

17. Admission of, and regulation with respect to, voluntary patients.—(1) On receipt of a request under section 15 or section 16, the medical officer in charge shall make such inquiry as he may deem fit within a period not exceeding twenty-four hours and if satisfied that the applicant or, as the case may be, the minor requires treatment as an inpatient in the psychiatric hospital or psychiatric nursing home, he may admit therein such applicant or, as the case may be, minor as a voluntary patient.

(2) Every voluntary patient admitted to a psychiatric hospital or psychiatric nursing home shall be bound to abide by such regulations as may be made by the medical officer in charge or the licensee of the psychiatric hospital or psychiatric nursing home.

18. Discharge of voluntary patients.—(1) The medical officer in-charge of a psychiatric hospital or psychiatric nursing home shall, on a request made in that behalf,—

(a) by any voluntary patient; and

(b) by the guardian of the patient, if he is a minor voluntary patient, discharge, subject to the provisions of sub-section (3) and within twenty-four hours of the receipt of such request, the patient from the psychiatric hospital or psychiatric nursing home.

(2) Where a minor voluntary patient who is admitted as an inpatient in a psychiatric hospital or psychiatric nursing home attains majority, the medical officer in charge of such hospital or nursing home shall, as soon as may be, intimate the patient that he has attained majority and that unless a request for his continuance as an inpatient is made by him within a period of one month of such intimation, he shall be discharged, and if, before the expiry of the said period, not request is made to the medical officer in charge for his continuance as an inpatient, he shall, subject to the provisions of sub-section (3), be discharged on the expiry of the said period.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), where the medical officer in charge of a psychiatric hospital or psychiatric nursing home is satisfied that the discharge of a voluntary patient under sub-section (1) or sub-section (2) will not be in the interest of such voluntary patient, he shall, within seventy-two hours of the receipt of a request under sub-section (1), or, if no request under sub-section (2) has been made by the voluntary patient before the expiry of the period mentioned in that sub-section, within seventy-two hours of such expiry constitute a Board consisting of two medical officers and seek its opinion as to whether such voluntary patient needs further treatment and if the Board is of the opinion that such voluntary patient needs further treatment in the psychiatric hospital or psychiatric nursing home, the medical officer shall not discharge the voluntary patient, but continue his treatment for a period not exceeding ninety days at a time.

PART II

ADMISSION UNDER SPECIAL CIRCUMSTANCES

19. Admission of mentally ill persons under certain special circumstances.—(1) Any mentally ill person who does not, or is unable to, express his willingness for admission as a voluntary patient, may be admitted and kept as an inpatient in a psychiatric hospital or psychiatric nursing home on an application made in that behalf by a relative or a friend of the mentally ill

person if the medical officer in charge is satisfied that in the interest of the mentally ill person it is necessary so to do:

Provided that no person so admitted as an inpatient shall be kept in the psychiatric hospital or psychiatric nursing home as an inpatient for a period exceeding ninety days except in accordance with the other provisions of this Act.

(2) Every application under sub-section (1) shall be in the prescribed form and be accompanied by two medical certificates, from two medical practitioners of whom one shall be a medical practitioner in the service of Government, to the effect that the condition of such mentally ill person is such that he should be kept under observation and treatment as an inpatient in a psychiatric hospital or psychiatric nursing home:

Provided that the medical officer, in charge of the psychiatric hospital or psychiatric nursing home concerned may, if satisfied that it is proper so to do, cause a mentally ill person to be examined by two medical practitioners working in the hospital or in the nursing home instead of requiring such certificates.

(3) Any mentally ill person admitted under sub-section (1) or his relative or friend may apply to the Magistrate for his discharge and the Magistrate may, after giving notice to the person at whose instance he was admitted to the psychiatric hospital or psychiatric nursing home and after making such inquiry as he may deem fit either allow or dismiss the application.

(4) The provisions of the foregoing sub-section shall be without prejudice to the power exercisable by a Magistrate before whom the case of a mentally ill person is brought, whether under this section or under any other provision of this Act, to pass a reception order, if he is satisfied that it is necessary so to do in accordance with the relevant provisions of this Act.

COMMENTS

Any mentally ill person who does not, or is unable to, express his willingness for admission as a voluntary patient can be admitted and kept as an inpatient in a psychiatric hospital or psychiatric nursing home on an application made by a relative or a friend of the mentally ill person.

PART III

RECEPTION ORDERS

A.—Reception order on applications

20. Application for reception order.—(1) An application for a reception order may be made by—

(a) the medical officer in charge of a psychiatric hospital or psychiatric nursing home, or

(b) by the husband, wife or any other relative of the mentally ill person.

