

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
CRM-30530-2021 in/and
CRA-S-834-2021 (O&M)
Date of decision: 22.11.2021
(Heard through VC)

PARTAP SINGH

....Petitioner

Versus

KAMLESH AND OTHERS

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Inderjit Kaushal, Advocate
for the appellant-applicant.

Mr. Hitesh Verma, Advocate
for respondents.

ARVIND SINGH SANGWAN J. (Oral)

CRM-30530-2021:

Counter reply to the status report dated 30.11.2021 is taken on record.

On verbal request of the parties, the hearing of the main appeal is preponed and taken up today itself.

Main Case:

Prayer in the present appeal is challenging the order dated 27.07.2021 vide which learned Chief judicial Magistrate, District SAS Nagar, Mohali dismissed the complaint No. 40 dated 08.07.2021 filed by the appellant under the Mental Health Care Act, 2017 (hereinafter to be referred as 'the Act').

Learned counsel for the appellant submits that the mother of the applicant-appellant is suffering from the mental illness i.e. Dementia since 2018 and it is submitted that the appellant has filed the aforesaid complaint with an application under Section 20 of the Act for taking the custody of his mother.

Vide impugned order dated 27.07.2021 passed by Chief Judicial Magistrate, dismissed the same.

The operative part of the order is as follows:-

“In brief, apprehension of the applicant is

that his mother Smt. Giano Devi is suffering from Dementia since 2018 and she has been diagnosed by the Department of Psychiatry, GMCH, Sector-32, Chandigarh. His late father refused to send her mother for treatment for the severe mental illness. The applicant/ complainant on advice of the doctor purchased and delivered medicines required for the treatment of severe mental illness of his mother Smt. Giano Devi from time to time. The respondent no.3 Asha who is working in PGI opposed the medical treatment of the mother saying that she is not suffering from any mental illness. After the death of his father on 17.05.2021, applicant/ complainant arranged video call from the Department of Psychiatry Department, GMCH, Sector-32, Chandigarh for treatment of Giano Devi and she was diagnosed as severe mental illness i.e. Dementia and advised constant medical treatment and care. On 09.06.2021 he got medical tests of Giano Devi done. On 10.06.2021 respondents no.1 & 2 forcibly took Giano Devi to the H.No. 6161/10, Sunny Enclave, Sector-125, Mohali regarding which DDR was also registered. The applicant/ complainant has reasonable apprehension that the respondents are giving heavy

doses of sleeping pills arranged by respondent no.3 to Giano Devi. The police did not take any action on his request. 3. In the report of SHO it is stated that the statement of Smt. Giano Devi was recored by visiting the place where she is presently residing i.e. H.No. 6161/10, Sunny Enclave, Sector-125, Desu Majra, District SAS Nagar (Mohali) and Giano Devi had disclosed that her husband Paras Ram died in May 2021 and the house where she is presently residing is H.No. 6161/10, Sunny Enclave, Mohali is in the name of her husband. She further stated that she is residing in the said house with her own consent. Her daughter Kamlesh and grandson Himanshu reside with her with her consent and they had not confined her in any manner. On 05.06.2021 she had gone to the house of her other son Partap Singh in Sector-44, Chandigarh and returned after three days to her present house in Sunny Enclave with her own consent. She is residing happily with her daughter Kamlesh and grandson Himanshu. Her other daughter Asha is also her neighbour in the said area. All of them take care of her. She is getting pension of her late husband. In addition to this statement, the police has submitted the report

that Giano Devi is residing with her own consent in the H.No. 6161/10, Sunny Enclave, Sector-125, Desu Majra, District SAS Nagar (Mohali) and she has not been confined nor she is suffering from any mental illness. The photograph of Giano Devi was also clicked, which has been placed on the file. There is no need to do any proceedings on the application moved by the applicant/ complainant.

