



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 23rd January, 2025

Pronounced on: 30th April, 2025

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CRL.M.C. 1453/2018 & CRL.M.A. 5279/2018 (stay)

1. **SUNIL KUMAR JAIN**
SON OF LATE SHRI J.P. JAIN
R/O K-19, SECOND FLOOR (BACK)
KAILASH COLONY,
NEW DELHI.Petitioner No.1.
2. **SHRI ASHOK KUMAR JAIN**
SON OF LATE SHRI J.P. JAIN
R/O K-16A, KAILASH COLONY,
NEW DELHI.Petitioner No.2.
3. **SMT. MAMTA JAIN,**
W/O SHRI ASHOK KUMAR JAIN
R/O K-16A, KAILASH COLONY,
NEW DELHI.Petitioner No.3.
4. **SHRI ANIL KUMAR JAIN**
SON OF LATE SHRI J.P. JAIN
R/O K-6A, KAILASH COLONY,
NEW DELHI.Petitioner No.4.
5. **SMT. SANGEETA JAIN**
W/O SHRI ANIL KUMAR JAIN
R/O K-6A, KAILASH COLONY,
NEW DELHI.Petitioner No.5.
6. **SMT. JAI MALA JAIN**
W/O LATE SHRI J.P. JAIN
K-16A, KAILASH COLONY,
NEW DELHI.Petitioner No.6.



Through: Mr. Rohit Gandhi, Mr. Hargun Singh
Kalra and Mr. Surender Sheoran,
Advocates.

versus

1. **ANITA JAIN**
W/O. SHRI SUNILJAIN
R/O S-459, GREATER KAILASH PART II,
NEW DELHI -110048.Respondent No.1
2. **MS. PRACHI JAIN**
D/O SHRI SUNIL KUMAR JAIN,
R/O S-459, GREATER KAILASH PART II,
NEW DELHI -110048Respondent No.2
Through: Mr. Anukrit Gupta, Advocate.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The Criminal Miscellaneous Petition under Section 482 Code for Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C."*) has been filed by the Petitioners, to challenge the Order dated 28.02.2018 of the learned ASJ, New Delhi under Section 29 of the Protection of Women from Domestic Violence Act, 2005 (*hereinafter referred to as "DV Act"*) upholding the Order of the learned Metropolitan Magistrate dated 17.04.2017 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (*hereinafter referred to as "D.V. Act"*), whereby the Application of the Petitioners for medical examination of the Respondent No. 1, was dismissed.



2. ***Briefly stated***, the Petitioner No.1/Mr. Sunil Kumar Jain got married to the Respondent No. 1/Ms. Anita Jain on 08.07.1992. One daughter, Ms. Prachi Jain/Respondent No. 2 was born from their wedlock on 23.06.1999. The Respondents left the matrimonial home and moved along with her belongings, to the parental home on 17.04.2014.

3. The Respondent filed a Complaint No. 1765/3/14 under Section 12 D.V. Act against the Petitioners, through her father, Late Sh. S.C. Jain, on the ground that she was suffering from certain *mental disorders and was a nervous wreck* at that time. The documents of her mental illness and also the affidavit of father of the Respondent No. 1, was annexed along with the Petition. An objection was taken by the Petitioner in regard to the maintainability of the Petition, filed through father of the Respondent No. 1, without him being appointed as a guardian under *Mental Health Act*. Thereafter, in the Appeal No. C.A. 26/2014 under Section 29 D.V. Act, filed by the Petitioners before the Court of Sessions Judge, New Delhi. The father of Respondent No. 1 withdrew the Petition with liberty to file the same afresh, as per law. *The Complaint was accordingly withdrawn on 18.12.2014.*

4. Respondent No. 1 thereafter, filed a fresh second Complaint Case No. 61941/2016 under Section 12 D.V. Act under her own signatures, on the premise that she has recovered from mental illness and was competent to sign the second Petition filed in December, 2014. The Medical Certificate dated 14.07.2014 was filed wherein Dr. Tina Gupta, M.D. Psychiatry, (AIIMS), New Delhi had prescribed a tablet '*Depakote*' for the Respondent No. 1 to treat *Manic Episodes related to Bi-Polar Disorder* (Manic Depression).



