

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**WRIT PETITION NO. 2091 OF 2021**

Karan Pradeep Nair  
Age 27 years, Occu. : Architect,  
Residing at : Plot 45/A, Silver Oak  
Estate, Ground Floor, Bhulabhai Desai  
Road, Mumbai – 400 026.

**...Petitioner**

**Versus**

1. State of Maharashtra  
L. T. Marg Police Station
2. Jitendra Pandurang Kadam  
(PI) – Marine Drive Police Station,  
R/o.5/185, Aaram Nagar, Seven  
Bungalows, Police Line, Andheri West,  
Mumbai – 400 061.

**...Respondents**

Mr. Rizwan Merchant, a/w Mr. J. R. Kshirsagar, i/b Mr.  
Pankaj B. Bafna, for the Petitioner.  
Mr. S. R. Shinde, APP for the State/Respondent no.1.

**CORAM: S. S. SHINDE &  
N. J. JAMADAR, JJ.**

**RESERVED ON: 23<sup>rd</sup> SEPTEMBER, 2021.  
PRONOUNCED ON: 6<sup>th</sup> OCTOBER, 2021.**

**ORDER:- [PER : N. J. JAMADAR, J.]**

1. This petition under Article 226 of the Constitution of India is preferred to quash and set aside the prosecution, being PW/361/2020, arising out FIR No.282/2020, dated 9<sup>th</sup> May, 2020, registered with L.T. Marg Police Station, Mumbai, for the

offences punishable under Sections 188, 269, 307, 324, 332, 353 of the Indian Penal Code, 1860 (“the Penal Code”), Section 27 read with Section 4 of the Arms Act, 1959 and Section 135 read with Section 37(1) of the Maharashtra Police Act, 1951.

**2.** The petition arises in the backdrop of the following facts:

(a) On 8<sup>th</sup> May, 2020, Jitendra Kadam (hereinafter referred to as, “the first informant”), then posted as the Police Inspector at Marine Drive Police Station, was on patrolling duty. Near Mafatlal Bath junction, the petitioner was found approaching unmasked. The petitioner was armed with a chopper. The petitioner proceeded towards Marine Drive Railway Station. When the first informant attempted to intercept the petitioner, the latter allegedly ran away amidst threats that whoever came forward to catch him, would be assaulted. The police party chased him. The first informant succeeded in accosting him near Appanag Building on M.K. Road. The petitioner allegedly aimed a blow by means of chopper on the head of the first informant amidst threat that if first informant tried to catch him, he would be killed. The first informant took an evasive action and the blow fell on his left shoulder. When Mr. Shelke, Police Sub-Inspector attempted to catch him, the petitioner inflicted a blow by means of chopper

on the right hand of Mr. Shelke. Eventually, the petitioner was overpowered by police and disarmed. The first informant thus lodged report.

(b) Investigation commenced. Accused came to be arrested. Post completion of investigation, report under Section 173 of the Code of Criminal Procedure, 1973 (“the Code”) came to be lodged against the petitioner. The jurisdictional Magistrate committed the case for trial to the Court of Sessions, Greater Bombay.

(c) The petitioner has invoked the writ jurisdiction of this Court seeking quashment of prosecution, arising out of FIR No.282/2020 on the ground that the petitioner had no *mens rea* at the time of the commission of the alleged offences. If the acts attributed to the petitioner are considered in the light of the circumstances which preceded, attended and succeeded the said occurrence, according to the petitioner, it becomes abundantly clear that on account of the unsoundness of mind the petitioner was incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law. The petitioner thus cannot be made to undergo the rigours of the trial when the material on record squarely brings the acts

and conduct of the petitioner within the exception of insanity envisaged by Section 84 of the Penal Code.

3. We have heard Mr. Merchant, the learned Counsel for the Petitioner and Mr. Shinde, the learned APP for the State, at some length. With the assistance of the learned Counsel for the parties, we have perused the material on record, especially, the report under Section 173 of the Code and its accompaniments.

