
(2014) 10 MAD CK 0086
In the Madras High Court
Case No : Crl. O.P. SR. No. 44093 of 2014

S. Hariprakash

APPELLANT

Vs

The Hon'ble Chief Justice Madras High Court

RESPONDENT

Date of Decision : 31-10-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 21, 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 2, 482
Mental Health Act, 1987 — Section 19, 19(1), 19(2), 2, 2(h)

Citation : (2014) 2 LW(Cri) 669 : (2014) 4 MLJ(Cri) 534

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Judgement

S. Nagamuthu, J.—A study conducted by the "National Commission on Macroeconomics and Health" in 2005 shows that nearly 5% of India's population suffers from common mental disorders, such as depression and anxiety. World Health Organisation (WHO) predicts that 20% of the Indian population will suffer from some form of mental illness by the year 2020. Due to stigma, ignorance and superstition, neither they openly identify themselves as mentally ill nor do their relatives identify them. It is quite common that only when their conduct and behaviour become incorrigible, they are identified and taken for treatment. As the reports go, the number of people who come for treatment is very low and the majority of the mentally ill population go untreated. Rarely, such mentally ill persons file vexatious litigations before Court's of Law, appear in person and waste the valuable time of the Courts. They need to be taken care of by at least the Courts of Law that have the Constitutional obligation to protect their rights. I am impelled to make this prelude as the facts and circumstances of this case absolutely warrant the same. The facts of the case are as follows:

2. The petitioner (Mentally sound ?) is a resident of Alamathi Village in Thiruvallur District. He has made appearance before this Court in person. He has come up with this criminal original petition with the following prayer:

Respectfully prayed that this Hon''ble Court may be pleased to issue a U/s. 482 for directing The Central Bureau of Investigation to conduct an enquiry with regard to the petitioner Public Interest Litigation case filing is very delay, wasting the valuable petitioner time of the PIL case and destroyed at Madras High Court, Chennai-104.

Petitioner Written Complaints requiring Hon''ble Chief Justice Enquiry. The enquiry report should be prepared and submitted to Government within 24 hours from the date of the complaint positively. The report should invariably contain information of the following:-The facts and given circumstances in PIL case, the nature of the PIL case, the manner in which it was planned and committed, the motive for commission of the filing, the conduct of the petitioner, the nature of records used and all other attending circumstances are relevant facts which would enter into the area of consideration. Public Interest Litigation physically disabled petitioner written complaints failure to attend the enquiry in Hon''ble Chief Justice at Madras High Court, Chennai-600 104. So petitioner request was rejected in Hon''ble Chief Justice at Madras High Court, Chennai-104.

Therefore respondent is an attempt to suppress the Public Murders case investigation and destroyed the Public Interest Litigation case records. Wasting the valuable petitioner time of the PIL case. Respondent to response our duty and delay. Respondent can't get off to law. This condition to disturbance of the Fundamental Right guaranteed Under Article 21 of the Constitution. Pass "Such other further order or orders as this Hon''ble Court may deem fit and proper in the facts and circumstances of the case. (sic)

3. This petition was filed on 28.08.2014. The Registry of this Court returned the same with the following remarks on 11.09.2014:

1. This petition is returned for want of proper presentation.

2. Prayer to be revised in this petition.

4. Having taken the petition back, the petitioner re-presented the said petition with the following remarks on 11.09.2014:

Return is done

5. The petition was again returned by the Registry with the following remarks on 15.09.2014:

How this petition is maintainable u/s. 482 of Cr.P.C. Hence petition is returned.

6. The petitioner has taken back the petition and again re-presented the same on 15.09.2014, with the following remarks:

The Code of Criminal Procedure u/s. 482 saving of inherent power of High Court.

So, Petitioner PIL case The Article 226 of the Constitution of India is non-issue in Writ Section at Madras High Court, Chennai-104.

Return is done.

7. The Registry again returned the petition on 19.09.2014 with the following remarks:

It may be stated why the Hon''ble The Chief Justice is arrayed as respondent in the petition.

The averments and prayer are not clear in the petition. Hence, same is returned.

8. The petitioner again re-presented the same on 22.09.2014 with the following remarks:

The Respondent is supported to Terrorist.

Prayer is very clear because this is CBI Enquiry matter. Return is done.

