

a [e] the respondent-accused shall mark presence before the concerned Police Station on every Monday for a period of three months and thereafter, on any day of first week of every English calendar month till the trial is over;

b [f] the respondent-accused shall furnish the present address of residence to the I.O. and also to the Court at the time of execution of the bond and he shall not change the residence without prior permission of this Court.

9. In view of the above, the present application is disposed of. Rule is made absolute to the aforesaid extent.

c Direct service is permitted.

**Result:-** Application disposed.

d **ABC 2016 (I) 451 BOM**  
**ACQUITTAL & BAIL CASES**  
**HIGH COURT OF BOMBAY**  
 (Indira K. Jain, J.)  
 Criminal Application No. 1398 of 2016  
 Decided on 22 April, 2016

e **FIROZA FAZAL SHAIKH** - Applicant(s).

*Versus*

**STATE OF MAHARASHTRA** - Respondent(s).

f **Law Covered:-** (A) *Code of Criminal Procedure, 1973 – Sections 329 & 330 – Release of lunatic pending investigation or trial – Application for – enquiry u/s 329, CrPC by trial Court – Application rejected – Expert opinion – Held, trial Court has not considered number of reports by experts – Competent witnesses – Non examination in course of enquiry – Held, enquiry cannot be said to be complete in all respects u/s 329 – order passed ignoring the relevant material on record – unsustainable in law – Matter is remanded to the Trial Court. (Para 13)*

g (B) *Criminal jurisprudence – Code of Criminal Procedure, 1973 – Section 329 – Enquiry under – Legal position of – Held, enquiry is treated as part of trial – when Trial Court is of the view that Accused is a man of unsound mind and consequently incapable of making his defence – after considering the medical report in this*

*regard – the Court should postpone further proceeding of case – trial will start as soon as he is found to be capable of making his defence. (Para 11)* a

*(C) Criminal Jurisprudence – Duty of the Court – Code of Criminal Procedure, 1973 – Section 329 – Procedure in case of person of unsound mind tried before Court – It is mandatory that when plea of unsoundness of mind is raised before the Court – it shall try the fact of unsoundness of mind – & incapability of Accused at the first instance. (Para 11)* b

*(D) Criminal Jurisprudence – Duty of the Court – Code of Criminal Procedure, 1973 – Section 329 – Procedure in case of person of unsound mind tried before Court – Two stages of procedure – First stage – it must appear to the Judge that Accused placed on trial was of unsound mind and incapable of making his defence – Next stage – when unsoundness & incapability appear – has to be enquired into on the basis of material placed before the Court – decision in this regard cannot be based merely on the information received from doctors – but it must be based on evidence and the entire material brought forth before the Court. (Para 12)* c  
d

**Facts:-** Applicant was an under trial prisoner for the offences punishable u/ss 302 & 201, IPC. He moved an application u/s 330, CrPC for his release on bail. It was rejected and the order of rejection was challenged before the Bombay High Court. The order was set aside and matter was remanded to Trial Court for following the procedure laid down. On remand Trial Court conducted enquiry afresh and vide impugned order rejected the plea raised by Accused that he is a person of unsound mind and consequently incapable of making his defence. Being aggrieved Applicant has challenged the said order in present application. e  
f

Refereeing various reports, it was found by the Court that reports indicate that patient was of unsound mind and unfit for trial. It was held that in this premise enquiry cannot be said to be complete in all respects u/s 329, CrPC and the order was passed ignoring the relevant material on record, the same was held as unsustainable in law. g

**Law of relief:-** When plea of unsoundness of mind of an accused is raised before the Court it shall try it at the first instance.

**Held:-** Needless to state that enquiry under Section 329 of the Code of Criminal Procedure is treated as part of trial. Section 329 of the Code of Criminal Procedure provides that when Trial Court is of the view that Accused is a man of unsound mind and consequently h

a incapable of making his defence, after considering the medical report in this regard, he should postpone further proceeding of case and trial will start as soon as he is found to be capable of making his defence. It is mandatory that when plea of unsoundness of mind is raised before the Court it shall try the fact of unsoundness of mind and incapability of Accused at the first instance. (Para 11)

b Section 329 of the Code of Criminal Procedure contemplates two stages of procedure. First stage lays down that it must appear to the Judge that Accused placed on trial was of unsound mind and incapable of making his defence. Next stage that has to follow when it appears to Judge that Accused was of unsound mind and consequently incapable of making his defence, is that the fact of such c unsoundness of mind and incapacity has to be enquired into on the basis of material placed before the Court. The decision in this regard cannot be based merely on the information received from doctors, but it must be based on evidence and the entire material brought forth d before the Court. (Para 12)

