

**205 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-5001-2019(O&M)

Date of decision : 12.04.2023

Manushree Sharma and another

...Petitioners

Vs.

State of Haryana and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Karan Kaushal, Advocate
for the petitioner No.1.

Mr. Gurjot Singh Sadhrao, Advocate
for petitioner No.2.

Respondent No. 5 in person.

Mr. Sukhdeep Parmar, DAG, Haryana.

MANOJ BAJAJ, J.

Petitioner No.1-Mrs.Manushree Sharma claiming herself as next friend of her mother, Mrs. Santosh Joshi-petitioner No.2 has invoked the writ jurisdiction of this Court under Article 226 Constitution of India on her behalf for issuance of a writ in the nature of mandamus directing the official-respondents to: get the CCTV camera removed from the place of residence of petitioner No.2; get the petitioner No.2 medically examined from Board of Doctors preferably at PGI, Chandigarh or Sector 32, Government Hospital, Chandigarh to ascertain her mental health for treatment and get the private-respondents No. 5 and 6 evicted from House No. 592, Sector 6, Panchkula who being son, daughter-in-law, respectively have been neglecting petitioner No.2.

Briefly, as per averments, the petitioner No.2-Mrs. Santosh Joshi retired as a school Teacher, who suffered depression in the year 1997 which resulted in attacks of “Paranoid Schizophrenia”, and later in the year 2015, she turned bed ridden. The medical prescription etc. of Mrs. Santosh Joshi is not in possession of Mrs. Manushree Sharma-petitioner No.1. Mrs. Santosh Joshi alongwith her husband-Jawaharlal Joshi was residing at House No. 592, Sector 6, Panchkula, and in the year 2010, their son Dr. Arun Joshi-respondent No.5 alongwith his wife Mrs.Shivani Joshi-respondent No.6 and their two children came to reside with them. In May, 2011, Jawaharlal Joshi suffered heart ailment and his surgical intervention was undertaken with the care of Dr. Arun Joshi, but thereafter, he and Mrs. Shivani Joshi started neglecting the old parents. Mrs. Manushree Sharma being a Teacher in school could not help the parents on regular basis, therefore, she requested her brother Dr. Arun Joshi to fulfill his responsibilities towards the ailing parents. Mrs. Manushree Sharma resided with her husband Rajinder Sharma at various stations in Haryana because of his frequent transfers, however, in the year 2011 after his transfer to Chandigarh, she shifted to Panchkula. Mrs. Manushree Sharma left her job in the year 2015 in order to take care of her ailing mother and started visiting their residence, and as she could not remain with the parents she engaged caretaker, to whom salary was being paid by Jawaharlal Joshi. This move was opposed by Dr. Arun Joshi, and when Mrs. Manushree Sharma tried to explain the necessity,

Dr. Arun Joshi turned aggressive and violent, which resulted in injuries to her. On 03.12.2018, Jawaharlal Joshi had given a complaint to the Deputy Commissioner, Panchkula under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, but the official-respondents refused to take action, for want of the presence of senior citizen and few days after the alleged complaint, the senior citizen died of cancer on 19.12.2018. The caretaker employed by Mrs. Manushree Sharma is taking care of old mother. In January, 2019, a CCTV camera was installed by Dr. Arun Joshi and Mrs. Shivani Joshi in the room of Mrs. Santosh Joshi, which amounts to breach of privacy, and because Dr. Arun Joshi and Mrs. Shivani Joshi have failed to fulfill their duties towards the aged parents, therefore, on these averments, Mrs. Manushree Sharma on behalf of her mother has prayed for the above noticed reliefs.

On 25.02.2019, this Court issued notice of motion in the writ petition and had also directed medical examination of Mrs. Santosh Joshi by a team of doctors headed by Civil Surgeon, Civil Hospital, Sector-6 Panchkula. In compliance of the direction, her examination was conducted on 27.02.2019 and report in this regard Mark 'A' is on record.

Thereafter, Mrs. Santosh Joshi moved an application bearing CM No.5709-CWP-2019 dated 04.04.2019 and pleaded that the filing of the petition came to her notice when Doctor arrived at her residence to examine her, who further expressed her unwillingness to continue with the litigation initiated by her daughter, as she is residing peacefully with

her son-Dr.Arun Joshi and daughter-in-law Mrs.Shivani Joshi. She specifically took a stand that neither she is a person of unsound mind nor any of the reliefs contained in the writ petition have been prayed for by her.

