

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.R. No.149 of 2021

- Tuleshwar Prasad Rajwade S/o Nandlal Rajwade Aged About 40 Years
R/o Village Kuruwan Police Station Vishrampur District Surajpur
Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh, Through Station House Officer, Police Station
Surajpur, District Surajpur Chhattisgarh

---- Non-applicant

For Applicant	:	Mr. Shakti Raj Sinha and Mr. Nishi Kant Sinha, Advocate.
For State	:	Mr. Gurudev I. Sharan, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

12-03-2021

Heard.

1. This Criminal Revision has been brought challenging the correctness, legality and propriety of the order dated 04.03.2020, passed in Sessions Trial No.77 of 2019 by the Court of Sessions Judge, Surajpur, District-Surajpur, C.G., dismissing the application of the applicant under Section 329 of Cr.P.C.
2. Learned counsel for the applicant submits that after the release of the applicant on bail, his counsel made a contact with the applicant to seek his instructions. Learned counsel for the applicant submits, that the applicant is behaving abnormally and he is unable to understand the questions. The family member of the applicant informed that the applicant is undergoing treatment from psychiatrist since the year 2015-

16 and he is also continuing on medication. Therefore, the application under Section 329 of Cr.P.C. was moved, praying for stay of the trial against the applicant. The learned trial Court then passed the impugned order and dismissed the application.

3. It is further submitted by the learned counsel for the applicant that the learned trial Court has passed the order, which is erroneous and incorrect. The only inquiry that was made by the learned Judge was by putting some questions to the applicant and it was on that basis, the conclusion has been recorded. This order is against the directions in provision under Section 329(1) of Cr.P.C. Hence, it is prayed that the impugned order may be set aside and relief be granted to the applicant.
4. Applicant has placed reliance on the judgment of M.P. High Court in the case of **Sher Singh @ Mullu Vs. State of Madhya Pradesh** in Criminal appeal No.541 of 2007 decided on 25.04.2017, the judgment of Orissa High Court in the case of **Snehaswakshayar Samal Vs. State of Orissa** in Cr.L.M.P. No.1474 of 2016 decided on 21.09.2017 and the judgment of this Court in Criminal Revision No.89 of 2017 between the **Tiruvardan Singh Vs. State of Chhattisgarh** decided on 22.02.2017.
5. Learned State counsel opposes the submission and submits that the learned trial Court has not committed any error in passing the impugned order, it has been rightly observed that the applicant was employee of S.E.C.L., he has never prayed earlier regarding his mental illness, made plea to the charge framed against him without any complaint. Further, the applicant has correctly answered the questions that were put to him by the learned Sessions Judge. Hence, the application has been moved under Section 329 of Cr.P.C. on a frivolous ground, which was not at all required to be entertained. Hence, it is prayed that this petition may be

dismissed.

6. Considered on the submissions made by the learned counsel for both the sides. Learned counsel for the applicant has filed documents in support of this revision petition. The copy of the applicant under Section 329 of Cr.P.C. also mentions about the production of the documents of treatment provided to the applicant regarding his mental illness. Hence, there was a need of detailed examination of all these aspects. The provision under Section 329(1) of Cr.P.C. is as follows:-

329. Procedure in case of person of unsound mind tried before Court.

(1) If at the trial of any person before a Magistrate or Court of Session, 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.

7. It is very clearly provided that the Magistrate of the Court shall for the first instance try the fact of such unsoundness and incapacity and the if the Magistrate or Court considering after such evidence and material as may be produced is specific then, he shall pass appropriate order. The learned Sessions Judge has made a formality by putting some questions to the applicant, instead of trying the fact of the said unsoundness of mind of the applicant. The trial means that the Judge has to permit production of evidence and decide the question. On the basis of such evidence, such proceeding has not been taken up by the learned trial Court, hence, this appears to be an error committed.

Hence, I am of this view that the learned trial Court has failed to exercise the jurisdiction that was available to it under Section 329(1) of Cr.P.C., therefore, the impugned order is not sustainable. The revision petition is allowed at the motion stage and the impugned order is set aside. The learned trial Court is directed to consider on the application filed by the applicant afresh and try the question afresh after inviting the evidence and then decide the question of unsoundness of mind of the applicant before proceeding to pass any order on application under Section 329 of Cr.P.C.

8. Accordingly, the petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Monika