(2) Where a medical officer in charge of a psychiatric hospital or psychiatric nursing home in which a mentally ill person is undergoing treatment under a temporary treatment order is satisfied that—

(a) the mentally ill person is suffering from mental disorder of such a nature and degree that his treatment in the psychiatric hospital or, as the case may be, psychiatric nursing home is required to be continued for more than six months, or

(b) it is necessary in the interests of the health and personal safety of the mentally ill person or for the protection of others that such person shall be detained in a psychiatric hospital or psychiatric nursing home,

he may make an application to the Magistrate within the local limits of whose jurisdiction the psychiatric hospital or, as the case may be, psychiatric nursing home is situated, for the detention of such mentally ill person under a reception order in such psychiatric hospital or psychiatric nursing home, as the case may be.

(3) Subject to the provisions of sub-section (5), the husband or wife of a person who is alleged to be mentally ill or, where there is no husband or wife, or where the husband or wife is prevented by reason of any illness or absence from India or otherwise from making the application, any other relative of such person may make an application to the Magistrate within the local limits of whose jurisdiction the said person ordinarily resides, for the detention of the alleged mentally ill person under a reception order in a psychiatric hospital or psychiatric nursing home.

(4) Where the husband or wife of the alleged mentally ill person is not the applicant, the application shall contain the reasons for the application not being made by the husband or wife and shall indicate the relationship of the applicant with the alleged mentally ill person and the circumstances under which the application is being made.

(5) No person,—

(i) who is a minor, or

(ii) who, within fourteen days before the date of the application, has not seen the alleged mentally ill person,

shall make an application under this section.

(6) Every application under sub-section (3) shall be made in the prescribed form and shall be signed and verified in the prescribed manner and shall state whether any previous application had been made for inquiry into the mental condition of the alleged mentally ill person and shall be accompanied by two medical certificates from two medical practitioners of whom one shall be a medical practitioner in the service of Government.

21. Form and contents of medical certificates.—Every medical certificate referred to in sub-section (6) of section 20 shall contain a statement,—

(a) that each of the medical practitioners referred to in that sub-section has independently examined the alleged mentally ill person and has formed his opinion on the basis of his own observations and from the particulars communicated to him; and

(b) that in the opinion of each such medical practitioner the alleged mentally ill person is suffering from mental disorder of such a nature and degree as to warrant the detention of such person in a psychiatric hospital or psychiatric nursing home and that such detention is necessary in the interests of the health and personal safety of that person or for the protection of others.

22. Procedure upon application for reception order.—(1) On receipt of an application under sub-section (2) of section 20, the Magistrate may make a reception order, if he is satisfied that—

(i) the mentally ill person is suffering from mental disorder of such a nature and degree that it is necessary to detain him in a psychiatric hospital or psychiatric nursing home for treatment; or

(ii) it is necessary in the interests of the health and personal safety of the mentally ill person or for the protection of others that he should be so

detained, and a temporary treatment order would not be adequate in the circumstances of the case and it is necessary to make a reception order.

(2) On receipt of an application under sub-section (3) of section 20, the Magistrate shall consider the statements made in the application and the evidence of mental illness as disclosed by the medical certificates.

(3) If the Magistrate considers that there are sufficient grounds for proceeding further, he shall personally examine the alleged mentally ill person unless, for reasons to be recorded in writing, he thinks that it is not necessary or expedient to do so.

(4) If the Magistrate is satisfied that a reception order may properly be made forthwith, he may make such order, and if the Magistrate is not so satisfied, he shall fix a date for further consideration of the application and may make such inquiries concerning the alleged mentally ill person as he thinks fit.

(5) The notice of the date fixed under sub-section (4) shall be given to the applicant and to any other person to whom, in the opinion of the Magistrate, such notice shall be given.

(6) If the Magistrate fixes a date under sub-section (4) for further consideration of the application, he may make such order as he thinks fit, for the proper care and custody of the alleged mentally ill person pending disposal of the application.

(7) On the date fixed under sub-section (4), or on such further date as may be fixed by the Magistrate, he shall proceed to consider the application *in camera*, in the presence of—

(i) the applicant;

(ii) the alleged mentally ill person (unless the Magistrate in his discretion otherwise directs);

(iii) the person who may be appointed by the alleged mentally ill person to represent him; and

(iv) such other person as the Magistrate thinks fit,

and if the Magistrate is satisfied that the alleged mentally ill person, in relation to whom the application is made, is so mentally ill that in the interests of the health and personal safety of that person or for the protection of others it is necessary to detain him in a psychiatric hospital or psychiatric nursing home for treatment, he may pass a reception order for that purpose and if he is not so satisfied, he shall dismiss the application and any such order may provide for the payment of the costs of the inquiry by the applicant personally or from out of the estate of the mentally ill person, as the Magistrate may deem appropriate.

(8) If any application is dismissed under sub-section (7), the Magistrate shall record the reasons for such dismissal and a copy of the order shall be furnished to the applicant.

B.—Reception orders on production of mentally ill persons before Magistrate

23. Powers and duties of police officers in respect of certain mentally ill persons.—(1) Every officer in charge of a police station,—

(a) may take or cause to be taken into protection any person found wandering at large within the limits of his station whom he has reason to believe to be so mentally ill as to be incapable of taking care of himself, and

- (b) shall take or cause to be taken into protection any person within the limits of his station whom he has reason to believe to be dangerous by reason of mental illness.