Mrs. Manushree Sharma filed reply to the said application (CM-5709-CWP-2019) and reiterated her stand that Mrs. Santosh Joshi is not a person of sound mind. She denied the averments contained in the application and prayed that the application be dismissed.

Subsequently, this Court vide order dated 12.07.2019 directed another medical examination of Mrs. Santosh Joshi by Board of doctors, PGI, Chandigarh and in compliance thereof she was examined on 13.07.2019 and the said medical report is on record as Annexure Mark 'B'.

Though, pursuant to the notice of motion, no formal written statement has been filed by any of the respondents, but a miscellaneous application bearing No. CM-3209-CWP-2022 was filed by Mrs. Santosh Joshi, wherein she prayed for the disposal of the writ petition by pre-poning the date of hearing, as she disowned the allegations contained in the petition and her relations with daughter. She highlighted that Mrs. Manushree Sharma does not enjoy good relations with the family, who has initiated this litigation with *mala fide* intentions. Mrs. Santosh Joshi specifically denied the averment that she is a person of unsound mind, who further clarified that she is completely aware of her surroundings and

never authorised the filing of this petition. In support of her stand, Mrs. Santosh Joshi annexed her affidavit dated 18.12.2019, newspaper publication dated 21.12.2019 (Annexures A-5 and A-6, respectively) to show that daughter-Mrs.Manushree Sharma has already been disowned by her. Apart from it, Mrs. Santosh Joshi revealed that she has also filed a Civil Suit No. 233 of 2019 for injunction against her daughter, and appended the copy of order dated 30.09.2019 (Annexure A-7) passed by Civil Judge, Senior Division, Panchkula. As per this order, the Civil Court observed that the plaintiff is of old age, but she is an alert lady fully conscious with active mind.

Mr. Karan Kaushal, learned counsel for the petitioner No.1 argued that Mrs. Santosh Joshi, who is mother of Mrs. Manushree Sharma is facing atrocities from her son Dr.Arun Joshi and his wife Mrs. Shivani Joshi, at this advanced age, who instead of taking care of ailing mother are neglecting her by not providing even the basic amenities. He submits that these respondents have installed CCTV camera in the bed room of Mrs. Santosh Joshi and this amounts to the breach of privacy, therefore, this electronic gadget deserves to be removed from the bed room. Learned counsel drew the attention of the Court to the various photographs of Mrs. Santosh Joshi and submitted that she is a person of unsound mind, who needs care and attention, but as the respondents No. 5 and 6 are not allowing the daughter to meet the mother, therefore, in order to seek the freedom of senior citizen, eviction of respondents No. 5 and 6 from the

house bearing No. 592, Sector 6, Panchkula is necessary. He prays that writ petition be accepted and the necessary directions be issued to the official respondents.

The prayer is opposed by Mr. Gurjot Singh Sadhrao, learned counsel for Mrs. Santosh Joshi who submitted that the case set up by Mrs. Manushree Sharma is absolutely false, and infact this litigation is initiated by petitioner No.1 with a motive to create differences between the old mother and her son. He submits that the mother came to know about the filing of this petition only when medical team arrived at her residence, therefore, the application was filed by Mrs. Santosh Joshi to refute the claim by Mrs. Manushree Sharma. Learned counsel submits that even the mother has filed a civil suit for injunction against her daughter and the said civil suit is pending, but this material circumstance has not been revealed by the daughter at any stage during the pendency of the litigation since 2019. He prays that the writ petition be dismissed.

At this Stage, Mr. Sukhdeep Parmar, DAG, Haryana has drawn the attention of this Court to the medical report Mark 'B' to contend that at the time of examination by the Board of Doctors, PGI, Chandigarh, Mrs. Santosh Joshi stated that her son is taking good care of her. He prays that in the light of this medical report as well as the independent stand of petitioner No.2, it becomes clear that claim of petitioner No.1 is false and baseless, which does not warrant interference.

After hearing learned counsel for the parties and examining

their rival stands, this Court finds that Mrs.Manushree Sharma has brought this writ petition in the capacity of a guardian/next friend of her mother- Mrs. Santosh Joshi, by setting up a ground that the old lady is a person of unsound mind, but concededly, in support of this plea no medical record of Mrs. Santosh Joshi has been placed on record.

Apart from it, the medical report Mark 'B' does not support the stand of Mrs. Manushree Sharma, which reads as under:

“Psychiatric Examination:

Although hard of hearing and without her corrective specs, she was able to comprehend and respond to queries, when spoken aloud. Lying on the stretcher, she appeared restless (constantly moving on either side, and asking for her son's whereabouts).

