K. Rayappa Vs. Lingappa

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Court : Karnataka

Decided On : Jul-31-1974

Reported in : AIR1975Kant5; ILR1974KAR1485; 1975(1)KarLJ79

Judge : B. Venkataswami and ;D. Noronha, JJ.

Acts : Indian Lunacy Act, 1912 - Sections 3(5), 38, 40, 41, 42, 62, 64, 65, 67 and 83

Appeal No. : Misc. First Appeal No. 163 of 1973

Appellant : K. Rayappa

Respondent : Lingappa

Advocate for Def. : R.S. Mahendra, Adv.

Advocate for Pet/Ap. : A.N. Jaya Ram, Adv.

Judgement :

1. This appeal under Section 83 of the Indian Lunacy Act, 1912, arises from an order of dismissal of an application preferred under Section 62 of that Act, made by the District Judge at Tumkur in Misc. Case No. 3 of 1972.

2. The application concerns the alleged idiocy or unsound ness of mind of one Koterayaswamy. The father of the said person is the applicant and the respondent is his maternal grandfather. It would appear that the alleged hmatic's mother,

Adavemma, died about 14 months before the date of the application. Ever since his birth he and his mother had been forced to live with the respondent. There has also been litigation between the alleged lunatic and his father which had concluded with the passing of a decree directing partition of the properties of the joint family of which they had both been members. Ever since the death of the alleged lunatic's mother, he had not been cared for, or looked after properly, although ho was possessed of property. Hence the petition for an order for the appointment of the applicant as the manager of the estate of the alleged lunatic. The petition has been resisted by the maternal grandfather, who, it may be stated, had settled some property on his grandson, absolutely, and, in subslance, it is the management of that property that is concerned in these proceedings. We say so because the applicant has not chosen to ask for any order regarding the custody of the alleged lunatic specifically while seeking relief regarding the management of the property.

3. The learned District Judge after notifying the parties and causing the production in person of the alleged lunatic for a preliminary examination pursuant to the provisions of Sections 40 and 41 of the Lunacy Act, concluded that in connection with the alleged lunatic, no order of any kind contemplated under Sections 65 and 67 of that Act was called for. He also concluded that the application had not been made in good faith. He, therefore, dismissed the application. Hence this appeal.

4. On behalf of the appellant, it is contended thus:-- The Court should have held an enquiry and afforded an opportunity to the applicant to adduce evidence in the case in support of the allegation of lunacy of his son. Further, it is a clear case of an erroneous exercise of jurisdiction by the Court below in that it had failed to consider certain documentary evidence produced with a memo, which would tend to show that the respondent--grandfather himself had treated and referred to the person in question as mentally retarded.

5. Before proceeding to consider the matter further, it may be convenient to clear the ground regarding the law governing the matter. This is best done by a referenceto certain enunciations in the decisions relied on at the bar.

6. In Joshi Ram Krishan v. Rukmini Bai : AIR1949 All449 , the High Court at Allahabad has referred to the enunciation of the Lahore High Court in the case mentioned hereunder as laying down the law correctly in such matters as the one on hand. The passage reads thus:

'In Mt. Teka Devi v. Gopal Das, AIR 1930 Lah 2S9 = 122 Ind Cas 570, it was observed that

'It is, therefore, the duty of the Court before proceeding further, to determine judicially whether the person alleged to be incapable of managing himself or his affairs, is really a 'lunatic' in this sense. Secondly, it must be remembered that this finding has got very far reaching consequences and must be given after very great care and deliberation. It may have the immediate effect of putting a human being under restraint. It might deprive him for a time, or for ever of the possession and management of his property. It will be prima facie evidence of his 'lunacy', and may be read in proof of it in other proceedings. The Legislature has, therefore, laid down an elaborate procedure for conducting an enquiry into this matter, and this procedure must be strictly followed. The Court cannot and ought not to deal lightheartedly with this important question, and it should not consider itself relieved of its responsibility by the mere circumstance that some or all the relatives of the person concerned have declared that he is 'lunatic'.

The above is undoubtedly an accurate statement of the policy underlying the precaution enjoined by the Legislature in the various provisions of the Act as a preliminary condition to the final exercise of jurisdiction by the Court in declaring a person as a lunatic, and I am inclined to consider the present case in the light of the principle so enunciated.'

7. In Vemasani Narasamma v. Vemasani Rama Naidu : AIR1951 Mad648 , Govincla Menon J. has, in referring to the dicta of Rankin C. J. observed thus:

'Reliance is placed upon the dicta of Rankin C. J. in Saraj Basini Devi v. Mohendranath : AIR1927 Cal636 , where that learned Judge was of opinion that where an application is made for directing an inquisition for the purpose of ascertaining whether a person is of unsound mind and incapable of managing his

own affairs, the first thing which has to be done is that the learned Judge, either with notice to the lunatic or without notice, should carefully consider whether the case is one which calls for an order directing an inquisition. In the words of the learned Judge an order directing an inquisition into a man's state of mind is a very serious thing and such an order is intended by the Statute to be a judicial determination carefully made upon adequate materials. It the Judge considers that it calls for an order directing an inquisition, then it is his obvious duty to record an order directing an inquisition. When once that is done, then the petition is a spent petition, which has served its primary purpose. The Judge should then, by the combined operation of Section 64 read with Sections 40, 41 and 42, Lunacy Act, take certain steps with regard to notice and such notice should be given as provided by Section 40 of the Act. Thereafter he should hold the inquisition either by himself or with the aid of assessors.'