9. Thereafter, on the orders of my Predecessor, this matter was listed for examining the maintainability of this Criminal Original Petition under Section 482 of Cr.P.C. When the matter came up for hearing on 24.09.2014, the petitioner was not present and therefore my predecessor had adjourned the matter. Again when the matter came up for hearing before me this Court on 10.10.2014, the petitioner was present in person and he made arguments for about 20 minutes on the question of maintainability and the same has been recorded by this Court as follows:

2. He submitted that the Hon''ble Chief Justice is supporting the terrorists. The Court is fully crowded by the persons, such as, lawyers, police officials and general public. He further submitted that in the State of Tamil Nadu, there are so many murders happening at the behest of the terrorists. He also submitted that such murders are committed by poisoning. He further submitted that such murders are suppressed by making them to appear as though they were all natural deaths.

3. It is also submitted by the party-in-person that he filed eight Public Interest Litigations and the Division Benches, without hearing him, passed orders rejecting his Public Interest Litigations. He further submitted that under Section 482 of Cr.P.C., all these murders have to be investigated. He further submitted that his villagers and relatives were all murdered.

4. The party-in-person further submitted that he is prepared to produce all the relevant documents in respect of these murders. As of now, he says that he has got particulars about 30 such murders committed by the terrorists. This is only a sample, he said.

5. He would further state that when he was coming to this Court from his house, he found lot of murders happening by poisoning and he is prepared to file an affidavit substantiating these allegations along with documents. He seeks time for the said purpose.

6. Post on 13.10.2014 at his request for filing affidavit.

10. When the matter again came up for hearing on 13.10.2014, he filed an affidavit dated 13.10.2014. It would be appropriate to extract the affidavit of the petitioner, which reads as follows:

S. Hariprakash, S/o N. Sriraman, aged about 40 years, residing at No. 1/183, Gangai Amman Koil Street, Alamathi Village, Ponneri Taluk, Thiruvallur District, Chennai-600 052. Do hereby solemnly and sincerely state as follows:-

The Respondent is Terrorism Supporter in Public Interest Litigation at Madras High Court.

The Respondent objective for terrorism support for all Public Interest Litigation cases threatens the sovereignty and territorial integrity of Indian.

The turbulence in Public Interest Litigation cases was exploited by the Respondent to draw up support for the Terrorism, in spite of the investigation, causing disquiet and threat to the security of the physically disabled petitioner.

And Whereas though Indian Citizens has been decimated in Public Interest Litigation cases but recent reports reveal that the terrorist are regrouping in Madras High Court in pursuance of their avowed objective of Cyber terrorism and wrecking revenge on the traitor and enemies.

And though Terrorism in the Madras High Court the Diaspora continue to spread anit-Citizens feeling amongst the Public Interest Litigation case Respondents by holding the top Petitioner responsible for the defeat of the Public Interest Litigation cases such propaganda through Madras High Court which remains continue are likely to impact Citizens security adversely in India.

The petitioner is of the opinion that the aforesaid activities of the Respondent continue to pose a threat to, and are detrimental to, the sovereignty and territorial integrity of India as also to the public order and, therefore, it should be declared as The Central Bureau of Investigation case.

The petitioner is further of the opinion that (1) Because of the Respondent continued violent and disruptive activities prejudicial to the integrity and sovereignty of India and (2) it continues to adopts a strong anti-citizens posture as also continues to pose a grave threat to the security of Indian nationals, it is necessary to declare the terrorism support as The Central Bureau of Investigation case with immediate effect."

11. The petitioner who was also present before this Court reiterated the averments made in the above referred to affidavit. His argument was not coherent and he highlighted all irrelevant matters which I do not want to reproduce. The matter was adjourned for further arguments.

12. Again when this matter came up for hearing before this Court on 20.10.2014, the petitioner was present and he made his further oral submissions.

This Court has recorded the same as follows:-

The petitioner, who is present in person submits that terrorists are committing murders in Tamil Nadu every day. But, today, to his knowledge, he is not aware as to whether any such murder has happened at the hands of the terrorists. Even today, he asserts that the Honourable Chief Justice is supporting the terrorists who are committing murders every day. He would further state that he filed eight cases before this Court and all those cases were heard by the Division Benches. All the 16 Judges who have heard the cases are supporting the terrorists, he added.