(2) No person taken into protection under sub-section (1) shall be detained by the police without being informed, as soon as may be, of the grounds for taking him into such protection, or where, in the opinion of the officer taking the person into protection, such person is not capable of understanding those grounds, without his relatives or friends, if any, being informed of such grounds.

(3) Every person who is taken into protection and detained under this section shall be produced before the nearest Magistrate within a period of twenty-four hours of taking him into such protection excluding the time necessary for the journey from the place where he was taken into such protection to the court of the Magistrate and shall not be detained beyond the said period without the authority of the Magistrate.

COMMENTS

Where the Magistrate not only failed to examine the alleged insane person but on the contrary recorded in the Reception Order that he had not personally seen him at all, it was a serious dereliction of duty; *Dial Singh v. I.G. of Prison*, 1998 GLJ 661.

24. Procedure on production of mentally ill person.—(1) If a person is produced before a Magistrate under sub-section (3) of section 23, and if, in his opinion, there are sufficient grounds for proceeding further, the Magistrate shall—

- examine the person to assess his capacity to understand,
- cause him to be examined by a medical officer, and
- make such inquiries in relation to such person as he may deem necessary.

(2) After the completion of the proceedings under sub-section (1), the Magistrate may pass a reception order authorising the detention of the said person as an inpatient in a psychiatric hospital or psychiatric nursing home,—

- if the medical officer certifies such person to be a mentally ill person, and
- if the Magistrate is satisfied that the said person is a mentally ill person and that in the interests of the health and personal safety of that person or for the protection of others, it is necessary to pass such order:

Provided that if any relative or friend of the mentally ill person desires that the mentally ill person be sent to any particular licensed psychiatric hospital or licensed psychiatric nursing home for treatment therein and undertakes in writing to the satisfaction of the Magistrate to pay the cost of maintenance of the mentally ill person in such hospital or nursing home, the Magistrate shall, if the medical officer in charge of such hospital or nursing home consents, make a reception order for the admission of the mentally ill person into that hospital or nursing home and detention therein:

Provided further that if any relative or friend of the mentally ill person enters into a bond, with or without sureties for such amount as the Magistrate may determine, undertaking that such mentally ill person will be properly taken care of and shall be prevented from doing any injury to himself or to others, the Magistrate may, instead of making a reception order, hand him over to the care of such relative or friend.

COMMENTS

Magistrate acting mechanically on Police report without applying mind in ordering detention of an alleged lunatic found on medical observation to be a normal person amounts to wrongful detention and violation of Article 21 of the Constitution. The State is liable to pay damages for wrongful detention leading to a violation of Article 21 of the Constitution; *Ezilda Fernandes v. Chetan Sanghi, Sub-Divisional Magistrate*, (1997) 4 Bom CR 641.

25. Order in case of mentally ill person cruelly treated or not under proper care and control.—(1) Every officer in charge of a police station, who has reason to believe that any person within the limits of his station is mentally ill and is not under proper care and control, or is ill-treated or neglected by any relative or other person having charge of such mentally ill person, shall forthwith report the fact to the Magistrate within the local limits of whose jurisdiction the mentally ill person resides.

(2) Any private person who has reason to believe that any person is mentally ill and is not under proper care and control, or is ill-treated or neglected by any relative or other person having charge of such mentally ill person, may report the fact to the Magistrate within the local limits of whose jurisdiction the mentally ill person resides.

(3) If it appears to the Magistrate, on the report of a police officer or on the report or information derived from any other person, or otherwise that any mentally ill person within the local limits of his jurisdiction is not under proper care and control, or is ill-treated or neglected by any relative or other person having the charge of such mentally ill person, the Magistrate may cause the mentally ill person to be produced before him, and summon such relative or other person who is, or who ought to be in charge of, such mentally ill person.

(4) If such relative or any other person is legally bound to maintain the mentally ill person, the Magistrate may, by order, require the relative or the other person to take proper care of such mentally ill person and where such relative or other person wilfully neglects to comply with the said order, he shall be punishable with fine which may extend to two thousand rupees.

(5) If there is no person legally bound to maintain the mentally ill person, or if the person legally bound to maintain the mentally ill person refuses or neglects to maintain such person, or if, for any other reason, the Magistrate thinks fit so to do, he may cause the mentally ill person to be produced before him and, without prejudice to any action that may be taken under sub-section (4), proceed in the manner provided in section 24 as if such person had been produced before him under sub-section (3) of section 23.

C.—Further provisions regarding admission and detention of certain mentally ill persons

26. Admission as inpatient after inquisition.—If any District Court holding an inquisition under Chapter VI regarding any person who is found to be mentally ill is of opinion that it is necessary so to do in the interests of such person, it may, by order, direct that such person shall be admitted and kept as an inpatient in a psychiatric hospital or psychiatric nursing home and every such order may be varied from time to time or revoked by the District Court.