Then again it is observed thus:

'It seems to me that having regard to the course which the petition took and having regard to the previous history of the fight between the appellant and the respondents which had gone through the gamut of a Sub Court suit as well as an appeal in the High Court, the learned Judge need not have gone into the elaborate procedure to find out whether prima facie it was proved that this Chiuna Rama Naidu was a lunatic or not.'

8. In Ranjit Kumar v. Secy. I, P. A. Society : AIR1963 Cal261 , a Division Bench of the Calcutta High Court has referred with approval to an enunciation of the High Court at Lahore, as laying down certain norms of procedure to be followed by a Court in proceedings under the Lunacy Act. We need do no more than reproduce the said enunciation occurring in paras 25 and 26 of the aforementioned report. It reads thus:

'We can only end this sorry and miserable procedural illegality of the grossest kind by quoting the Division Bench observations of the Allahabad High Court in Mohamed Yaqub v. Nazir Ahmed, AIR 1920 All 80 at p. 81:

'An inquiry of that sort once started must be prosecuted to the bitter end and has all the attributes of an ordinary trial on an issue of fact, and therefore when a person is alleged to be insane, before his or her family are cast into an elaborate proceeding of that sort, there ought to be a careful and thorough preliminary inquiry and the Judge ought to satisfy himself that there is a real ground for an inquisition. It is impossible to lay down any hard and fast rule, but in the first place it is essential that the person making the application should support it ordinarily by affidavit or by tendering himself for examination to the Judge on oath in support of the allegations in his application. The learned Judge would naturally want to know what relationship existed, what previous association had existed between the appellant and the alleged insane person, how long the illness was supposed to have lasted, why no previous steps had been taken and what were the present symptoms and actual cause winch had induced the applicant to makethe application as and when he did.'

Again at p. 81 the learned Judge, in that case observed:

'(26) In many cases, and we think that this case is probably one, it would be very desirable that the Judge should seek some personal interview with the alleged insane, not with a view to forming a final opinion as to her real condition, but to satisfy himself in the ordinary way, in which a layman can do, that there is a real ground for supposing that there is something abnormal in her mental condition which might bring her within the Lunacy Act.'

9. In Sarjug Singh v. Gulabo Kuer : AIR1969 Pat33 , a learned single Judge of the Patua High Court, after a review of many decisions Bearing on the point, has summarised the principles enunciated therein in para 17 of the said report. It is sufficient to refer to one of them only and it reads:

' 'Unsoundness of mind' implies some unusual feature of the mind as has tended to make it different from the normal and has in effect impaired the man's capacity to look after his affairs in a manner in which another person without such mental irregularity would be able to do in the matter of his own. The idea suggests some derangement of the mind, whatever be its degree, and it is not to be confused with or taken as analogous to a mere mental weakness or lack of intelligence. A man

may find it difficult to answer questions of particular class but if he intelligently answers questions of various other sorts concerning himself, his family and property, be cannot be classed with men of unsound mind being unable to manage their affairs. If a man is able to understand and answers questions on various matters except those relating to arithmetical calculations, he cannot be regarded as mentally unsound, although he would be held as having a weak or undeveloped mind.'

10. Viewed in the light of the above mentioned principles, we are clearly of the view that the contentions of the appellant ought not to prevail. The learned District Judge, before proceeding to hold an inquisition has had an opportunity to see the alleged lunatic and examine him as he thought fit in the circumstances. This clearly he was entitled to do in law before proceeding to hold the inquisition proper. It is only on availing himself of such an opportunity, he has opined thus:

'I had privilege of observing the demeanour of this person Koterayaswamy. He is normal, He appears to understand normal things of life. He appears to be not an educated person, but he is a worker attending to the field work and the domestic affairs. He even states that a marriage has been proposed to him and betrothal had taken place. I bad put those questions to him by taking him unawares whether he understands different subjects put at differentcontexts. He understands every question that was pot to him. I am satisfied that he is neither a lunatic nor a born idiot.'

11. So long as the procedure followed by the Court below cannot be seriously found fault with, we do not think it either proper or appropriate to interfere with the above said conclusion of the learned District judge. If, after such an examination, the Court considers it unnecessary to proceed further in the matter of inquisition, such a course, In our opinion, was perfectly open to it having regard to the combined effect of Sections 41 and 62 of the Lunacy Act. It also seems to us that the power to hold an inquisition under Section 62 is discretionary, the nature of sub exercise of discretion being judicial. In the facts and circumstances of this case we are satisfied that the learned District Judge has neither ignored any relevant principle nor applied any principle which is irrelevent, in coming to the

conclusion as aforesaid.

12. But it is argued that the material documentary evidence placed before the Court had not been considered at all. It is true that on that day the matter was considered by the Court below, two certified copies of documents containing certain statements of the maternal grandfather of the alleged lunatic, had been made available. As can be seen from the enunciations reproduced earlier, sub statements of near relatives are not conclusive of the matter. Hence we do not find any merit in either of the contentions of the appellant.

13. The result is that the appealdeserves to fail, and is accordingly dismissed. No costs.

14. Appeal dismissed.