2. The petitioner states that he studied B.Sc. (Zoology) but he has not secured a degree. He further states that every day he is given drinking water mixed with poison by the terrorists. He states that before drinking water every day, he gives the same to ant. He further states that if the water is mixed with poison, the ant won't even take it. From that, he would find whether the water is mixed with poison or not and after ensuring that, he would drink water every day. He further states, every day he comes to the High Court, goes to the Registry to one section or the other and wants some relief. He further states that the Public Relations Officer, State Transport Corporation, Chennai has issued a certificate to him that he is a physically disabled person so as to enable him to travel freely in corporation buses from Alamathi village to High Court. He states that number of times he filed writ petitions and every time it was rejected. He said that only for the specific purpose of coming to the High Court, he has got the pass from the Public Relations Officer, State Transport Corporation, Chennai. On completing his arguments, he stated that he is in need of order copy today itself. However, the matter is adjourned to 31.10.2014.

13. I have considered all his submissions, his affidavit and the averments in the petition.

14. A perusal of the averments in the affidavit would go a long way to show that the petitioner has got no genuine case to be prosecuted before this Court. The petition as well as the affidavit do not make out any sense. In the open Court, in the presence of lawyers, litigant public and police he made the submission that the Hon'ble The Chief Justice is supporting the Terrorists. The petitioner was probably aggrieved by the order of the Division Bench presided over by the Hon'ble The Chief Justice as referred to above, where the Bench has directed the Registry not to entertain any further petitions filed by the petitioner on this account. Because that order was passed in a petition purportedly filed under Article 226 of the Constitution of India, now the petitioner has changed his course and has come up before this Court through a different channel under Section 482 of the Code of Criminal Procedure with the similar kind of allegations but for the same relief. This petition undoubtedly deserves only to be rejected. At the same time, mere rejection of this petition, in my considered opinion, would not be suffice for the following reasons.

15. From the records of this Registry, it is seen that earlier the petitioner filed a writ petition in W.P. No. 7374 of 2011 seeking a mandamus to direct the Central

Bureau of Investigation to conduct an inquiry with regard to the continuous alleged artificial deaths at Alamathi Village in Ponneri Taluk, Tiruvallur District. That writ petition was dismissed by a Division Bench of this Court on 07.06.2011 as the petitioner did not want to argue the case and he had prayed for dismissal of the same.

16. Thereafter, the petitioner filed yet another writ petition on 11.09.2012 in W.P. SR No. 103081 of 2012 with the following prayer:-

For the reasons stated in the accompanying affidavit it is prayed that this Hon"ble Court may be pleased to issue a WRIT OF MANDAMUS From 2008 to 2011 continued Artificial Death at Alamathi Village, Ponneri Taluk, Thiruvallur District, Chennai 600 052 and nearest places. Please to direct the CBI enquiry in this case.

This case Funeral Rites working all are illegal. Government and Magistracy are impartial in safeguarding our human rights. But Failure by the Police to attend the enquiry in this case, No guaranteed right under Article 21 of the constitution. Pass Such other further order or orders as this Hon"ble Court may deem fit and proper in the facts and circumstances of the case.

17. The Registry had a doubt about the maintainability of the said writ petition and so, returned the same. But, the petitioner repeatedly represented the same without explaining as to how the writ petition was maintainable. Therefore, the writ petition was taken up before the Division Bench headed by the then Hon"ble Acting Chief Justice on 21.01.2013. On the same day, the Division Bench dismissed the writ petition with the following directions:-

2. Therefore, we have no doubt to hold that the objection of the Registry sustains. Accordingly, this WPSR is liable to be dismissed as not maintainable.

3. Further, since the petitioner has unnecessarily come forward with the present lis, wasting the valuable public time of the Court, we dismiss this WPSR with costs of Rs. 5,000/- (Rupees Five Thousand only) to be paid by the petitioner to the Advocate Clerks Association, High Court Buildings, Chennai, within a period of one week from the date of receipt of a copy of this order. It is not known as to whether the petitioner has paid the said cost of Rs. 5,000/- as directed or not.

18. Not stopping with that, the petitioner filed yet another writ petition in W.P. SR No. 91416 on 19.08.2014 with the following prayer:-

Therefore respondent is an attempt to suppress the Public Murders case investigation and destroyed the Public Interest Litigation case records. Wasting the valuable petitioner time of the PIL case. Respondent no response our duty and delay. Respondent can't get off to law. This condition to disturbance of the Fundamental Right guaranteed Under Article 21 of the constitution. Pass Such other further order or orders as this Hon"ble Court may deem fit and proper in the facts and circumstances of the case.

