

In Re: Basharat Ali Chowdhry

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Court : Kolkata

Decided On : May-04-1896

Reported in : (1897)ILR24Cal133

Judge : Macpherson and ;Hill, JJ.

Appellant : In Re: Basharat Ali Chowdhry

Judgement :

Macpherson and Hill, JJ.

1. We have read the affidavits and have heard learned Counsel on both sides, and are clearly of opinion that this is not a matter in which we should interfere even if we could properly do so.

2. It appears that Basharat Ali Chowdhry, a resident of the Tipperah District, was many years ago declared under Act XXXV of 1858 to be a lunatic by the Chief Civil Court of that District. When the occurrences complained of took place, Mr. Sandys was the appointed manager of his estate, and the petitioner, Syud Mahomed Hashira was the appointed guardian of his person. The latter under the Act was charged with the care and maintenance of the lunatic ward, but unquestionably he was in the performance of his duties in complete subordination to the Civil Court, which appointed him and could remove him for sufficient cause.

3. On the 18th November 1894 the petitioner and the lunatic were allowed to leave the Tipperah District, for a 4 months' tour in the Upper Provinces, the object being to give the lunatic; the advantage of change of air and scene. On the 22nd December they went to Calcutta and remained there till the 18th February 1895, when the petitioner applied to the District Judge for the extension of the time allowed for tour. This was refused, and he was directed to return immediately with his ward. We need not refer in detail to the correspondence which then ensued, and which is set out in the affidavits; it is enough to say generally that the petitioner was, through Mr. Sandys, repeatedly directed to return with his ward, and that he made repeated excuses for not doing so, mainly on the ground that the ward was unwilling to go, and that he had been placed under medical treatment, which rendered it inadvisable that he should go.

4. On the 21st March the District Judge sent Mr. Sandys to Calcutta to bring back the ward, and gave him a letter which concluded thus: 'Syud Mahomed Hashim, at present guardian of the person of the ward, is hereby suspended until further orders.' On the 25th he telegraphed to Mahomed Hashim to make over the ward to Mr. Sandys immediately. The ward was made over and taken back to Tipperah, and a copy of the Judge's letter of the 21st was sent by Mr. Sandys to the petitioner. We are asked to do two things,---to reinstate the guardian, and to direct that the lunatic be made over to his care in Calcutta: for that purpose the lunatic must be taken out of the jurisdiction of the Court which has control over him to a place where that Court would have no control over either him or the guardian. We have to consider the interests of the lunatic quite apart from the interests of the guardian, and it in no way follows that the interests of both are the same.

5. Act XXXV of 1858 certainly contemplates that a lunatic who is brought under the operation of the Act should remain where he ordinarily resides, that is within the jurisdiction of the Court which has found him to be a lunatic, and which has appointed the manager of his estate and the guardian of his person. The Act does not provide for residence out of the jurisdiction, although there may be cases, in which this is very desirable for a time at least. In England it has been allowed, on the committee giving security to produce the lunatic when called upon to do so. Possibly this Court would interfere if a strong case was made, and a District Court

had unreasonably and improperly refused permission. We need not however consider what the power of the Court in this respect is, as in our opinion no case for the exercise of it in the interest of the lunatic has been made. We are not satisfied that it was in March 1895, much less than it is now, necessary for the lunatic to remain in Calcutta. It would require much stronger proof than is furnished by the affidavit of the petitioner to induce us to direct the removal of the lunatic from the jurisdiction of the Court which has control over him. We may add that the District Judge has shown no disinclination to allow the lunatic to leave the jurisdiction when it was considered for his benefit to go, and there is no reason to suppose that he will not continue to do what he considers beneficial to him.

6. Even, therefore, if we considered that the Judge should have allowed the lunatic to remain in Calcutta in March 1895, we could not, on the materials before us, direct that he be sent back there.

7. Now as regard the guardian. Some strong comments have been made on the action of Mr. Sandys, the irregularities in the proceedings of the Judge, and the injustice said to have been done to the petitioner, and we think it right to express briefly our view of the matter.

8. The Judge was certainly under the impression that the petitioner wished, to remain in Calcutta for his own convenience rather than for the benefit of the ward, and a perusal of the affidavits has failed to convince us that the impression was wrong.

9. From the 22nd December to the 18th February we hear nothing of the lunatic being under medical treatment, and the application of the last mentioned date had nothing to do with his condition mental or bodily. When that failed he was taken to a leading practitioner, who gave a very guarded certificate to the effect that there was no objection to the lunatic remaining longer in Calcutta, and that his mental condition was improving under the effect of change. The latter view was obviously, however, not the result of personal observation, and must have been based on information received. The certificate when submitted to the Judge did not produce the desired effect, and it is not till the 11th March that there is any suggestion of the lunatic being put under medical treatment for the infirmity from which he had

been suffering for so many years. On the 17th March a certificate was obtained from another leading practitioner, and we do not doubt the truth of what is stated in it. To our minds it does not, however, prove very much, and furnishes no sufficient excuse for the disobedience of the guardian. The lunatic ward had not been and was riot then suffering from any illness which prevented his return, and the idea of putting him under treatment for his mental infirmity was clearly an afterthought.

10. We must, however, say that the Judge's mode of communicating with the guardian through Mr. Sandys was not right, and probably created unnecessary friction. The guardian was not subordinate to the manager, and many of the orders, which were very peremptory, did not even purport to be in the Judge's name, although it was doubtless known that they emanated from him. The manager also sent him a letter containing serious reflections on his character, which certainly ought not to have been sent.

11. It is argued that the order for suspension was illegal and that the guardian has been greatly prejudiced, as, if there had been an order for removal properly communicated, he would have had a right of appeal. We do not think he is entitled to any consideration on this account. He was, when suspended, acting in contempt of the Judge's authority, and he has never since made submission to it. He has not attempted to account to the Judge for his conduct or asked to be reinstated, and he cannot, under the circumstances, gain anything by the omission to make a final order for his removal. He wants, indeed, now to be reinstated on his own terms, which are, apparently, that he is to remain in Calcutta, and that the lunatic ward is to be brought from Tipperah and made over to his care here. This cannot be allowed.

12. The rule is discharged. We make no order as to costs.