RAJASTHAN HIGH COURT
सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Miscellaneous (Petition) No.8509/2024
CNR: RJHC021043472024 | URN: CRLMP / 17563U / 2024

Rajasthan High Court
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Chandrakant Son Of Moolchand, Aged About 86 Years, Resident Of Nigohi, Police Station Deeg, District Deeg, Through Natural Father, Mool Chand Dixit Son Of Nathilal, Aged About 86 Years, Resident Of D-240,surya Nagar, Alwar, District Alwar, Rajasthan.

----Petitioner

Versus

1. State Of Rajasthan, Through P.P.
2. Shankarnath Son Of Shri Dhuriya, Resident Of Punchari, District Bharatpur (Presently District Deeg).

----Respondents

For Petitioner(s) : Mr. Govind Prasad Kaushik
For Respondent(s) : Mr. Rajendra Singh Shekhawat, PP

JUSTICE ANOOP KUMAR DHAND

Order

20/11/2026

Reportable

1. By way of filing the instant criminal misc. petition, a prayer has been made to quash the entire proceedings arising out of Criminal Case No. 59/2022 titled as State Vs. Chandrakant, pending before the court of Additional District & Sessions Judge, Deeg, in connection with the FIR No.509/2026, registered with the Police Station Deeg, District Bharatpur for the offence punishable under Section 302 IPC.

2. Learned counsel for the petitioner submits that an FIR No.509/2006 was registered with the Police Station Deeg, District Bharatpur for the offence punishable under Section 302 IPC on 11.10.2006, wherein it was alleged that the petitioner along with other co-accused persons shot one Kunwar Pal, due to which he

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died. Therefore, a Crime No.509/2006 was registered under Section 302 IPC and after investigation, charge sheet was submitted against the petitioner before the concerned court on 01.12.2006. Learned counsel submits that the petitioner is suffering from schizophrenia and he is not in a position to understand the Court proceedings. As per the medical report of the petitioner and as per the opinion of the doctors, the petitioner is not mentally fit to understand the Court proceedings. Hence, under these circumstances, the petitioner would not be in a position to face trial.

3. Learned counsel for the petitioner further submits that the proceedings under Section 329 Cr.P.C. were initiated and the petitioner was medically examined by a Medical Board of doctors of the subject and field, who opined that the petitioner is suffering from mental illness and he is not in a position to understand the Court proceedings. Learned counsel submits that even the statements of doctors namely J.S. Sharma and Dr. Om Prakash Gupta were recorded before the Trial Court in the proceedings initiated under Section 329 Cr.P.C., and on the basis of the statements and evidence of the aforesaid witnesses, the learned Trial Judge temporarily closed the matter and directed to produce the petitioner within an interval of every three months, after getting his fresh medical examination. Learned counsel submits that such order was passed by the concerned court on 28.08.2009 and since then, after expiry of every three months of the year, the petitioner is medically examined and on each occasion, a similar report is submitted with regard to the mental condition of the petitioner, i.e. he is not in a position to understand the Court

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proceedings and accordingly, the case is deferred from one date to another. Learned counsel submits that by way of conducting the aforesaid exercise, almost 17 years have passed, but till date the petitioner's condition is the same as it was back in the year 2009.

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4. Learned counsel for the petitioner further submits that it becomes difficult for the family members of the petitioner to take him to the Medical Board of the hospital for his medical examination in every three months of each year and, in case, any default is done at the instance of the family members, i.e. the father of the petitioner, the Court below issue warrants or arrest warrants to procure the presence of the petitioner.

5. Learned counsel for the petitioner further submits that disease of schizophrenia, suffered by the petitioner, is a lifetime disease and the same cannot be cured. Hence, under these circumstances, the entire proceedings may be put to an end in terms of the mandate contained under the proviso (a) attached to Section 369(3) BNSS 2023, wherein it has been laid down that if on the basis of the medical opinion or opinion of a specialist, the Magistrate or Court may decide to order discharge/release of such accused. Hence, the petitioner be discharged/released forever.

6. *Per contra*, learned Public Prosecutor opposed the prayer made by learned counsel for the petitioner and submitted that schizophrenia is not such a disease that is not curable. It depends upon the condition of each and every patient and in some of the cases, the disease is cured with the lapse of time. He submits that in the possibility of the disease suffered by the petitioner potentially being cured at some point in the future, he cannot be allowed to escape from his liability for the charges levelled against

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him under Section 302 IPC. Hence, the Court below has not committed any error in issuing the directions for medical examination of the petitioner after expiry of every three months each year. Hence, under these circumstances, interference of this Court is not warranted and the instant criminal misc. petition is liable to be rejected.

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7. Heard and considered the submissions made at the Bar and perused the material available on the record.

8. Perusal of the record indicates that an FIR under Section 302 IPC was registered against the petitioner in the year 2006, i.e. on 11.10.2006. After investigation, the petitioner was charge-sheeted for the offence under Section 302 IPC before the concerned Court on 01.12.2006.

9. Thereafter, when the case was posted before the Court of Additional District & Sessions Judge, Deeg, a fact was brought into the notice of the learned Trial Judge that the petitioner is suffering from a mental disease, i.e. schizophrenia, and he is not mentally fit to understand the Court proceedings.