5. The Petitioner has asserted that the medical documents and the Certificate annexed by Respondent No. 1, indicate that the problem of the Respondent No. 1 was greater than the *ordinary nervous breakdown* as claimed by Respondent No. 1. Moreover, the Protection Officer in his Report dated 05.01.2014 also observed that “*Complainant has a mentally disturbed(sic).*”

6. Furthermore, in Paragraph 43 of the Complaint, she has admitted that she became a *nervous wreck*. Likewise, in Paragraph 45, she stated that she is under the treatment for *neurological disorder* and number of Tests and Check-ups are required for which father of the Respondent No. 1 has been spending money when in fact, it is the responsibility of the Petitioner No. 1, her husband. The copies of the Test Reports along with the Bills, were annexed with the Complaint. In Paragraph 57 of the Complaint, she admitted the filing of the earlier Complaint. In Paragraph 58, she further stated that after few months of treatment, she is in a better state of mind and can depose before the Court with a healthy deposing mind.

7. It is claimed that from the averments and the medical documents, it is manifest that the Respondent No. 1 is having mental and neurological disorders and is incapable of making decisions in her own interest and is *mentally ill* as defined under the Mental Health Act, 1987.

8. Furthermore, father of the Respondent No. 1 in his Reply filed in CA No. 26/2014 filed by the Petitioner No. 1, admitted that the Respondent No. 1 was undergoing neurological disorder treatment. He also stated that because of her mental condition, the first Complaint on her behalf was filed through father.



9. The Petitioners have further asserted that while filing the second/present Complaint, no Medical Certificate declaring the Respondent No. 1 to have undergone mental rehabilitation and is mentally fit and sound, has been filed. In the absence of any authentic Medical Certification from any Government Hospital, the Complaint filed by the Respondent No. 1 was not maintainable as being barred under the provisions of the Mental Health Act, 1987, which prescribes the manner in which the proceedings on behalf of the mentally ill persons, can be conducted.

10. The Petitioner No. 1 has already filed a Complaint under Section 25 of the Mental Health Act, 1987, for medical inquisition of the Respondent No. 1 and for her care, *vide* DD No. 22-B dated 20.11.2014. The Police, however, has not taken action.

11. The Petitioners on receiving the summons of the second Complaint Case, filed another Application under Section 245 Cr.P.C., before the learned M.M. alleging that the Petition was not maintainable on behalf of the Respondent No. 1 because of her mental unsoundness and she cannot be a witness in her case and was not fit to file the Complaint under her own signatures.

12. The Application of the Petitioners, was rejected *vide* Order dated 03.03.2015 and learned M.M. proceeded further with the trial of the Complaint. This Order of learned M.M. dated 08.01.2015 and 03.03.2015, was challenged by the Petitioners in Appeal bearing C.A. No. 57/2015 before the learned ASJ, New Delhi but the same also got dismissed on 01.12.2015.

13. The Petitioners challenged the Order of learned ASJ dated 01.12.2015 before this Court in Crl. M.C. No. 80/2016. The Petitioners,



during the pendency of Appeal, filed an Application before the learned M.M. for Medical Examination of the Respondent No. 1 by a Medical Board.

14. CrI. M.C. No. 80/2016 before this Court was disposed of with the directions that the Application of the Petitioners, for examination of the Respondent No. 1 by Medical Board, be disposed of by the learned Trial Court in an expeditious manner.

15. The learned M.M. on 07.04.2017 noted that the Respondent No. 1 had no objection to her being examined by the Medical Board for her mental fitness. However, the Application of the Petitioners, for medical examination was dismissed by the learned M.M. on 17.04.2017 against which C.A. No. 175/2017 under Section 29 D.V. Act, was filed but the Appeal also got dismissed by the learned ASJ on 28.02.2018, which has been challenged by way of the present Petition.

16. The ***grounds of challenge*** are that the Order is based on conjectures and surmises, without appreciating the facts and the right perspective. It is asserted that there is a major controversy involved in regard to the *Mental Health* of the Respondent No. 1, as is borne out from the two Complaints filed on her behalf, to show her mental disability and unsoundness. The Medical Record filed by the Respondent No. 1, also shows that she suffers from *Bi-Polar Disorder* for which she is taking medicines. It has not been appreciated that the Respondent No. 1 could not have filed the Petition, without her getting an appointment of guardian under Mental Health Act.

