

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.3796 OF 2016

Mod. Yousuf s/o Md. Abdul Haq ... APPLICANT

VERSUS

The State of Maharashtra ... RESPONDENT

.....
Shri M.V. Ghatge, Advocate for applicant
K.D. Mundhe, A.P.P. for State
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CORAM: A.I.S. CHEEMA, J.

DATED: 20th July, 2016.

ORAL ORDER :

1. Heard counsel for the applicant. Perused the application and the impugned order. The learned counsel submits that, the applicant- accused is facing trial under Section 302 of the Indian Penal Code before the Sessions Judge, Nanded. It is stated that, at the time of initial remand, the applicant had claimed insanity and at that time, the Magistrate had sent the accused for examination by the Civil Surgeon and the Civil Surgeon had given negative report. Subsequently, the matter came to be committed to the Court of Sessions and consequently, the applicant filed application to the Sessions Court relying on Sections 328 and 329 of the Code of Criminal

Procedure (Cr.P.C. for short) to submit that the applicant-accused was suffering for insanity and was unable to defend himself. It is stated that, the Sessions Court, instead of sending the applicant-accused to the Civil Surgeon or Psychiatrist has rejected the application. According to the counsel, as the application under Sections 328 and 329 of Cr.P.C. has been rejected, the applicant has lost his right to file appeal contemplated in sub-section (1A) of Section 329 of the Cr.P.C.

2. Heard learned A.P.P. also. Learned A.P.P. is opposing the application. According to him, at the level of Magistrate also it is found that the applicant was not suffering from insanity and the Sessions Judge has also not found that it was a case fit enough to invoke Section 329 of the Cr.P.C.

3. Going through the material and the impugned order, it can be seen, specially from para 8 of the order that, the Sessions Judge had various occasions to interact with the applicant-accused. Para 8 of the order reads as under :

"8. The accused had appeared before the Court numerous time since through Video conferencing from Aurangabad and since last two dates he is physically present before the Court. I have interacted to the accused during the video conferencing and listen to his complaint regarding his minor health problem and also that he be transferred to the Jail at Nanded. Since last more than one year I am observing the accused Mohd.

Yousuf. From my observation and experience I can ascertain and can state that he is normal person. He is not of unsound mind and in my opinion he is fit person capable of taking defence and to face the trial."

4. Sub-section (1) of Section 329 of the Cr.P.C. reads as under :

"(1) If at the trial of any person before a Magistrate or Court of Session, it appears to the Magistrate or Court that such person is of unsound mind and consequently incapable of making his defence, the Magistrate or Court shall, in the first instance, try the fact of such unsoundness and incapacity, and if the Magistrate or Court, after considering such medical and other evidence as may be produced before him or it is satisfied of the fact, he or it shall record a finding to that effect and shall postpone further proceedings in the case.

(1-A) If during trial, the Magistrate or Court of Sessions finds the accused to be of unsound mind, he or it shall refer such person to a psychiatrist or clinical psychologist for care and treatment, and the psychiatrist or clinical psychologist, as the case may be, shall report to the Magistrate or Court whether the accused is suffering from unsoundness of mind:

Provided that if the accused is aggrieved by the information given by the psychiatric or clinical psychologist, as the case may be, to the Magistrate, he may prefer an appeal before the Medical Board which shall consist of --

(a) head of psychiatry unit in the nearest Government hospital; and

(b) a faculty member in psychiatry in the nearest medical college."

5. Now if the above para 8 of the impugned order is

read with the above sub-section (1) of Section 329, it can be seen that it did not appear to the Court that such person is of unsound mind and consequently incapable of making a defence. When in the first instance itself it did not appear to the Court of Sessions that the accused appeared to be of unsound mind, the subsequent stages of the Section will not get attracted. The Sessions Court has observed that, the application of the accused was frivolous and that, delaying tactics were being resorted to.

6. Looking to the impugned order, it appears to be correct. I do not find any reason to invoke inherent powers to intervene in this matter. The application is rejected.

(A.I.S. CHEEMA, J.)