



HC-KAR



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF NOVEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE M.I.ARUN

WRIT PETITION NO. 3773 OF 2024 (GM-RES)

BETWEEN:

1. MR. ALPHONSA SALDANA
AGED 55 YEARS,
S/O LATE JOHN SALDANHA,
RESIDING AT AGINDAKADU HOUSE,
SALDANHA COMPOUND,
YELINJE VILLAGE,
MANGALURU TALUK,
D.K DISTRICT - 574107.

...PETITIONER

(BY SRI.ASHWIN JOYSTON KUTINHA., ADVOCATE
FOR SRI.VIKRAM RAJ A.,ADVOCATE;)

AND:

1. THE STATE OF KARNATAKA
THROUGH THE INSPECTOR OF POLICE,
MULKI POLICE STATION,
D K DISTRICT - 574154
REP. BY PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BENGALURU 560001
2. MRS LEENA D'CUNHA
W/O LATE BAPIST D'CUNHA
AGED ABOUT 69 YEARS,





R/AT GOD GRACE HOUSE, MUTTAIAH LAKE
ELINJE POST AND VILLAGE,
MANGALORE TALUK-574107

...RESPONDENTS

(BY SRI.RAJAT SUBRAMANYAM.,HCGP FOR R1;
SMT.ADLENE STEPHANIE MENDES.,ADVOCATE FOR R2;)

THIS PETITION IS FILED UNDER ARTICLES 226 OF THE
CONSTITUTION OF INDIA READ WITH SECTION 482 OF CR.PC,
1973 PRAYING TO ISSUE A WRIT OF CERTIORARI OR ANY
OTHER APPROPRIATE WRITS OR ORDERS, QUASHING THE
IMPUGNED ORDER DATED 28.12.2023 WHICH IS PRODUCED
AS ANNEXURE-A, PASSED BY HON'BLE I ADDL.DISTRICT AND
SESSIONS JUDGE, D.K AT MANGALURU IN S.C.NO.69/2020,
CONSEQUENTLY ALLOWING THE SAID APPLICATIONS
PRODUCED AS ANNEXURE H AND ANNEXURE J AND ETC.,

THIS PETITION, COMING ON FOR ORDERS THROUGH
VIDEO CONFERENCING / PHYSICAL HEARING, THIS DAY,
ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE M.I.ARUN



HC-KAR

ORAL ORDER

The writ petition is filed with the following prayers:

"a. Issue a Writ of Certiorari or any other appropriate Writs or orders, quashing the impugned order dated 28-12-2023 which is produced as Annexure 'A', passed by Hon'ble I Addl.District and Sessions Judge, D.K at Mangaluru in S.C.No.69/2020, consequently allowing the said applications produced as Annexure H and Annexure J and

b. Grant such other and further reliefs as this Hon'ble deems fit to grant under the circumstances of the case, in the interest of justice and equity."

2. The petitioner is the accused in S.C.No.69/2020, pending on the file of I Additional District and Sessions Judge, Dakshina Kannada, Mangaluru. The petitioner is accused of murdering one Sri. Vincent D'Souza and one Smt. Helen D'Souza by stabbing. The petitioner has admitted, killing of the said two persons but has pleaded the defence of insanity before the trial Court.



He has examined eight defence witnesses and has got marked certain exhibits through them. DW6 is the psychiatrist who has treated the petitioner in prison. He has not examined any other psychiatrist. The petitioner has filed two applications, one under Section 45 of the Indian Evidence Act read with Section 311 of the Criminal Procedure Code (for short, 'the Cr.P.C) with the following prayers:

"Hence it is humbly prayed that this Hon'ble may please to send copies of medical records of year 2000 to 2002 and medical records procured from the jail and all the complaints filed by the accused against the neighbours and replies given by the parties and police report and the complaint of present case to Forensic Psychiatry Department of NIHMANS and direct them to examine the material and give their expert opinion in evidence within stipulated time as this Hon'ble Court deems fit herein in the interest of justice."

The other application is filed under Section 105 of the Mental HealthCare Act, 2017 with the following prayers:



HC-KAR

"Hence under these circumstances, it is prayed that Hon'ble Court shall be pleased to refer the same for further scrutiny to the concerned Board as stated under the Section 105 of Mental Health Care Act and for the proper diagnosis this Hon'ble may please to send copies of medical records of year 2000 to 2002 and Medical records procured from the jail and all the complaints filed by the accused against the neighbors and replies given by the parties and police reports.

And the Hon'ble Court may be pleased to pass any necessary orders therein in the interest of justice."

3. The trial Court has dismissed both the applications. Challenging the same, the present writ petition is filed.

4. The question that arises for consideration is:

Whether the petitioner has made out a case for setting aside the impugned order and to allow the applications as prayed for?



5. Admittedly, the act of killing the deceased by the petitioner is admitted by the petitioner herein. He has set up a defence of unsoundness of mind and has contended that he did not have the necessary *mens rea* at the time of commission of the offence. Under the said circumstances, the onus is on the petitioner to establish that he did not have the necessary *mens rea* at the time of killing of the deceased.

6. Section 105 of the Indian Evidence Act, 1872 reads as under:

"105. Burden of proving that case of accused comes within exceptions.

When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the Indian Penal Code, 1860 (45 of 1860) or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the court shall presume the absence of such circumstances."



7. Section 84 of the Indian Penal Code, 1860 (for short, 'the IPC'), reads as under:

"84. Act of a person of unsound mind.—

Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law."

Thus, the onus of proving that the petitioner was incapable of knowing the nature of the act, that is, the killing of the deceased in the instant case, due to unsoundness of mind lies on the petitioner.