On enquiry why she was in the hospital, she reported some dispute between her son & daughter but did not elaborate on that. She did not want to meet her daughter as of now & also reported that her son took good care of her. She denied any physical or verbal abuse towards her. She was oriented to time, place and person and scored 20 on Hindi Mental Status Examination (HMSE- normal score>23) indicating need for detailed evaluation of her neurological and cognitive functions.

The above listed findings do not indicate a severe mental illness; however, she requires detailed physical, neurological and cognitive evaluation to rule out subtle cognitive impairment.”

Besides, on the contrary the mother herself has controverted the stand of Mrs. Manushree Sharma by stating that she is happily

residing with her son Dr. Arun Joshi, and also relied upon the order dated 30.09.2019 (Annexure A-7) passed by Civil Judge (Senior Division), Panchkula, whereby in her suit for injunction, it has been observed that the plaintiff-Mrs. Santosh Joshi is not a person of unsound mind. Further, she has condemned the conduct of her daughter, while relying upon the copy of newspaper publication dated 21.12.2019 (Annexure A-6), whereby she severed her relations with the daughter and her family.

Thus, this Court has no hesitation in holding that Mrs. Manushree Sharma has filed this writ petition on behalf of her mother, by concealing the true facts and attempted to mislead this Court, therefore, her status as guardian/next friend of Mrs. Santosh Joshi is rejected.

Now, while examining the averments in the writ petition, it comes out that admittedly, Mrs. Manushree Sharma was working as a school Teacher who also resided at different stations because of the transfer of her husband, therefore, she could not pay attention to the old mother, though she had shifted to Panchkula in the year 2011. According to her the old parents were attended to by the caretaker employed by her father and there is no explanation behind this delay in filing the petition in the year 2019. Interestingly, it is also not disputed by petitioner No.1 that when her father suffered heart ailment, his treatment by way of surgical intervention was facilitated with the help and care of Dr. Arun Joshi, and similar is the stand of Mrs. Santosh Joshi that her son is taking good care

of her. Therefore, in this background, the complaint dated 03.12.2018 allegedly given by Jawaharlal Joshi against Dr. Arun Joshi does not seem to be genuine and is rendered seriously doubtful, because admittedly no action was taken upon the said complaint by the official respondents for want of presence of the senior citizen, who few days after the alleged complaint, died of cancer on 19.12.2018.

During the course of hearing, it is not disputed by Mr. Karan Kaushal, learned counsel that the petitioner No.1-daughter is residing separately from her mother and their place of residence are different. Further, when learned counsel was asked to show the material on record regarding installation of CCTV in the bed room of the old lady, he straightaway stated that he does not press the first prayer in the writ petition.

Further reading of the pleadings in the writ petition shows that the petitioner No.1 has only condemned the conduct of her brother for not providing care to his parents, whereas the mother in her statement has stated that her son is taking good care of her. As far as the health condition of Mrs. Santosh Joshi is concerned, she needs attention, and of course, she is getting the required medical treatment. There is nothing in the writ petition to indicate that petitioner No.1 ever contributed towards the expenses incurred in treatment of her mother or claimed her custody to serve, therefore, the ground set up for eviction of respondents No. 5 and 6 is not worth acceptance. As a result of this discussion, it is held

that the writ petition filed by Mrs. Manushree Sharma is not founded upon a genuine and valid cause of action.

Above all, in respect of the three prayers contained in the writ petition, no request much less any demand by way of complaint/representation was ever made by Mrs. Manushree Sharma to the official-respondents, therefore, the present petition seeking a writ of mandamus is not maintainable.

As a result of the above discussion, this Court comes to the conclusion that the petitioner No.1 with an oblique motive engineered this frivolous litigation and invoked extraordinary writ jurisdiction without a justifiable cause, which amounts to abuse of the process of law, thus, for this misconduct Mrs. Manushree Sharma deserves to be saddled with exemplary costs.

Consequently, the writ petition is dismissed and a costs of Rs. 2 lacs is imposed upon Mrs. Manushree Sharma, which shall be paid to the mother Mrs. Santosh Joshi (Rs. 1 lac) and Dr. Arun Joshi and Mrs. Shivani Joshi (Rs.50,000/- each).

(MANOJ BAJAJ)
JUDGE

12.04.2023
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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No