4. I have gone through the record of present case. It is pertinent to note that the applicant/ complainant claimed that his mother is suffering from severe mental illness i.e. Dementia since 2018. However, he has failed to place on record any medical evidence in relation to the year 2018, since when he claims that his mother is suffering from this disease. It is also pertinent to note that applicant/ complainant claims that he used to give medicines to his mother on the prescription of doctors for this alleged mental illness, but there is not even a single bill of the medicines prescribed by the doctor (except one video call slip) on the file to support his claim. The applicant/ complainant has failed to even mention the name of the doctor whom he had consulted

in the year 2018 for giving medicines to his mother and has also failed to mention the name of the medicines which he claim to have purchased. The document placed on the record and relied by the applicant/ complainant is one photocopy of the OPD slip via video call done by the Department of Psychiatry, GMCH, Sector-32, Chandigarh. Copy of the OPD slip via video call attached with the application shows the illness as Dementia but there is no specific mention that patient needs constant care. The circumstances/ complaints or difficulties which are mentioned in the said slip are apparently disclosed by the applicant/ complainant to the doctor since the applicant claims that his mother is not in a position to do anything. It appears strange that apart from one video call OPD slip there is no medical record of Giano Devi suffering from mental illness even though the applicant claims that she is suffering from the disease since 2018 and he claims to be providing medicines to her. It is interesting to note that this video call slip is also of the time of after the death of husband of Giano Devi. Even in the police report, it is specifically mention that Giano Devi is residing at her house in Sunny Enclave with her own consent and she is

being looked after as well as taken care of by her daughters and grandson Himanshu. It appears that the applicant/ complainant moved the present application with some ulterior purpose.

5. The other medical record is of routine medical tests which is attached with the application which were also got conducted after the death of husband of Giano Devi. No tests of any prior date are attached. Moreover, there is nothing alarming mentioned in the tests. There are a few tests, the reports of which are out of normal reference range, but there is no medical opinion to show that these medical test reports are alarming. It is also to be noted that these medical tests are not direct indicators of the mental health of patient Giano Devi. It is also to be noted that it is only the applicant/ complainant who has categorized his mother to be suffering from “severe mental illness” i.e. Dementia. Even the OPD, Video Call slip relied upon by the applicant/ complainant has nowhere categorized Giano Devi to be suffering from severe mental illness. The definition of mental health is laid down under Section 2 (s) of The Mental Healthcare Act, 2017 which defines it as under:-

“(s) “mental illness” means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterized by sub-normality of intelligence;”

mere diagnose of a patient to suffer from Dementia does not automatically mount to the patient falling in the category of “severe mental illness or mentally sick”.

The counsel for the applicant/ complainant relied upon the definition of Dementia in the book Harrison’s Principles of Internal Medicine, but perusal of that portion also shows it is no where stated that Dementia of any category/ type is severe mental illness. There are variety of symptoms of Dementia and the extent of symptoms are also different. 6. In view of above discussions, this court is of the considered opinion that there is no merit in the present application moved by the applicant/ complainant. There is no iota of evidence that Smt. Giano Devi is not being treated or not taken care of by her daughters and grandson with whom she is presently residing or that she is being administered

sleeping pills as claimed by applicant/ complainant. The report of the police also goes against the claim of applicant that Giano Devi is suffering suffering from any mental illness. Rather, she is residing with her own consent at her house at Sunny Enclave, Mohali and has not been confined in any manner. In view of above averments, present application is hereby dismissed. Papers be consigned to the record room after due compliance.”

The appellant has challenged the aforesaid order by way of filing the present appeal along with an application with prayer for directing the Senior Superintendent of Police, District SAS Nagar to depute Police Officer to take Giano Devi-mother of the appellant to the Psychiatry Department, GMCH ,Sector 32, Chandigarh in order to assess her mental illness.

Vide order dated 23.09.2020, Senior Superintendent of Police was directed to depute some senior police officer along with a lady police officer to take Giano Devi, to the Department of Psychiatry, GMCH , Sector 32, Chandigarh for the assessment of her mental illness in compliance of the order dated 24.08.2021.

