

(2019) 09 DEL CK 0241

In the Delhi High Court

Case No : Criminal Writ Petition No. 2255 Of 2019, Criminal Miscellaneous Application No. 33474, 33943, 35222 Of 2019

R.S.

APPELLANT

Vs

State & Ors

RESPONDENT

Date of Decision : 20-09-2019

Acts Referred:

Mental Healthcare Act, 2017 — Section 3, 3(5), 4, 5, 23, 24, 102(1)(a)

Citation : (2019) 09 DEL CK 0241

Hon'ble Judges : Manmohan, J; Sangita Dhingra Sehgal, J

Bench : Division Bench

Advocate : K.K.Rai, Anshul Rai, RamkrishnaVeerendra, S.K.Pandey, D.P.S.Rajesh, Rahul Mehra, Chaitanya Gosain, Siddharth Luthra, D. Abhinav Rao, B.Shravanth Shanker, Amit Sibal, Rohit Bharadwaj

Final Decision : Disposed Of

Judgement

Manmohan, J

1. Present writ of habeas corpus had been filed by the petitioner-son Mr. R.S. seeking a declaration that his mother- Mrs. S.D. had been detained/confined by respondent no.2-father D.M.P. as well as respondent no.3-Ms. U.D. and by their agents/representatives. The petitioner-son also sought custody of his mother-Mrs. S.D.

2. On 14th August, 2019, this Court had directed petitioner's mother-Mrs. S.D.to be personally present before this Court on 19th August, 2019.

3. On the said date, petitioner-son Mr. R.S. as well as his mother-Mrs. S.D. and respondent no.2-father D.M.P. appeared before this Court. During our meeting with the parties in our chamber, we realised that both respondent no.2-father D.M.P. as well as petitioner's mother-Mrs. S.D. needed care and protection. However, keeping in view the status as well as close relationship of the parties and the lack of clarity with regard to the medical problems of the parties, we

requested the three learned senior counsel to suggest a future course of action. The order dated 19th August, 2019 reads as under:-

"Though the present matter was mentioned in the morning by Mr. Amit Sibal, learned senior counsel for Smt. S.D. seeking dispensation of her personal appearance, yet keeping in view the categorical direction in our last order dated 14th August, 2019, Mr. Amit Sibal agreed that Smt. S.D. shall be personally present post lunch. He, however, prayed that Ms. S.D. be examined by the Court in Chambers, to which we agreed.

On our oral direction, petitioner, respondent no.2 and Smt. S.D. personally appeared in Court at about 3.30 p.m. We spoke to the aforesaid three individuals in our Chambers.

While Smt. S.D. was hard of hearing and it was difficult to communicate with her, we found that respondent no.2 (D.M.P.) did not recognize either the petitioner (his son) or Smt. S.D. (his wife). He, in fact, told us that Smt. S.D. was his mother and the petitioner's name was A. and not R.S. Respondent no. 2 repeated ad nauseam that he had travelled to all the countries of the world.

Enquiry from the staff who accompanied Smt. S.D. and respondent no. 2 revealed that respondent no. 2's younger brother was managing the business empire.

Keeping in view the gravity of the situation, we requested the three learned senior counsel, Mr. Sidharth Luthra, Mr. K.K. Rai and Mr. Amit Sibal as well as learned standing counsel, Mr. Rahul Mehra to suggest to this Court a mutually agreed future course of action.

At the request of learned senior counsel for parties, list on 27th August, 2019 at 4.00 p.m."

4. Thereafter an application being Crl.M.A.No.33943/2019 was filed by respondent no.2-father D.M.P. seeking recall of the order dated 19th August, 2019 to the extent we had recorded the conduct of the parties after meeting them in our chamber. In the said application it was averred that the thyroid levels of respondent-2-father D.M.P. had shot up and the sodium levels were highly depleted due to which there was inaccuracy in his speech and diction. A copy of the medical report dated 01st July, 2019 was enclosed. However, when the application was listed for hearing before the Court, learned counsel for respondent no.2-father D.M.P. sought an adjournment.

