

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 799 OF 2024

Shaikh Sameer Shaikh Salim On Behalf Of Sk. Nayeem Sk. Salim

VERSUS

The State Of Maharashtra

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Advocate for the Petitioner : Mr. Kuldeep S. Kahalekar h/f Mr.
Ghanekar Nilesh S.

APP for Respondent/State : Ms. V.S. Choudhari

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CORAM : S.G. MEHARE, J.

DATED : AUGUST 13, 2024

PER COURT:-

1. Heard learned counsel for the petitioner and learned APP for the State.
2. The petitioner moved an application under Section 329 of the Criminal Procedure Code whereby the learned Trial Court referred him to the Psychiatric at Ghati Hospital. The Psychiatric/expert applying the test of questioning submitted the report that the petitioner is able to stand the trial.
3. Learned counsel for the petitioner would submit that instead of following the procedure as laid down in Section 329 of the Criminal Procedure Code i.e. sending the patient for care and treatment only some questions were put to him and incorrect opinion has been formed that the petitioner is able to stand the trial.

4. Proviso to sub-section 1-A of Section 329 of the Criminal Procedure Code provides for an appeal before the Medical Board if the accused is aggrieved by the information given by the Psychiatrist or Clinical Psychologist. It is a matter of expert opinion. The ordinary man even the Presiding Officer or a Judge is not supposed to be an expert to comment on the opinion of the expert. Therefore, the law has taken care of provision for an appeal before the Medical Board. If the petitioner is not satisfied with the report submitted by the Psychiatric, the remedy of appeal is available to the aggrieved before the Medical Board. The Court has passed the correct orders on an application under Section 329 of the Criminal Procedure Code. The Court immediately referred the petitioner to the Psychiatric and the Psychiatric has produced the report against which the petitioner is aggrieved.

5. In the circumstances, the Court is of the view that the best remedy to the petitioner is to prefer an appeal before the Medical Board. Hence, the petition stands dismissed with liberty to the petitioner to prefer an appeal before the Medical Board.

(S.G. MEHARE, J.)