

**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE PREM NARAYAN SINGH**

**CRIMINAL REVISION No. 5165 of 2023**

**BETWEEN:-**

**ASHUTOSH SHRIVASTAVA S/O SANTOSH  
SHRIVASTAVA, AGED ABOUT 22 YEARS, OCCUPATION:  
STUDENT HOUSE NO.-6, VIJAY SHREE NAGAR, KALANI  
NAGAR, AERODROME ROAD, INDORE (MADHYA  
PRADESH)**

**.....PETITIONER**

***(SHRI BHAVDEEP SINGH, LEARNED COUNSEL FOR THE PETITIONER )***

**AND**

**THE STATE OF MADHYA PRADESH STATION HOUSE  
OFFICER THROUGH P.S.- SIMROL, MHOW (MADHYA  
PRADESH)**

**.....RESPONDENTS**

***(SHRI GAURAV RAWAT APPEARING ON BEHALF OF ADVOCATE  
GENERAL & SHRI VIVEK SINGH, LEARNED COUNSEL FOR THE  
RESPONDENT [R-1][OBJ] )***

**HEARD ON :01.03.2024**

**DELIVERED ON:11.03.2024**

*This revision petition was heard and the court pronounced the  
following:*

**ORDER**

The petitioner has filed the present revision petition under Section 397 r/w 401 of Cr.P.C. being aggrieved by the order dated 27.09.2023 passed in ST No.28/2023 by 5th ASJ, Mhow, Indore whereby the learned Session Court has dismissed the application of the petitioner filed under Section 329 of Cr.P.C.

2. Brief facts leading to filing of the present petition are that an FIR bearing Crime No.74/2023 was lodged on 21.02.2023 at P.S. Simrol, District

Indore, Dehat for committing the offence under Section 307 of IPC alleging that on 20.02.2023 at about 04:00 PM, the accused intercepted the deceased, poured petrol on her and set her ablaze. during treatment, she expired on 25.02.2023. Subsequently the offences under Section 302,, 195-A and 201 of IPC were added. Thereafter, the charge-sheet was filed and the matter is under trial.

3. During pendency of the trial, the petitioner has filed an application under Section 329 of Cr.P.C. before the learned trial Court to suspend the trial by submitting that after the elaborate medical examination, a team of doctors of FMYH Hospital Indore and Medical Examination Board has found that the petitioner is suffering from "delusion of control" alongwith auditory hallucinations. It is further submitted that in this context, the learned trial Court has also taken the statements of concerned medical officer, but the learned trial Court rejected the application of the petitioner. It is further submitted that as per the psychiatric, the petitioner required for 15 days stay in hospital to ascertain psychiatric condition of the petitioner. It is further submitted that the learned trial Court has also committed grave error of law by denying the accused's opportunity of cross-examination of medical Officer.

4. Learned counsel for the petitioner submits that due to mental health treatment, the petitioner is not able to appear before the trial Court in trial proceedings. He further submits that petitioner has been prescribed medications to address anxiety and insomnia while the trial Court erroneously concludes that there is no medical history of the petitioner. The trial Court has wrongly made oversight the medical board report of the petitioner, which shows that the petitioner was admitted to the hospital for 12 days. Hence, prays for setting aside the impugned order.

5. Learned counsel for the complainant submits that the petitioner is in the capacity to defend himself and it is also submitted that some facts have wrongly been mentioned in the petition filed by the petitioner like the petitioner was diagnosed as *"Delusion of control & passivity along with auditory hallucinations"* while in the petition *"Dilution of control and passivity along with auditory hallucinations"* has been mentioned. Counsel for the complainant further submitted that the petitioner is a habitual offender and already facing two trials and in those cases, he has not filed any application under Section 329 of Cr.P.C. for suspending the trial. It is further submitted that from the face para no.9 of the petition, the petitioner himself has admitted that ***"however, to arrive at a definitive diagnosis, further psychometric evaluation is required which is beyond the capabilities of this department"***, hence, such type of question mark on the health department to protect an accused of murder is definitely questionable. Therefore, on these grounds, the prayer of the petitioner be rejected.

6. Learned counsel for the respondent/State also supports the contentions made by the counsel for the complainant and prays for rejection of the petition.

7. I have heard the counsel for the parties and perused the records.

8. It is clear that the learned trial Court prior to passing the impugned order, has examined the petitioner, medical Officer, Medical Officer of concerned Jail as well as the report of prisoners regarding behavior of the petitioner. Detailed scrutiny of the same clearly shows that the learned trial Court has found that the petitioner is capable to defend himself.

9. At the outset, before dwelling upon the subject matter, it would be

appropriate to render the concerned provision of Section 329 (1) of Cr.P.C, as under:

**329. Procedure in case of person of unsound mind tried before Court.**

(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 proceedings in the case.

[1-A) If during trial, the Magistrate or Court of Sessions finds the accused to be of unsound mind, he or it shall refer such person to a psychiatrist or clinical psychologist for care and treatment, and the psychiatrist or clinical psychologist, as the case may be, report to the Magistrate or Court whether the accused is suffering from unsoundness of mind:

Provided that if the accused is aggrieved by the information given by the psychiatric or clinical psychologist, as the case may be, to the Magistrate, he may prefer an appeal before the Medical Board

which shall consist of-

- (a) head of psychiatry unit in the nearest Government hospital; and
- (b) a faculty member in psychiatry in the nearest medical college.]