27. Admission and detention of mentally ill prisoner.—An order under section 30 of the Prisoners Act, 1900 (3 of 1900) or under section 144 of the Air Force Act, 1950 (45 of 1950), or under section 145 of the Army Act, 1950 (46 of 1950), or under section 143 or section 144 of the Navy Act, 1957 (62 of 1957), or under section 330 or section 335 of the Code of Criminal Procedure, 1973 (2 of 1974), directing the reception of a mentally ill prisoner into any psychiatric hospital or psychiatric nursing home, shall be sufficient authority for the admission of such person in such hospital or, as the case may be, such nursing home or any other psychiatric hospital or psychiatric nursing home to which such person may be lawfully transferred for detention therein.

28. Detention of alleged mentally ill person pending report by medical officer.—(1) When any person alleged to be a mentally ill person appears or is brought before a Magistrate under section 23 or section 25, the Magistrate may, by order in writing, authorise the detention of the alleged mentally ill person under proper medical custody in an observation ward of a general hospital or general nursing home or psychiatric hospital or psychiatric nursing home or in any other suitable place for such period not exceeding ten days as the Magistrate may consider necessary for enabling any medical officer to determine whether a medical certificate in respect of that alleged mentally ill person may properly be given under clause (a) of sub-section (2) of section 24.

(2) The Magistrate may, from time to time, for the purpose mentioned in sub-section (1), by order in writing, authorise such further detention of the alleged mentally ill person for periods not exceeding ten days at a time as he may deem necessary:

Provided that no person shall be authorised to be detained under this sub-section for a continuous period exceeding thirty days in the aggregate.

COMMENTS

Section 28(1) of the Act confers jurisdiction on Magistrate to deal with a person who is alleged to be a lunatic when he is brought before the Magistrate. Such a person can be detained by an order of the Magistrate for such time not exceeding 10 days as may be in his opinion, necessary to enable the medical officer to determine whether such alleged lunatic is a person in respect of whom a Medical Certificate may be properly given; *Abdul Kareem v. T. Gopala Krishnan Nambisan*, 1990 Cri LJ 742.

29. Detention of mentally ill person pending his removal to psychiatric hospital or psychiatric nursing home.—Whenever any reception order is made by a Magistrate under section 22, section 24 or section 25, he may, for reasons to be recorded in writing, direct that the mentally ill person in respect of whom the order is made may be detained for such period not exceeding thirty days in such place as he may deem appropriate, pending the removal of such person to a psychiatric hospital or psychiatric nursing home.

D.—Miscellaneous provisions in relation to orders under this Chapter

30. Time and manner of medical examination of mentally ill person.—Where any order under this Chapter is required to be made on the basis of a medical certificate, such order shall not be made unless the person who has signed the medical certificate, or where such order is required to be made on the basis of two medical certificates, the signatory of the respective certificates, has certified that he has personally examined the alleged mentally ill person,—

- (i) in the case of an order made on an application, not earlier than ten clear days immediately before the date on which such application is made; and
- (ii) in any other case, not earlier than ten clear days immediately before the date of such order:

Provided that where a reception order is required to be made on the basis of two medical certificates such order shall not be made unless the certificates show that the signatory of each certificate examined the alleged mentally ill person independently of the signatory of the other certificate.

31. Authority for reception order.—A reception order made under this Chapter shall be sufficient authority—

- (i) for the applicant or any person authorised by him, or
- (ii) in the case of a reception order made otherwise than on an application, for the person authorised so to do by the authority making the order,

to take the mentally ill person to the place mentioned in such order or for his admission and treatment as an inpatient in the psychiatric hospital or psychiatric nursing home specified in the order or, as the case may be, for his admission and detention therein, or in any psychiatric hospital or psychiatric nursing home to which he may be removed in accordance with the provisions of this Act, and the medical officer in charge shall be bound to comply with such order:

Provided that in any case where the medical officer in charge finds accommodation in the psychiatric hospital or psychiatric nursing home inadequate, he shall, after according admission, intimate that fact to the Magistrate or the District Court which passed the order and thereupon the Magistrate or the District Court, as the case may be, shall pass such order as he or it may deem fit:

Provided further that every reception order shall cease to have effect—

- (a) on the expiry of thirty days from the date on which it was made, unless within that period, the mentally ill person has been admitted to the place mentioned therein, and
- (b) on the discharge, in accordance with the provisions of this Act, of the mentally ill person.

32. Copy of reception order to be sent to medical officer in-charge.—Every Magistrate or District Court making a reception order shall forthwith send a certified copy thereof together with copies of the requisite medical certificates and the statement of particulars to the medical officer in charge of the psychiatric hospital or psychiatric nursing home to which the mentally ill person is to be admitted.