17. The Appellate Court wrongly considered the observations made by the learned ASJ in the Order dated 01.12.2015 in Appeal C.A. No. 57/2015 that the Petitioners are entitled to raise the plea of *mental illness* afresh



before the Trial Court if they could bring some evidence in this regard. Moreover, the only Prayer made by the Petitioners in the Application, was for getting the mental condition of the Complainant ascertained and to be certified by a trained Medical Practitioner and not to be left to the assumptions and presumptions by non-medical personnel; whether it be a Court or the Protection Officer under the D.V. Act. Moreover, Respondent No. 1 herself had given 'No Objection', which has been disregarded while dismissing the Application.

18. It is submitted that there is ample evidence on record to establish the mental condition of Respondent No. 1, for the Court to *prima facie* form an opinion that the mental condition of the Respondent No. 1, is not of a sound person and she is required to be examined medically.

19. The learned Trial Court by its Order dated 03.03.2015 has already granted Interim Maintenance to the Respondents, which Order is being complied by Petitioner No. 1. There was no occasion for the learned Trial Court, to form an opinion that the medical examination of the Respondent No. 1 was being insisted only to delay the proceedings and the disposal of the Maintenance Application.

20. The Impugned Order suffers from basic jurisdictional error to have taken cognizance of the Complaint by Order dated 08.01.2015, without relying upon the *Domestic Enquiry Report*. Also the Judgments in Nidhi Kaushik vs. Union of India, 212 (2014) DLT 5; Ravi Dutta vs. Kiran Dutta &Anr., 2014 (208) DLT 61 and Shambhu Prasad Singh vs. Manjari, 2012 (190) DLT 647, have been ignored by the learned Trial Court.

21. The Petitioners have placed reliance on the case of Lalit Kishore vs. Meeru Sharna &Anr., (2009) 9 SCC 433 wherein the Apex Court relied on



the case of Sharda vs. Dharmpal, (2003) 4 SCC 493, wherein a three-Judge Bench took into consideration the power of the Court to allow an Application for medical examination of a party in a matrimonial proceeding and observed that in certain cases medical examination by the Experts, may not only be found to be leading to the truth of the matter, but may also lead to removal of misunderstanding between the parties. It may bring the parties to terms.

22. The Apex Court in Lalit Kishore, (supra) further observed that the court is always empowered to satisfy itself as to whether a party before it suffers from mental illness or not either for the purpose of taking evidence on the ground for which the matrimonial proceeding was started.

23. It is well settled that the primary duty of the court is to see that the truth comes out. Therefore, although the medical examination for a party is not provided in the Act, even then, the court has complete inherent power in an appropriate case under Section 151 of the Code of Civil Procedure, to pass all orders for doing complete justice to the parties to the suit.

24. Reliance has also been placed on the case of Sandeep Aggarwal vs. Priyanka Aggarwal, 2021 SCC OnLine Del 5521 wherein the husband sought annulment of marriage under Section 12(1)(b) Hindu Marriage Act, alleging that his wife, prior to their marriage, had fraudulently concealed her mental illness (Schizophrenia). The wife denied any such condition and refused medical examination. This Court held that the wife's refusal to undergo medical evaluation coupled with circumstantial evidence and her own admissions, raised a strong presumption of mental illness.

25. In Sandeep Aggarwal, (supra) it was also observed, "... Judges are not medical professionals or experts, and acquire limited knowledge based



on the arguments of the parties, and the medical literature produced before them; the testimonies of expert witnesses produced in Court, and; the submissions advanced before the Court. The Courts, to be able to decide such issues, needs expert opinion from credible persons in the field.”

26. It is, therefore, submitted that the impugned Order is liable to be set-aside.

27. ***The Respondent No.1/Anita Jain in the detailed Reply*** has submitted that the present Petition is false and frivolous and based on wrong and concocted facts and has been filed with the sole intention to harass the Respondents and to further delay the proceedings. It is submitted that the learned ASJ in its Order dated 17.04.2014, had interacted with the Respondent No. 1 and observed that *“now the respondent appears to have recovered from her trauma and seems to be absolutely fine.”*

28. She has asserted that she is now out of depression and thus, provisions of Mental Health Act, 1987, are not applicable. The learned M.M. and the learned ASJ in their respective Orders, have dismissed this Application by noting that the Respondent No. 1 had been appearing on each date before the Court and was answering all the queries made by the Court. It is asserted that the Petitioners have tried to mislead the Court by levelling a person suffering from depression as a mentally unstable person, which is not only wrong but also defamatory.

29. It is further submitted that the entire expenditure relating to her treatment was borne by her father, which otherwise was the responsibility of the Petitioner No. 1, husband of Respondent No. 1.