5. On 27th August, 2019, there was no consensus with regard to the future course of action. Consequently, this Court transferred the investigation to the Crime Branch and parties were directed to maintain confidentiality. The order dated 27th August, 2019 is reproduced hereinbelow:-

"Keeping in view the nature of the allegations in the present petition as well as the earlier order dated 19.08.2019, the investigation of the present case is

transferred to Crime Branch forthwith.

Let a status report be filed on or before the next date of hearing under the signature of Mr. Joy Tirkey, DCP (Crime). The parties are directed not to publicise or disclose either the order or the proceedings to any third party.

List on 05.09.2019. The registry is directed not to upload the present order on the portal of Delhi High Court till the next date of hearing.

Order dasti under the signature of the Court Master."

6. Thereafter, a status report dated 03rd September, 2019 was filed by the DCP, Crime Branch. The relevant portion of the said status report reads as under:-

"Discussion of evidence

In the enquiry conducted so far, the following issues have emerged.

1. That Smt. S.D. is the lawfully wedded wife of D.M.P., whereas, Smt U.D. has been living with D.M.P. as his wife since 1973. Smt. S.D. is an illiterate lady while Smt. U.D. is a Science Graduate from Maitreyi College, Delhi University.
2. That Smt. S.D. and Smt. R.D. have been living together since long. They were staying at Harit Nilaya Farm House, Dera Village, New Delhi for about the past one year and had shifted to Kothi No.4, Safdarjung Lane, Delhi about a month ago.
3. That Smt. S.D. had not been able to meet her son, Sh. R.S. (petitioner) for quite some time. She desired to meet her son R.S., her daughter in law G. and her grandson A.
4. That D.M.P. calls Smt. U.D. as his wife but does not accord the same status to his lawfully wedded wife Smt. S.D.
5. That D.M.P. has disowned his son Sh. R.S. in the year 2016 and does not want to either talk to him or to let him enter his house.
6. That Smt. U.D. holds a Diplomatic Passport stating that she is D.M.P.'s wife.
7. That two ex-employees have stated that Smt. S.D. and Smt. R.D. were kept in confinement and not allowed to go out.
8. That neither Smt. S.D. nor Smt. R.D. have stated that they had been confined or beaten by anyone.
9. That none of the servants who are presently employed with D.M.P. have corroborated the allegation of confinement or physical torture.

Findings

During the enquiry conducted so far, it is apparent that both Smt. S.D. and Smt. R.D. are estranged from their husbands. They live together and are totally dependent on D.M.P. and Smt. U.D. for everything. Due to old age, D.M.P. is also

suffering from some memory loss. During enquiry, no female attendant was found to be looking after the two ladies."

7. Keeping in view the aforesaid report which revealed that even petitioner's aunt (Chachi)-Mrs. R.D. needed care and protection as well as Mr. Rahul Mehra learned standing counsel for the State's allegation that investigation was being sought to be impeded by representatives of the respondents, this Court vide order dated 05th September, 2019 directed petitioner's mother-Mrs. S.D.as well as petitioner's aunt-Mrs. R.D. to shift to C-1/21, Vasant Vihar, the property owned by respondent no.2-father D.M.P. On the said date, Mr.Siddharth Luthra, learned senior counsel for respondent no.2-father D.M.P. voluntarily stated that respondent no. 2 would get himself admitted in AIIMS. The said order reads as under:-

"Today Mr.Rahul Mehra, learned standing counsel for the State has handed over a detailed status report. The same is taken on record. A photocopy of the same has been supplied to learned counsel for the parties.

After hearing the matter at some length, Mr.Siddharth Luthra, learned senior counsel for respondent no.2 -D.M.P. states that his client would move an application before Mr.Joy Tirkey, DCP (Crime) today itself to get himself admitted in AIIMS. Mr.Siddharth Luthra states that D.M.P. would abide by any directions given by the doctors. The Director, AIIMS is directed to constitute a medical board to examine and take care of D.M.P. A status report is directed to be filed by AIIMS in a sealed cover, at least one day prior to the next date of hearing. Copies of the orders passed today as well as on 19th August, 2019 and the status report filed by the DCP (Crime) shall be forwarded to the Director, AIIMS.