In the present case it is apparent from the impugned order that Trial Court has not considered number of reports by experts, voluminous documents containing 168 pages produced by Dr.Donglikar and did not examine competent witnesses in course of enquiry. In this premise enquiry cannot be said to be complete in all e respects under Section 329 of the Code of Criminal Procedure and the order passed ignoring the relevant material on record is unsustainable in law. (Para 13)

**Counsel:-** For Applicant(s): Mr. Rajendra S. Deshmukh, Advocate  
i/b Mr. Abhaysinh K. Bhosale.  
f For Respondent(s): Mr. S. D. Ghayal, APP & Mr. S. S. Ladda, Advocate.

### **JUDGMENT**

g **INDIRA K. JAIN, J.:** - Rule. Rule made returnable forthwith. Heard finally with the consent of the learned counsel for parties.

2. By this application, Applicant / original Accused challenges the order dated 25th February, 2016 passed by the learned Additional Sessions Judge, Aurangabad below Exhibit 1 in Sessions Case No.300 of 2013.

h 3. Heard at length Mr. R. S. Deshmukh, learned counsel for Applicant and Mr. S. D. Ghayal, learned APP for State.

June 2016

4. Facts giving rise to present application may be stated in nutshell as under:

i. PSO Begumpura Police Station, Aurangabad filed charge-sheet in Crime No.I-34 of 2013 against the Applicant for the offences punishable under Sections 302 of 201 of the Indian penal Code. Applicant is an under trial prisoner. Sessions Case No.300 of 2013 arising out of said crime is pending before the learned Additional Sessions Judge, Aurangabad.

ii. On 9th May, 2013 Accused was arrested. He moved an application Exhibit 7 under Section 330 of the Code of Criminal Procedure for his release on bail. It was rejected on 29th May, 2014. The order of rejection of application was challenged before this Court in Criminal Application No.6050 of 2014. By the order dated 19th December, 2012 (Coram : T. V. Nalawade, J.), the order passed below Exhibit 7 was set aside and matter was remanded to Trial Court for following the procedure laid down in Chapter XXV of the Code of Criminal Procedure. On remand Trial Court conducted enquiry afresh and vide impugned order rejected the plea raised by Accused that he is a person of unsound mind and consequently incapable of making his defence. Being aggrieved Applicant has challenged the said order in present application.

5. In his extensive arguments learned counsel for Applicant vehemently contended that Applicant was examined by experts at Mental Hospital, Yerwada. Reports dated 19th June, 2015, 25th July, 2015 and 27th August, 2015 persistently suggest that Applicant is of unsound mind and needs long terms indoor treatment. It is submitted that report dated 27th August, 2015 also indicates that patient would also require family support and such environment which would be helpful for his speedy recovery. Learned counsel submits that on 4th February, 2016 Mental Hospital, Pune surprisingly issued a report showing that Accused is fit for trial and based on this report Trial Court came to the conclusion that Accused was not of unsound mind and not incapable to make his defence. Learned counsel submitted that number of reports in favour of Applicant would speak otherwise and the impugned order therefore needs to be set aside.

6. Per contra learned APP strongly supports the order passed by the Trial Court under Section 329 of the Code of Criminal

a Procedure. Learned APP submitted that report Exhibit 54 issued by Dr. Donglikar clearly shows that Accused is fit for trial and so Trial Court has rightly negated the plea raised by Applicant.

b 7. Mr. S. S. Ladda, learned counsel for Complainant is also heard. Learned counsel submitted that Accused is involved in series of offences and he never raised plea of unsoundness of mind in either of the cases. Learned counsel for Complainant contended that number of documents were available on record before the Trial Court which would show that Accused was not a person of unsound mind but the plea of unsoundness of mind has been purposely raised to frustrate the trial and to anyhow get released on bail since all the efforts of Accused to get himself enlarged on bail have failed. Learned counsel c submits that Trial Court has rightly negated the plea of unsoundness of mind and no interference is warranted in this application.

d 8. On perusal of report dated 19th June, 2015 submitted by Superintendent Regional Mental Hospital, Yerwada, Pune to the Sessions Court, Aurangabad it can be seen that mental status examination of patient was conducted and doctor opined that patient was showing some improvement in psychiatric symptoms and he needs further long term indoor management. Another report dated 23rd July, 2015 is on the same line. In third report dated 27th August, 2015 impression recorded by doctor is "at present patient is missing e his relatives and feeling lonely. He is on above said medicines. He will require long term treatment as well as family support/ environment would be helpful for his speech recovery."