30. Learned M.M. *vide* Order dated 03.03.2015 had directed the Petitioner No. 1 to pay the school fee, transportation fee and miscellaneous



expenditure of the education of the Respondent No. 2, despite which he is only paying the school fee even though he owns properties from which he gets rent of Rs.1,68,000/-p.m.

31. It is submitted that it has been rightly observed by learned ASJ in its Order dated 28.02.2018, that the Appeal after Appeal are being filed by the Petitioners asserting that a person is mentally unsound, which have been dismissed and it amounts to misuse of process of the Court, which cannot be allowed.

32. ***On merits***, all the averments made in the Complaint are denied and it is reasserted that she has recovered and is mentally sound to pursue the Complaint.

33. **Submissions heard and record perused.**

34. The Petitioners have sought the setting aside of the Order of learned ASJ dated 28.02.2018 upholding the Order of learned M.M. dated 17.04.2017 whereby the Application of the Petitioners for Medical examination of Respondent No.1, was dismissed.

35. The Petitioners have raised the basic issue in regard to the maintainability of the Petition under Section 12 D.V. Act on the ground of Respondent No.1 suffering from *mental ill health* and therefore incapable to file the Petition in her name. To substantiate these assertions, reference is made to the first D.V. Petition filed by Respondent No. 1 through her father as her Guardian/Next Friend, wherein she was stated to be under “*severe depression*” and was “*not of stable mind*”.

36. The ***first aspect*** which needs to be clarified is that the present Petition essentially stems from an Application for medical examination of



Respondent No. 1 filed in Respondent No. 1's Section 12 D.V. Act Complaint.

Assessing the nature of proceedings under the D.V. Act:

37. To comprehend the nature and scope of the proceedings undertaken in the D.V. Act, it is imperative to refer to *The Statement of Objects and Reasons* which clearly indicates that the D.V. Act was enacted to fulfill India's commitment to CEDAW. It acknowledged that while Section 498A IPC offered a criminal remedy for women subjected to cruelty by husbands or relatives, civil law did not fully address the issue. Therefore, the D.V. Act was specifically designed to provide civil remedies to protect women from domestic violence. ***This legislative intent unambiguously establishes that the remedies under the DV Act are civil in nature, not criminal.***

38. A reference may be made to **Section 28 D.V. Act** which provides for the procedure to be followed under the D.V. Act. While its Sub-Clause (1) states that the D.V. proceedings shall be governed by the provision of Cr.P.C., but Sub-Clause (2) empowers the Court to lay down its own procedure for disposal of the Application under Section 12 D.V. Act or Sub-Section 2 of Section 23 of the D.V. Act. It is evident that it is an empowering provision which makes provisions of Cr.P.C. applicable for summoning and ensuring the presence of the Respondent and such other aspects, but *while considering the Application under Section 12 D.V. Act for adjudication on merits, essentially the civil procedure is followed which may be improvised or defined by the Court itself.*

39. This aspect was considered in Kunapareddy @ NookalaShanka Balaji vs. Kunapareddy Swarna Kumari & Ors., (2016) 11 SCC 774, wherein the



Apex Court held that the Legislature incorporated Sub-Section (2) of Section 28 DV Act by keeping a defined purpose in mind Section 28 of D.V. Act in making Cr.P.C., 1973 procedures applicable to the D.V. Act, but the proceedings essentially are civil in nature as is evident from the fact that even the amendment of Complaint is allowed. Further, the reliefs granted by the Court are absolutely civil in nature.

40. Furthermore, in the case of *Kamatchi vs. Lakshmi Narayanan*, (2022) 15 SCC 50, the Apex Court observed that essentially, the proceedings under Section 12 D.V. Act are initiated on filing of a Complaint which is followed by a Reply by the Respondent, and after considering the rival pleadings and also if the Court so desires, taking evidence by way of Affidavits, the Court may pass appropriate Orders under Section 12 DV Act which may be for protection. ***The procedure thus, followed also indicates that the proceedings are essentially civil in nature.***

41. Having so observed that the proceedings and remedies under D.V. Act are Civil, the first question to assess is, ***whether the term “Depression” and “not in a state of stable mind” would amount to unsoundness of mind and that whether the mental health/illness of Respondent No.1 would make her of unsound mind?***

Unsoundness of Mind and Mental Illness:

42. At the outset, it is imperative to understand the meaning of the term *Mental Unsoundness* and if it is synonymous with *Mental Illness*.