19. In support of the said prayer, he had filled an affidavit (a copy of which has been filed in the present petition) which reads as follows:

Large number of people were killed and disappointed. Public Continued Cruel Murder's are relevant if they support with the Certificate of Documents, when such Certificate are relevant.

2010, 2011, 2012, 2013 years more and more people are died in relevant date.

They are:

1st Person was killed on (Monday)

the 28th of January 2013

2nd Person was killed on (Tuesday)

the 29th of January 2013

3rd Person was killed on (Thursday)

the 31st of January 2013

4th Person was killed on (Friday)

the 01st of February 2013

1st Person was killed on (Sunday)

the 22nd of January 2012

2nd Person was killed on (Same day)

the 22nd of January 2012

3rd Person was killed on (Thursday)

the 29th of March 2012

4th Person was killed on (Same day)

the 29th of March 2012

5th Person was killed on (Wednesday)

the 11th of April 2012

6th Person was killed on (Same day)

the 11th of April 2012

7th Person was killed on (Tuesday)

the 21st of August 2012

8th Person was killed on (Same day)

the 21st of August 2012

9th Person was killed on (Friday)
the 16th of November 2012

10th Person was killed on (Saturday)
the 17th of November 2012

1st Person was killed on (Thursday)
the 03rd of March 2011

2nd Person was killed on (Tuesday)
the 08th of March 2011

3rd Person was killed on (Wednesday)
the 09th of March 2011

4th Person was killed on (Same day)
the 09th of March 2011

5th Person was killed on (Thursday)
the 10th of March 2011

6th Person was killed on (Friday)
the 18th of March 2011

7th Person was killed on (Saturday)
the 19th of March 2011

8th Person was killed on (Sunday)
the 20th of March 2011

9th Person was killed on (Monday)
the 21st of March 2011

10th Person was killed on (Thursday)
the 31st of March 2011

1st Person was killed on (Monday)
the 02nd of May 2011

2nd Person was killed on (Wednesday)
the 04th of May 2011

3rd Person was killed on (Sunday)
the 08th of May 2011

4th Person was killed on (Tuesday)
the 10th of May 2011

5th Person was killed on (Tuesday)
the 17th of May 2011

6th Person was killed on (Sunday)
the 22nd of May 2011

7th Person was killed on (Monday)
the 23rd of May 2011

8th Person was killed on (Friday)
the 27th of May 2011

9th Person was killed on (Saturday)
the 28th of May 2011

1st Person was killed on (Saturday)
the 03rd of April 2010

2nd Person was killed on (Wednesday)
the 07th of April 2010

3rd Person was killed on (Monday)
the 12th of April 2010

4th Person was killed on (Tuesday)
the 13th of April 2010

5th Person was killed on (Thursday)
the 15th of April 2010

6th Person was killed on (Thursday)
the 22nd of April 2010

7th Person was killed on (Monday)
the 26th of April 2010

8th Person was killed on (Wednesday)
the 28th of April 2010

9th Person was killed on (Thursday)
the 29th of April 2010

1st Person was killed on (Sunday)

the 05th of September 2010

2nd Person was killed on (Saturday)

the 11th of September 2010

3rd Person was killed on (Monday)

the 20th of September 2010

4th Person was killed on (Same day)

the 20th of September 2010

5th Person was killed on (Wednesday)

the 22nd of September 2010

6th Person was killed on (Same day)

the 22nd of September 2010

7th Person was killed on (Sunday)

the 26th of September 2010

8th Person was killed on (Monday)

the 27th of September 2010

9th Person was killed on (Tuesday)

the 28th of September 2010

That was the Public Murder Report. There must be a limit for everything. Now death situation is very bad. Please give protective arrangement.

Public Murder is non-stop pre-plan murder. "No enquired case" because Terrorist did it with a view to threatens. Several people were killed in Heart Attack.

When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

When the statement was made by a number of person, and expressed feelings or impressions on their part relevant to the matter in question.

Speedy trial is a fundamental right guaranteed in Art 21. The Hon"ble India Government Sealed Letter"s and Telephone No. 01123389537 "Complaint Conversation" is a fresh period of limitation shall begin to run at every moment

of the time during which the complaints continues. Public Interest Litigation is not in the nature of adversary litigation. I have legal right. I am a Aggrieved Party. The Respondent no understanding of the nature and effect of the Telephone Conversation and Letter this condition to disturbance of the Fundamental Right guaranteed under Article 21 of the Constitution.

