

Yogesh Kumar and anr. Vs. State

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Court : Delhi

Decided On : Apr-12-1996

Reported in : 1996CriLJ2724; 1996RLR260

Judge : Jaspal Singh, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 329

Appeal No. : Civil Miscellaneous (Main) Appeal No. 751 of 1991

Appellant : Yogesh Kumar and anr.

Respondent : State

Advocate for Def. : M.S. Butalia, Adv.

Advocate for Pet/Ap. : Ms. Bharti Kochar, Adv

Judgement :

Jaspal Singh, J.

(1) It all started with an application u/Ss 328/329 of the Criminal Procedure Code . that the accused Yogesh Kumar was of unsound mind thus incapable of making his defense. It was claimed that he had already been examined by a Medical Board of the Hospital for Mental Diseases, Shahdara and declared as a person of unsound mind.

(2) By an order of this court dated 15.4.88 it was directed that the report of the Board be taken on record and the Chairman of the Board be examined. Consequent thereupon, the report was taken on record and Chairman was examined. Unfortunately for the petitioner. the Report of the Board did not find favor with the M.M. who rejected the same as 'not tenable'.

(3) Aggrieved by the order of Mm, a criminal revision was preferred. It was dismissed by a Additional Sessions Judge. Hence this petition.

(4) It is contended that it was incumbent upon the Magistrate to try the fact of unsoundness and incapacity of Yogesh Kumar by affording the parties opportunity to lead medical and other evidence. The grievance is that the petitioner was not afforded any such opportunity and that the entire exercise was made to confine only to the question of acceptability or otherwise of the Report of the Medical Board. [In para 5, S. 329, is reproduced].

(5) As would be borne out from a bare perusal of the provision reproduced above, before a Magistrate or Court proceeds to 'try' the fact of unsoundness and incapacity it must appear' to the Court that the person is of unsound mind and consequently incapable of making his defense. The word 'appears' surely imports a lesser degree of probability than 'proof' but then this would not mean that the Court must proceed to 'try' the question on mere asking. There must be something either in the form of medical record or other material to raise a reasonable doubt in the mind of the Court that the accused is of unsound mind. Even the demeanour of the accused may sufficiently lead to such a doubt. It is only on the crossing of this hurdle that it becomes obligatory on the Court to 'try' the fact of such unsoundness of mind and incapacity of the accused and I feel that this preliminary requirement ceased to be in issue or at least stood satisfied when this court directed the taking on record not only the Report of the Medical Board but examination of the Chairman of the Board also. But then, there was no direction nor there could any be to confine the enquiry only to the said Report or to the said examination. Parties have to be allowed to lead medical and/or other evidence and the decision has to be based on evidence so led The learned Counsel for the petitioner states that the petitioner would like to lead such evidence. Same is being said on behalf of the

respondent too. I am not disinclined. I cannot be, because affording of such an opportunity would meet the dictates of law. The impugned order is thus set aside. Let the learned Metropolitan Magistrate embark on a fresh enquiry. However, a word before the curtain is drawn. The Courts below have not accepted the Report of the Medical Board principally on the ground that the Board did not have sufficient time to observe the accused. How about keeping Yogesh Kumar under observation for two or three weeks in a well equipped Government hospital before proceeding to record evidence But, then this is only a suggestion.

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