f 9. Next report is dated 16th November, 2015. It shows that patient showing improvement needs long term management. Presently he is not fit for trial. One more report dated 19th December, 2015 is by Visitors Committee consisting of Chief Judicial Magistrate, Pune, Superintendent Regional Mental Hospital, Yerwada, Pune and Deputy Superintendent Regional Mental Hospital, Pune. This report g indicates that patient was of unsound mind and unfit for trial.

h 10. It is also evident that after the matter was remanded prosecution moved an application calling an expert as a witness. Trial Court issued summons to Medical Superintendent, Regional Mental Hospital, Yerwada, Pune and examined Dr. Bhalchandra s/o Manikrao Donglikar as Court Witness No.1. In his evidence Dr. Donglikar stated that Dr. Gosavi was the treating doctor of Accused.

He was regularly attending the patient. Dr. Gosavi was not examined in the course of enquiry.

11. Needless to state that enquiry under Section 329 of the Code of Criminal Procedure is treated as part of trial. Section 329 of the Code of Criminal Procedure provides that when Trial Court is of the view that Accused is a man of unsound mind and consequently incapable of making his defence, after considering the medical report in this regard, he should postpone further proceeding of case and trial will start as soon as he is found to be capable of making his defence. It is mandatory that when plea of unsoundness of mind is raised before the Court it shall try the fact of unsoundness of mind and incapability of Accused at the first instance.

12. Section 329 of the Code of Criminal Procedure contemplates two stages of procedure. First stage lays down that it must appear to the Judge that Accused placed on trial was of unsound mind and incapable of making his defence. Next stage that has to follow when it appears to Judge that Accused was of unsound mind and consequently incapable of making his defence, is that the fact of such unsoundness of mind and incapacity has to be enquired into on the basis of material placed before the Court. The decision in this regard cannot be based merely on the information received from doctors, but it must be based on evidence and the entire material brought forth before the Court.

13. In the present case it is apparent from the impugned order that Trial Court has not considered number of reports by experts, voluminous documents containing 168 pages produced by Dr.Donglikar and did not examine competent witnesses in course of enquiry. In this premise enquiry cannot be said to be complete in all respects under Section 329 of the Code of Criminal Procedure and the order passed ignoring the relevant material on record is unsustainable in law. Hence the following order -

#### ORDER

I. Criminal Application No.1398 of 2016 is .

II. Impugned order dated 25th February, 2016 passed below Exhibit 1 by the learned Additional Sessions Judge, Aurangabad in Sessions Case No.300 of 2013, is set aside.

III. Matter is remanded to the Trial Court with a direction to enquire into the plea of unsoundness of mind and consequently his

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incapacity to make his defence, as raised by the Accused, afresh in accordance with the law.

a

IV. While recording finding on the plea raised by Accused Trial Court is expected to consider the entire material and evidence on record.

V. Trial Court shall complete the enquiry as early as possible and in any case within three months.

VI. Rule is made absolute in above terms.

**Result:-** Criminal Application allowed.

c

**ABC 2016 (I) 457 BOM  
ACQUITTAL & BAIL CASES  
HIGH COURT OF BOMBAY**

(A.I.S. Cheema, J.)

d

Criminal Appeal No. 533 of 2003

Decided on 20 April, 2016

Aurangabad Bench

**SUBHASH NAMDEV CHANDANSHIVE** - Appellant(s).

*Versus*

e

**STATE OF MAHARASHTRA** - Respondent(s).

f

**Law Covered:-** (A) Indian Penal Code, 1860 – Section 306 & 498-A – Conviction under – Death by burn injuries – Presence of accused at the place of incident admitted – Dying declaration – No allegation against present appellant – did not claim that she was ever beaten by the accused – Prosecution witnesses – material contradictions, aggegerations & omissions by – Burn injuries sustained by accused – benefit of doubt – Acquittal. (Para 21)

g

(B) Indian Evidence Act, 1872 – Section 3 – relevant fact – Conduct of accused – injuries sustained by the accused in the process of putting out fire of the deceased – Intention of – The extent of burns of the hands of the accused has not been brought on record – Held, had it been brought, it would have been possible to assess whether or not the accused was serious in putting out the fire – or acted or reacted merely byway of formality – Indian Penal Code, 1860 – Section 306 & 498-A. (Para 12)

h

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