2025:DHC:4233

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment delivered on: 21.04.2025*

\+ **CRL.REV.P. 763/2017**

STATE .....Petitioner

Through: Mr. Naresh Kumar Chahar, APP for the State

versus

NEERAJ .....Respondents

Through: Mr. Arpit Srivastava, Adv.

CORAM:
HON'BLE DR. JUSTICE SWARANA KANTA SHARMA

J U D G M E N T

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DR. SWARANA KANTA SHARMA, J.

1. The State, by way of this petition, seeks to assail the order dated 29.04.2017 [hereafter '*impugned order*'], passed by the learned Additional Sessions Judge-01, North District, Rohini Court, Delhi [hereafter '*Sessions Court*'], in SC No. 58842/16, arising out of FIR No. 618/2016, registered at Police Station Bhalswa Dairy, Delhi, for offence punishable under Section 376 of the Indian Penal Code [hereafter '*IPC*'] read with Section 6 of the Protection of Children from Sexual Offences Act, 2012 [hereafter '*POCSO Act*'].

FACTUAL BACKGROUND

2. The present matter arises out of allegations of an attempted sexual assault upon the victim, a minor girl, by a boy named Neeraj i.e. the respondent herein. The victim in the present case alleged that Neeraj had attempted to commit an inappropriate act with her, in a vacant plot. The victim was medically examined on 18.09.2015 at BJRM Hospital, Delhi. The doctor concerned had recorded the history in the MLC as "alleged history of attempt to sexual assault", as stated by the victim. It was also noted that the accused was not known to the victim. One witness, Richa, had claimed to have seen the incident from her residence. According to her, the accused Neeraj

had undressed himself as well as the victim and he was about to sexually assault the victim, but he was apprehended before he could commit any further act. After completion of the investigation, chargesheet was filed against the accused for offence punishable under Section 376 of IPC read with Section 6 of the POCSO Act.

3. The learned Sessions Court, by way of the impugned order dated 29.04.2017, was pleased to discharge the accused. The discharge order was premised on the fact that the mental age of the accused had been assessed to be that of a four-year-old child, as per the opinion of the Medical Board constituted at the Institute of Human Behaviour and Allied Sciences (IHBAS), which had diagnosed the accused as a case of severe mental retardation though without any behavioural problems. Accordingly, it was held *vide* the impugned order that accused could not understand the nature of act committed by him nor was he capable of entering a defence and thus, there was no ground to proceed against accused Neeraj. The relevant portion of the impugned order is set out below:

> " Dr. Vijender Singh has appeared on behalf of the Medical Board, which was constituted to find out whether accused is fit to stand trial.
>
> He has been examined as CW-1. Dr. Vijender Singh deposed that accused Neeraj has been diagnosed as a severe case of Mental Retardation and has been found unfit to stand trial. It has also been stated that this kind of mental condition is usually by birth and is continuous and this condition is unlikely to improve as there is no treatment for this kind of Mental Retardation. Report of the Medial Board is taken on record as Ex. CW-l/A.

Charge Sheet filed on behalf of Investigating Agency is also having a I.Q. Certificate dated 02.02.2009 issued by IHBAS (Institute of Human Behaviour and Allied Sciences), wherein the mental age of accused is assessed to be of four years.

From the opinion of Medical Board, Ex. CW-l/A as well as the I.Q. certificate dated 02.02.2009, it is evident that accused was not having a sound mind capable of understanding the nature of act committed by him at the time of commission of offence. Court is satisfied that accused Neeraj could not understand the nature of act committed by him nor he is capable of entering a defence. In facts of the case, there is no ground to proceed against accused Neeraj. Accordingly, accused Neeraj is discharged from the present case.

Father of the accused Neeraj is directed to furnish a surety bond in sum of Rs.10,000/- U/s 437-A Cr.P.C."