33. Restriction as to psychiatric hospitals; and psychiatric nursing homes into which reception order may direct admission.—No Magistrate or District Court shall pass a reception order for the admission as an inpatient to, or for the detention of any mentally ill person in, any psychiatric hospital or psychiatric nursing home outside the State in which the Magistrate or the District Court exercises jurisdiction:

Provided that an order for admission or detention into or in a psychiatric hospital or psychiatric nursing home situated in any other State may be passed if the State Government has, by general or special order and after obtaining the consent of the Government of such other State, authorised the Magistrate or the District Court in that behalf.

34. Amendment of order or document.—If, after the admission of any mentally ill person to any psychiatric hospital or psychiatric nursing home under a reception order, it appears that the order under which he was admitted or detained or any of the documents on the basis of which such order was made is defective or incorrect, the same may, at any time thereafter, be amended with the permission of the Magistrate or the District Court, by the person or persons who signed the same and upon such amendment being made, the order shall have effect and shall be deemed always to have had effect as if it had been originally made as so amended, or, as the case be, the documents upon which it was made had been originally furnished as so amended.

35. Power to appoint substitute for person upon whose application reception order has been made.—(1) Subject to the provisions of this section the Magistrate may, by order in writing (hereinafter referred to as the order of substitution), transfer the duties and responsibilities under this Act, of the person on whose application a reception order was made, to any other person who is willing to undertake the same and such other person shall thereupon be deemed for the purposes of this Act to be the person on whose application the reception order was made and all references in this Act to the latter person shall be construed accordingly:

Provided that no such order of substitution shall absolve the person upon whose application the reception order was made or, if he is dead, his legal representatives, from any liability incurred before the date of the order of substitution.

(2) Before making any order of substitution, the Magistrate shall send a notice to the person on whose application the reception order was made, if he is alive, and to any relative of the mentally ill person who, in the opinion of the Magistrate, shall have notice.

(3) The notice under sub-section (2) shall specify the name of the person in whose favour it is proposed to make the order of substitution and the date (which shall be not less than twenty days from the date of issue of the notice) on which objections, if any, to the making of such order shall be considered.

(4) On the date specified under sub-section (3), or on any subsequent date to which the proceedings may be adjourned, the Magistrate shall consider any objection made by any person to whom notice was sent, or by any other relative of the mentally ill person, and shall receive all such evidence as may be produced by or on behalf of any such person or relative and after making such inquiry as the Magistrate may deem fit, make or refrain from making the order of substitution:

Provided that, if the person on whose application the reception order was made is dead and any other person is willing and is, in the opinion of the Magistrate, fit to undertake the duties and responsibilities under this Act of the

former person, the Magistrate shall, subject to the provisions contained in the proviso to sub-section (1), make an order to that effect.

(5) In making any substitution order under this section, the Magistrate shall give preference to the person who is the nearest relative of the mentally ill person, unless, for reasons to be recorded in writing the Magistrate considers that giving such preference will not be in the interests of the mentally ill person.

(6) The Magistrate may make such order for the payment of the costs of an inquiry under this section by any person or from out of the estate of the mentally ill person as he thinks fit.

(7) Any notice under sub-section (2) may be sent by post to the last known address of the person for whom it is intended.

36. Officers competent to exercise powers and discharge functions of Magistrate under certain sections.—In any area where a Commissioner of Police has been appointed, all the powers and functions of the Magistrate under sections 23, 24, 25 and 28 may be exercised or discharged by the Commissioner of Police and all the functions of an officer in charge of a police station under this Act may be discharged by any police officer not below the rank of an Inspector.

CHAPTER V

INSPECTION, DISCHARGE, LEAVE OF ABSENCE AND REMOVAL OF MENTALLY ILL PERSONS

PART I

INSPECTION

37. Appointment of Visitors.—(1) The State Government or the Central Government, as the case may be, shall appoint for every psychiatric hospital and every psychiatric nursing home, not less than five Visitors, of whom at least one shall be a medical officer, preferably a psychiatrist and two social workers.

(2) The head of the Medical Services of the State or his nominee preferably a psychiatrist shall be an *ex officio* Visitor of all the psychiatric hospitals and psychiatric nursing homes in the State.

(3) The qualifications of persons to be appointed as Visitors under sub-section (1) and the terms and conditions of their appointment shall be such as may be prescribed.

38. Monthly inspection by Visitors.—Not less than three Visitors shall, at least once in every month, make a joint inspection of every part of the psychiatric hospital or psychiatric nursing home in respect of which they have been appointed and examine every minor admitted as a voluntary patient under section 17 and, as far as circumstances will permit, every other mentally ill person admitted therein and the order for the admission of, and the medical certificates relating to, every mentally ill person admitted subsequent to the joint inspection immediately preceding, and shall enter in a book kept for that purpose such remarks as they deem appropriate in regard to the management and condition of such hospital or nursing home and of the inpatients thereof:

Provided that the Visitors shall not be entitled to inspect any personal records of an inpatient which in the opinion of the medical officer in charge are confidential in nature:

Provided further that if any of the Visitors does not participate in the joint inspection of the psychiatric hospital or psychiatric nursing home in respect of which he was appointed a Visitor for three consecutive months, he shall cease to hold office as such Visitor.