It is further agreed between the parties that Smt. S.D. as well as Smt. R.D. shall be shifted tomorrow i.e. 06th September, 2019 to Bungalow No.C-1/21, Vasant Vihar - the property owned by D.M.P. Before Smt. S.D. and Smt. R.D. are shifted to the said house, the Police shall sanitise the house and ensure that neither the petitioner nor his family members or the family members of D.M.P. have access to the said house or to Smt. S.D. as well as Smt. R.D. The existing staff of Smt. S.D. as well as Smt. R.D. would abide by any directions given by Mr.Joy Tirkey, DCP (Crime).

Mr.Luthra further agrees that, as recommended by Mr.Joy Tirkey, DCP (Crime), two lady nurses shall be employed at D.M.P.'s expense either from a hospital or any reputed agency.

The Police is directed to continue its investigation and file a fresh status report a day prior to the next date of hearing.

The interim order dated 27th August, 2019 with regard to confidentiality and non-uploading of the order on the official website of this Court shall continue till the next date of hearing.

List on 19th September, 2019.

Order dasti under the signature of the Court Master."

8. In pursuance to the order dated 05th September, 2019, the medical report dated 12th September, 2019 has been received from the AIIMS. A copy of the same has been handed over to Mr.Siddharth Luthra, learned senior counsel for respondent no.2-father D.M.P. The said medical report dated 12th September, 2019 reads as under:-

Subject: Report of the Medical Board/ Committee at AIIMS (CNC) constituted for medical examination and status report of D.M.P., an existing Hon'ble M.P. (Rajya Sabha) as directed by the Hon'ble Delhi High Court Order dated 05.09.2019 in Writ Petition Criminal No. 2255/2019 in the matter of R.S. Versus State.

The meeting of the medical board held under the Chairmanship of Dr. Achal Kumar Srivastava, Professor, Deptt. of Neurology on 12.09.2019 (Thursday) at 3:00 PM in Room No. 13 (VIP Room), MS Office wing, Old Pvt. Ward, AIIMS, New Delhi. The following members were present in the meeting:

1. Dr. Achal Kumar Srivastava Professor, Deptt. of Neurology

Chairperson

2. Dr. Sanjay Wadhwa Member Professor, Deptt. of PMR

Co-opted

3. Dr. Vinay Goyal Professor, Deptt. of Neurology

Co-opted Member

4. Dr. Mamta Sood Professor, Psychiatry

Co-opted Member

5. Dr. Biraj Chandra paul Duty Officer, CNC

Member Secretary

6. Dr. Ashok Chauhan Duty Officer, CNC

Observer

Report: D.M.P., an existing Hon'ble M.P. (Rajya Sabha) was examined in detail. His all available relevant investigation reports were evaluated. The Medical Board is of the opinion that D.M.P. is suffering from dementia (fronto-temporal dementia)."

9. Yesterday, a fresh status report dated 19th September, 2019 was handed over by learned standing counsel for the State. The relevant portion of the said status report reads as under:-

"Discussion of evidence

In the further enquiry conducted in the matter, the following issues have emerged.

1. That Smt. S.D. and Smt. R.D. have alleged beating and confinement by Smt. U.D. and some servants on her behest. Both the ladies do not remember dates but shared their experience as per incidents.
2. That Smt. S.D. and Smt. R.D. want to live at C-1/21, Vasant Vihar, New Delhi.
3. That they do not want to meet D.M.P. and Smt. U.D. but Smt. S.D. wants to meet her son R.S., her daughter in law and her grandson. Smt. R.D. wants to meet and live with her husband.
4. That Smt. R.D. has alleged that when she was living at the farm house, one servant named S. used to make obscene gestures at her and made fun of her. He would also lock her up inside the bathroom and not let her come outside and would keep standing outside the bathroom.
5. That Smt. R.D. has alleged that Smt. U.D. has taken away all the gold items belonging to her and S.D.
6. That two ex-employees of the Company have stated that D.M.P. has been having memory related issues and that the company is now being controlled by his erstwhile Secretary, Smt. U.D.
7. That Director, AIIMS had been directed by the Hon'ble Court to constitute a Medical Board to examine and take care of D.M.P. and file a Status Report in this regard a day before the next date of hearing i.e. 19.9.19. Request in this regard was sent to the Medical Superintendent, AIIMS on 06.09.19.

