

\$~10

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 4070/2017 & CRL.M.A. 16335/2017**

NICOLAAS WILHELM VANDER WESTHUIZENPetitioner

Through: Mr. Anurag Jain and Ms. Ayushi
Sharma, Advocates

versus

NCB

.....Respondent

Through: Mr. B.S. Arora, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

%

11.04.2019

Petitioner's application under Section 329 of Cr.P.C. for determining if petitioner is of unsound mind, stands rejected by trial court vide impugned order 10th November, 2016.

Learned counsel for petitioner relies upon a decision of Coordinate Bench of this Court in *Kamal Bhardwaj Thr. His Father/Parokar Satish Kumar vs. The State (NCT of Delhi) And Another* 2016 (232) DLT 603, to submit that mental retardation is of various kinds and whether a person is of unsound mind or not, has to be determined on the basis of medical examination.

Learned counsel for respondent supports the impugned order and submits that an enquiry in terms of under Section 329 of Cr.P.C. has been made by the trial court and therefore, trial court has rightly concluded that petitioner is of sound mind.

The pertinent observation made in *Kamal Bhardwaj (Supra)* are as

under:-

“Sections 328 and 329 Cr.P.C. carve out a distinction between a lunatic and a person of unsound mind. A person may not be mentally ill but still due to mental retardation and absence of necessary growth he may not be competent to withstand the trial. Section 329 Cr.P.C. not only uses the word “unsoundness” but also “incapacity”. Thus to ascertain whether the accused is a person of unsound mind or not, the learned Trial Court is required to seek an opinion of Psychiatrist/Psychologist and form a final opinion as to whether he can be proceeded with trial. In the present case the procedure required by law has not been followed by the learned Trial Court.”

Upon hearing on perusal of impugned order and the decision cited, I find that the appropriate course to adopt is to obtain medical opinion regarding petitioner's mental condition. Accordingly, impugned order is set aside with direction to the concerned Jail Superintendent to ensure that petitioner be got medically examined in Institute of Human Behaviour and Allied Science (IHBAS), Delhi within a period of four weeks and the medical report be produced before the trial court to enable it to pass appropriate orders on petitioner's application under Section 329 of Cr. P.C afresh.

With aforesaid directions, this petition and the application are accordingly disposed of.

(SUNIL GAUR)
JUDGE

APRIL 11, 2019

v