Government and Magistracy are impartial in safeguarding our human rights. "Public Interest Litigation case involved terrorism" Petitioner called to Respondent office through Telephone No. No. 01123389537, Several times petitioner was requested for Public Interest Litigation cases involved Terrorist Arrest and First Information Report. As soon as respondent office officials heard that news, "At present I don't accept your information, I can't help, your information is not urgent matter, respondent office Officials on received of information from petitioner but failure by the respondent to attend received complaint. Respondent can't get off to law, Respondent no response our duty. Public Interest Litigation case involved Terrorist Arrest and First Information Report is very delay, wasting the valuable petitioner time of the PIL case and destroyed the Public Interest Litigation case records. This condition to disturbance of the Fundamental Right guaranteed Under Article 21 of the Constitution.

Therefore, it is prayed that this Hon"ble Court may be pleased to issue under Article 226 and 21 of the Constitution of India for Central Bureau of investigations to conduct an enquiry with regard to the "Terrorist killed several people during illegal Funeral Rites" and thus render justice.

I state that no personal interest in this case. My own funds have used in this case, no Society or associate interest in this case, no newspaper report in this case, no personal gain in this case, no file anywhere in this case, no give and received from any authority in this case.

The averments extracted above further strengthens the doubt about the mental health of the petitioner.

20. The Registry returned the writ petition raising doubts about the maintainability of the same. Again the petitioner represented the petition repeatedly without explaining as to how the writ petition was maintainable. Finally, when the matter came up before the Division Bench presided-over by the Hon"ble The Chief Justice, the said Division Bench rejected the said writ petition by order dated 03.09.2014 wherein in paragraphs 2 and 3 of the order, the Division Bench has observed/directed as follows:-

2. It appears that the petitioner is in the habit of filing the same petition with some modifications here and there again and again. This is apart from the fact that the present prayer does not make any sense.

3. We, thus, uphold the issue of maintainability, rejecting the petition and direct the Registry not to entertain any further petition by the petitioner on this account.

21. Despite the above orders of the Division Benches, the petitioner has now come up with this vexatious petition. From the relief sought for in this petition as well as in the earlier writ petitions, from the allegations made, more particularly, about the Hon'ble Judges of this Court including The Hon'ble Chief Justice that they are supporting the terrorists, from the fact that he has given a long list of names of the people alleging that they were all killed by terrorists during the years 2010 to 2013 and from the fact that despite the rejection of the earlier petitions by the Division Benches, the petitioner has come up with this petition with reckless allegations, I have very strong reasons to doubt the mental health of the petitioner. I am of the view that a man of normal mental health or ordinary prudence would not have made such reckless allegations. Therefore, I am of the opinion, merely rejecting this petition even by imposing cost would be meaningless.

22. As it has been stated in the statements of objects and reasons for the Mental Health Act, 1987, mentally ill persons are to be treated like any other sick persons and the environment around them should be made as normal as possible. In the light of the same, I feel that it is absolutely necessary to examine whether the petitioner needs to be dealt with under the provisions of The Mental Health Act, 1987.

23. Sub Section (1) of Section 2 of the Mental Health Act defines the term "Mentally ill person" to mean a person who is in need of treatment by reason of any mental disorder other than mental retardation. The said Act, provides enormous safeguards prescribing a long procedure to be followed before recognizing or labelling a person as mentally ill. Obviously, such safeguards are due to the fact that labelling a man/woman as a mentally ill person, will, in the prevailing mind set of the society, carry a stigma having adverse impact on his/her life and liberty. It needs no emphasis that labelling a person, either by mistake or due to over zealousness, as a mentally ill person, though in fact, he may not be so, will surely, be violative of Article 21 of the Constitution of India. Therefore, every authority including a Magistrate under the Act should put in extra care and caution while dealing with an individual before bringing him within the ambit of The Mental Health Act, 1987.

24. In the instant case, though this Court has got a reasonable doubt about the mental health of the petitioner, this Court cannot be hasty to straight away label him as a mentally ill person so as to issue an appropriate direction for bringing him within the ambit of the said Act, though it may be to protect the welfare of the petitioner. Though in general, when a person appears before the Court, either in person or through a counsel, such a doubt about his mental well being is not doubted, the instant case is an extraordinary and a rarest of rare case where this Court has got reasons to doubt his mental health. Again at the risk of repetition, I want to reiterate that this Court has not declared the petitioner, at any stretch of imagination, as a mentally ill person in terms of The Mental Health Act, instead, this Court has got only a reasonable doubt about his mental well being.

