

(2012) 01 DEL CK 0586

In the Delhi High Court

Case No : Writ Petition (Criminal) No. 1741 of 2011

V.K. Aggarwal and Another

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 24-01-2012

Acts Referred:

Citation : (2012) 01 DEL CK 0586

Hon'ble Judges : S.P. Garg, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Sushil Kumar Jain with Mr. Puneet Jain, for the Appellant; Sanjay Lao, APP for the State, for the Respondent

Judgement

S. Ravindra Bhat, J.—Learned counsel for the petitioner seeks leave to place on record affidavits in reply to the affidavit filed by Ms. Madhu Jain yesterday. The same are hereby taken on record. With the consent of learned counsel for the parties, the matter was heard for disposal.

2. The present writ petition seeks directions in the nature of habeas corpus to the Police Commissioner to locate and trace Ms. Madhu Jain and her daughter Ms. Mahan Jain and to take them to a place of safety (in hospital).

3. The Petitioner aver that Ms. Madhu Jain underwent trauma and acute mental harassment on account of her husband's (late M.K. Jain) prolonged kidney ailment. The Petitioners are Ms. Madhu Jain's brothers. It is averred that for almost three years late Mr. M.K Jain underwent expensive medical treatment and ultimately passed away on 07.12.2007. The Petitioners further submit that Ms. Madhu Jain with her daughter had shifted to her mother's house at F-90, Green Park (Main), New Delhi and thereafter she took some other premises where she could stay. It is further stated that Ms. Madhu Jain suffers from mental ailment for which she underwent treatment at VIMHANS hospital, some time in year 2008. Copies of the medical treatment records have been placed on record along with the petition. Petitioners' counsel states that Ms. Madhu Jain was suffering

from paranoid Schizophrenia. It is further stated that Ms. Madhu Jain and her daughter went missing from 06.12.2011; they apparently notified police about this and sought their intervention.

4. After the Court had issued notice, in this Writ Petition, on 02.01.2012, the learned Standing Counsel for the State had submitted that according to the instructions given to him Ms. Madhu Jain and her daughter were residing somewhere in Ghaziabad. This Court has therefore, required their presence on the next date i.e.06.01.2012. On that date Mr. Rakesh Sharma, Advocate, put in appearance on their behalf; they were directed to be produced in Court. The matter thereafter was directed to be listed on 24.01.2012. In the meanwhile an application was filed on behalf of the second Petitioner. The Petitioners' counsel further urged the Court to refer the matter to the Monitoring Committee constituted by this Court in Pratibha Chopra v. Union of India in W.P.(C) No. 6698/2007 which is seized of similar issues concerning destitute and abandoned persons who are also mentally ill or so affected.

5. Learned APP for the State urged that the jurisdiction of this Court under Article 226 is narrow and circumscribed. The Petitioners had approached this Court for the production of the two missing persons i.e. Madhu Jain and her daughter Mahan Jain. The record reveals that the two women were present in Court on 23.01.2012 and with the leave of the Court had placed on record an affidavit contending that they were mentally fit and also levelled certain allegations against the present Petitioners.

6. We notice from the record that the matter was mentioned at the instance of the Standing Counsel on behalf of the State, when Madhu Jain and Mahan Jain were present, and were permitted to do so on 23.01.2012. They sought to place on record an affidavit; in that document they levelled allegations against the Petitioners and it was also submitted that Ms. Madhu Jain is not suffering from any mental ailment or such like condition. Since the Petition had not been listed, this Court directed the matter to be listed on the same date (23-01-2012) and also apprised the counsel for the Petitioner Mr. Shyam Murjhani who, therefore, appeared then in Court. A copy of the affidavit was made available to him; as a result the reply affidavits were sought to be placed on record today.

7. The present writ petition seeks direction in the nature of habeas corpus to the Commissioner of Police to locate and trace Ms. Madhu Jain and her daughter Ms. Mahan Jain and take them to a place of safety (in hospital) for treatment, as per the advice of Doctors at VIMHANS at the cost and expense of the Petitioners. We notice that so far as the relief or the principal grievance which impelled the Petitioners to approach the Court was that the two women were missing. It is a matter of record that they did appear before the Court; they have even authorized appearance of a Counsel on their behalf on 06.01.2012 and also appeared on 23.01.2012 when the Petitioners' Counsel was present. Therefore, as far as the safety and whereabouts of the said two women is concerned, this Court is satisfied that they are not in any kind of danger to warrant intervention

under Article 226 of the Constitution of India. Whilst the concern expressed by the Petitioner may be merited and warrant consideration, we have to be mindful of the fact that the jurisdiction under Article 226 of the Constitution of India is narrow. That power extends to issuing all manner of directions to secure the liberties of citizens and individuals approaching the Court; at the same time it does not extend over disputed civil rights. Thus, whether Madhu Jain is suffering from any ailment which impairs her capacity to manage her affairs, or those of her daughter, are disputes concerning status, and thus civil right disputes, falling within the realm of private law. Besides, they involve adjudication of disputed questions of fact, for which the remedy under Article 226 is inapt; it may call for examination of parties' witnesses. Such disputed questions are best left for determination by Civil Courts and other fore constituted in that regard. (Ref. P.R. Murlidharan and Others Vs. Swami Dharmananda Theertha Padar and Others, ; Ruchi Majoo Vs. Sanjeev Majoo,). The question as to whether Ms. Madhu Jain is indeed suffering from any mental ailment such as Schizophrenia is not one which could be adjudicated in exercise of writ jurisdiction. Besides, granting such relief would mean that the Court assumes that such mental condition exists, which is highly inappropriate.

8. Having regard to every individual's right as a citizen of this Country under Article 21 of the Constitution of India, any finding rendered by this Court vis-à-vis the mental capacity or abilities of any party would be prejudicial to either party since there are specific remedies available in law, which either the Petitioners or Ms. Jain may appropriately chose to avail. In view of the above, this Court is of the opinion that no further purpose would be served in retaining the present petition on board. It is open to the Petitioners, if so advised, to seek appropriate remedies in accordance with law.

9. The writ petition is disposed of in the above terms.

10. A copy of the order be given dasti to the learned counsel for the Petitioners under the signatures of the Court Master.