

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

(132)

CRM-M-42903-2022

Date of decision :-22.09.2022

Chander Parkash Madan

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr.Vikram Singh Dakhla, Advocate for the petitioner.

Ms. Mahima Yashpal, DAG, Haryana
for the respondent-State.

SUVIR SEHGAL, J.

By way of present petition filed under Section 482 of the Code of Criminal Procedure, 1973 (for short “the Code”), the accused-petitioner has approached this Court seeking quashing/modification of order dated 29.08.2022, Annexure P-9, passed by the learned Additional Sessions Judge/Fast Track Special Court, (POCSO), Karnal in case FIR No.528 dated 15.09.2021 lodged for offence under Section 8 of Protection of Children from Sexual Offences Act, 2012 and Section 3 (2) (va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 at Police Station, Karnal Civil Lines, District Karnal.

Counsel for the accused-petitioner submits that the petitioner is a shopkeeper and an FIR has been registered against him on the complaint of a 17 year old girl on the allegation that he inappropriately touched her when she went to his shop to make purchases. He has canvassed that the accused-petitioner is a person of an unsound mind and unable to produce his defence, therefore, the proceedings against him cannot continue in view of Section

329 of the Code and the trial Court has erred in fixing the proceedings for consideration on medical report as well as for arguments on charge by the order under challenge.

Advance copy of the petition has been served upon the State. State counsel has, on the other hand, supported the impugned order.

I have considered the rival submission of the counsel for the parties and examined the documents appended with the paper-book with their able assistance.

Section 329 provides for procedure in case of person of unsound mind, who is tried before a Court and sub-section (1) thereof lays down as under:

“(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 proceeding in the case.”

The requirement of Section 329 (1) of the Code is that when an accused raises a plea of insanity and consequent incapacity in making his defence before the Magistrate or Court, the plea has to be tried “at the first instance” after taking such evidence, including medical evidence as may be necessary. The Court can proceed against the accused only if it is satisfied that the accused is of a sound mind and capable of producing his defence.

This provision being mandatory, non-adherence to it can vitiate the entire trial.

Since, the accused, who is 76 years old, has filed an application claiming mental infirmity, Trial Court is bound to follow the mandate of Section 329 of Code. Application submitted by petitioner is accompanied by medical record of his treatment. After calling for and receiving a medical report regarding his mental condition, but without adopting to the procedure laid down in the provision, the Trial Court has adjourned the case to 04.10.2022 for consideration on the report as well as for arguments on charge. In CRM-M-54223 of 2021, *Jaiky versus State of Haryana*, decided on 19.01.2022, this Court has held that once such an application is moved by an accused claiming insanity, which is supported by a medical certificate, it is the bounden duty of the Court or the Magistrate to follow the procedure as laid down in Section 328 or 329 of the Code, as the case may be.

Accordingly, the trial Court shall first conduct an inquiry into the application submitted by the accused-petitioner regarding the unsoundness of mind, as envisaged by Section 329 of the Code and thereafter proceed further in accordance with law.

Petition is disposed with the above clarification.

22.09.2022
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(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No