

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRR No. 344 of 2019**

Shrikant Bhoi

**Applicant**

**Versus**

State of Chhatisgarh and Another

**Respondents**

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**Post for pronouncement of the order on 27 .11.2019**

**Sd/-**

**JUDGE**

**HIGH COURT OF CHHATTISGARH, BILASPUR****Order Reserved on : 27.08.2019****Order Delivered on : 27/11/2019****CRR No. 344 of 2019**

- Shrikant Bhoi S/o Shri Kailash Chandra Bhoi Aged About 50 Years R/o Ward No. 15 Old Civil Lines Mahasamund, Mentally Challenged Through Smt. Laxmi Bhoi W/o Shri Shrikant Bhoi, Aged About 46 Years, R/o Ward No. 15 Old Civil Lines Mahasamund, Chhattisgarh

**---- Applicant****Versus**

1. State Of Chhattisgarh Through District Magistrate, Mahasamund, District Mahasamund, Chhattisgarh
2. Chandraprabha Dewangan D/o Beersingh Dewangan Aged About 45 Years R/o Behind Ram Mandir, Purana Basti Mahasamund, Thana, Tahsil And District Mahasamund, Chhattisgarh

**---- Respondents**


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|---------------------------|-------------------------------------|
| For Applicant             | : Shri Arvind Shrivastava, Advocate |
| For Respondent No.1/State | : Shri Anil Tripathi, PL            |
| For Respondent No.2       | : Shri Dheeraj Wankhede, Advocate   |

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**Hon'ble Smt. Justice Rajani Dubey****C A V Order****27/11/2019**

Present revision has been filed against the order dated 13.02.2019 passed by the First Additional Sessions Judge, Mahasamund whereby the application filed by the applicant under Section 328 Cr.P.C. has been dismissed.

2. Brief facts of the case are that respondent No.2 filed complaint

against the applicant under Section 138 of the Negotiable Instruments Act before the Judicial Magistrate First Class, Mahasamund. The trial court by judgment dated 23.01.2018 convicted him under Section 138 of the N.I. Act and sentenced him to undergo SI for 6 months and to pay compensation of Rs. 2,40,000/-. This order was appealed by the applicant and during trial, applicant filed application under Section 328 Cr.P.C. which was dismissed by the learned appellate court. Hence, the present revision.

3. Counsel for the applicant submits that the appellate court has failed to consider the mandatory provisions and contents under Section 328 Cr.P.C. The sessions court has not considered the application of the applicant on merits and dismissed the same holding that the documents produced by the applicant does not show that he is of unsound mind or capable to defend his case properly though the said fact could have been examined, after direction for enquiry through medical board as per Section 328 (2) Cr.P.C. Learned Sessions Court has committed error in law in dismissing the application without going through the principles of law relating to unsound mind. Applicant has filed the medical report and certificate issued by the treating doctor and the said documents are sufficient to hold that the applicant is of unsound mind therefore the case ought to have been stayed till the applicant's mental condition is recovered. He has filed some medical documents in support of his case and also filed affidavit in support of his application dated 08.07.2019. Reliance has been placed in the matter of **Dashrath Vs. State of Madhya Pradesh in Cr.A. No. 1248/2005** vide its order dated April 2017 and **Vivian Rodrick Vs. State of West Bengal (1969 (3) SCC 176)**.

4. On the other hand, counsel for the State supported the order impugned.

5. Counsel for the respondent No.2 submit that Section 328 Cr.P.C. apply to the proceedings in the enquiry before the magistrate and does not be applicable in the appellate stage. To avail the benefit of Section 84 IPC, it must be proved that the accused was insane at the time of commission of the offence. Reliance has been placed in the matter of **Jai Lal Vs. Delhi Administration (AIR 1969 SC 15)**.

6. Heard counsel for the parties and perused the impugned orders challenged in this revision. It has been stated by the counsel for the applicant that during pendency of appeal, the mental condition of the applicant was not good and that he was continuously undergoing treatment and as such he was not in a position to defend himself. Section 328 Cr. P.C. reads as under :

**Section 328 : Procedure in cases in which accused being lunatic**

**Clause 1 :** In this section, when a magistrate is conducting an inquiry and if he has reasons to believe that the person being examined is of unsound mind and incapable of giving his defense. Then the magistrate shall conduct inquiry about the fact of unsoundness of mind and direct a civil surgeon of the district or any medical officer of state government to examine such person. Then he shall examine such medical officer as a witness and shall reduce the examination in writing.

**Clause ( 1A ):** If the medical officer finds the accused to be of unsound mind then he shall refer such person to a psychiatrist or clinical psychologist. He shall inform the

Magistrate whether the accused is suffering from mental retardation or unsoundness of mind.

Provided that if the accused is aggrieved by the information given by psychiatrist or psychologist to the Magistrate then he may prefer to appeal before the medical board. The medical board consists of:

- Head of psychiatry unit of Government hospital.
- A faculty member in psychiatry of a medical college.

**Clause 2:** The Magistrate may deal with the accused person in accordance with Section 330 in pending inquiry and examination.

**Clause 3:** If the Magistrate is informed that the person is of unsound mind as mentioned in sub section (1A) then he further determines whether the unsoundness of mind renders the accused incapable of defending himself. If the Magistrate believes that the accused is incapable to defend himself then he shall record a finding to that effect and examine the record evidence produced by prosecution. The magistrate has to question the advocate not the accused if he finds out that no prima facie case is made out against the accused and he shall discharge the accused instead of postponing the enquiry. It should be followed in the manner provided under Section 330. Provided that if prima facie case is found against the accused person then he shall postpone the proceeding with the opinion of the psychiatrist or psychologist for the treatment of the accused.

**Clause 4:** If the accused is suffering from mental retardation then he shall be examined whether he can defend himself. If the accused is found incapable then

the Magistrate shall deal with the accused in the manner provided under Section 330.

7. It is not clear from the order sheets and documents that during trial, the applicant has filed any application before the court below or not and after his conviction and sentence before the appellate court he has filed application under Section 328 Cr.P.C. The appellate court has observed that it has nowhere mentioned that the applicant was of unsound mind or that he was not in a position to defend himself. The applicant has filed medical papers which is also supported by affidavit before this Court, mentioning that he is not capable of defending himself and suffering from mental disorder.

8. Thus, in view of the above circumstances as indicated above, the court below has rightly rejected the application filed by the applicant under Section 328 Cr.P.C. Revision has not merits and the same is accordingly dismissed.

Sd/-

(Rajani Dubey)  
Judge