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

+ **CRL.REV.P. 682/2024**

ANKUR ABBOT

..... Petitioner

Through: Mr. Viraj Datar, Senior Advocate
with Mr. Kapil Madan, Mr. Gurmukh
Singh, Mr. Vansh Bajaj, Ms. Muskan
Kaur Kalra, Mr. Saurabh Joon,
Advocates.

versus

EKTA ABBOT & ANR.

..... Respondents

Through: Mr. Rajiv Bajaj, Ms. Shruti Khosla,
Advocates with respondents in-
person.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

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20.05.2024

CRL.M.A. 15712/2024 (exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application is accordingly disposed of.

CRL.REV.P. 682/2024, CRL.M.A. 15713/2024 (Stay on execution proceedings) & CRL.M.A. 15714/2024 (Additional documents)

3. The present petition filed under Sections 397/401 read with Section 482 of the Cr.P.C. seeks the following prayers:

“a) Issue an appropriate order or direction under Sections 397/401 read with 482 of the code of criminal procedure, 1973 for setting aside the order dated 07.05.2024 passed by Ld. Additional Session Judge Sh. Gautam Manan in Criminal Appeal Bearing no. 394/2023



titled “ANKUR ABBOT VERSUS EKTA ABBOT”.

b) Issue an appropriate order or direction under Section 397/401 read with 482 of the code of criminal procedure, 1973 for setting aside the impugned order 01.11.2023 passed by Ld. MM Aneeza Bishnoi in MC NO.79/2017 titled “EKTA ABBOT VS ANKUR ABBOT”.

c) Pass an order or direction under Section 482 of the Code of Criminal Procedure, 1973 thereby granting a stay on the execution proceedings titled as Ekta Abbot Versus Ankur Abbot having EX. CRL. NO. 115/2022.

d) Pass an order or direction under section 105 read with 116 and 120 of the Mental Healthcare Act, 2017 to refer the matter to a medical board.

e) Pass an order thereby directing the Ld. MM to follow the mandatory procedure as stipulated under Section 105, 116 and 120 of the Mental Healthcare Act 2017.

f) Issue any other order or directions that this Hon’ble Court may deem fit and proper in the facts and circumstances of the present case.”

4. Learned Senior Counsel appearing on behalf of the petitioner submits that in an application filed under Section 105/116 and 120 of the Mental Healthcare Act, 2017, the Learned Metropolitan Magistrate *vide* order dated 01.11.2023 declined to exercise its power. It is submitted that an appeal against the said order has now been dismissed by the Learned Additional Sessions Judge in Crl.A. No. 394/2023 *vide* order dated 07.05.2024.

5. Learned Senior counsel appearing on behalf of the petitioner submits that the petitioner had sought the exercise of the powers by the Learned Metropolitan Magistrate in terms of Section 105 of the Mental Healthcare Act, 2017.

6. It is pointed out that the petitioner is suffering from Bipolar Affective Disorder and documents with regard to the same had been



produced before the concerned Courts.

7. It is submitted that instead of passing directions with regard to the examination of the petitioner before any concerned medical Board, the Learned ASJ had come to the conclusion that the medical record of the petitioner reflects that he is not suffering from any mental illness. Learned ASJ while affirming and upholding the observation of Learned Metropolitan Magistrate, recorded as under:

“16. True that application of Section 105 Mental Health Care Act, 2017 is mandatory but facts of the case does not indicate that appellant is suffering from any mental illness under Section 105 of the Act or affecting his mental faculties or preventing to form a rational opinion or judgment pertaining to matter in issue, for the following reasons:

i) *Medical record of appellant does not mention that appellant has any issues which has impaired his judgment or his capacity to recognize the reality or ability to meet ordinary demands of life to track.*

ii) *Record of appellant shows that he is litigating in the present case for last eight years and during all these times, the appellant has been pursuing his defence diligently.*

iii) *While hearing the present appeal, this Court also interacted with appellant, in which the appellant participated and also come up with various suggestions to resolve the matter amicably which shows that he doesn't have a impaired judgment or incapacity to recognize reality or ability to meet ordinary demands of life.*

iv) *Appellant filed an application only when the proceedings were taken against him in the execution petition filed on behalf of respondent, as if, he suddenly realized that he is suffering from mental illness. It is matter of record that before filing of Execution petition, appellant did not come up with any plea under Mental Healthcare Act, despite he being in litigation for past so many years.”*

8. Learned counsel appearing on behalf of the respondents submits that the Learned Metropolitan Magistrate and the Learned ASJ did not



commit any error in passing the impugned orders inasmuch as the present ground of mental illness has been taken for the first time after a gap of approximately 8 years in the proceedings. It is further pointed out that the learned Single Judge of this Court in CONT. CAS(C) No. 467/2022 *vide* judgment dated 19.02.2024 has taken into consideration the aforesaid issue and issued show cause to the present petitioner under Contempt of Courts act for violating the order dated 31.03.2022 passed by the Learned Metropolitan Magistrate, awarding interim maintenance.

9. Heard learned counsel for the parties and perused the record.

10. As per the provision of Section 105 of the Mental Healthcare Act, the examination of the person applying under the same would be required to assess the degree of such mental illness as claimed by such a person seeking protection under said act.

11. Issue notice.

12. Learned counsel for the respondents accepts notice and seeks time to file a response to the present petition. Let the same be done before the next date of hearing with an advance copy to Learned counsel for the petitioner.

13. It is pointed out that the execution proceeding with respect to the petition is listed for 27.08.2024. List this petition for hearing on 10.07.2024.

AMIT SHARMA, J

MAY 20, 2024/ab

[Click here to check corrigendum, if any](#)