal is disposed of with an observation that the

order of 17-2-2005 impugned herein would be deemed to have been passed subject to objections of other side, which they shall be at liberty to

file before the trial Court within two weeks from receipt of the file, whereafter the learned trial judge shall hear the parties and pass appropriate

orders. While doing so, he may seek guidance from provisions of Section 91 of the Mental Health Act also which directly deals with disbursement

of pension etc. payable to the mentally retarded person. Even though the said provision does not apparently envisage action thereunder at this

stage by Court intervention, yet, once the competent Court is seized of the matter and called upon to act, there is no harm in borrowing the

substance thereof along with the underlying policy for disposal of the controversy in hand.

5. Before parting with the order, it would be appropriate to observe that the procedure adopted by learned District Judge while conducting the

inquisition proceedings under reference does not appear to be wholly in accordance with the procedure laid down under the Mental Health Act.

Instead they appear to have been conducted according to the broad procedural lines drawn under CPC, which besides derailing the proceedings

has also misdirected the attention of the trial Court. Provisions relating to judicial inquisition and procedure to be adopted therefore is contained in

Chapter VI of the Mental Health Act, which, in so far as the procedure required to be adopted for conducting the inquisition is concerned is quite

self contained and in view of the non-obstinate clause contained, in Section 96 of the Act, has over riding effect over all other laws to the extent of

being inconsistent therewith. Chapter VI starts with Section 50 of the Act which contains the provision for filing an application for holding inquisition into the mental condition of a mentally ill person, possessed of property, by any of his relatives, public curator or the Advocate General, to the District Judge within whose territorial jurisdiction the alleged mentally ill person resides. Under Sub-section 2 thereof, the concerned District Court is necessarily required to issue a notice by personal service or otherwise to the alleged mentally ill person for his appearance as also to the person having his custody etc. for his production and hold the inquisition, if necessary with assistance of two or more accessories who in his opinion may be of help to come to correct conclusions. u/s 51 after completion of the inquisition, the District Court is required to record its finding regarding factum of the alleged mental illness of the person concerned, and if mentally ill, whether he is capable of taking care of himself and managing his property. u/s 52 if, and, after the Court records its finding regarding mental illness of the person and his incapability to take care of himself or his property, it shall appoint a guardian for his person and manager for his property. Otherwise, i.e. if the Court finds that the concerned person is not mentally ill, it shall dismiss the application for inquisition. In other words therefore, the power of the District Court to appoint a guardian for person of the mentally ill person or a manager for his property, flows from its own finding regarding the mental sickness of concerned person, and unless that finding is recorded, the power of appointing a guardian for his person or a manager for his property cannot be exercised, because in terms of the foregoing provisions the exercise of that power is conditional upon the finding of the Court regarding the mental sickness of the concerned person. Remaining provisions of Chapter-VI aforesaid only pertain to procedure etc. for appointment of guardian/managers and their duties, the mode of performance thereof, and other matters connected therewith.

6. Thus the procedure adopted by concerned District Court is not wholly in accordance with the one laid down under the Act, and in order to effectively bring the proceedings back on rails, the learned District Judge concerned shall, after receipt of the file, recommence proceedings thereupon as envisaged. u/s 50 of the Act in accordance with the procedure provided. It may also be profitable in mention that u/s 77 of the Act,

the concerned District Court has all the power to make regulations for carrying out the purpose of above mentioned provisions and that being so,

the learned District Judge can devise his own procedure to complete the inquisition, and even make necessary regulations for conduct thereof.

7. With these observations, the appeal stands disposed of as aforesaid. Subordinate file be sent down along with a copy of this order, where the parties shall appear on 1st. of October 2005. Registry to transmit the records well before that date.

8. To convey the observations made hereinabove, copies of this order be communicated to all District Judges.