In compliance thereof, reply by way of an affidavit of Deputy Superintendent of Police Sub Division, Kharar-I, District SAS Nagar, Mohali is filed by learned State counsel.

It is stated that Senior Superintendent of Police , SAS Nagar, Mohali has directed the SHO, Police Station Kharar to take Giano Devi-mother of the appellant to psychiatry department, GMCH, Sector 32, Chandigarh for the assessment of her mental illness and an ASI and a lady police officer were deputed for that purpose.

On 07.10.2021, her OPD Card bearing No. UHID No. 211003682 was got prepared and she was taken to the Department of Psychiatry and got her examined from Dr. Kampila Kardam, Senior Resident, Department of Psychiatry, GMCH, Sector-32, Chandigarh.

The copy of the OPD card is also attached as Annexure R-1 with this reply wherein the doctor has recorded the case history and it is found that Giano Devi is already under treatment with psychiatry department, P.G.I.M.S., Chandigarh. It is also recorded that the complainant has history of forgetfulness, weeping spell and disturbed sleeps. She was also referred to a specialist consultant Dr.Subhash for the purpose of her treatment.

It is thus submitted that the order has been duly complied with.

Learned counsel for the appellant submits that Giano Devi is not properly given treatment by the private respondents, who are none other than the daughters and maternal grand son.

As per the memo of parties, respondent No. 1-Kamlesh is the daughter of late Paras Ram and Giano Devi similarly respondent No. 3-Asha is also the daughter of Giano Devi and respondent No. 2-Himanshu is maternal grandson of Giano Devi and son of respondent No. 1-Kamlesh.

Learned counsel for the appellant submits that since respondents are

not taking care of their mother, the impugned order be set aside and directions be issued to Chief Judicial Magistrate to properly get treatment of Giano Devi.

Learned counsel, representing the respondents, has however opposed the prayer on the ground that this petition is an act of greed at the instance of the appellant son of Giano Devi because she is the owner of one house situated at Sector 45, Chanidgarh. He further submits that the respondents No. 1 and 3 being daughters of Giano Devi and Paras Ram were taking care of her parents for the last many years and the appellant/son never cared about them. Till 2019, Giano Devi and her husband late Paras Ram were residing at Hamirpur in Himachal Pradesh, when they were brought to Sunny Enclave, Mohali for their treatment. Later on Paras Ram the husband of Giano Devi died on 17.05.2021 while residing with the respondents.

Counsel submits that Paras Ram was in full senses and knew the good and bad as well as taking care by private respondents and was aware about execution of Will by Giano Devi and never objected to it and it is only after the death of the father of the parties, appellant has starting harassing the respondents on the pretext that they are not providing proper care including medical care to Giano Devi.

Counsel submits that in fact Giano Devi has executing a Will in favour of his daughter that respondent No. 1-Kamlesh which is the bone of contention between the brother and sisters as by adopting a Nobel Method the appellant has starting harassing them on the pretext that respondent No. 1 is not providing proper care and treatment to Giano Devi. It is also submitted that respondent No. 1 was earlier residing at Delhi whereas respondent No. 2 was

settled in Goa and to take care of their old parents they have come to Mohali and even respondent No. 3 the another sister of the appellant as well as respondent No. 1 very well knew that it is respondent No. 1 who is taking care of Giano Devi and she has also never raised any objection that her mother is residing in care and custody of her daughter respondent No. 1-Kamlesh.

After hearing both the counsel and on careful perusal of the impugned order passed by Chief Judicial Magistrate and also in view of the affidavit of Deputy Superintendent of Police which is based on mental illness assessment made by the department of Psychiatry, GMCH, Sector 32, Chandigarh, I find no merit in the present case and accordingly, the present appeal stands dismissed. However, it is observed that respondents No. 1-Kamlesh will ensure to provide proper care including medical care of Giano Devi during her life time.

Dismissed.

[ARVIND SINGH SANGWAN]
JUDGE

22.11.2021
Riya

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No