

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRM-M-2839-2018 (O&M)

Date of Decision:23.01.2018

Ram Niwas

... Petitioner

Versus

State of Haryana

... Respondent

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. R.N. Lohan, Advocate for the petitioner.

....

TEJINDER SINGH DHINDSA, J.

Petitioner along with co-accused is facing trial in case FIR No.45, dated 11.01.2009 under Sections 420/467/468/471/120-B IPC and sections 7, 13, 49, 88 of the Prevention of Corruption Act, registered at Police Station City Jind. In brief FIR was registered after an information was received regarding discrepancies in the registration of vehicles by the office of R.T.A., Safidon.

An application was moved by Smt. Sunita i.e. wife of the petitioner under Section 328 Cr.P.C. for holding an inquiry and postponement of trial proceedings on the ground that her husband/accused Ram Niwas is suffering from a psychiatry problem and as such is unable to set up his defence. Such application was dismissed vide order dated 05.10.2015 passed by the learned Additional Sessions Judge, Jind. At that stage, petitioner filed CRM-M-35977-2015 assailing the order dated 05.10.2015.

CRM-M-35977-2015 was allowed by this Court vide order dated 02.03.2017 and the operative part of the order reads as follows:

“For the reasons recorded above, the present petition is allowed. Order dated 05.10.2015 (Annexure P-3) is set aside. The matter is remanded back to the trial Court for deciding the application moved by the wife of petitioner afresh and in terms of the mandate contained in Chapter XXV of the Code of Criminal Procedure and as per Sections 328, 329 and 330 Cr.P.C. An order afresh be passed within a period of two months from the date of receipt of a certified copy of this order. Trial proceedings qua accused Ram Niwas shall be kept in abeyance till the date of passing of the order afresh and would thereafter be subject to the outcome of such order.

Petition is allowed in the above said terms.”

In compliance of the directions issued by this Court, the trial Court considered the matter afresh and passed an order dated 09.10.2017 dismissing the application preferred by wife of the petitioner under Section 328 Cr.P.C.

Challenge in the instant petition is to an order dated 19.12.2017 passed by the learned Additional Sessions Judge, Jind (Annexure P-9), whereby an application moved on behalf of the petitioner seeking a fresh report with regard to his insanity/mental condition has been dismissed.

Learned counsel appearing for the petitioner has argued that the trial Court while passing the impugned order has ignored the fact that the petitioner is incapable of setting up his defence and thus, it was mandatory for the Court to have postponed further proceedings in the case as there was sufficient material on record to show that petitioner is of unsound mind.

Having heard counsel for the petitioner at length and having perused pleadings on record, this Court is of the considered view that the instant petition is wholly mis-conceived and deserves to be dismissed.

Sections 328 and 329 Cr.P.C. contain a condition essential for applicability of such provisions i.e. it must appear to the Court that the accused brought before it, is of unsound mind. If it does so appear, then the fact has to be tried and decided before calling upon the accused to stand trial for the offence charged. The issue of insanity is to be considered only where accused appears to be incapable of making his defence due to mental infirmity. The trial Court cannot act on its own opinion. There must be before the competent Court a statement of the Medical Officer and who must be examined. Where the Court decides that the accused is of unsound mind and consequently incapable of making his defence the trial is to be postponed.

Perusal of the order dated 09.10.2017 passed by the trial Court at Annexure P-4 would reveal that towards compliance of the order dated 02.03.2017 passed by this Court in CRM-M-35977-2015, the accused/petitioner was produced before the Chief Medical Officer, Civil Hospital, Jind. On account of lack of sufficient medical facilities to assess the medical condition of the petitioner, he was sent to Maharaja Agrasen Medical College and Hospital, Agroha and thereafter referred to PGIMS, Rohtak. Petitioner was medically examined at Medical College, Agroha as well as by the Medical Board of PGIMS, Rohtak and finally at the Institute of Mental Health, UHS, Rohtak. The petitioner concededly was examined by a Board of four doctors and it was clearly opined that having taken into consideration his old treatment records and as per ward observation reports, his sleep and appetite were normal. He did not show any gross behavioural disturbances. His old medical treatment records also reflected that he was maintaining

well on treatment. The categoric opinion furnished by the Board was that the petitioner was having no active psychopathology at the present and he is fit to stand trial. The opinion of the Medical Board as per report dated 03.10.2017 is appended as Annexure P-3. Suffice it to observe that the trial Court took notice of such opinion furnished by the Board while dismissing the application moved by wife of the petitioner under Section 328 Cr.P.C. vide order dated 09.10.2017 (Annexure P-4). Such order is not a subject matter of challenge in the instant petition.

The petitioner has thereafter chosen to file yet another application to seek an opinion as regards his medical status. In other words, the application was virtually seeking a review of the opinion already rendered by the Medical Board duly constituted. This Court is of the considered view that the application moved on behalf of the petitioner and which has been declined vide impugned order dated 19.12.2017 (Annexure P-9) is nothing but another attempt on his behalf to stall the trial proceedings. The trial Court has rightfully held the application to have been filed with a malafide intention.

There would be no occasion for this Court to differ with the opinion recorded by the Medical Board consisting of four eminent doctors. The impugned order is based on valid and cogent reasoning.

No interference in the matter is warranted.

Petition dismissed.

23.01.2018

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

i) Whether speaking/reasoned? Yes/No

ii) Whether reportable? Yes/No