8. Section 45 of the Indian Evidence Act, 1872, reads as under:

"45. Opinions of experts

When the court has to form an opinion upon a point of foreign law, or of science or art; or as to identity of handwriting ²[or finger impressions], the opinions upon that point of persons specially skilled in such foreign law, science or art, ³[or in questions



HC-KAR

as to identity of handwriting]²[or finger-impressions] are relevant facts.

Such persons are called experts."

9. Section 311 of the Cr.P.C, 1973, reads as under:

"311. Power to summon material witness, or examine person present.—Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case."

10. In umpteen judgments, this Court as well as the Hon'ble Apex Court have held that, the opinion of experts is not binding on the trial Court and the trial Court will entertain an application made under Section 45 of the Indian Evidence Act, 1872, only if it is deemed necessary and not otherwise.



HC-KAR

11. The petitioner, in order to prove the fact of unsoundness of mind at the time of commission of the act, can establish the same by adducing necessary evidence regarding his behaviour and conduct before, during and after the occurrence of the said act and also by relying upon his past history of the diagnosis, treatment and medications and such other relevant facts under the circumstances of the case. As already stated, a mere plea of insanity is not sufficient; and the onus is on the petitioner to prove the same. Further, what has to be considered by the Courts is the state of mind of the petitioner at the time of commission of the offence and not whether the petitioner is of unsound mind as of today or not.

12. The trial Court in the impugned order has come to the conclusion that the opinion of the expert on a mere single examination of the accused is of no evidentiary value to adjudicate the unsoundness of mind of the person at the time of commission of the offence. It has concluded



that in the presence of defence evidence, especially the evidence of the treated doctor, evidence of the neighbour, evidence of the psychiatrist and the medical document, under the given facts and circumstances of the case, the Court does not deem it necessary to refer the petitioner for further medical examination under Section 45 of the Indian Evidence Act, 1872 and it has rejected the application of the petitioner. Under the given peculiar facts and circumstances of the case, I do not see any error in the impugned order insofar as it relates to rejection of the application filed under Section 45 of the Indian Evidence Act, 1872, read with Section 311 of Cr.P.C, as the Court has opined, it can decide the case on hand based on the evidence adduced by the accused insofar as it relates to his behaviour is concerned before, at the time and immediately thereafter the commissioning of the alleged offence. It has also been noted that the petitioner has examined the treated doctor.



13. Insofar as it relates to an application made under Section 105 of the Mental HealthCare Act, 2017, the same reads as under:

"105. Question of mental illness in judicial process.—If during any judicial process before any competent court, proof of mental illness is produced and is challenged by the other party, the court shall refer the same for further scrutiny to the concerned Board and Board shall, after examination of the person alleged to have a mental illness either by itself or through a committee of experts, submits its opinion to the court."

14. The case of the petitioner is that as per the said section, during any judicial process, if proof of mental illness is produced, the same shall be referred by the Court for further scrutiny to the concerned Medical Board and in the instant case, the trial Court could not have rejected the said application.

15. Section 2(1)(s) of the Mental HealthCare Act, 2017, defines mental illness as follows:

**"2. Definitions.—**

(1) In this Act, unless the context otherwise requires,—

(s) "mental illness" means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterised by sub-normality of intelligence;"

16. The mental illness defined in the Mental Health Care Act, 2017 is much broader than 'unsoundness of mind' as contemplated under Section 84 of the IPC.

17. A person with an unsound mind as contemplated under Section 84 of the IPC is definitely suffering from mental illness as defined under the Mental HealthCare Act, 2017, but all the mental illness that gets covered under Section 2(1)(s) of the Mental HealthCare



Act, 2017, does not come in the purview of 'unsoundness of mind' as contemplated under the IPC.

18. Thus, when an application is made under Section 105 of the Mental HealthCare Act, 2017, claiming that the accused is suffering from unsoundness of mind, as contemplated under Section 84 of the IPC and that he should be referred to the medical Board for further examination, the person making the application is required to produce proof of mental illness to the standards as contemplated under Section 84 of the IPC and only if such evidence is produced and if the same is challenged by the other party, in this case the prosecution, then in that event, the Court is bound to refer the same for further scrutiny to the concerned medical Board. In the instant case, the petitioner to be successful in the application made by him under Section 105 of the Mental HealthCare Act, 2017, it has to be examined whether the evidence adduced by him is sufficient to prove 'unsoundness of mind,' for which the examination-in-chief of the defence



witnesses in the instant case has to be considered along with the statement of the petitioner under Section 313 of Cr.P.C and the documents marked.

19. Perusal of the records shows that DW6 is the only psychiatrist examined by the petitioner. Nowhere in the examination-in-chief a question is put to him to speak about the unsound mind of the petitioner sufficient to establish his incapacity of knowing the nature of his act of killing the deceased or that what he did was either wrong or contrary to the law. Evidence of the other persons so far adduced and the 313 statement of the accused/petitioner herein also does not satisfy the ingredient of unsoundness of mind as contemplated under Section 84 of the IPC.

20. As the petitioner has failed to produce adequate evidence in proof of unsoundness of mind as contemplated under Section 84 of the IPC, the question of entertaining the application under Section 105 of the Mental



HealthCare Act, 2017, does not arise and the petitioner is not entitled for any reliefs as prayed for.

21. Hence the following:

ORDER

- i. The Writ Petition is hereby ***dismissed***.
- ii. The observations made herein above are only for the purposes of disposal of this writ petition and the trial Court will not be bound by it and will take a decision based upon the evidence adduced before it, independently of the observations made herein above.

**SD/-
(M.I.ARUN)
JUDGE**

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List No.: 1 Sl No.: 10