SUBMISSIONS BEFORE THE COURT

4. The learned APP for the State, while assailing the impugned order, argues that the said order is not sustainable in the eyes of law, as it is based on mere imagination and presumption, rather than a correct application of the statutory provisions under the Cr.P.C. It is argued that the impugned order clearly reflects that the procedure prescribed under Chapter XXV of the Cr.P.C. had not been followed by the learned Sessions Court, which renders the impugned order legally untenable. In this regard, it is contended that the learned Sessions Court had failed to properly appreciate and apply the mandatory provisions under Sections 328(3) and 329(1) of the Cr.P.C. It is argued that once it came to the Court's knowledge that the accused was of unsound mind and incapable of making his defence, it was incumbent upon the Court to postpone further

proceedings and conduct a proper inquiry into the mental status of the accused, as envisaged under the said sections. It is submitted that the Court must cause the accused to be examined by a designated medical officer and thereafter examine such officer as a witness. In the instant case, however, the accused was discharged at the stage of framing of charge solely on the basis of an IQ Certificate, without conducting the mandatory inquiry as required under law. It is also contended that the learned Sessions Court failed to adhere to the mandate of Section 330(2) of Cr.P.C., which provides for detention of the accused in safe custody in such place and manner as the Court may deem fit, along with reporting the action taken to the State Government. The learned APP for the State further submits that the procedural steps under Sections 331 and 334 of Cr.P.C. have been completely overlooked, particularly the aspect of whether the accused had committed the alleged act or not, which the Trial Court was duty-bound to address. It is also contended that the learned Sessions Court has ignored the relevant provisions of the Mental Health Act, 1987, which replaced the Indian Lunacy Act, 1912, inasmuch as Section 27 of the Mental Health Act provides that any order made under Section 330 of Cr.P.C. or Section 30 of the Prisoners Act, 1900, directing the reception of a mentally ill person into a psychiatric hospital or nursing home, shall be deemed sufficient authority for the same. On these grounds, the learned APP for the State prays that the impugned order of discharge passed by the learned Sessions Court be set aside and the matter be remanded back for proper proceedings in

accordance with law.

5. Conversely, the learned counsel appearing for the respondent argues that the respondent had been diagnosed with Mental Retardation, as duly documented in the IQ Certificate dated 02.02.2009, issued by the Institute of Human Behaviour and Allied Sciences (IHBAS). As per the said certificate, the respondent's mental age had been assessed to be equivalent to that of a four-year-old child, thereby rendering him incapable of understanding or participating meaningfully in the proceedings. It is contended that the procedural safeguards for individuals suffering from mental incapacity or unsoundness of mind are clearly outlined under Section 328 of Cr.P.C., which applies to proceedings at the pre-trial stage, i.e., prior to the framing of charges. The learned counsel argues that since the case had not reached the stage of framing of charges, the application of Section 328, and not Section 329 of Cr.P.C., was appropriate. Without prejudice to the distinction between Sections 328 and 329 of Cr.P.C., the learned counsel submits that both provisions are substantially similar in terms of procedure and legal effect, and Section 330 of Cr.P.C. governs the subsequent steps to be taken in respect of an accused person found to be of unsound mind or suffering from mental retardation. It is argued that the learned Sessions Court, having formed a reason to believe that the respondent was incapable of making his defence, had acted strictly in compliance with the statutory framework. It is further pointed out that the learned

Sessions Court, *vide* order dated 26.05.2016, had initiated an inquiry into the respondent's mental condition by directing a medical evaluation from a duly constituted Medical Board at IHBAS, and this action fully satisfied the requirement under Section 328(1) of Cr.P.C., and the Court had passed the impugned order only after receiving the medical opinion and after recording statement of the doctor concerned. It is thus submitted that the discharge of the respondent was based on the authoritative findings of the Medical Board, which confirmed severe mental retardation, and also the fact that there was no scope of any improvement ever in the mental condition of the respondent. Therefore, the learned counsel submits that the learned Sessions Court had rightly concluded that the respondent was incapable of forming the necessary intent or *mens rea* required to constitute the alleged offence under Section 376 of IPC and Section 6 of POCSO Act. Thus, it is prayed that the present petition be dismissed as the impugned order calls for no interference.

ANALYSIS & FINDINGS

6. The issue before this Court is as to whether or not the learned Sessions Court has followed the procedure set out under Chapter XXV of the Cr.P.C., while conducting inquiry into the mental state (unsoundness of mind or mental retardation) of the accused and discharging him in the present case.

Unsoundness of Mind vs. Mental Retardation

7. There is a clear distinction between unsoundness of mind and mental retardation, both medically and legally. While these terms may appear synonymous in ordinary parlance, their implications in criminal law are different, both in substance and in procedure.

