

(1949) 03 MAD CK 0030
In the Madras High Court

Vemasani Narasamma

APPELLANT

Vs

Vemasani Rama Naidu and Another

RESPONDENT

Date of Decision : 16-03-1949

Acts Referred:

Lunacy Act, 1912 — Section 62

Citation : (1949) 2 MLJ 251

Hon'ble Judges : Govinda Menon, J

Bench : Division Bench

Judgement

Govinda Menon, J.—This appeal arises out of proceedings in the District Court of Nellore in O.P. No. 137 of 1946, which was a petition

filed under Section 62 of the Indian Lunacy Act, praying the Court to make an inquiry about the lunacy of one Vemasani China Rama Naidu

and to adjudge him as a lunatic. The further prayers were that in case he is adjudged a lunatic, a manager to manage his estate may be appointed.

2. The learned District Judge after following a certain procedure about which it will be necessary to mention something hereafter, came to the

conclusion that this. China Rama Naidu was a lunatic and he was adjudged as such. As a result of this finding, he appointed the mother, Vemasani

Narasamma, who was the first respondent in the Court below and the appellant in this appeal, as the personal guardian of the lunatic and the

Government Pleader of Nellore as the manager of the properties of the said lunatic.

3. Mr. T. Venkatadri appearing for the appellant, who, as stated already, is the mother of the lunatic, raises a question regarding the procedure

adopted by the Court below. It arises this way : The petitioner in the lower Court, who is the contesting respondent in this appeal, is the paternal

uncle's son of the lunatic and O.P. No. 137 of 1946 was filed on the 24th August, 1946. There are quite a large number of endorsements on the petition showing that it was returned for the rectification of mistakes and corrections of various matters and finally after various vicissitudes the defects were remedied and the petition was re-presented on 28th September, 1946. It came up before the learned District Judge for orders on 5th October, 1946, when the learned Judge heard arguments on the maintainability and the prima facie merits of the petition and reserved orders. The learned Judge was of opinion that notice had to be given u/s 40 of the Indian Lunacy Act to the respondents in whose custody the alleged lunatic was said to be living, to produce him before the Court, and thereafter he would, if necessary, examine the lunatic and direct the District Medical Officer at Nellore to examine him and send a report about his mental capacity and condition u/s 41. On hearing the parties further, the learned Judge would decide whether he would hold the inquisition with the aid of two or more assessors or conduct it himself. With this object in view, he issued notice to the respondents to produce the alleged lunatic in Court on 30th October, 1946. This order was pronounced on 8th October, 1946. On 30th October, 1946, there is an endorsement that the first respondent, the mother, was served in person. The second respondent, the brother-in-law of the alleged lunatic, was said to have refused notice. Substituted service was also ordered, but there is also the endorsement that Mr. A.H.R. appears for Rule 2. and B.R.S. appears for Rule 1. After a further adjournment to 18th November, 1946, on which date the Judge was on casual leave, on 21st November, 1946, the advocate for the first respondent undertook to produce the alleged lunatic in Court on 29th November, 1946. On that date the alleged lunatic was produced in Court and the Judge was of opinion that prima facie he appeared to be a person of unsound mind. Therefore he was directed to be produced before the District Medical Officer, Nellore, and the petition was adjourned to await the medical report. Accordingly the alleged lunatic was examined by P.W.I and his report is to the effect that this Vemasani China Rama Naidu was incapable of acting for himself that he is to be taken care of by others both as regards his person and his property and that he can be certified as a lunatic. The doctor gave evidence on 6th January, 1947. Thereafter the parties filed documents in Court but no other oral evidence

was adduced. The result was that on 23rd January, 1947, orders were pronounced allowing the petition in the manner as stated above by me at the outset of the judgment.

4. Reliance is placed upon the dicta of Rankin, C.J., in *Saroj Basani Debi v. Mahendranath Bhaduri* ILR (1927) Cal. 836, where that learned

Judge was of opinion that where an application is made for directing an inquisition for the purpose of ascertaining whether a person is of unsound

mind and incapable of managing his own affairs, the first thing which has to be done is that the learned Judge, either with notice to the lunatic or

without notice, should carefully consider whether the case is one which calls for an order directing an inquisition. In the words of the learned Judge,

an order directing an inquisition into a man's state of mind is a very serious thing, and such an order is intended by the statute to be a judicial

determination carefully made upon adequate materials. If the Judge considers that it calls for an order directing an inquisition, then it is his obvious

duty to record an order directing an inquisition. When once that is done, then the petition is a spent petition, which, has served its primary purpose.

The Judge should then, by the combined operation of Section 64 read with Sections 40, 41 and 42 of the Indian Lunacy Act, take certain steps

with regard to notice and such notice should be given as provided by Section 40 of the Act. Thereafter he should hold the inquisition either by

himself or with the aid of assessors. This decision to a certain extent is based upon the observations contained in the judgment of the Bench of the

Allahabad High Court in *Muhammad Taqub v. Nazir Ahmed* ILR (1920) All. 504 where Piggot and Walsh, JJ., came to the conclusion that an

application for an inquisition should ordinarily be supported by an 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. Both these judgments as well as certain English cases, viz., *In re E.S.* (1876) 4

Ch.D. 301 and *In re John McLaughlin* (1905) A.C. 343 were considered by Tek Chand, J., in *Tekadevi v. Gopaldas* AIR 1930 Lah. 289. The

learned Judge also came to the conclusion, similar to that arrived at by the Judges of the Calcutta and the Allahabad High Courts and made certain

observations which are highly useful to Courts in dealing with such lunacy applications.