Therefore, in my considered view, it will be appropriate for this Court to issue a direction for medical examination of the petitioner to find out his mental health.

25. Before concluding so, this Court has to examine as to whether such preliminary medical examination would be an invasion into his privacy, thereby, violating Article 21 of the Constitution of India. The further question is whether this Court is empowered to issue a direction for his medical examination.

26. Behind every crime committed by a person, there is his abnormal mental behaviour. When the mental faculty of the man suffers from a disorder, it arouse the man into disorderly action which results, at times, in a crime. If such criminal misbehaviour due to mental health problem is identified and treated at the earliest, many crimes could be averted. The function of the Courts is not only to punish the guilty after the commission of the crime as the Courts should also play a proactive role to, aid prevention of crimes, as far as possible, however, by functioning within the legal parameters and the legal norms. The Mental Health Act, 1987 is a step forward empowering the Magistrates to play such proactive role in the matter of mentally ill persons. Without derogating the provisions of the said Act, the inherent power of the High Court, as saved under Section 482 of Cr.P.C. could also be invoked in order to do justice to such mentally ill persons. These legal questions have been extensively dealt with by the Hon"ble Supreme Court in *Sharda Vs. Dharmpal*, wherein, in paragraphs 57, 58, 59, 60 and 61 the Hon"ble Supreme Court has held as follows:

"57. But the right to privacy in terms of Article 21 of the Constitution is not absolute right.

58. In *Govind v. State of Madhya Pradesh and Anr.* 75, it was held:

"Assuming that the fundamental rights explicitly guaranteed to a citizen have penumbral zones and that the right to privacy is itself a fundamental right, that fundamental right must be subject to restriction on the basis of compelling public interest." (Para 31)

59. If there were a conflict between fundamental rights of two parties, that right which advances public morality would prevail. [See *Mr "X" Vs. Hospital "Z"*, and *Mr. "X" v. Hospital "Z"* 02]. In *R. Rajagopal v. State of Tamil Nadu and Ors.* 95, this Court upon formulating six principles, however, hastened to add that they are only broad principles and neither exhaustive nor all comprehending and indeed no such enunciation is possible or advisable.

60. In *Govind v. State of Madhya Pradesh and Anr.* (supra) it was held:

"28. The right to privacy in any event will necessarily have to go through a process of case-by-case development. Therefore, even assuming that the right to personal liberty, the right to move freely throughout the territory of India and the freedom of speech create an independent right of privacy as an emanation from them which one can characterize as a fundamental right, we do not think that the right is absolute."

61. Having outlined the law relating to right to privacy in India, it is relevant in this context to notice that certain laws have been enacted by the Indian Parliament where the accused may be subjected to certain medical or other tests."

In paragraphs 80, 81 and 82, the Hon"ble Supreme Court has held as follows:

"80. The matter may be considered from another angle. In all such matrimonial cases where divorce is sought, say on the ground of impotency, schizophrenia...etc. normally without there being medical examination, it would be difficult to arrive at a conclusion as to whether the allegation made by his spouse against the other spouses seeking divorce on such a ground, is correct or not. In order to substantiate such allegation, the petitioner would always insist on medical examination. If respondent avoids such medical examination on the ground that it violates his/her right to privacy or for a matter right to personal liberty as enshrined under Article 21 of the Constitution of India, then it may in most of such cases become impossible to arrive at a conclusion. It may render the very grounds on which divorce is permissible nugatory. Therefore, when there is no right to privacy specifically conferred by Article 21 of the Constitution of India and with the extensive interpretation of the phrase "personal liberty" this right has been read into Article 21, it cannot be treated as absolute right. What is emphasized is that some limitations on this right have to be imposed and particularly where two competing interests clash. In mattes of aforesaid nature where the legislature has conferred a right upon his spouse to seek divorce on such grounds, it would be the right of that spouse which comes in conflict with the so-called right to privacy of the respondent. Thus the Court has to reconcile these competing interests by balancing the interests involved.

81. If for arriving at the satisfaction of the Court and to protect the right of a party to the lis who may otherwise be found to be incapable of protecting his own interest, the Court passes an appropriate order, the question of such action being violative of Article 21 of the Constitution of India would not arise. The Court having regard to Article 21 of the Constitution of India must also see to it that the right of a person to defend himself must be adequately protected.

