

CRL MP NO. 1489 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28-01-2025

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THE HONOURABLE MR JUSTICE S.M. SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

CRL MP NO. 1489 of 2025

IN

CRL A NO. 532 OF 2022

Dinesh Kumar

S/o. Kulanthaivel, No.454, Therkku Kattukottai,
Sundarapuram, Palaniyapuram Post, Attur Tk, Salem

Appellant(s)

Vs

State Rep By , Inspector Of Police
Attur Town Police Station, Salem.

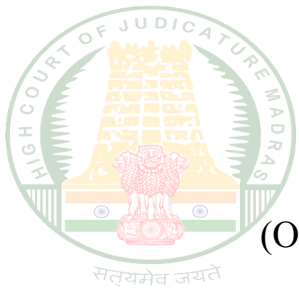
Respondent(s)

For Appellant(s):

R.Sankarasubbu
A.Ramesh
P.Loganathan
A.Sivakumar @ Sivaaji
S.Jeevanantham
S.Mathivannan

For Respondent(s):

Public Prosecutor



ORDER

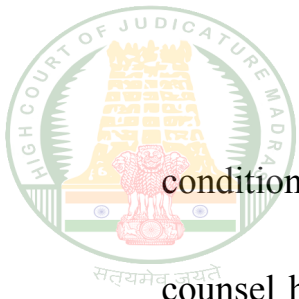
(Order of the Court was made by the Hon'ble S.m.Subramaniam J.)

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The present petition has been filed under Section 329 r/w 482 Cr.P.C seeking a direction to the Superintendent of Central Prison, Coimbatore to produce the Condemned prisoner/Dinesh Kumar, S/o.Kulanthaivel confined in Central Prison, Coimbatore to be produced before the Medical Board of National Institute of Mental Health and Neuro Science, Bangalore, Karnataka to evaluate the mental health of the prisoner prior to 22.10.2018 and as on 22.10.2018 and thereafter.

2. The Registry, High Court raised an objection regarding maintainability of the petition in the present referred trial. This Court permitted the learned counsel for the petitioner/convict prisoner on merits, though the petition has been listed under the caption “for maintainability”.

3. The learned counsel for the petitioner would mainly contend that Dr.Shankar, whose evidence has been recorded by this Court, would reveal that the mental



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condition of the convict prisoner has not been examined properly. The learned counsel has taken an exception with reference to the deposition of the Doctor, who deposed before this Court that the convict prisoner, at the time of the trial was fit and there was no sign of unsound mind noticed. This Court recorded 313 Cr.P.C statement of the convict prisoner, who is produced by the jail authorities before this Court on 28.01.2025.

4. It is not in dispute that, no complaint of unsound mind was raised before the learned Magistrate at the time of remand. The Doctor's report was considered by the learned Magistrate at the time of remanding the prisoner under judicial custody. The Trial Court at the time of trial, charge has been read over by the Trial Court to the prisoner, who in turn responded and there was no reason to believe for the Trial Court to form an opinion that the accused was of unsound mind during the course of trial.

5. Chapter XXV of Cr.P.C provides provisions as to accused persons of unsound mind. Section 328 contemplates procedure in case of accused being



the learned Judicial Magistrate.

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6. Section 329 Cr.P.C contemplates procedure in case of person of unsound mind tried before Court. The Trial Court found that the accused was fit to stand trial and completed the same and delivered judgment.

7. When the case is numbered as referred trial, as mandated under the Cr.P.C, the learned counsel for the petitioner/accused made an attempt to set a ground, as if the accused was unsound mind at the time of commission of offence.

8. The very prayer sought for in the present petition indicates that, the learned counsel for the petitioner wishes to ascertain the mental condition of the prisoner prior to 22.10.2018 and as on 22.10.2018, the date of commission of offence. Such a medical examination during the referred trial became unnecessary in the opinion of this Court, since right from the remand stage, no such complaint was noticed nor raised on behalf of the accused and both the learned Magistrate and the Sessions Judge who conducted the trial found that

the accused is fit to stand for trial.



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9. This Court is of the considered opinion that, the learned counsel himself is filing petition after petition in the referred trial proceedings with an idea to prolong and protract the referred trial, despite the fact that the Court repeatedly requested the learned counsel to argue the main case.

10. Pertinently, Section 84 IPC denotes act of a person of unsound mind. The Court held that the burden of proving the existence of circumstances bringing the case within the preview of Section 84 lies upon the accused under Section 105 of the Evidence Act. Such a proof has not made discharge by the accused at the time of remand or during the course of trial.

11. Though defence witnesses had been examined before the Trial Court, there is no such proof to establish that the petitioner/accused was on unsound mind during the commission of offence. However, it is left open to the petitioner to raise all these grounds during the course of final arguments in the referred trial.

12. Learned counsel for the petitioner is now attempting to raise grounds, which



all are available to the accused during the course of the final hearing, and thereby attempting to protract the proceedings.

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13. On earlier occasion also, the learned counsel for the petitioner filed a petition under his name. The present petition also filed by the lawyer appearing on behalf of the accused and both the petitions filed in the referred trial recently are not signed by the accused. These grounds when available for the accused for argument during the final arguments, it became unnecessary to file petition after petition and arguing the case in each petition with an idea to increase the longevity of the referred trial. Therefore, this Court is not inclined to entertain the petition. We are inclined to dismiss the petition on merits.

14. Accordingly, Criminal Miscellaneous Petition is dismissed. Post the matter on 05.02.2025 for final hearing.

(S.M.SUBRAMANIAM J.) (M.JOTHIRAMAN J.)
28-01-2025

GD

To
1. State Rep By , Inspector Of Police
Attur Town Police Station,

Salem



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