39. Inspection of mentally ill prisoners.—(1) Notwithstanding anything contained in section 38, where any person is detained under the provisions of section 144 of the Air Force Act, 1950 (45 of 1950), or section 145 of the Army Act, 1950 (46 of 1950), or section 143 or section 144 of the Navy Act, 1957 (62 of 1957), or section 330 or section 335 of the Code of Criminal Procedure, 1973 (2 of 1974),—

- (i) the Inspector-General of Prisons, where such person is detained in a jail; and
 - (ii) all or any three of the Visitors including at least one social worker appointed under sub-section (1) of section 37, where such person is detained in a psychiatric hospital or psychiatric nursing home,
- shall, once in every three months, visit such person at the place where he is detained, in order to assess the state of mind of such person and make a report thereon to the authority under whose order such person is so detained.

(2) The State Government may empower any of its officers to discharge all or any of the functions of the Inspector-General of Prisons under sub-section (1).

(3) The medical officer in charge of a psychiatric hospital or psychiatric nursing home wherein any person referred to in sub-section (1) is detained shall once in every six months, make a special report regarding the mental and physical condition of such person to the authority under whose order such person is detained.

(4) Every person who is detained in jail under the provisions of various Acts referred to in sub-section (1) shall be visited at least once in every three months by a psychiatrist, or, where a psychiatrist is not available, by a medical officer empowered by the State Government in this behalf and such psychiatrist or, as the case may be, such medical officer shall make a special report regarding the mental and physical condition of such person to the authority under whose order such person is detained.

PART II

DISCHARGE

40. Order of discharge by medical officer in charge.—(1) Notwithstanding anything contained in Chapter IV, the medical officer in charge of a psychiatric hospital or psychiatric nursing home may, on the recommendation of two medical practitioners one of whom shall preferably be a psychiatrist, by order in writing, direct the discharge of any person, other than a voluntary patient detained or undergoing treatment therein as an inpatient, and such person shall thereupon be discharged from the psychiatric hospital or psychiatric nursing home.

Provided that no order under this sub-section shall be made in respect of a mentally ill prisoner otherwise than as provided in section 30 of the Prisoners Act, 1900 (3 of 1900) or in any other relevant law.

(2) Where any order of discharge is made under sub-section (1) in respect of a person who has been detained or is undergoing treatment as inpatient in pursuance of an order of any authority, a copy of such order shall be immediately forwarded to that authority by the medical officer in charge.

41. Discharge of mentally ill persons on application.—Any person detained in a psychiatric hospital or psychiatric nursing home under an order made in pursuance of an application made under this Act, shall be discharged on an application made in that behalf to the medical officer in charge by the person on whose application the order was made:

Provided that no person shall be discharged under this section if the medical officer in charge certifies in writing that the person is dangerous and unfit to be at large.

42. Order of discharge on the undertaking of relatives or friends, etc., for due care of mentally ill person.—(1) Where any relative or friend of a mentally ill person detained in a psychiatric hospital or psychiatric nursing home under section 22, section 24 or section 25 desires that such person shall be delivered over to his care and custody, he may make an application to the medical officer in charge who shall forward it together with his remarks thereon to the authority under those orders the mentally ill person is detained.

(2) Where an application is received under sub-section (1), the authority shall, on such relative or friend furnishing a bond, with or without sureties, for such amount as such authority may specify in this behalf undertaking to take proper care of such mentally ill person, and ensuring that the mentally ill person shall be prevented from causing injury to himself or to others, make an order of discharge and thereupon the mentally ill person shall be discharged.

43. Discharge of person on his request.—(1) Any person (not being a mentally ill prisoner) detained in pursuance of an order made under this Act who feels that he has recovered from his mental illness, may make an application to the Magistrate, where necessary under the provisions of this Act, for his discharge from the psychiatric hospital or psychiatric nursing home.

(2) An application made under sub-section (1) shall be supported by a certificate either from the medical officer in charge of the psychiatric hospital or psychiatric nursing home where the applicant is undergoing treatment or from a psychiatrist.

(3) The Magistrate may, after making such inquiry as he may deem fit, pass an order discharging the person or dismissing the application.

44. Discharge of person subsequently found on inquisition to be of sound mind.—If any person detained in a psychiatric hospital or psychiatric nursing home in pursuance of a reception order made under this Act is subsequently found, on an inquisition held in accordance with the provisions of Chapter VI, to be of sound mind or capable of taking care of himself and managing his affairs, the medical officer in charge shall forthwith, on the production of a copy of such finding duly certified by the District Court, discharge such person from such hospital or nursing home.