4. Mr. Merchant, the learned Counsel for the petitioner took us through the FIR and the statements of the police personnel, who accompanied the first informant at the time of the alleged occurrence. An endeavour was made to demonstrate that from the bare perusal of the allegations in the FIR it becomes evident that the petitioner had no intention to commit murder or cause grievous injury to any person. Mr. Merchant, invited the attention of the Court to the injury certificates to draw home the point that the first informant and the injured witnesses had suffered simple injuries on hands and legs. None of the injured had sustained serious injury on a vital part of the body.

5. Mr. Merchant would urge that the petitioner had taken the defence of unsoundness of mind at the first possible opportunity. An application was preferred on the very day the petitioner was produced before the learned Magistrate.

However, the learned Magistrate rejected the application on an incorrect premise that no document was attached in support of the ground stated in the application.

6. A strong reliance was placed on the report of a Psychiatrist to the effect that on the basis of the information furnished by the petitioner's mother, including the evaluation of the video clips and the instances narrated by the petitioner's mother, he had recommended that the petitioner required immediate hospitalization for further psychiatric evaluation and treatment. Accordingly, after release on bail, the petitioner was evaluated and treated by the Psychiatrists at Chaitanya Institute of Mental Health. The petitioners current diagnosis is 'Schizophrenia in partial remission' and the treatment includes 'Psychopharmacotherapy and psychotherapy'.

7. Laying emphasis on the aforesaid certificate, Mr. Merchant vehemently urged that even if the case of the prosecution is taken at its face value, the petitioner cannot be subjected to face the trial as the act of the petitioner clearly fell within the ambit of Section 84 of the Penal Code. To lend support to this submission, Mr. Merchant placed a strong reliance on the judgment of the Rajasthan High Court in the case of *Vidhya*

*Devi vs. State of Rajasthan.*<sup>1</sup> In the said case, the appellant therein had assailed the conviction on the ground that she was suffering from schizophrenia at the time of occurrence and was thus entitled to the benefit of the exception contained in Section 84 of the Penal Code. In the said context, the Rajasthan High Court enunciated the legal position in the following words:

“26. A fundamental principle of criminal law is that mens rea (guilty mind) is an essential element in every offence and no crime can be said to have been committed if the mind of the person doing the act is not guilty. Since criminal act is an indispensable element in every crime, a person incapable of entertaining such intent cannot incur legal guilt. Idiots and lunatics are, therefore, not liable in criminal law for their acts. It has been said that a mad man is best punished by his own madness. (Furiosus furore suo punier); or that a mad man has no will (Furiosus nulla voluntus est); or a mad man is like one who is absent (Furiosus absentis loco est).

27. To establish that an act done cannot be said to be an offence as covered by Section 84 IPC, the following elements must be present:-

(i) the accused was of unsound mind at the time of commission of the act; and

(ii) by reason of unsoundness of mind, the accused was incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law.

28. Apart from this, there are certain principles to be borne in mind before applying Section 84 IPC and they are as follows:-

(a) every type of insanity is not legal insanity; the cognitive faculty must be so destroyed as to render one incapable of knowing the nature of his act or that what he is doing is wrong or contrary to law;

(b) the Court shall presume the absence of such insanity'

(c) the burden of proof of legal insanity is on the accused though it is not as heavy as on the prosecution to prove an offence;

---

**1** 2004 SCC Online Raj 294.

(d) the Court must consider whether the accused suffered from legal insanity at the time when the offence was committed;

(e) in reaching such a conclusion, the circumstances which preceded, attended or followed the crime are relevant consideration; and

(f) the prosecution in discharging its burden in the face of the plea of legal insanity has merely to prove the basic fact and rely upon the normal presumption of law that everyone knows the law and the natural consequences of his act.”

8. Mr. Merchant further submitted that schizophrenia with which the petitioner has been suffering from is but a form of insanity. Support was sought to be drawn from the following observations of the Rajasthan High Court in paragraphs 35 and 36 of the aforesaid judgment:

35. Schizophrenia has been defined in *Livingstone's Medical Dictionary* as a group of mental illness characterised by disorganisation of the patient's personality, often resulting in chronic life long ill-health and hospitalization. In its simple form the patient is dull, withdrawn, solitary and inactive.

36. Schizophrenia is one of the forms of insanity. Each case of schizophrenia has to be considered on its own merits. It is an illness of slow insidious onset developing over years. There may be report of strange, odd inappropriate behaviour.”

