

(2018) 02 PAT CK 0012

In the Patna High Court

Case No : 12949 of 2012

Chunnu

APPELLANT

Vs

The State of Bihar & Ors

RESPONDENT

Date of Decision : 13-02-2018

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#), [Section 330](#), [Section 331](#), [Section 329](#) - Saving of inherent powers of High Court - Release of lunatic pe

Citation : (2018) 02 PAT CK 0012

Hon'ble Judges : Sanjay Priya

Bench : Single Bench

Advocate : Sanjay Kumar Singh, Ram Sumiran Roy

Final Decision : Dismissed

Judgement

1. This petition under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 27.2.2012 passed by the 3rd Additional Sessions Judge, Saran at Chapra, by which the learned Court below has observed that accused was in a fit condition to defend his case and therefore he has been ordered to be present on the next date for framing of charge. The Court below has also mentioned in the impugned order that if during the course of trial it is found that he is not found fit to defend or understand the trial, necessary order may also be passed.

2. Sections 329 and 330 of the Code of Criminal Procedure (for short "the Code") is very specific. For better appreciation Section 329 and 330 of the Code is quoted below:- " 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 shall 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]

2.If such Magistrate or Court is informed that the person referred to in sub-section (1-A) is a person of unsound mind, the Magistrate or Court shall further determine whether unsoundness of mind renders the accused incapable of entering defence and if the accused is found so incapable, the Magistrate or Court shall record a finding to that effect and shall examine the record of evidence produced by the prosecution and after hearing the advocate of the accused but without questioning the accused, if the Magistrate or Court finds that no prima facie case is made out against the accused, he or it shall, instead of postponing the trial, discharge the accused and deal with him in the manner provided under Section 330:

Provided that if the Magistrate or Court finds that a prima facie case is made out against the accused in respect of whom a finding of unsoundness of mind is arrived at, he shall postpone the trial for such period, as in the opinion of the psychiatrist or clinical psychologist, is required for the treatment of the accused.

3. If the Magistrate or Court finds that a prima facie case is made out against the accused and he is incapable of entering defence by reason of mental retardation, he or it shall not hold the trial and order the accused to be dealt with in accordance with section 330]."

3. Section 330 of the Code prescribes the release of person of unsound mind pending investigation or trial which reads as under: "1. Whenever a person is found under section 328 or section 329 to be incapable of entering defence by reason of unsoundness of mind or mental retardation, the Magistrate or Court, as the case may be shall , whether the case is one in which bail may be taken or not, order release of such person on bail: Provided that the accused is suffering from unsoundness of mind or mental retardation which does not mandate in-patient treatment and a friend or relative undertakes to obtain regular out-patient psychiatric treatment from the nearest medical facility and to prevent

from doing injury to himself or to any other person.

2. If the case is one in which, in the opinion of the Magistrate or Court, as the case may be, bail cannot be granted or if an appropriate undertaking is not given, he or it shall order the accused to be kept in such a place where regular psychiatric treatment can be provided, and shall report the action taken to the State Government:

Provided that no order for the detention of the accused in a lunatic asylum shall be made otherwise than in accordance with such rules as the State Government may have made under the Mental Health Act, 1987. (14 of 1987).

3. Whenever a person is found under section 328 or section 329 to be incapable of entering defence by reason of unsoundness of mind or mental retardation, the Magistrate or Court, as the case may be, shall keeping in view the nature of the act committed and the extent of unsoundness of mind or mental retardation, further determine if the release of the accused can be ordered:

Provided that-

(a) if on the basis of medical opinion or opinion of a specialist, the Magistrate or Court, as the case may be, decide to order discharge of the accused, as provided under section 328 or section 329, such release may be ordered, if sufficient security is given that the accused shall be prevented from doing injury to himself or to any other person;

(b) if the Magistrate or Court, as the case may be, is of opinion that discharge of the accused cannot be ordered, the transfer of the accused to a residential facility for persons of unsound mind or mental retardation may be ordered wherein the accused may be provided care and appropriate education and training]."

4. Section 331Cr. P.C. speaks of resumption of inquiry or trial. The same is quoted below: "(1) Whenever an inquiry or a trial is postponed under section 328 or section 329, the Magistrate or Court, as the case may be, may at any time after the person concerned has ceased to be of unsound mind, resume the inquiry or trial, and require the accused to appear or be brought before such Magistrate or Court.

(2) When the accused has been released under section 330, and the sureties for his appearance produce him to the officer whom the Magistrate or Court appoints in this behalf, the certificate of such officer that the accused is capable of making his defence shall be receivable in evidence."

5. From perusal of the impugned order itself, this Court finds that the Court below has taken proper precaution and has observed in order itself that accused was in a fit condition to defend his case and therefore he has been ordered to be present on next date for framing of charge. The trial Court has further observed that if during course of trial it is found that he is not fit to defend or understand

the trial then necessary order may also be passed.

6. Therefore, this Court does not find any illegality in the impugned order. This Cr. Misc. application is, accordingly, dismissed.

7. The learned Court below is directed to proceed in the trial in accordance with law after following the provisions of law as discussed above.