10. Hence, the proceedings under Section 329 Cr.P.C. (now Section 369 BNSS, 2023) were initiated and the opinion of the Medical Board was sought with regard to mental condition of the petitioner.

11. Accordingly, the Medical Board constituted at the concerned hospital gave its opinion that the petitioner is suffering from schizophrenia and he is not in a position to understand the Court proceedings initiated against him.

12. Even the statements of two doctors, i.e. Dr. J.S. Sharma and Dr. Om Prakash Gupta were recorded in this regard, who have

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categorically stated about the medical condition of the petitioner being such that he is not in a position to understand the Court proceedings against him.

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13. Hence, based on the evidence of the subject experts of the relevant field, the proceedings against the petitioner have been deferred on the condition that he would be examined by the Medical Board after an interval of every three months and a certificate of the Medical Board with regard to his mental condition shall be produced by the petitioner or his family members. This exercise is being continuously carried out since August, 2009 and in the meantime, around 17 years have passed.

14. Now, it is the case of the petitioner that under these circumstances, the criminal case pending against the petitioner be closed forever in terms of the provisions contained under Section 369 (3) Proviso Clause (a) of BNSS 2023.

15. Whereas, it is the case of the prosecution that the case against the petitioner cannot be closed, as serious charges of murder have been levelled against the petitioner and so far as the disease suffered by the petitioner is concerned, the same is curable. Hence, proceedings cannot be closed forever, without conducting any trial against him.

16. An accused cannot be prosecuted under the law unless and until he is certified to be of sound mind.

17. The Right to Fair Trial is a fundamental right guaranteed under Article 21 of the Constitution of India and no person should be condemned unheard.

A criminal trial cannot proceed against an accused who is mentally unfit, as it violates the fundamental principles of fair

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trial. The accused must possess the cognitive capacity to understand the charges framed against him, follow the proceedings and put his defence.

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When the accused, who is being prosecuted under any law, does not possess the ability to understand the court proceedings and if he is not able to defend himself, he is incompetent to face the trial.

If the criminal process is jeopardized then there would be no fair trial. So, to ensure a fair trial and to protect the principles of natural justice, the assessment of the accused person's mental capacity is necessary to establish that he is able to understand the proceedings of trial and put his defence before the concerned court.

18. Perusal of the opinion given by the duly constituted Medical Board regarding the petitioner’s mental condition along-with the statements of doctors, who are part of the Medical Board, indicate that it is their medical opinion that the petitioner is suffering from the disease of schizophrenia and he is not in a position to understand the Court proceedings.

19. Considering the above factual aspect of the matter, the Court below was of the opinion that the proceedings against the petitioner cannot be continued unless and until he is found to be mentally fit to face the trial. Hence, the trial has been deferred for an indefinite period of time, subject to the condition that the petitioner would continue to get himself examined by the Medical Board with regard to his mental condition. A direction has also been issued to the petitioner to submit a medical report in this regard within an interval of three months every year. More than 17

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years have passed thereafter, and the petitioner has been medically examined on several occasions, i.e. four times in a year since 2009, but the mental condition of the petitioner is same as it was back in the year 2009. There is no improvement in his medical condition. Hence, under these circumstances, it is not desirable to insist the petitioner to continue getting his medical examination within a short interval of every three months.

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20. Considering the overall facts and circumstances of the case and looking to the fact that schizophrenia is not such a disease, which is found to be incurable and in some of the cases, it is found that the disease is curable, this Court is of the considered opinion that the matter pending against the petitioner cannot be closed forever at this stage.

21. The law requires a balance - balance between the right of the accused to a fair trial and dignity, and the right of the victim and society to have the offence tried. This balance can be maintained in the instant case by reducing the frequency of medical examination of the mental condition of the petitioner, while keeping the proceedings alive.

22. Therefore, the impugned order passed by the Court below stands modified and it is clarified that instead of three months, the petitioner shall be produced before the Trial Court after an interval of every 18 months. The petitioner is also directed to get his medical examination with regard to his mental condition after a gap of every 18 months and produce the medical certificate with regard to his mental condition before the Court below. In case it is found that the condition of the petitioner is mentally fit to face the

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trial, the Trial Court may proceed against the petitioner in accordance with the law.

23. In case, the Medical Board opines that the mental condition of the petitioner is fit to understand the Court proceedings against him, then such report shall be submitted before the Trial Court and thereafter, in case the Trial Court comes to the conclusion that on the basis of the report received from the Medical Board, the petitioner seems to be of sound mind and he is in a position to understand the proceedings against him and face trial, then appropriate orders be passed for resumption of the proceedings against him, as per the provisions contained under Section 331 Cr.P.C. (now Section 370 BNSS, 2023) and the trial shall be concluded in accordance with law.

24. The Trial Court shall keep the record safe and shall not insist on personal appearance of the petitioner except for medical examination as directed above, unless required for any specific purpose.

25. With the aforesaid observations and directions, the instant criminal misc. petition stands disposed of. Stay application as well as all pending applications, if any, also stand disposed of.

(ANOOP KUMAR DHAND),J

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