

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

CRIMINAL APPLICATION NO. 1398 OF 2016

Firoza Fazal Shaikh,
Age: 34 years, Occu: Household,
R/o. Mulla Galli, Harsool,
Aurangabad.

... APPLICANT

VERSUS

The State of Maharashtra,
At the instance of Begumpura
Police Station, Dist. Aurangabad.

... RESPONDENT

...

Mr. Rajendra S. Deshmukh, Advocate i/b Mr. Abhaysinh K. Bhosale,
Advocate for Applicant.

Mr. S. D. Ghayal, APP for Respondent / State.

Mr. S. S. Ladda, Advocate for Intervenor / Complainant.

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CORAM : INDIRA K. JAIN, J.

DATE : 22nd April, 2016.

ORAL JUDGMENT:

. Rule. Rule made returnable forthwith. Heard finally with
the consent of the learned counsel for parties.

2 By this application, Applicant / original Accused challenges the order dated 25th February, 2016 passed by the learned Additional Sessions Judge, Aurangabad below Exhibit 1 in Sessions Case No.300 of 2013.

3 Heard at length Mr. R. S. Deshmukh, learned counsel for Applicant and Mr. S. D. Ghayal, learned APP for State.

4 Facts giving rise to present application may be stated in nutshell as under:

- i. PSO Begumpura Police Station, Aurangabad filed charge-sheet in Crime No.I-34 of 2013 against the Applicant for the offences punishable under Sections 302 of 201 of the Indian penal Code. Applicant is an under trial prisoner. Sessions Case No.300 of 2013 arising out of said crime is pending before the learned Additional Sessions Judge, Aurangabad.
- ii. On 9th May, 2013 Accused was arrested. He moved an application Exhibit 7 under Section 330

of the Code of Criminal Procedure for his release on bail. It was rejected on 29th May, 2014. The order of rejection of application was challenged before this Court in Criminal Application No.6050 of 2014. By the order dated 19th December, 2012 (Coram : T. V. Nalawade, J.), the order passed below Exhibit 7 was set aside and matter was remanded to Trial Court for following the procedure laid down in Chapter XXV of the Code of Criminal Procedure. On remand Trial Court conducted enquiry afresh and vide impugned order rejected the plea raised by Accused that he is a person of unsound mind and consequently incapable of making his defence. Being aggrieved Applicant has challenged the said order in present application.

5 In his extensive arguments learned counsel for Applicant vehemently contended that Applicant was examined by experts at Mental Hospital, Yerwada. Reports dated 19th June, 2015, 25th July, 2015 and 27th August, 2015 persistently suggest that Applicant is of

unsound mind and needs long terms indoor treatment. It is submitted that report dated 27th August, 2015 also indicates that patient would also require family support and such environment which would be helpful for his speedy recovery. Learned counsel submits that on 4th February, 2016 Mental Hospital, Pune surprisingly issued a report showing that Accused is fit for trial and based on this report Trial Court came to the conclusion that Accused was not of unsound mind and not incapable to make his defence. Learned counsel submitted that number of reports in favour of Applicant would speak otherwise and the impugned order therefore needs to be set aside.

6 Per contra learned APP strongly supports the order passed by the Trial Court under Section 329 of the Code of Criminal Procedure. Learned APP submitted that report Exhibit 54 issued by Dr. Donglikar clearly shows that Accused is fit for trial and so Trial Court has rightly negated the plea raised by Applicant.

7 Mr. S. S. Ladda, learned counsel for Complainant is also heard. Learned counsel submitted that Accused is involved in series of offences and he never raised plea of unsoundness of mind in either of the cases. Learned counsel for Complainant contended that

number of documents were available on record before the Trial Court which would show that Accused was not a person of unsound mind but the plea of unsoundness of mind has been purposely raised to frustrate the trial and to anyhow get released on bail since all the efforts of Accused to get himself enlarged on bail have failed. Learned counsel submits that Trial Court has rightly negated the plea of unsoundness of mind and no interference is warranted in this application.

8 On perusal of report dated 19th June, 2015 submitted by Superintendent Regional Mental Hospital, Yerwada, Pune to the Sessions Court, Aurangabad it can be seen that mental status examination of patient was conducted and doctor opined that patient was showing some improvement in psychiatric symptoms and he needs further long term indoor management. Another report dated 23rd July, 2015 is on the same line. In third report dated 27th August, 2015 impression recorded by doctor is “at present patient is missing his relatives and feeling lonely. He is on above said medicines. He will require long term treatment as well as family support/environment would be helpful for his speech recovery.”

9 Next report is dated 16th November, 2015. It shows that patient showing improvement needs long term management. Presently he is not fit for trial. One more report dated 19th December, 2015 is by Visitors Committee consisting of Chief Judicial Magistrate, Pune, Superintendent Regional Mental Hospital, Yerwada, Pune and Deputy Superintendent Regional Mental Hospital, Pune. This report indicates that patient was of unsound mind and unfit for trial.

10 It is also evident that after the matter was remanded prosecution moved an application calling an expert as a witness. Trial Court issued summons to Medical Superintendent, Regional Mental Hospital, Yerwada, Pune and examined Dr. Bhalchandra s/o. Manikrao Donglikar as Court Witness No.1. In his evidence Dr. Donglikar stated that Dr. Gosavi was the treating doctor of Accused. He was regularly attending the patient. Dr. Gosavi was not examined in the course of enquiry.

11 Needless to state that enquiry under Section 329 of the Code of Criminal Procedure is treated as part of trial. Section 329 of the Code of Criminal Procedure provides that when Trial Court is of the view that Accused is a man of unsound mind and consequently

incapable of making his defence, after considering the medical report in this regard, he should postpone further proceeding of case and trial will start as soon as he is found to be capable of making his defence. It is mandatory that when plea of unsoundness of mind is raised before the Court it shall try the fact of unsoundness of mind and incapacity of Accused at the first instance.

12 Section 329 of the Code of Criminal Procedure contemplates two stages of procedure. First stage lays down that it must appear to the Judge that Accused placed on trial was of unsound mind and incapable of making his defence. Next stage that has to follow when it appears to Judge that Accused was of unsound mind and consequently incapable of making his defence, is that the fact of such unsoundness of mind and incapacity has to be enquired into on the basis of material placed before the Court. The decision in this regard cannot be based merely on the information received from doctors, but it must be based on evidence and the entire material brought forth before the Court.

13 In the present case it is apparent from the impugned order that Trial Court has not considered number of reports by experts,

voluminous documents containing 168 pages produced by Dr.Donglikar and did not examine competent witnesses in course of enquiry. In this premise enquiry cannot be said to be complete in all respects under Section 329 of the Code of Criminal Procedure and the order passed ignoring the relevant material on record is unsustainable in law. Hence the following order –

ORDER

- I. Criminal Application No.1398 of 2016 is allowed.
- II. Impugned order dated 25th February, 2016 passed below Exhibit 1 by the learned Additional Sessions Judge, Aurangabad in Sessions Case No.300 of 2013, is set aside.
- III. Matter is remanded to the Trial Court with a direction to enquire into the plea of unsoundness of mind and consequently his incapacity to make his defence, as raised by the Accused, afresh in accordance with the law.

- IV. While recording finding on the plea raised by Accused Trial Court is expected to consider the entire material and evidence on record.
- V. Trial Court shall complete the enquiry as early as possible and in any case within three months.
- VI. Rule is made absolute in above terms.

[INDIRA K. JAIN, J.]

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