43. The Black’s Law Dictionary defines *unsound mind* as a non-legal term referring to one who from infirmity of mind is incapable of managing himself or his affairs. Insanity is a social and legal term rather a medical



one. It indicates a condition which *renders the affected person unfit to enjoy the liberty of action because of the unreliability of his behaviour with concomitant danger to himself and others*. The term is more or less synonymous with mental illness or psychosis.

44. In law, the term is used to denote that degree of mental illness which negates the individual's legal responsibility/capacity.

Unsoundness of mind in Civil law

45. **Order XXXII of the Code of Civil Procedure, 1908**(*hereinafter referred to as "CPC"*) establishes a comprehensive framework for protecting the interests of persons of unsound mind in legal proceedings. Order XXXII contains special provisions applicable only in cases where either the Suit is to be instituted at the cause of a minor/person of unsound mind or against a minor/person of unsound mind. Any person of sound mind who has attained majority can act as a Next Friend, provided their interests do not conflict with those of the person they represent.

46. **Rule 15 of Order XXXII CPC** serves as an extension provision that applies the procedural protections designed for minors to persons of unsound mind. This rule explicitly provides that Rules 1 to 14 (with the exception of Rule 2A) shall apply, as far as possible, to persons who have been adjudged to be of unsound mind either before or during the pendency of a suit. Significantly, the Rule extends beyond formal adjudications of unsoundness of mind to encompass individuals who, while not formally adjudged as such, are determined by the Court through inquiry to be incapable of protecting their interests in litigation due to mental infirmity.



47. In the case of Gopakumar vs. Madhusoodanan Nair &Anr., 2023:Ker:54001, the Court observed that there are *two categories of individuals who require special representation in court, those “adjudged of unsound mind” and those “incapable of protecting their interests due to mental infirmity”*. The first category specifically refers to persons who have been formally declared of unsound mind through proper judicial proceedings under relevant mental health legislation (*previously the Indian Lunacy Act, 1912 then the Mental Health Act, 1987 and currently the Mental Healthcare Act, 2017*). This determination must come from a competent court or authority through judicial inquisition pertaining to mental illness. The Court must accept this prior judicial determination without further inquiry.

48. Furthermore, in Gopakumar, (supra), the Court further observed that the use of the word ‘*found by the court on enquiry*’ is applicable only in relation to the second category of Rule 15. Unlike the first category (which requires prior judicial determination), this second category (*incapable of protecting their interests due to mental infirmity*) empowers the court to conduct its own inquiry to determine whether a person has mental incapacity due to any mental ailment or disorder, including potential insanity or impairment. ***Hence, the Court should adopt a pragmatic approach and if it is found necessary, call for further evidence including medical evidence, instead of jumping onto a conclusion.***

49. Importantly, these mental health laws explicitly exclude persons with mental retardation from their definition of “mentally ill”, meaning the first provision of Rule 15 applies only to those judicially determined to have mental illness distinct from mental retardation. **The Court’s only**



consideration under this provision is to verify whether a proper judicial determination of unsoundness of mind exists.

50. The appointment of a Court Guardian or grant of permission to sue through a Next Friend without conducting an enquiry as mandated under Rule 15 cannot be sustained, as the compliance of requirement under the said Rule is mandatory and the legal position was very much settled by the Apex Court in Kasturibai and others vs. Anguri Chaudhary, (2003) SCC 225.

51. The Madras High Court in the case of M.S. Nadar @ Subramaniya Nadar vs. S. Saraswathi, 1997 (2) CTC 132 relied upon Rami Reddi vs. Papi Reddi, AIR 1963 A.P 160 wherein while dealing with the nature of enquiry to be conducted by the Court, the learned single Judge of the Andhra Pradesh High Court held as follows:-

"Order 32, Rule 15, Civil P.C., applies not only to a person adjudged to be of unsound mind, as under the old Code, but also to a person of weak mind. Where in a suit filed by the plaintiff through his next friend an application is made by the next friend that the plaintiff is of unsound mind, or mentally infirm for the purpose of the rule, the extent of the infirmity has to be found by the court on inquiry. This enquiry should consist of the examination of the alleged lunatic by the Judge, either in open court or chambers, and as courts are generally presided over by lay-men, as a matter of precaution, the evidence of medical expert should be taken. Where the precaution of such a judicial enquiry is not observed, the person cannot be declared lunatic, and a guardian cannot be appointed for him."