PART III

LEAVE OF ABSENCE

45. Leave of absence.—(1) An application for leave of absence on behalf of any mentally ill person (not being a mentally ill prisoner) undergoing treatment as an inpatient in any psychiatric hospital or psychiatric nursing home may be made to the medical officer in charge,—

- (a) in the case of a person who was admitted on the application of the husband or wife, by the husband or wife of such mentally ill person, or where by reason of mental or physical illness, absence from India or otherwise, the husband or wife is not in a position to make such application, by any other relative of the mentally ill person duly authorised by the husband or wife, or
- (b) in the case of any other person, by the person on whose application the mentally ill person was admitted:

Provided that no application under this sub-section shall be made by a person who has not attained the age of majority.

(2) Every application under sub-section (1) shall be accompanied by a bond with or without sureties for such amount as the medical officer in charge may specify, undertaking—

- (i) to take proper care of the mentally ill person,
- (ii) to prevent the mentally ill person from causing injury to himself or to others, and
- (iii) to bring back the mentally ill person to the psychiatric hospital or, as the case may be, psychiatric nursing home, on the expiry of the period of leave.

(3) On receipt of an application under sub-section (1), the medical officer in charge may grant leave of absence to the mentally ill person for such period as the medical officer in charge may deem necessary and subject to such conditions as may, in the interests of the health and personal safety of the mentally ill person or for the protection of others, be specified in the order:

Provided that the total number of days for which leave of absence may be granted to a patient under this sub-section shall not exceed sixty days.

(4) Where the mentally ill person is not brought back to the psychiatric hospital or psychiatric nursing home on the expiry of the leave granted to him under this section, the medical officer in charge shall forthwith report that fact to the Magistrate within the local limits of whose jurisdiction such hospital or nursing home is situate and the Magistrate may, after making such inquiry as he may deem fit, make an order directing him to be brought back to the psychiatric hospital or psychiatric nursing home, as the case may be.

(5) Nothing contained in this section shall apply to a voluntary patient referred to in section 15 or section 16 and the provisions of section 18 shall apply to him.

46. Grant of leave of absence by Magistrate.—(1) Where the medical officer in charge refuses to grant leave of absence to a mentally ill person under section 45, the applicant may apply to the Magistrate within the local limits of whose jurisdiction the psychiatric hospital or psychiatric nursing home wherein the

mentally ill person is detained is situate, for the grant of leave of absence to the mentally ill person and the Magistrate may, if he is satisfied that it is necessary so to do, and on the applicant entering into a bond in accordance with the provisions of sub-section (2), by order, grant leave of absence to the mentally ill person for such period and subject to such conditions as may be specified in the order.

(2) Every bond referred to in sub-section (1) shall be with or without sureties and for such amount as the Magistrate may decide and shall contain the undertaking referred to in sub-section (2) of section 45.

(3) The Magistrate shall forward a copy of his order to the medical officer in charge and on receipt of such order the medical officer in charge shall entrust the mentally ill person to the person on whose application the leave of absence was granted under this section.

PART IV

REMOVAL

47. Removal of mentally ill person from one psychiatric hospital or psychiatric nursing home to any other psychiatric hospital or psychiatric nursing home.—(1) Any mentally ill person other than a voluntary patient referred to in section 15 or section 16 may, subject to any general or special order of the State Government, be removed from any psychiatric hospital or psychiatric nursing home to any other psychiatric hospital or psychiatric nursing home within the State, or to any other psychiatric hospital or psychiatric nursing home in any other State with the consent of the Government of that other State:

Provided that no mentally ill person admitted to a psychiatric hospital or psychiatric nursing home under an order made in pursuance of an application made under this Act shall be so removed unless intimation thereof has been given to the applicant.

(2) The State Government may make such general or special order as it thinks fit directing the removal of any mentally ill prisoner from the place where he is for the time being detained, to any psychiatric hospital, psychiatric nursing home, jail or other place of safe custody in the State or to any psychiatric hospital, psychiatric nursing home, jail or other place of safe custody in any other State with the consent of the Government of that other State.

48. Admission, detention and retaking in certain cases.—Every person brought into a psychiatric hospital or psychiatric nursing home under any order made under this Act, may be detained or as the case may be, admitted as an inpatient therein until he is removed or is discharged under any law, and in case of his escape from such hospital or nursing home he may, by virtue of such order, be re-taken by any police officer or by the medical officer in charge or any officer or servant of such hospital or nursing home, or by any other person authorised in that behalf by the medical officer in charge, and conveyed to, and received and detained or, as the case may be, kept as an inpatient in such hospital or nursing home:

Provided that in the case of a mentally ill person (not being a mentally ill prisoner) the power to re-take as aforesaid under this section shall not be exercisable after the expiry of a period of one month from the date of his escape.

49. Appeal from orders of Magistrate.—Any person aggrieved by any order of a Magistrate, passed under any of the foregoing provisions may, within sixty days from the date of the order, appeal against that order to the District Court within the local limits of whose jurisdiction the Magistrate exercised the powers, and the decision of the District Court on such appeal shall be final.

