

Judgment sheet

THE HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD.

Miscellaneous Appeal No. 36 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For hearing of CMA No.2484/2023.
2. For hearing of main case.

Date of hearings : 08.03.2024, 11.03.2024 & 15.03.2024.

Date of decision : 27.05.2024.

M/s. Parkash & Ravi Kumar advocates for appellant.

M/s. Imdad Ali R.Unar & Shahzad Ali Daudpoto advocate for respondent No.1.

Mr. Sohail Ahmed, Advocate for Respondent No.3.

J U D G M E N T

KHADIM HUSSAIN SOOMRO, J- Through this appeal, the appellant has impugned order dated 17.08.2023, passed by learned IInd. Additional District Judge, Hyderabad, in Protection Petition No. 04 of 2023 [*re: Mst. Shahul Talpur vs Meer Shah Muhammad Talpur and others*], whereby an application under Section 29 of the Sindh Mental Health Chapter-V of Act, 2013 **(The Act)** filed by the Respondent No.1 was allowed; therefore, he prayed for set aside the aforesaid order.

2. Pithily facts of the case are that Respondent No.1 / applicant, Mst. Shahul Talpur initiated proceedings under Section 29 of the Sindh Mental Health Act, 2013, asserting that Mir Ghulam Akbar, son of Mir Rasool Bux Talpur **(patient)**, aged approximately 75/80 years, is suffering from a mental disorder. She further contends that formal medical treatment for the patient was administered at Maher Medical Centre, Block-4 Karachi, whereupon medical practitioners diagnosed him as a patient with dementia. Additionally, she alleges that the

appellant, due to the mental illness of the patient, has displayed avaricious behaviour, exploiting his status as the sole male member of the family to unlawfully seize control of family assets and bank accounts; hence, engage in financial forgery, thereby causing financial harm to the family. Furthermore, she asserts compliance with the statutory requirement and has obtained the consent of the Advocate General of Sindh for the aforementioned proceedings under Section 29, Chapter 5 of the Act, 2013.

3. Upon receipt of said application, notices were duly served upon the respondents and the purportedly patient. Respondents No.1 and 3, represented by their counsel, appeared and submitted separate objections. They vehemently contested the assertions made by the applicant, asserting that the application lacks merit under the law. They allege that the consent was purportedly obtained by the applicant from the Advocate General of Sindh by way of misrepresentation and fraud. The Advocate General of Sindh initiated an inquiry, as demonstrated by a letter dated 18.08.2023 bearing reference No. AG/3296 of 2023 substantiates their claim.

4. Learned counsel for the appellant has contended that Respondent No.1, without obtaining prior permission from Advocate General Sindh, has filed an application before the trial Court which is not maintainable. He has also contended that a psychiatrist cannot treat the disease in which the patient is suffering. He has further contended that there is no evidence demonstrating the mental condition of a patient. He also contended that Respondent No.1 had filed an application on the basis of false and baseless assertions. He argues that the learned Additional District Judge Hyderabad lacks jurisdiction to entertain such an application and make a decision on the matter, as that power lies with the District Judge.

5. Conversely, learned counsel for the Respondent has contended that the patient is suffering from a mental disease, and he was privately treated by a psychiatrist in Mehar Medical Centre Karachi. He has contended that the Additional District Judge and District Judge have the same powers under the procedural law. He also contended that prior to filing the application before the trial court, the Respondent obtained permission from the Advocate General Sindh as per the requirement of the Sindh Mental Health Act, 2013, which is part and parcel of the record. He urged the appellant to deprive his sister of their father's property and to drag them into litigation filed the instant appeal. He has also urged that Respondent No.3 look after the patient right from the beginning, and due to her mental illness, she could not marry. The appeal is not maintainable and is liable to be dismissed.