52. In the case of Mahomed Yakub vs. Abdul Quddus, 4 Pat LT 17 : (AIR 1923 Pat 187) (C), the principle of law laid down is as under:



*“.....the test of soundness of mind is that he is capable of understanding the business and of forming a rational judgment as to its effect upon his interest. **There being a presumption in favour of sanity, the person who relies on the unsoundness of mind must prove it sufficiently to satisfy this test Mere weakness of mind is not sufficient.....**”*

53. Furthermore, in the case of Ram Narain Gupta vs. Rameshwari Gupta, (1988) 4 SCC 247, it was held that *the burden of proof of the existence of the requisite degree of mental disorder is on the spouse basing the claim on that state of facts.*

Unsoundness of mind in Criminal law

54. **Section 84 IPC** (now Section 22 Bharatiya Nyaya Sanhita, 2023) defines an act of a person of unsound mind. It stated that nothing is an offence which is done by a person who at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

55. In the case of Prakash Nayi vs. State of Goa, (2023) 5 SCC 673, the Apex Court relied on Jaisingh P. Modi, A Textbook on Medical Jurisprudence and Toxicology, 26th Edn. 2018, p. 938 which discussed the *Ascertainment of mental illness. **The said medical jurisprudence observed that medical insanity and legal insanity are not necessarily congruent.*** A mental illness that requires institutional care or administration of therapeutic care for medical insanity may not still be sufficient to insulate the person from consequences of a criminal act and punishment if she/he is not legally



insane. The assessment shall be to elicit such information as the law qualifies the general exception for proof of culpability under Section 84 IPC.

56. In the case of Prem Singh vs. State of NCT of Delhi, (2023) 3 SCC 372 the Apex Court while dealing with the issue of mental capacity of the Appellant convicted for offences under Section 302/201 Indian Penal Code, 1860 observed that the Appellant remained admitted to the Rehabilitation Centre for a period of about 5 months and was never found suffering from any mental illness so as to be regarded as a person of unsound mind.

57. Thus, from the assessment of the concept and understanding it through various provisions under Civil and Criminal law, it is quite clear that *mental illness* and *mental unsoundness* are distinct concepts that cannot not be conflated or used synonymously.

58. While *mental illness* refers to a clinically diagnosable psychiatric condition as defined by medical standards, *legal insanity or mental unsoundness* is a narrowly tailored to addresses the insufficiency to negate legal responsibility. Furthermore, mere presence of a mental health diagnosis (in the present case, the Respondent No.1 was earlier prescribed medicine for depression) does not automatically render an individual as a person of an unsound mind/insane.

59. Having established that mental illness does not automatically equate to legal unsoundness of mind, it is now essential to examine how mental illness is formally defined and addressed within India's legal framework. The Mental Healthcare Act, 2017 provides comprehensive guidelines for determining mental illness, protecting the rights of persons with mental illness, and establishing procedures for their treatment and care. Understanding these provisions is crucial for properly evaluating the



Respondent No.1's mental capacity in the present case and determining whether any medical examination is warranted under the law.

Procedure Under Mental Healthcare Act, 2017:

60. The Statement of Objects and Reasons of the Mental Healthcare Act, 2017 (*hereinafter referred to as "MHA, 2017"*) elucidates it as an Act to provide for mental healthcare and services for persons with mental illness and to protect, promote and fulfil the rights of such persons during delivery of mental healthcare and services and for matters connected therewith or incidental thereto.

61. The Co-ordinate bench of this court in Kunal Kashyap vs. State of NCT of Delhi, 2024:DHC:342, reiterated the transformative potential of the MHA emphasizing its rights-based framework.

62. The term "*mental illness*" as defined under Section 2(s) MHA, 2017 reads as under:

"mental illness" means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary demands 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 characterised by subnormality of intelligence"

63. **Section 3 of the MHA, 2017 deals with the procedure for determination of mental illness.** Clause (i) provides that "*mental illness*" shall be determined according to nationally and internationally accepted medical standards. Clause (ii) further states that *no person or authority shall*



*classify a person as a person with mental illness except for the purpose of directly relating it to the treatment of mental illness. Further, **Clause (iii)** states that *mental illness of a person shall not be determined on the basis of:* (a) *political, economic or social status* or membership of a cultural, racial or religious group, or for any other reason not directly relevant to mental health status of the person; (b) *non-conformity* with moral, social, cultural, work or political values or religious beliefs prevailing in a person's community. According to **Clause (iv)** *past treatment* or hospitalization in a mental health establishment, though relevant, *would not justify any present or future determination* of the person's mental illness.*

64. Thus, referring to the provisions above-mentioned, from its very definition, the *mental illness* as contemplated under the MHA is one which creates a substantial disorder of thinking, mood, perception orientation or memory that grossly impairs judgment and behaviour. Furthermore, any past mental illness would not be sufficient to justify the present mental health condition of the individual.