10. Having gone through the aforesaid provision, it reveals that when it appears to the magistrate or Court that such person is of unsound mind and incapable of making his defence then the Magistrate or Court shall proceed in accordance with further procedure. Here, the word "appears" is very significant. Actually, it is the concerned magistrate or trial Court which has to feel that the accused is suffering from unsoundness of mind or insanity. Only by raising objection or contention in this regard cannot be suffice to satisfy the trial Court in this regard. In this case, as per the order of learned trial Court, the learned trial Court has examined the accused, but does not found anything by which the Court can assume that the petitioner is suffering from insanity or unsoundness of mind. Moreover, the learned trial Court has also called a report from Jail Superintendent and in that report, it has been mentioned that neither any medicine regarding insomnia is used by the petitioner nor the petitioner kept with insane prisoners. it is also mentioned that as per the documentary record furnished by the AGP (for State), the accused has not made any dispute with other prisoners Mohit, Ritesh, Deepak etc. and his behaviour in the jail is as usual. He neither committed any unexpected things nor causing any violence in the jail. Considering that report, the learned trial Court has rejected the application of the petitioner.

11. On this aspect, the following excerpt of the Full Bench judgment of

Hon'ble Apex Court delivered in the case of **I.B. Shivaswami vs. State of Mysore** [AIR 1971 SC 1638], is condign to quote here as under:

"24.....It is true that the word "appears" in Section 465 imports a lesser degree of probability that whenever a Counsel raises a point before a Sessions Judge he has to straightaway hold an elaborate enquiry into the matter. If on examining the accused it does not appear to him that the accused is insane it is not necessary that he should go further and send for and examine medical witnesses and other relevant evidence. Of course if he has any serious doubt in the matter the Sessions Judge should have a proper enquiry."

12. The aforesaid proposition of law clearly ordains that only on the instruction of petitioner's advocate, the respective Sessions Judge is not required to start elaborate inquiry and after examining the accused, when it does not appear to him that the accused is "insane", he can reject the application filed under Section 329 of Cr.P.C. out rightly.

13. In this regard, it is also undisputed that the present petitioner is also facing some other trial, but he has not raised such contentions in those trial. Due to the fact that this is a case under Section 302 of IPC, such application has been filed unnecessarily. Counsel for the complainant further submits that such objection has neither been filed before the remand Court nor prior to committal of the session to trial Court. Counsel for the complainant has also submitted that said application has been filed only to procrastinate the trial.

14. So far as the revisional power of this Court is concerned, it is well

settled legal position that the jurisdiction of the revisional Court is not as that of an appellate Court, which is free to reach its own conclusion on evidence untrammelled by any finding entered by the trial Court. Actually the jurisdiction of revisional Court has a limited scope. The revisional Court can interfere with the impugned order of subordinate Court *only when it is unjust and unfair*. In case where the order of subordinate Court does not suffer from any infirmity or illegality merely because of equitable considerations, the revisional Court has no jurisdiction to re-consider the matter and pass a different order in a routine manner.

15. On this aspect, the law laid down by Hon'ble Apex Court in the case of **Amit Kapoor (Supra)**, is pertinent to quote here as under:-

"The jurisdiction of the Court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression 'prevent abuse of process of any court or otherwise to secure the ends of justice', the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily....."

16. In view of the aforesaid discussion in entirety as well as the material available on record, the law laid down by Hon'ble Apex Court in the aforesaid cases, this Court does not find any illegality, irregularity or impropriety in the impugned order passed by the learned trial Court. Therefore, no interference is warranted.

17. As such, this revision petition filed by the petitioner fails. Resultantly, the present petition is dismissed and the impugned order of the learned trial Court is hereby affirmed.

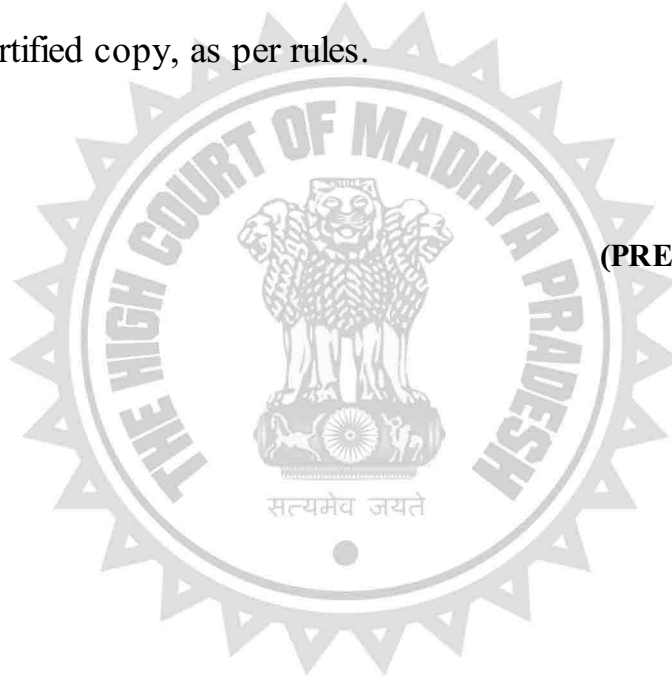
18. Pending application, if any, also closed.

19. It is made clear that this Court has not made any observations on the merits of the case and this order shall not be come in the way of the learned trial Court while passing any order or final judgment.

20. A copy of this order be sent to the trial Court concerned for information.

Certified copy, as per rules.

amit



**(PREM NARAYAN SINGH)**  
**JUDGE**