9. As against this, Mr. Shinde, the learned APP, submitted that, at this stage, there is ample material to demonstrate that the petitioner was cognizant of the nature of the act, and intentionally caused hurt to the informant and the prosecution witnesses. Mr. Shinde laid stress on the fact that there is no material to show that the petitioner had been suffering from

mental illness from before the occurrence. The fact that the petitioner was subsequently treated for mental illness is not of determinative significance, submitted Mr. Shinde.

10. We have given our anxious consideration to the aforesaid submissions.

11. To begin with, from the perusal of the allegations in the first information report and the statements of witnesses, it becomes evident that the petitioner allegedly inflicted blows by means of chopper, when the police party attempted to chase and pin him down, after noticing that he was roaming around armed with a chopper unmasked in breach of Covid-19 restrictions. The first informant and witnesses have categorically stated that whenever they reached close to the petitioner, the latter threatened to cause harm to them and even threatened to kill them.

12. In the context of the defence of insanity, the Court is called upon to consider whether at the time of the commission of the offence the accused was, by reason of unsoundness of mind, incapable of knowing the nature of the act or that what he was doing was either wrong or contrary to law. It is trite that the crucial point for ascertaining the state of mind of the accused is the time when the offence was committed. Of necessity, such

inference about the state of mind of the accused can be drawn from the circumstances which preceded, attended and followed the occurrence. Moreover, there is presumption against insanity. Every person is presumed to know the consequences of his act. Thus the burden of proof of insanity is on the accused. However, the standard of proof to dispel the burden is not proof beyond reasonable doubt but preponderance of probabilities.

13. A profitable reference, in this context, can be made to the judgment of the Supreme Court in the case of ***Bapu alias Gujraj Singh vs. State of Rajasthan***,<sup>2</sup> wherein the legal position as regards the defence of insanity was expounded, as under:

“10. Section 84 embodies the fundamental maxim of criminal law, i.e., *actus non reum facit nisi mens sit rea* (an act does not constitute guilt unless done with a guilty intention). In order to constitute an offence, the intent and act must concur; but in the case of insane persons, no culpability is fastened on them as they have no free will (*furios is nulla voluntas est*).

11. The section itself provides that the benefit is available only after it is proved that at the time of committing the act, the accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or that even if he did not know it, it was either wrong or contrary to law then this section must be applied. The crucial point of time for deciding whether the benefit of this section should be given or not, is the material time when the offence takes place. In coming to that conclusion, the relevant circumstances are to be taken into consideration, it would be dangerous to admit the: defence of insanity upon arguments derived merely from the character of the crime. It is only unsoundness of mind which naturally impairs the cognitive faculties of the mind that can form a ground of: exemption

---

**2** (2007) 8 Supreme Court Cases 66.

from criminal responsibility. Stephen in *'History of the Criminal Law of England, Vo. II, page 166* has observed that if a persons cut off the head of a sleeping man because it would be great fun to see him looking for it when he woke up, would obviously be a case where the perpetrator of the act would be incapable of knowing the physical effects of his act. The law recognizes nothing but incapacity to realise the nature of the act and presumes that where a man's mind or his faculties of ratiocination are sufficiently dim to apprehend what he is doing, he must always be presumed to intend the consequence of the action he takes. Mere absence of motive for a crime, howsoever atrocious it may be, cannot in the absence of plea and proof of legal insanity, bring the case within this section This Court in *Sherall Walli Mohammed v. State of Maharashtra: (1972 Cr.LJ 1523 (SC)* held that: (SCC p.79)

“The mere fact that no motive has been proved why the accused murdered his wife and children or the fact that he made no attempt to run away when the door was broken open, would not indicate that he was insane or that he did not have necessary mens rea for the offence.”