82. It is, however, axiomatic that a Court shall not order a roving inquiry. It must have sufficient materials before it to enable it to exercise its discretion. Exercise of such discretion would be subjected to the supervisory jurisdiction of the High Court in terms of Section 115 of the Code of Civil Procedure and/or Article 227 of the Constitution of India. Abuse of the discretionary power at the hands of a Court is not expected. The Court must arrive at a finding that the applicant has established a strong prima facie case before passing such an order." (Emphasis added)

27. A close reading of this judgment would reflect the in-depth study made by the Hon"ble Supreme Court on the subject and the logical conclusions arrived at. In the light of the said settled position of law, it is crystal clear that at least, in

order to protect the welfare of the petitioner whose mental health is doubtful, it is absolutely necessary for this Court to exercise its discretion to order for his preliminary medical examination, which, in my considered view will not amount to an invasion into his privacy.

28. In this regard, we may usefully refer to Section 25 of the Act which reads as follows:-

25. Order in case of mentally ill person cruelty treated or not under proper care and control.-(1) Every officer in charge of a police station, who has reason to believe that any person within the limits of his station is mentally ill and is not under proper care and control, or is ill-treated or neglected by any relative or other person having charge of such mentally ill person, shall forthwith report the fact to the Magistrate within the local limits of whose jurisdiction the mentally ill person resides.

(2) Any private person who has reason to believe that any person is mentally ill and is not under proper care and control, or is ill-treated or neglected by any relative or other person having charge of such mentally ill person, may report the fact to the Magistrate within the local limits of whose jurisdiction the mentally ill person resides.

(3) If it appears to the Magistrate, on the report of a police officer or on the report or information derived from any other person, or otherwise that any mentally ill person within the local limits of his jurisdiction is not under proper care and control, or is ill-treated or neglected by any relative or other person having the charge of such mentally ill person, the Magistrate may cause the mentally ill person to be produced before him, and summon such relative or other person who is, or who ought to be in charge of, such mentally ill person.

(4) If such relative or any other person is legally bound to maintain the mentally ill person, the Magistrate may, by order, require the relative or the other person to take proper care of such mentally ill person and where such relative or other person wilfully neglects to comply with the said order, he shall be punishable with fine which may extend to two thousand rupees.

(5) If there is no person legally bound to maintain the mentally ill person, or if the person legally bound to maintain the mentally ill person refuses or neglects to maintain such person, or if, for any other reason, the Magistrate thinks fit so to do, he may cause the mentally ill person to be produced before him and, without prejudice to any action that may be taken under sub-section (4), proceed in the manner provided in Section 24 as if such person had been produced before him under sub-section (3) of Section 23.

29. For the purpose of Section 25 of the Mental Health Act, it is absolutely essential to ascertain as to whether the petitioner is a mentally ill person as defined in Section 2(I) of the Act. It further needs to be ascertained whether he has been neglected by his family members. If these two conditions are satisfied,

then only, it would be appropriate for a Magistrate to deal with him under Section 25 of The Act.

30. For the purposes of this Act, the term Magistrate has been defined in Section 2(h), according to which, Magistrate means, in relation to a metropolitan area within the meaning of Cl (k) of Sec. 2 of the Code of Criminal Procedure, 1973, a Metropolitan Magistrate. Thus, undoubtedly, a Magistrate referred to in Section 25 of the Act so far as Chennai City is concerned, is the Metropolitan Magistrate of Chennai. Now, let us have a quick look into Section 36 of The Mental Health Act which reads as follows:-

36. Officers competent to exercise powers and discharge functions of Magistrate under certain sections.- In any area where a Commissioner of Police has been appointed, all the powers and functions of the Magistrate under Sections 23, 24, 25 and 28 may be exercised or discharged by the Commissioner of Police and all the functions of an officer-in charge of a police station under this Act may be discharged by any police officer not below the rank of an Inspector.

31. A conjoint reading of these provisions would make it ipso facto clear that the Commissioner of Police, Chennai City has got all the powers and functions of a Magistrate under Section 25 of The Mental Health Act, 1987. Therefore, it would be appropriate, in the instant case, for the Commissioner of Police, Chennai City to forward the petitioner to two medical practitioners as referred to in Section 19(2) of the Act for preliminary medical examination. On such examination, if the Doctors opine that the petitioner is a mentally ill person in terms of Section 2(l) of the Act, the Commissioner of Police, Chennai City, shall thereafter make an application under Section 19 of the Act to the Medical Officer of a Psychiatric Hospital or Psychiatric Nursing Home under Section 19(1) of the Act for admission and thereafter, if the circumstances warrant, to approach the Chief Metropolitan Magistrate, Chennai for a reception order under Section 22 of the Act.