CHAPTER VI

JUDICIAL INQUISITION REGARDING ALLEGED MENTALLY ILL PERSON POSSESSING PROPERTY, CUSTODY OF HIS PERSON AND MANAGEMENT OF HIS PROPERTY

50. Application for judicial inquisition.—(1) Where an alleged mentally ill person is possessed of property, an application for holding an inquisition into the mental condition of such person may be made either—

- (a) by any of his relatives, or
- (b) by a public curator appointed under the Indian Succession Act, 1925 (39 of 1925), or
- (c) by the Advocate-General of the State in which the alleged mentally ill person resides, or
- (d) where the property of the alleged mentally ill person comprises land or interest in land, or where the property or part thereof is of such a nature as can lawfully be entrusted for management to a Court of Wards established under any law for the time being in force in the State, by the Collector of the District in which such land is situate, to the District Court within the local limits of whose jurisdiction the alleged mentally ill person resides.

(2) On receipt of an application under sub-section (1), the District Court shall, by personal service or by such other mode of service as it may deem fit, serve a notice on the alleged mentally ill person to attend at such place and at such time as may be specified in the notice or shall in like manner, serve a notice on the person having the custody of the alleged mentally ill person to produce such person at the said place and at the said time, or being examined by the District Court or by any other person from whom the District Court may call for a report concerning the mentally ill person:

Provided that, if the alleged mentally ill person is a woman, who according to the custom prevailing in the area where she resides or according to the religion to which she belongs, ought not to be compelled to appear in public, the District Court may cause her to be examined by issuing a commission as provided in the Code of Civil Procedure, 1908 (5 of 1908).

(3) A copy of the notice under sub-section (2) shall also be served upon the applicant and upon any relative of the alleged mentally ill person or other person who, in the opinion of the District Court, shall have notice of judicial inquisition to be held by it.

(4) For the purpose of holding the inquisition applied for, the District Court may appoint two or more persons to act as assessors.

COMMENTS

(i) An application under section 50 can be filed only by the persons or authorities specified in clauses (a) to (d) of sub-section (1) of section 50. It is pursuant to the proceedings so initiated that the other provisions of the chapter including sections 52 to 55 would apply. Section 50 does not contemplate any application being made or a contention being raised by a tenant in proceedings for eviction against him; *Raj Kumar v. Rameshchand*, 1999 (8) SCC 29.

(ii) In case an alleged mentally ill person is possessed of property, an application for holding an inquisition into the mental condition of such person may be made either (i) by any of his relatives, or (ii) by a public curator appointed under the Indian Succession Act, 1925, or (iii) by the Advocate-General of the State in which the alleged mentally ill person resides, or (iv) where the property of the alleged mentally ill person comprises land or interest in land, or when the property or part thereof is of such a nature as can lawfully be entrusted for management to a Court of Wards, by the Collector of the District in which such land is situate, to the District Court within the local limits of whose jurisdiction the alleged mentally ill person resides.

51. Issues on which finding should be given by District Court after inquisition.—On completion of the inquisition, the District Court shall record its findings on,—

- (i) whether the alleged mentally ill person is in fact mentally ill or not, and
- (ii) where such person is mentally ill, whether he is incapable of taking care of himself and of managing his property, or incapable of managing his property only.

52. Provision for appointing guardian of mentally ill person and for manager of property.—(1) Where the District Court records a finding that the alleged mentally ill person is in fact mentally ill and is incapable of taking care of himself and of managing his property, it shall make an order for the appointment of a guardian under section 53 to take care of his person and of a manager under section 54 for the management of his property.

(2) Where the District Court records a finding that the alleged mentally ill person is in fact mentally ill and is incapable of managing his property but capable of taking care of himself, it shall make an order under section 54 regarding the management of his property.

(3) Where the District Court records a finding that the alleged mentally ill person is not mentally ill, it shall dismiss the application.

(4) Where the District Court deems fit, it may appoint under sub-section (1) the same person to be the guardian and manager.

COMMENTS

If the alleged mentally ill person is in fact mentally ill and is incapable of taking care of himself and of managing his property and the District Court records a finding to that effect then it should make an order for the appointment of a guardian to take care of his person and of a manager for the management of his property.

53. Appointment of guardian of mentally ill person.—(1) Where the mentally ill person is incapable of taking care of himself, the District Court or, where a direction has been issued under sub-section (2) of section 54, the Collector of the District, may appoint any suitable person to be his guardian.

(2) In the discharge of his functions under sub-section (1), the Collector shall be subject to the supervision and control of the State Government or of any authority appointed by it in that behalf.

54. Appointment of manager for management of property of mentally ill person.—(1) Where the property of the mentally ill person who is incapable of managing it is such as can be taken charge of by a Court of Wards under any law for the time being in force, the District Court shall authorise the Court of Wards