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Calcutta High Court

Case No: C.R. No. 666-68 of 1988

Smt. Mayabala Dutta and Others		APPELLANT
	Vs	
The State		RESPONDENT

Date of Decision: July 7, 1988

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 329
- Drugs and Cosmetics Act, 1940 - Section 18(a), 27
- Penal Code, 1860 (IPC) - Section 34

Citation: 93 CWN 115

Hon'ble Judges: Sankar Bhattacharyya, J

Bench: Single Bench

Advocate: D. Majumdar and Atashi Gupta, for the Appellant; Osi Ranjan Mondal and Tapas Kar, for the Respondent

Final Decision: Allowed

Judgement

Sankar Bhattacharyya, J.

These three revisional applications are directed against identical orders passed on 16.388 by Shri M. K. Basu, Additional Sessions Judge, Hooghly, in Sessions Trial Nos. 3 of 1982, 5 of 1982 and 175 of 1980, refusing the petitioner''s prayers for adjournment of the Trials on the ground of her unsoundness of mind and incapacity to make her defence. As all the three cases involve a common question of law, they have been heard together and this order will govern all of them. The petitioner is the owner of a Drug house at Serampore. For alleged violation of Section 18(a) and (c) of the Drugs and Cosmetics Act, 1940 ("Act" for short) and rule 65(18) of the Drugs and Cosmetics Rules, 1945 on three occasions, she and her son Bidhan Chandra Dutta were arraigned before the learned Additional Sessions Judge in Sessions Trial No. 3 of 1982, 5 of 1982 and L75 of 1980 to answer the charge u/s 27 of the Act, read with Section 34 of the Indian Penal Code. It may be pointed out that

the three cases were being tried simulteneously by the learned Additional Sessions Judge.

2. The trials were to commence on and from 15.3.88 but due to "Bharat Bandh" on that day, the Court could not function and the accused persons could not also appear. On 16.3.88 three applications for adjournment of the trials were filed on behalf of the petitioner in the aforementioned three cases on the ground That due to prolonged and acute mental and paychological disorders she had developed unsoundness of mind and was incapable of making her defence. It was also stated in the applications that on the advice of the Psychiatrist arrangements were being made for her immediate admission to a Mental Hospital.

3. The applications were strongly opposed by the learned Additional Public Prosecutor who submitted that it was always the practice of the defence to take adjpurnament whenever the cases were fixed for trial.

4. After hearinng the learned defence lawyer and the learned Additional Public Prosecutor, the learned Additional Sessions Judge rejected the applications by three identical orders. The learned Judge appears to have been carried away by the fact that in the applications for adjournment filed by the petitioner on 10.3.88, there was not even any whisper about her alleged mental depression or unsoundness of mind which made it clear that the plea of unsoundness of mind raised by her was out and out false and nothing but a clever ruse to delay the trials by hook or by crook. The learned Judge not only rejected the applications for adjoumements but in his over zealousness to expedite the trials, even cancelled the bail bond of the petitioner and directed warrant of arrest to be issued against her although, indisputably, she is a fairly old lady. As stated already, the three identical orders passed by the learned Additional Sessions Judge are under challenge in these revisional applications filed on her behalf by her son Bidhan Chandra Dutta, describing her to be a person of unsound mind.

5. Mr. Majumdar, learned Advocate appearing in support of the applications, strongly assails the inpugned orders as being illegal, improper and violative of Section 329 of the Code of Criminal Procedure. 11 should be mentioned that Mr. Mondal, learned Advocate for the State, fairly and frankly concedes that the impugned orders are unsupportable.

6. Section 329, Criminal Procedure Code, appearing in Chapter XXV under the heading "PROVISIONS AS TO ACCUSED PERSONS OF UNSOUND MIND" reads as follows :

"329. Procedure in case of person of unsound mind tried before Court. - (1) If at the 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",

(emphasis supplied).

7. The words "it appears to the Magistrate or Court" occuring in this section cannot be interpreted to mean the subjective satisfaction of the Magistrate or the Court of Session. A plain reading of the section will at once go to show that whenever it comes to the notice of the Court that the accused is of unsound mind and incapable of making his defence, the Court is obligated to try the fact of such unsoundness and incapacity in the first instance. For that purpose, the Court is bound to take and consider such medical and other evidence as may be produced before it and to record its finding on such fact. It is not permissible for the Court to hold, on the basis of submission made by the prosecution and the past conduct of the accused, that the plea of insanity is a got up story invented for the purpose of getting an adjournment of the trial by hook or by crook.

8. The impugned order goes to show That the learned defence Advocate pointedly drew the attention of the learned Judge to the provisions of the Chapter XXV of the Code of Criminal Procedure but the learned Judge, in his eagerness for speedy trial, did not even care to look to the said Chapter for. had he done so. he could not have passed the order that he had passed.

9. In this connection, I may refer to a Division Bench decision of this Court in Radhanath Mondal v. Emperor (AIR 1927 Cal. 289), where the Court held that the moment the question of insanity of the accused is raised, the Judge, must put to the jury as a preliminary issue to be tried by them as to whether or not the jury are satisfied that the accused is a person of unsound mind and incapable of standing his trial and in a position to understand the proceedings which are going on in Court. It was further held that evidence must be led on that point and the Judge must come to a finding on the basis of such evidence.

10. In Jai Shankar v. State of Himachal Pradesh (AIR 1972 SC 2267), the Supreme Court held that where in murder trial, the accused makes and application u/s 464 Criminal Procedure Code (Old) before the Magistrate, raising the question as to the unsoundness of mind of the accused, the Magistrate is bound to inquire, before he proceeds with the inquiry before him, whether the accused is or is not incapacitated by the unsoundness of mind from making his defence. Their Lordships observed that such a provision clearly is in consonance with the principles of fair administration of justice.

11. Speedy trial is always desirable but then, justice should not be sacrificed at the alter of expedition and by trying a person alleged to be of unsound mind and incapable of making his defence without first trying the fact of unsoundness and incapacity, the trial should not be reduced to a mockery. In this connection, it must be observed that the learned Additional Public Prosecutor also failed in his duty by

raising objection to the prayer for adjournment and making the submission that the plea of unsoundness of mind of the petitioner was a got up story invented to obtain an adjournment of the trial by hook or by crook. In all fairness to the defence he should have conceded to the prayer for adjournment and further conceded that u/s 329, Criminal Procedure Code, the Court was bound to try the fact of alleged unsoundness of mind and incapacity of the petitioner to make her defence. The unhealthy practice of expeditious trial at the cost of justice and fair play cannot but be condemned for the forgoing reasons, I allow the revisional applications, set aside the impugned order dated 16.3.88 passed by the learned Additional Sessions Judge in Sessions Trial Nos. 3 of 1983, 5 of 1982 and 175 of 1980 and direct him to try the fact of alleged unsoundness of mind of the petitioner and her incapacity to make her defence in the first instancy, in accordance with Jaw. before proceeding further with the trial. The fact that in these revisional applications, the petitioner has been allowed to be described as a person of unsound mind shall not, in any way, prejudice the decision of the lower court on the fact of her alleged unsoundness of mind or incapacity to make her defence.