

Fazal Vs. State of Maharashtra

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Court : Mumbai Aurangabad

Decided On : Dec-19-2014

Judge : T.V. Nalawade

Appeal No. : Criminal Application No. 6050 of 2014

Appellant : Fazal

Respondent : State of Maharashtra

Judgement :

1. Rule. Rule made returnable forthwith. Heard both the sides by consent for final disposal.

2. The present proceeding is filed under Chapter XXV of the Code of Criminal Procedure and under section 482 of the Code to challenge the order made by the learned Additional Sessions Judge in Sessions Case No.300/2013 on Exhibit 7. The application at Exhibit 7 was filed under section 330 of the Code and it was contended that the applicant is of unsound mind and so he needs to be released on bail for giving him proper treatment and for keeping him in proper and safe custody. It appears that the learned Judge of the trial Court made an order of medical examination of the accused through the Medical Board at Nagpur. The learned Judge of the trial Court has considered that report. However, the learned Judge has made some observations with regard to few facts noticed by the predecessor of the trial Court to the effect that the predecessor had made some

inquiry with the accused in jail and he did not notice anything indicating that he was of unsound mind. Thus opinion of the predecessor which was personal to the predecessor of the present Presiding officer which was not formed during trial is also considered and the application is straightway rejected.

3. The learned counsel for the applicant took this Court through the provisions of Chapter XXV of the Code of Criminal Procedure. He submitted that when some trial is expected under section 329 of the Code for deciding the fact in dispute, there was no such trial much less inquiry and the learned Judge of the trial Court has made aforesaid order. It appears from the order made by the learned Judge of the trial Court that he has not followed the procedure laid down in section 329 of the Code which shows that the disputed fact needs to be tried like any other fact to ascertain the unsoundness and incapacity of the accused and finding of that fact is required to be given by the trial Court Judge. Unless and until such finding is given, further proceeding is not possible. It appears that at present there is opinion of the Medical Board from Nagpur showing that the accused is suffering from schizophrenia. It needs to be ascertained as to whether he is fit to face the trial and finding in that regard needs to be recorded under section 329 of the Code. As the procedure was not followed, this Court holds that the order made by the learned Additional Sessions Judge cannot sustain in law.

4. In the result, the application is allowed. The order made below Exhibit 7 in Sessions Case No.300/2013 by the learned Additional Sessions Judge is hereby set aside and the matter is remanded back to the trial Court for following the procedure and for giving finding. The Additional Sessions Judge is expected to show urgency in the matter. Rule is made absolute in above terms.

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