6. I have heard the learned counsel for both parties and scanned material available on the record. The counsel first raised the point of jurisdiction that the Additional District Judge has no jurisdiction to pass the impugned order as per section 2 (e) of The Sindh Mental Health Act, 2013, and only a District Judge has jurisdiction to adjudicate upon the matter. For the purpose of analysis, the relevant section is reproduced as under:-

"Court of Protection" means a District Court having jurisdiction under this Act in matters specified herein and designated as such by the Government;

7. Section 3 of the West Pakistan Civil Courts Ordinance, 1962 delineated three tiers of judicial authority: the Court of District Judge, the Court of Additional District Judge, and the Court of Civil Judge. According to subsection (2) of Section 8.6 of the Ordinance mentioned above, an Additional District Judge shall fulfil duties delegated by a District Judge and, in executing said duties, shall exercise commensurate authority as the

District Judge. Moreover, when vested with authority concerning assigned responsibilities, an Additional District Judge shall exercise the powers vested in the District Judge. In circumstances where a matter is transferred to an Additional District Judge by the District Judge in accordance with the provisions of Section 6 of the West Pakistan Civil Courts Ordinance, 1962, the Additional District Judge shall adjudicate upon the said matter with the authority of a District Judge. The record and procedure demonstrate that the application was filed in the court of the District Judge, which was transferred to the learned Additional District Judge for adjudication, who passed an interim order, which is the subject matter of the existing appeal. Hence, no case of excessive jurisdiction is made out.

8. The contention raised by the learned for the Appellant that Respondent, No 1, without obtaining permission from Advocate General Sindh, has filed an application before the trial court, which is not maintainable and hit by Section 29 of the Act, 2013. The perusal of the section demonstrates that if an individual is in possession of assets and stands suffering from a mental disorder, the Court of Protection, within the jurisdiction of which a mentally ill person resides, is vested with the jurisdiction to decide an application filed by any of his kin with the written consent of the Advocate General of Sindh. This application seeks to initiate an investigation to determine whether the individual is indeed mentally disordered and thereby incapable of autonomously managing himself, his assets, and affairs. For connivance, the relevant section is reproduced as under:-

"29 Whenever any person is possessed of property and is alleged to be mentally disordered, the Court of Protection, within whose jurisdiction such person is residing may, upon application by any of his relatives having obtained consent in writing of the Advocate General of Sindh, by order direct an inquiry for the purpose of ascertaining whether such person is mentally disordered and incapable of managing himself, his property and his affairs."

9. The record and procedure of the learned trial court reflect that permission from the office of Advocate General Sindh through Ref No 350/2023 was obtained by respondent No 1 prior to filing the application before the trial court. Hence, this argument of the learned counsel carries no weight.

10. The next contention of the counsel for the appellant is that the disease Dementia is to be treated by a Neurologist and not by a psychiatrist. It is worth noting that the disease in which the alleged patient is suffering has not been denied, but the counsel for the appellant submits that the patient is to be treated by the Neurologist and not by the psychiatrist. As per medical literature, diagnosing dementia requires a comprehensive evaluation by a qualified healthcare professional, but no particular medical treatment or protocol can be suggested through this judgment. However, collaboratively with a multidisciplinary team can provide a comprehensive evaluation, establish an accurate diagnosis, and develop a personalized care plan tailored to the patient's individual needs. The learned trial court has already issued the directions through an order impugned in the present appeal to achieve this purpose.

11. Another essential aspect of the present appeal is that the appellant has impugned the interim order deals with an investigation of whether the patient is suffering from a mental disease or not; the court will decide if the purportedly mentally ill person really has a mental disorder and can't take care of himself or his affairs or is a danger to himself or others. Finally, the court can make any order that is best for the person based on the opinion of medical experts. Considering the uncertainty surrounding the patient's diagnosis of a potential mental illness, it would be hasty to draw any conclusions just yet, let the investigation be completed, and let the report come on the record. The legislature has purposefully incorporated section 30 (3) of the Act, which is reproduced as under:-

"(3) Upon the completion of the inquiry, the Court shall determine whether the alleged mentally disordered person

is suffering from a mental disorder and is incapable of managing himself and his affairs, or may come to a special finding that such person lacks the capacity to manage his affairs, but is capable of managing himself and is not dangerous to himself or to others, or may make any such order it deems fit, in the circumstances of the case, in the best interests of such person."

12. In light of the above discussion, the instant appeal is dismissed. However, the Impugned order dated 17.08.2023 passed by learned IInd Additional District Judge, Hyderabad, in Protection Petition No. 04 of 2023, is hereby maintained with a modification that the Medical Superintendent of Sir Cowasjee Jehangir Institute of Psychiatry shall constitute a board comprises of two senior Psychiatrist experts, and one Nerulogist who may examine the patient and submits their report with the trial court within 15 days after receipt of this order. The appellant and respondents are directed to cooperate with the above-cited medical board. The office is directed to communicate this order to the Medical Superintendent of Sir Cowasjee Jehangir Institute of Psychiatry for compliance.

J U D G E