5. What we have therefore to see is whether the learned District Judge in this-case has directed his judicial attention to the proper procedure that

should be followed in matters of this kind. Mr. Venkatadri says that before the learned Judge directed the mother to produce the lunatic before the

Court, he ought to have been satisfied by taking evidence *prima facie* or by other papers placed before him that there is a case for him to enquire.

Not having done so, the entire procedure is vitiated by the initial irregularity in his action. It seems to me that having regard to the course which the

petition took and having regard to the previous history of the fight between the appellant and the respondents which had gone through the gamut of

a Sub-Court suit as well as an appeal in the High Court, the learned Judge need not have gone into the elaborate procedure to find out whether

prima facie it was proved that this China Rama Naidu was, a lunatic or not. Ex. P-2, filed in the lower Court was the deposition of the present

appellant in O.S. No. 58 of 1942 which came up to this Court in A.S. No. 545 of 1944. This deposition was filed by consent of parties and was

treated as admissible in evidence by the learned Judge. We find there the appellant, the mother, stating that her son is mad and that she had to

borrow money for his upkeep. There are also other statements, especially those contained in the counter-affidavit here, that this China Rama Naidu

was a person of unsound mind, incapable of taking care of himself and such being the case, I am satisfied that the learned Judge had *prima facie*

evidence before him before he directed the examination of the lunatic by the Assistant District Medical Officer. In Ex. P-2 the appellant also says

that she had been getting her son treated by borrowed money. There is further, the recital contained in the judgment of the Subordinate Judge in

O.S. No. 58 of 1942, which judgment also has been filed by consent of parties, that the second plaintiff therein who is the alleged lunatic was a

person who was incapable of looking after himself and therefore a lunatic. The learned Subordinate Judge found that P.W. 1, the mother, was the

guardian of the lunatic, the second plaintiff. In these circumstances, it seems to me that there was nothing wrong in the procedure adopted by the

learned District Judge before he directed the production of the lunatic by the mother in whose custody he was then. It is worthy of note that the appellant's counsel did not dispute the fact that this China Rama Naidu was a person who could not take care of himself. In fact the undertaking to produce the lunatic itself is proof enough that China Rama Naidu was not a person in his ordinary senses and was more in the nature of a person who could be directed by volitions and wills other than that of himself. I am therefore of opinion that the preliminary point urged by the learned advocate for the appellant is unsustainable and has to be rejected.

6. The next question is whether on the materials placed before the lower Court the learned District Judge was justified in making the order he did.

As stated already, the only piece of oral evidence that was before him was the evidence of the Assistant District Medical Officer who kept the alleged lunatic under observation for a period of nearly two weeks and came to the conclusion that he should be declared and certified as a lunatic.

There was no serious cross-examination of the doctor. The only answer that was elicited from him in cross-examination was that his observations were confined to the present condition of the lunatic. Before the learned Judge, the petitioner filed Exs. P-1 to P-4, and the respondents filed Exs.

D-1 to D-7. The learned Judge has exhaustively considered the scope and effect of these documents and was of opinion that it was eminently a fit case for the application of the Indian Lunacy Act. I have not been shown any reasons why I should disagree from the learned District Judge in this conclusion. The judgments in O.S. No. 58 of 1942, and the appeal therefrom do not in any way help the present contention of the appellant. Her own deposition in O.S. No. 58 of 1942, cuts the ground under her feet now when she disclaims that her son is a man of unsound mind. Having carefully considered the judgment of the learned Judge I see no reason to come to a different conclusion from him.

7. Mr. Venkatadri then contends that there was no justification for appointing the Government Pleader of Nellore as the manager of the property of this lunatic. According to him the first respondent who initiated the proceedings in the Court below was actuated by malice and ill-will and the petition therefore should not have been entertained. I would certainly have agreed with that contention were it not for the fact that it has now been

proved that China Rama Naidu should be looked after both as regards his person and property by somebody other than himself. It is very difficult to probe into the minds of men and find out the motives that actuate human actions. But in the present case, whether the first respondent is actuated by ill-will against the appellant or not, I cannot say that he was not justified in applying to the lower Court for the appointment of a guardian for China Rama Naidu. It is contended that the appellant had alienated the share of the property which she got by hard and strenuous fight with the paternal uncle for the purpose of meeting the food and the treatment expenses of this lunatic. The learned advocate strenuously argues that the outcome of appointing a person as manager would be that litigation will be started to invalidate the same, but for which it would have been difficult to feed the lunatic at all. These are matters which have to be decided in the fresh litigation if any that the manager of the property may or may not undertake to bring hereafter. I do not think that I can dismiss the petition in the present conditions on account of the fact that an alienation about the validity of which the High Court on a previous occasion did not express any opinion might be re-opened and old matters of controversy would be resuscitated. In these circumstances I am unable to accept the argument put forward by the learned Counsel for the appellant.

8. The appeal therefore fails and is dismissed with costs.