12. Mere abnormality of mind or partial delusion, irresistible impulse or compulsive behaviour of a psychopath affords no protection under Section 84 as the law contained in that section is still squarely based on the outdated *M' Naughton rules of 19th Century* England. The provisions of Section 84 are in substance the same as that laid down in the answers of the Judges to the questions put to them by the House of Lords, in *M Naughton's case, [(1843) 4 St. Tr. (NS) 847]*. Behaviour, antecedent, attendant and subsequent to the event, may be relevant in finding the mental condition of the accused at the time of the event, but not that remote in time. It is difficult to prove the precise state of the offender's mind at the time of the commission of the offence, but some indication thereof is often furnished by the conduct of the offender while committing it or immediately after the commission of the offence. A lucid interval of an insane person is not merely a cessation of the violent symptoms of the disorder, but a restoration of the faculties of the mind sufficiently to enable the person soundly to judge the act; but the expression does not necessarily mean complete or prefect restoration of the mental faculties to their original condition. So, if there is such a restoration, the person concerned can do the act with such reason, memory and judgment as to make it a legal act; but merely a cessation of the violent symptoms of the disorder is not sufficient.

13. The standard to be applied is whether according to the ordinary standard, adopted by reasonable men, the act was right or wrong. The mere fact that an accused is conceited, odd irascible and his brain is not quite all right, or that the

physical and mental ailments from which he suffered had rendered his intellect weak and had affected his emotions and will, or that he had committed certain unusual acts in the past, or that he was liable to recurring fits of insanity at short intervals, or that he was subject to getting epileptic fits but there was nothing abnormal in his behaviour, or that his behaviour was queer, cannot be sufficient to attract the application of this section.”

14. On the aforesaid touchstone, reverting to the facts of the case, the reliance sought to be placed by the petitioner on the certificate of the Psychiatrist, referred to above, at this stage, does not seem to advance the cause of the petitioner. The said evaluation is evidently based on the narration of the facts and incidents by the mother of the petitioner, post occurrence. It is not the claim of the petitioner that the petitioner had been undergoing treatment for the ailment since prior to the occurrence. Thus, at this juncture, there is no material which would shed light on the circumstances which preceded the occurrence or the state of mind of the petitioner proximate to the time of occurrence.

15. As regards the circumstances which attended the alleged crime, from the narration of the first informant and the witnesses, *prima facie*, the petitioner allegedly resisted the attempts to catch him and threatened to cause harm to the police personnel and attempted blows by means of chopper.

16. Undoubtedly, there is material to indicate that the petitioner was admitted in Chaitanya Institute of Mental Health, post release on bail. This fact may bear upon the state of mind of the petitioner so as to adjudicate the complicity for the alleged occurrence. However, it may not assume decisive significance as the determinative point of time for evaluating the state of mind of the accused is the time when the offence was committed.

17. In our view, in the facts of the instant case, on the basis of the material pressed into service on behalf of the petitioner, at this juncture, it may not be possible to draw an inference that at the time of the alleged occurrence the petitioner was incapable of knowing the nature and quality of the act. Appreciation of the material on record to evaluate the merits of the defence, which Mr. Merchant desires this Court to venture into, is not permissible in exercise of extraordinary and inherent jurisdiction. The question as to whether the petitioner was suffering from such mental ailment which prevented him from appreciating the nature and quality of the act is, thus, a matter for trial.

18. Mr. Merchant canvassed another submission that the petitioner, on account of unsoundness of mind, is incapable of

defending himself. Thus, the petitioner cannot be forced to face the trial.

19. It would be suffice to note that a prosecution cannot be quashed on the ground that an accused is incapable to defend himself on account of unsoundness of mind. Chapter XXV of the Code makes elaborate provisions to address the situations when an accused is found to be incapable of defending himself, at the trial, on account of unsoundness of mind.

20. We are sure that if the issue of applicability of the provisions contained in Chapter XXV of the Code is brought to the notice of the learned Sessions Judge either by way of an application by the petitioner or otherwise, the learned Sessions Judge would deal with the same in accordance with law.

21. For the forgoing reasons, we are not inclined to entertain this petition.

22. The petition thus stands rejected.

23. We make it clear that the consideration is confined to the prayer for quashment of the prosecution in exercise of extraordinary jurisdiction and we may not be understood to have expressed opinion on the merits of the defence and the learned Sessions Judge shall deal with all the issues which may

arise in the case without being influenced by any of the observations made hereinabove.

**[N. J. JAMADAR, J.]**

**[S. S. SHINDE, J.]**