

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

WRIT PETITION No.9529 of 2017

ORDER: (Per Suresh Kumar Kait, J)

Vide the present petition, petitioner seeks direction, thereby declaring the action of the respondents in illegally detaining Mr.Arun Papali, S/o. Arnold Papali, aged about 55 years, in their custody, as unlawful and unconstitutional and consequently direct the respondents to produce him forthwith before this Court and set him free.

2. Pursuant to the order dated 21.03.2017, respondent No.2 – Dr. George Reddy has filed his affidavit whereby he has stated that he is a Psychiatrist by profession and previously treated Mr.Arun Papali, the brother of the petitioner, for a short period of time in the year 2013 as Mr.Arun Papali was suffering from bipolar mood disorder. He saw Mr.Arun Papali last time on 25.06.2015 when he certified that he was suffering bipolar mood disorder. He has clearly stated in the affidavit that the said Arun Papali is not in his custody much less illegal detention.

3. Respondent No.1 is the wife of Mr.Arun Papali, who filed a very lengthy counter-affidavit, consisting of 9 pages with 25 paragraphs. She states that she married Mr.Arun Papali in December, 1990 and at that time she was aged about 23 years and her husband was aged about 28 years. Neither the petitioner, who is the sister of her husband, nor her parents, disclosed the fact that her husband was already suffering from a serious mental disorder, i.e., bipolar mood disorder since his childhood. This fact was suppressed when the alliance was fixed. After her marriage, she

discovered that his behaviour was odd, aggressive and erratic. He has been abusing her and children both physically and mentally. Her husband did not take up any employment from the year 1991.

4. She further stated that her husband filed a police complaint against his own son in the year 2014 to prevent him from going to the United States of America for higher studies and his behaviour is inappropriate in the society. It is further stated that her husband was initially treated more than 40 years ago by Dr.M.A.M. Khan, a well-known psychiatrist of Hyderabad. Whenever her husband became uncontrollable, he has been admitted to various rehabilitation centers and after his aggression abated, he was brought back home. She further stated that after marriage, for about 3 to 4 months, her husband worked as Marketing Executive in Nestle Company and thereafter never ever worked in any other establishments. She is working as a Teacher and with her earnings she has taken care of household affairs and other needs of the children. She clearly stated in the affidavit that her husband is currently undergoing rehabilitation at Maithri Psychiatry center, P-855, Sai Aishwarya Residency, near Parvathapur Ward Office, Ranga Reddy District. He was admitted in the center in the month of January, 2017. She further states that she is a person of modest means. She has spent about Rs.9 lakhs during the past few years for the medical expenditure of her husband. Her husband has been admitted periodically in various rehabilitation centers as he has no control over his actions and his actions can result in danger not only to himself but to others also. She is willing to produce her husband before this Court if this Court so desires, but she cannot give any assurance or take any responsibility regarding his behaviour in the Court.

Instead, she suggests that an Advocate-Commissioner or a Medical Officer of the Government Mental Hospital be allowed to meet her husband in the presence of the petitioner on any date convenient to her, so that the Court may ask the Advocate-Commissioner to submit a report.

5. It is further stated by respondent No.1 that if the petitioner wishes to take care of the health and other needs of her husband, who is her brother, she does not have any objection. However, she submits that family members of her husband are very manipulative and late mother of her husband had given General Power of Attorney to her husband, i.e., Mr.Arun Papali to sell some agricultural lands in Kerala, to a citizen of Australia, who is none other than the younger brother of her husband by name Mr.Michael Papali. As per RBI Regulations, foreign nationals cannot buy agricultural lands in India. Her husband was made to execute sale deed even though he is a person of unsound mind. The Enforcement Directorate issued summons dated 23.05.2015 under Section 37(1) and (3) of FEMA to her husband. She appeared before the Enforcement Directorate and explained to them that he is a person of unsound mind and that he was being merely used as a pawn by the members of his family to sign various sale deeds, so that they themselves can escape from the income tax and other liabilities. Her husband is being constantly used by members of his family to execute sale deeds with oblique motives. She further submits that if the petitioner undertakes before this Court that she will take care about the health and other needs of her husband and that they would not involve him in any property matters and financial transactions, she has no objection to handover her husband, Mr.Arun Papali, to the petitioner.

6. Heard both parties.

7. The petitioner is personally present in the Court with her counsel Smt. Vasudha Nagaraj. She is identified by the counsel as Diana Florence Roberts, W/o. Paul Roberts, aged about 58 years, presently residing at H.No.8-3-319/8/8, Sai Sarathi Nagar, Yellareddyguda, Hyderabad. In addition to the above, petitioner has produced original passport issued by the Australian Government bearing passport No.M9001434, showing her date of birth as 10.08.1958. A photocopy of the same is annexed as Ex.P.1 at page No.13 in the affidavit filed by her in support of the petition. She undertakes that she will take care of Mr.Arun Papali, who is her brother. She submits, she is aware of the fact that he is not mentally sound and suffering from bipolar mood disorder; she is aware that from the last so many years, he has been taking treatment, however, his condition has not been controlled by medicines and earlier also he was sent to various rehabilitation centers and presently he is undergoing rehabilitation at Maithri Psychiatry center, P-855, Sai Aishwarya Residency, near Parvathapur Ward Office, Ranga Reddy District, as disclosed by respondent No.1; she is ready to take up all the responsibilities of Mr.Arun Papali, who is her brother; if she is not able to look after him properly, she will certainly return him to the same rehabilitation center as per procedure and law and she will not leave him forlorn. She further undertakes that neither herself nor any relatives or near and dear shall involve her brother Mr.Arun Papali in any financial or property transactions whatsoever.

8. Though Mr.Arun Papali is not produced before the Court, it is undertaken that he will be produced if the Court so desires. In view of his health condition, we do not want his presence, as it is stated by respondent No.1 that he is not mentally sound. As agreed between the petitioner and respondent No.1, respondent No.1 shall make all efforts to get her husband from the above-stated rehabilitation center and hand him over to the petitioner. The petitioner, after receiving her brother, Mr.Arun Papali, shall give an acknowledgment in writing to respondent No.1, which shall be retained by her.

9. We hereby make it clear that above mentioned Maithri Psychiatry Center, shall not create any problem for handing over of Mr.Arun Papali to the petitioner unless his medical condition warrants.

10. Accordingly, we hereby dispose of the writ petition with direction to respondent No.1 to accompany the petitioner and approach Maithri Psychiatry Center, P-855, Sai Aishwarya Residency, near Parvathapur Ward Office, Ranga Reddy District and hand over her husband, i.e., Mr.Arun Papali, who is the brother of the petitioner, today itself, by 7.00 p.m. No order as to costs.

As a sequel, miscellaneous petitions if any pending in the writ petition stand closed.

SURESH KUMAR KAIT, J

U. DURGA PRASAD RAO, J

March 28, 2017
MRR