65. Reference here is made to **Chapter 12 MHA** which deals with *admission, treatment and discharge*. **Section 85 MHA** provides for *an admission of person with mental illness as independent patient in mental health establishment*, refers to admission of a person who has the capacity to make mental healthcare and treatment decisions or requires minimal support in making decisions.

66. **Chapter 13 MHA** outlines the *responsibilities of other agencies*, with **Section 105** specifying the *mandatory procedure for the Competent Court when presented with proof of mental illness during a judicial process*. This Court in Kunal Kashyap, (supra) also clarified that the term '*shall*' in



Section 105 indicates the legislative intent that the prescribed procedure is obligatory.

67. *Section 105 is produced as under:*

“Question of mental illness in judicial process.

*If during any judicial process before any competent court, **proof of mental illness is produced and is challenged by the other party**, the court shall refer the same for **further scrutiny to the concerned Board** and the Board shall, after examination of the person alleged to have a mental illness either by itself or through a committee of experts, submit its opinion to the court.”*

68. *In the present case, mere Application so filed on behalf of the Petitioners was not tenable, there being no basis for getting the Respondent No.1 examined by the Medical Board. There is no assertion in regard to mental illness, but the contentions of the Petitioners are based not on the basis of any independent medical evidence but solely on the statement of father of Respondent No.1 as made in the first D.V. Petition.*

69. It was stated in the First Petition that she was rendered a nervous wreck due to torture inflicted upon her by the Petitioners. In paragraph 25 of the Petition, it was stated that *“Respondent No.1 was actually falling into the trap of respondents (Petitioners herein), as she was almost becoming a ‘nervous wreck’.* Petitioners’ averment of alleged mental illness also needs to be understood in the light of the observations of learned ASJ in CA No. 57/2015, on 01.12.2015 wherein he had specifically observed that he had personally talked to Respondent No.1 and she appeared to ***be sound, rational and prudent mind.***



Meaning of ‘Nervous Wreck’ and Depression:

70. The Petitioners in their Application had relied upon the First Complaint filed by the father of Respondent No.1 stating that she was suffering from Depression and mental agony, entirely due to the unsavoury motives of the Petitioners. She was rendered as a nervous wreck due to torture inflicted upon her by the Respondents.

71. Oxford Dictionary defines “*nervous wreck*” as *nervousness of a person suffering from stress or emotional exhaustion*. As per MacMillan Dictionary, it means *someone who is very upset and worried*. According to Merriam-Webster Dictionary, *nervous wreck* is used for a *person who is very worried or nervous about something*. From the very definition of the word “*nervous wreck*” it is evident that this only implies the mental condition of being under stress or being upset and worried. This cannot be termed as ‘*mental illness*’.

72. World Health Organisation (WHO) describes “*depressive disorder*”(also known as *depression*) as involving a *depressed mood or loss of pleasure or interest in activities for long periods of time*.

73. As per American Psychiatric Association, to diagnose depression, a Healthcare professional will conduct a thorough diagnostic evaluation that includes a comprehensive interview to discuss the symptoms in addition to personal, medical and family histories. Moreover, a physical examination should be performed to screen for underlying medical conditions that may mimic depression. Laboratory and imaging tests may also be included in the evaluation as part of the medical screening. The evaluating medical



professional will take all of these factors into account as they formulate a diagnosis and recommend an individualized treatment plan.

74. The *American Psychiatric Association's Diagnostic Statistical Manual of Mental Disorders, Fifth Edition (DSM-5)* classifies the **depressive disorders** into Disruptive mood dysregulation disorder; Major depressive disorder; Persistent depressive disorder (dysthymia); Premenstrual dysphoric disorder; and Depressive disorder due to another medical condition. *The common features of all the depressive disorders are sadness, emptiness, or irritable mood, accompanied by somatic and cognitive changes that significantly affect the individual's capacity to function.*

75. The *International Statistical Classification of Diseases and Related Health Problems, 10th Revision (ICD-10)*, is the international standard for diagnostic classification developed by WHO. It was introduced in 1993 and officially adopted by India in the year 2000. The ICD-10 defines depression primarily under the codes *F32 (Depressive Episode)* and *F33 (Recurrent Depressive Disorder)*. Recurrent Depressive Disorder is characterized by *repeated episodes of depression (mild, moderate, or severe), without any history of independent episodes of mania*. However, typical depressive episodes feature as *depressed mood, loss of interest and enjoyment, reduced energy and increased fatigue*.