32. In this respect, I deem it worthwhile to refer to a Division Bench judgment of the Delhi High Court in Deepak Khosla Vs. Montreaux Resorts Pvt Ltd and Others, . That was a case where a learned single Judge of the Delhi High Court, on noticing the repeated litigations, filed by a party in person and after having noticed his abnormal behaviour in Court issued two directions viz., (i) that he shall not appear in any Court either in person or as an attorney of a third party, as he does not have inherent right to appear and argue; and (ii) he should be medically examined whether he was suffering from any mental disorder. The SHO of the police Station Tilak Marg was directed to get the appellant admitted in the Institute of Human Behaviour and Allied Sciences (IHBAS, for short), Shahdara, Delhi. The Medical Superintendent of IMHAS was directed to submit a report within a week.

33. When these two directions were challenged by the party in person before a Division Bench of Delhi High Court, the Division Bench held that before passing

and issuing such a direction, it would have been appropriate if a preliminary examination and report of a doctor or a psychiatric had been obtained. Since such preliminary medical examination was not conducted, the Division Bench set aside such direction.

34. In the instant case, I simply follow the said decision of the Division Bench of the Delhi High Court. In the case on hand, the direction which I have issued herein to the Commissioner of Police is not on the conclusion that the petitioner is mentally ill, but, only on doubt and therefore, the Commissioner of Police shall not straight away treat the petitioner as a mentally ill person and instead, cause him to be examined by medical experts summarily to offer their preliminary opinion as to whether he can be dealt with under the provisions of The Mental Health Act or not. For any reason, if the medical experts give positive opinion, then, it is needless to say that the Commissioner of Police shall deal with him under the provisions of the Act.

35. So far as injunction against him from filing any vexatious litigation before this Court or before any other Court as per the provisions of The Tamil Nadu Vexatious Litigation [Prevention] Act, 1949, I do not propose to deal with him for the present under the provisions of the said Act because of the doubt I had about the mental health of the petitioner. Similarly, I do not deem it proper at this stage to initiate criminal contempt proceedings though a prima facie case is made out, for I have doubt about his mental health. For any reason, if the petitioner is found to be mentally sound and if he files any more case of this nature, which is vexatious in nature, this Court may have to think of initiating proceedings against him under The Vexatious Litigation [Prevention] Act, 1949. Similarly, this Court may have to think of initiating proceeding against him for criminal contempt. For the present, I deem it no good to initiate any such proceedings.

36. In the result,

(i) The criminal original petition is rejected as not maintainable;

(ii) The Commissioner of Police, Chennai City, is directed to cause medical examination of the petitioner by two medical experts for preliminary assessment of the mental health of the petitioner and if the Commissioner of Police finds from such reports of the medical experts and other materials that the petitioner is a mentally ill person, the Commissioner of Police shall thereafter deal with him under the provisions of The Mental Health Act, 1987 as indicated herein above.

(iii) The Assistant Commissioner of Police, Madras High Court is directed to take (lead) the petitioner and cause his appearance before the Commissioner of Police, Chennai City for necessary action, without causing any harm to his dignity.

(iv) In order to protect the privacy of the petitioner, it is directed that the Press and Media shall not mention the name of the petitioner in their reports and instead a fictitious name may be mentioned.

(v) The Commissioner of Police, Chennai City, shall forthwith inform the parents of the petitioner Mr. Sriraman and Mrs. Udayakala residing at No. 1/183, Gangai Amman Koil Street, Alamathi Village, Ponneri Taluk, Tiruvallur District, Chennai 600 052, about this order and the fact that the petitioner is being produced before the Commissioner of Police, Chennai City, as indicated above. The Commissioner of Police shall permit the parents of the petitioner to interact with him and also assist him to undergo medical examination.

Note: 1. The Registry shall furnish a draft copy of this order forthwith to the Assistant Commissioner of Police, Madras High Court, Chennai, through the Additional Public Prosecutor, High Court, Madras, to enable him to comply with the directions.

2. It is recorded that the Mr.Nazir Basha, Assistant Commissioner of Police, Madras High Court, Chennai, is present in court and he has taken the petitioner along with him to take care of the petitioner as directed.