

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL REVISION NO. 89 OF 2017

Tiruvardan Singh, S/o Bharosh Ram Singh, aged about 27 years, R/o Village Namma Khurd, Police Station Udaipar, District Surguja (C.G.)

... Applicant

Versus

State of Chhattisgarh, through Station House Officer, Police Station Officer, Police Station Udaipar, District Surguja (C.G.)

... Non-applicant

For Applicant	:	Mr. Shakti Raj Sinha, Advocate.
For Non-applicant/State	:	Ms. M. Asha, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

22/02/2017

1. The present Criminal Revision has been filed by the Applicant against the order dated 5.10.2016 passed by the Fourth Additional Sessions Judge, Ambikapur (Surgjua), in Sessions Trial No. 88 of 2016.
2. Vide impugned order dated 5.10.2016, the Court below has rejected the application under Section 329 of CrPC moved by the present Applicant.
3. Counsel for the Applicant submits that the Applicant in the instant case is of an unsound mind and that he has been subjected to treatment for quite some time for this ailment. He further draws the attention of this Court to the letter dated 13.8.2016 written by the Jail Superintendent, Central Jail, Ambikapur, referring the applicant-accused to the Mental Hospital, Sendri at Bilaspur and submits that he however has not been shifted to the said Hospital till date. Counsel for the Applicant refers to the case of *Pujappa v. The State*, reported in 1991 Cri.L.J. 1189, wherein it was held that :

“7. It is thus clear that in the first instance it is mandatory that the fact of unsoundness of mind and incapacity to make defence have to be tried after taking such evidence including the medical evidence that may be necessary for the purpose. The records do not reveal whether the Sessions Court at any stage at least sought a final report from the Mental Hospital, Dharwar about the condition of the accused-appellant and on the question whether

was capable to make his defence. The amicus curiae invited our attention to a decision of the Bombay High Court in the case of Balu Ganapat v. State of Maharashtra, 1983 Cri LJ 1769 in which the learned Judges of the Division Bench observed that under section 329 Cr.P.C. if at the trial of any person, it appears to the Court that such person is of unsound mind and consequently incapable of making his defence, the Court shall, in the first instance." try the fact of such unsoundness and incapacity". In the instant case as in that case as well the record did not indicate compliance with this mandatory provision. All that happened was that the trial Court did take a prima facie view in favour of the accused and did postpone the trial pending his medical examination. But after medical examination the trial Court did not try the fact of the purported unsoundness and incapacity of the accused, did not record finding as to his mental condition and defending capacity and without fulfilling this initial obligation forth with resumed and concluded the trial on the main charge itself. The resulting lacuna was not innocuous but vital. This vital lacuna would vitiate the trial.

8. ...It is for this reason that S. 329, Cr.P.C. is attracted in the instant case and it was the duty of the Sessions Court to try the fact of unsoundness of mind and incapacity or otherwise of the appellant to make his defence. If only the Sessions Court had looked into the certificate issued finally by the R.M.O. of the District Hospital, Raichur it could have been able to understand its mandatory duty under section 329. Cr.P.C. In our view therefore failure to comply with this mandatory requirement has vitiated the trial and for that reason the judgment of conviction and sentence passed by the Sessions Court cannot sustain. The same have to be quashed and the case has to be remanded to the Sessions Court for its trial with a direction to comply with the provisions of S. 329, Cr.P.C."

4. In view of the aforesaid judgment, this Court is of the opinion that ends of justice would meet if the present Applicant is subjected to a medical examination, as has been envisaged under the provisions of Section 329 of CrPC.

5. Accordingly, it is directed that the Applicant who is presently languishing in Central Jail, Ambikapur be subjected to a medical examination particularly in respect of his mental status by the Medical Board at Bilaspur. The Trial Court is hereby directed that on the next date of hearing which is 23.2.2017 to 25.2.2017 it should immediately issue appropriate directions to the Jail Superintendent, Central Jail, Ambikapur to coordinate with the Chief Medical Officer, District Hospital, Bilaspur for the specific purpose of examining the

applicant-accused by a Medical Board on a date to be given by the Chief Medical Officer, District Hospital, Bilaspur. The applicant-accused should be produced before the Board for examination on the said date and a report in this regard should be collected immediately so that the same may be submitted to the Trial Court by the Jail Superintendent, Central Jail, Ambikapur.

6. With the aforesaid direction, the present Criminal Revision stands finally disposed of.

Sd/-
(P. Sam Koshy)
Judge

/Sharad/