

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

CRM No.M-25480 of 2020 (O&M)
Date of Decision: September 01, 2020

Kuldeep Singh

...Petitioner

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Rahul Rathore, Advocate,
for the petitioner.

ARCHANA PURI, J.

The present petition has been filed under Section 482 Cr.P.C. For setting aside the order dated 27.02.2020, whereby application filed at the behest of Lal Singh, father of one of the accused namely Kuldeep Singh under Section 329 Cr.P.C. for dropping proceedings against Kuldeep Singh in case titled as '*State vs. Kuldeep Singh etc.*' bearing in FIR No.260 dated 27.09.2016 under Sections 148, 149, 285, 307, 323, 324, 325, 506 IPC and Sections 25 and 27 of the Arms Act, registered at Police Station Kunjpura, District Karnal, had been dismissed.

During the course of the trial, when the case was at the stage of recording of the statement of the accused under Section 313 Cr.P.C., an application was filed at the instance of father of accused Kuldeep Singh for dropping of the proceedings qua Kuldeep Singh as Kuldeep Singh was

asserted to be mentally retarded/of unsound mind due to brain haemorrhage

suffered by him on 24.01.2017 while he was in judicial custody. The present application was filed on 01.02.2020 and thereafter, the case was adjourned further and the application was finally disposed of vide impugned order dated 27.02.2020, whereby said application was dismissed. Now, it is asserted by the petitioner that as per Section 329 Cr.P.C., the trial Court was required to conduct enquiry regarding mental status of the petitioner before coming to the conclusion about there being no merit in the said application. However, it is submitted that no such enquiry had been conducted by the trial Court. As such, a prayer has been made for setting aside of the impugned order.

Notice of motion.

Mr.Kapil Bansal, DAG, Haryana, accepts notice on behalf of the respondent-State.

At the instance of the respondent, learned State counsel has submitted that present application has been filed at a belated stage only when statements of accused under Section 313 Cr.P.C. were to be recorded. He submitted that said application is frivolous one and the observations have been so made, even by the trial Court, after going through the material brought on record. It is also submitted that petitioner Kuldeep Singh, who is also a Sarpanch of Gram Panchayat Bajidpur, is handling all affairs like signing the cheques and other Resolutions even after his medical ailment and therefore, learned trial Court has rightly dismissed the aforesaid application.

Heard.

Section 329 Cr.P.C. reads as herein given:-

“(1) If at the trial of any person before a Magistrate or Court of

Sessions, 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.

(1A) 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:

XXX

XXX

XXX

XXX

As per the aforesaid provision of law, during the course of trial, whenever it appears to the Magistrate or Court that such person is of unsound mind and 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.

The perusal of the material brought on record reveals that the application for dropping the proceedings against Kuldeep Singh-present petitioner was filed on the ground that he is mentally retarded/of unsound mind due to brain haemorrhage suffered by him while in judicial custody. The said application was filed on 01.02.2020 and the same was dismissed on 27.02.2020. However, from the impugned order, it is not evident as to whether

the filing of the aforesaid application.

As culled out from the material on record, FIR in question was got registered and the present petitioner was arrested and sent to judicial lock up on 28.09.2016. He suffered brain haemorrhage on 24.01.2017. Thereafter, he was operated upon by the doctor. Now, it is claimed that he is unable to understand the proceedings conducted against him as he has lost his speech and movement and cannot understand. Even disability certificate (Annexure P-4) has been placed on record, wherein it has been concluded by the doctors about the petitioner to be suffering 85% disability. Though this extent of disability solely cannot be a ground to conclude about the petitioner to be of unsound mind but however, as per requirement of Section 329 Cr.P.C., it was required on the part of the concerned Court to conduct enquiry about the unsoundness and incapacity of the petitioner, as asserted in the application.

Copies of zimni orders so passed by the trial Court have been placed on record and on perusal of the same, it is evident that at earlier stage, an application was moved at the behest of Kuldeep Singh for seeking exemption from personal appearance. While appraising the said application, it has been specifically mentioned in the order dated 07.09.2019 that there is mention in the application that accused Kuldeep Singh is suffering from paralysis and is getting treatment from Arvind Hospital, Karnal. At the time of filing of the application, besides an affidavit, even medical record relating to the ailment of the petitioner was annexed.

In the order dated 04.10.2017 passed by the trial Court, appraisal was made about the application filed for seeking exemption from personal appearance and in the zimni order, it has been specifically mentioned about the application so filed by father of Kuldeep Singh, wherein it is submitted that

treatment of a doctor of Arvind Hospital, Karnal and is unable to move and speak and that he is not going to recover from the illness very shortly. Considering the medical record qua ailment of petitioner Kuldeep Singh, his personal appearance was exempted by the trial Court till further orders.

Even though, an observation has been made in the impugned order about the petitioner to be working as Sarpanch of Gram Panchayat and also transacting business in that capacity but however, it is pertinent to mention that on the record, there is copy of the Resolution dated 06.02.2017 passed by the Gram Panchayat Bajidpur, which is placed on record as Annexure P-2, wherein it is stated that due to medical ailment, the Sarpanch is not able to look after the work of Gram Panchayat and his duties thereof were given to **Member (Panch) Vipin Kumar**. Even though, learned State counsel has placed reliance upon a Resolution dated 06.02.2017, which is stated to have been signed by the petitioner but however, it is pertinent to mention that Annexure P-2 is also of the same date and therefore, not much sustenance cannot be drawn on the basis of said resolution, keeping in view the Resolution passed by the Gram Panchayat, Bajidpur, which is Annexure P-2.

In the light of the aforesaid circumstances, it cannot be ascertained about the petitioner Kuldeep Singh to be transacting the proceedings of the Gram Panchayat, as so observed by learned trial Court in paragraph No.8 of the impugned order. Further in the impugned order, an observation has been made by learned trial Court that neither the applicant nor the accused had moved an application before the competent authority/Civil Surgeon for constituting the Board with a request to ascertain that the petitioner is incapable of doing anything and he has become completely mentally retarded. However, it was not so required on the part of the applicant,

who is father of Kuldeep Singh, to file any such application. By moving the

application in hand, the petitioner, who is facing trial, is stated to be incapacitated on account of brain haemorrhage and once the said application is so filed, the concerned Court is required to conduct enquiry about the unsoundness of one of the accused Kuldeep Singh, as so asserted and its onus cannot be shifted upon the petitioner to provide the medical evidence regarding the same.

Moreover, as detailed aforesaid, during the course of trial, such evidence has been produced by the petitioner, which is evident from the zimni orders, so passed by the trial Court and which had been relied upon while extending exemption from personal appearance to the petitioner.

In these circumstances, the impugned order dated 27.02.2020 (Annexure P-5), is not sustainable in the eyes of law and the same is set aside with a direction to the trial Court to proceed further on the application, so filed qua the unsoundness/incapacity of Kuldeep Singh, in terms of the process so required as envisaged under Sections 329 Cr.P.C. and to pass a fresh order.

However, these observations are circumscribed only for the purposes of disposal of the present petition and shall not be construed as expression on merits qua the unsoundness/incapacity of Kuldeep Singh as asserted in the application in hand. This order shall not have any affect on the findings ought to be recorded by the trial Court while proceeding on the application, as stated aforesaid.

Disposed of accordingly.

(ARCHANA PURI)
JUDGE

September 01, 2020
Vgulati

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No