76. In the present case, the contention is that Crl. M.C. No.80/2016 was disposed of *vide* Order dated 19.07.2016 with the directions that the Application filed by the Appellants/Petitions for examination of Respondent No.1 by Medical Board, which was pending, be decided expeditiously by the Trial Court. Despite these Directions, and Respondent No.1 giving her '*No Objection*' for her examination by the Medical Board on 07.04.2017,



the said Application was dismissed by the learned M.M. *vide* the Order dated 17.04.2017.

77. However, herein it is important to note that the only averments made in the First Complaint was that Respondent No.1 herein was becoming a nervous wreck. Merely because she was driven to be a nervous wreck on account of alleged torture being inflicting upon her, cannot lead to any conclusion of her being mentally ill. Likewise, being in depression on account of surrounding circumstances, can also not be held as making her incapable of filing the Petition. Furthermore, merely because she was under depression or on the verge of becoming a nervous wreck, does not imply that she could not have recovered from her depression after proper treatment.

78. Even if it is accepted that the Respondent No.1 had suffered from depression, but her medical record shows that she had been prescribed the tablet 'Depakote' for her treatment which she had been taking regularly. It is clear that depression is not a state of mind. It is a medical condition diagnosed by a health care professional which is curable for which medicines may be prescribed. Moreover, Section 3(4) MHA is quite clear that any past treatment or hospitalisation in a mental health establishment would not be *per se* sufficient to determine present/future mental illness of the person.

79. *In the present case*, the complainant/Respondent No.1 initially filed her Complaint under the D.V. Act through a Guardian/Next Friend. She subsequently withdrew this Complaint and filed a Second Complaint under her own signature. When the Petitioners raised objections to this approach, the ASJ Court noted on 01.12.2015 *that Respondent No.1 appeared to be of*



rational mind. The Court had no reason to seek medical evidence, as no circumstance arose during proceedings that would suggest Respondent No.1 was of unsound mind or incapable of making decisions for herself. Without any indication of mental incapacity, there was no basis for the Court to initiate an inquiry into her mental competence.

Report of the Protection Officer:

80. The assertions of the Petitioners to claim that she was mentally unsound also emanates from the Report of the Protection Officer dated 05.01.2014, who had observed “*complainant has a mentally disturbed*”. This has been considered by the learned ASJ comprehensively, to reject it. It has been noted that this endorsement has not been made in the body of Report, but is hand written on the top of first sheet of DIR. The learned ASJ noted that the power of the Protection Officer under Section 9 D.V. Act nowhere authorizes the Protection officer to give any opinion about the mental condition/status of the Complainant. The DIR submitted by the Protection Officer may be considered for the purpose it is intended, but there is no mandate of it being accepted in *toto*, whether relevant or irrelevant.

81. As had been noted by learned ASJ, this was a hand written note inserted on the top of the Report at the right corner and was not a part of the main Report. The credibility of such endorsement on DIR appears to be manipulated and is of little significance. Moreover, it needs to be mentioned that the Protection Officer is not a Professional having any qualification to comment upon the Mental soundness of an individual. Furthermore, there is no explanation or basis which prompted him to make this endorsement separately and not detail it in his Report. Also, *mentally disturbed* is a loose



word which does not necessarily lead to the conclusion of mental unsoundness. The comment endorsed by him, was rightly discarded by the learned ASJ.

82. Merely because Respondent No.1 had no objection to her examination, can be no justification to allow the Application filed by the Petitioners, to refer the Respondent No.1 for examination by the Medical Board for ascertaining the mental illness, under MHA, 2017.

Conclusion:

83. The Application has been rightly rejected by the learned M.M. *vide* Order dated 17.04.2017 which has been upheld by the learned ASJ *vide* Order dated 28.02.2018. There is no merit in the present Petition, which is hereby dismissed.

84. The Petition stands disposed of along with the pending Application(s).

**(NEENA BANSAL KRISHNA)
JUDGE**

APRIL 30, 2025

RS/VA