Findings

1. During the enquiry conducted so far, both Smt. S.D. and Smt. R.D. have alleged confinement and physical abuse.
2. Smt. R.D. has alleged that a servant S. used to make obscene gestures at her and used to lock her up in the bathroom at the farm house.
3. Smt. R.D. has further alleged that Smt. U.D. has taken away gold items belonging to her and Smt. S.D.

In view of the above submission made therein, the undersigned is ready and willing to abide by any directions of this Hon'ble Court.

Dr. Joy N. Tirkey

Dy. Commissioner of Police

AHTU, Crime Branch, Delhi."

10. We met the parties once again yesterday. The petitioner's mother-Mrs. S.D. and petitioner's aunt-Mrs. R.D. expressed satisfaction at the arrangement made

by this Court for their stay vide order dated 05th September, 2019. We found that in comparison to the previous meetings, petitioner's mother-Mrs. S.D. was far more confident, self-assured, relaxed, calm and composed.

11. When we met respondent no.3-Ms. U.D. in our chamber, she vehemently denied the allegations made by petitioner's mother-Mrs. S.D. as well as by her former employees-as detailed in the status reports. She emphasised that respondent no.2-D.M.P. had shown her as his legally wedded wife in the official records. She stated that she had been taking care of respondent no.2-D.M.P. and his family for the last 45 years. She also stated that she had brought up petitioner-Mr. R.S. as her own son. She contended that allegations had been made against her in pursuance to a well orchestrated conspiracy.

12. The respondent no.2-father D.M.P. could still not recollect the names of any of his family members except respondent no.3-Ms.U.D. He kept on repeating ad nauseam that he had travelled to all the countries of the world except Somalia.

13. Mr. Siddharth Luthra, submitted yesterday that by virtue of Section 3(5) of the Mental Healthcare Act, 2017 (hereinafter referred to as the 'Act, 2017'), the determination of a person's mental illness shall alone not imply or be taken to mean that the person is of unsound mind unless he has been declared as such by a competent court. We agree with this submission.

14. While Mr. Rahul Mehra, learned standing counsel for the State, on instructions of the DCP Mr. Joy N. Tirkey, contended that it would be impossible to proceed further with the investigation into allegations of illegal confinement of petitioner's mother and aunt if respondent no.3-Ms. U.D. continued to reside with respondent no.2-D.M.P., learned counsel for respondent no.3-Ms. U.D. stated that if she is directed to live separately from respondent no.2-D.M.P., her health as well as that of respondent no.2, shall deteriorate. Mr. Siddharth Luthra, learned senior counsel for respondent no.2-father D.M.P. suggested that respondent no.3-Ms. U.D. be allowed to meet respondent no.2 for a few hours every day. Mr. Rahul Mehra, learned standing counsel for the State also prayed that respondent no.3-Ms. U.D. be restrained from travelling abroad. As the hearing was inconclusive yesterday, the matter was adjourned.

15. Today, learned counsel for the parties voluntarily state that they are agreeable to the following consensual order:-

(a) The petitioner's mother-Mrs. S.D. and petitioner's aunt-Mrs. R.D. would continue to stay, as long as they want, at C-1/21, Vasant Vihar. Two lady nurses from Apollo Hospital employed at the expense of respondent no.2-father D.M.P. shall continue to look after them. In the event, the said nurses have to be replaced and/or are not available, the replacement shall be procured from the same hospital.

(b) The petitioner's mother-Mrs. S.D. will be free to meet anyone she wants including the petitioner and his family members as well as the respondent no.2-

D.M.P.

(c) Mr. Joy N. Tirkey, DCP, Crime Branch assures this Court that, after interrogating respondent no.3-Ms. U.D. and other relevant witnesses, he would conclude the investigation within four weeks.

(d) Mr. Siddharth Luthra, on instructions, undertakes that respondent no.2-father D.M.P. shall voluntarily undergo an assessment of his mental health by filing an appropriate application under Section 102(1)(a) read with Sections 3, 4 and 5 of the Act, 2017 before a Magistrate within a week.

(e) Learned counsel for respondent no.3-Ms. U.D. states that Ms. U.D. shall voluntarily deposit her passport with the Registry of this Court forthwith. He further states that respondent no.3-Ms. U.D. has no objection if the DCP issues a Look Out Circular (LOC) against her to prevent her from travelling.

16. The statements, undertakings and assurances given by Mr. Siddharth Luthra, learned senior counsel, on instructions of respondent no.2-father D.M.P. as well as Mr. B. Sharvanth Shanker, Advocate for respondent no.3-Ms. U.D., are accepted by this Court and their clients are held bound by the same. Respondent no.3-Ms. U.D. is directed to deposit her passport for a period of four weeks with the Registry of this Court on or before 24th September, 2019.

17. Further the statement made by DCP Joy N. Tirkey with regard to completion of the investigation is accepted by this Court. He is directed to take steps in accordance with the law upon conclusion of his investigation/enquiry. In fact, the consensual understanding between the parties is accepted by this Court and the same shall be treated as binding directions of this Court.

18. However, there is no consensus between the parties as to whether respondent no.3-Ms. U.D. should be allowed to meet and/or stay with respondent no.2-D.M.P. The parties pray that the said issue be decided by this Court.

19. Keeping in view the serious allegations of theft, physical abuse and illegal confinement against respondent no.3-Ms. U.D. by Mrs. S.D.- petitioner's mother and the allegation by former employees and the police that respondent no.3-Ms. U.D. was using her proximity to respondent no.2-D.M.P. to control his entire house, staff and company as well as to get documents executed, this Court, erring on the side of caution, directs Ms. U.D. to live separately from respondent no.2-father till conclusion of investigation i.e. for a period of four weeks.

20. We are also of the prima facie view that an attempt was made to conceal the exact medical condition of respondent no.2-father D.M.P. till we accidentally discovered it in our meeting on 19th August, 2019. Even the learned senior counsel for respondent no.2-father D.M.P. was surprised by the extent of the medical problem of his client. Further, till we received the report of AIIMS, we were being constantly told that respondent no.2-father D.M.P.'s problem was minor, age related and easily treatable by medicines. Neither counsel for respondent no.3-Ms. U.D. nor respondent no.2's younger brother who interacted

with us on 19th August, 2019 informed us that he was suffering from a serious ailment.

21. Till the conclusion of the investigation, respondent no.2-father D.M.P. is directed to be taken care of by the wife of deceased brother of the petitioner i.e. Ms. K.R. as well as two male nurses to be employed by DCP Joy N.Tirkey. In the event of any emergency, the DCP shall be at liberty to allow respondent no.3-Ms. U.D. to meet respondent no.2-father D.M.P.

22. Lastly, keeping in view the Right to Confidentiality and Restriction on release of information in respect of mental illness enshrined under Sections 23 and 24 of the Act, 2017, this Court directs the Registry to redact the name of the parties from this order as well as the quotations therein, while uploading the judgment. This Court may clarify that it has mentioned the full name of the parties in the order as certain directions have to be implemented by judicial officers and the police and if their full names are not mentioned in the order there is a possibility of confusion creeping in.

23. The parties are given liberty to mention the matter in the event of any necessity/emergency.

24. With the aforesaid directions, present criminal writ petition and pending applications stand disposed of.

25. Order dasti under the signature of the Court Master.