8. Historically, our legal system referred to persons of unsound mind using terminologies such as 'lunatic' under early legislations, which have since undergone significant revision. The Indian Lunacy Act, 1912, which earlier governed this area, was replaced by a more progressive regime under the Mental Health Act of 1987, and subsequently by the Mental Healthcare Act, 2017. Each successive enactment has aimed to reflect a clearer understanding of mental health conditions. In the Mental Health Act of 1987, 'mentally ill person' was defined to mean – a person who is in need of treatment by reason of any mental disorder other than mental retardation. But under the Mental Healthcare Act, 2017, 'mental illness' was defined as under:

> "2(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;"

9. Thus, the legislature has drawn a clear boundary between mental illness (or unsoundness of mind) and mental retardation.

While unsoundness of mind or mental illness would generally refer to disorders that affect a person's thinking, emotional state, or behavior, and that significantly impair their judgment, perception of reality, or ability to function in daily life, with such conditions being episodic or progressive in nature and may, in certain circumstances, be responsive to treatment; the mental retardation, on the other hand, is recognized as a separate and distinct condition, as it denotes a developmental disability characterized by significantly subaverage intellectual functioning, which originates during the developmental period and is associated with limitations in adaptive behavior. It is also referred to in clinical terminology as intellectual disability. Crucially, it is not considered a mental illness or unsoundness of mind per se, but rather a condition involving arrested or incomplete cognitive development, which is generally non-curable and not typically subject to fluctuation or relapse in the way mental illnesses are.

Relevance under the Indian Penal Code

10. Under the IPC, the defence of insanity is embodied in Section 84, which reads as follows:

> "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."

11. Thus, a person of unsound mind is exempted from criminal liability if, at the time of committing the act, he was incapable of

knowing the nature of the act or that it was wrong or contrary to law. The relevant point of time for deciding as to whether the benefit of the defence available to an accused under this Section should be given or not, is the material time when the alleged offence takes place.

12. However, mental retardation, being a static and developmental condition, is not *per se* referred to under Section 84 of IPC.

Relevance under the Code of Criminal Procedure

13. Chapter XXV of the Cr.P.C., is 'Provisions as to Accused Persons of Unsound Mind', and it starts from Section 328 and ends at Section 339. This Chapter lays down a comprehensive procedure for cases where the accused is suspected to be suffering either from unsoundness of mind or mental retardation – either at the pre-trial stage or during the course of trial.

Procedural Safeguards under Chapter XXV of Cr.P.C.

14. At the outset, Sections 328, 329 and 330 of Cr.P.C., which are relevant for adjudicating the present petition, are set out below:

> "**328. Procedure in case of accused being lunatic.**— (1) When a Magistrate holding an inquiry has reason to believe that the person against whom the inquiry is being held is of unsound mind and consequently incapable of making his defence, the Magistrate shall inquire into the fact of such unsoundness of mind, and shall cause such person to be examined by the civil surgeon of the district or such other medical officer as the State Government may direct, and thereupon shall examine such surgeon or other officer as a witness, and shall reduce the examination to writing.

(1A) If the civil surgeon finds the accused to be of unsound mind, he shall refer such person to a psychiatrist or clinical psychologist for care, treatment and prognosis of the condition and the psychiatrist or clinical psychologist, as the case may be, shall inform the Magistrate whether the accused is suffering from unsoundness of mind or mental retardation:

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) Pending such examination and inquiry, the Magistrate may deal with such person in accordance with the provisions of section 330.

(3) If such Magistrate is informed that the person referred to in sub-section (1A) is a person of unsound mind, the Magistrate shall further determine whether the unsoundness of mind renders the accused incapable of entering defence and if the accused is found so incapable, the Magistrate 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 he finds that no prima facie case is made out against the accused, he shall, instead of postponing the enquiry, discharge the accused and deal with him in the manner provided under section 330:

Provided that if the Magistrate 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 proceeding for such period, as in the opinion of the psychiatrist or clinical psychologist, is required for the treatment of the accused, and order the accused to be dealt with as provided under section 330.

(4) If such Magistrate is informed that the person referred to in sub-section (1A) is a person with mental retardation, the Magistrate shall further determine whether the mental retardation renders the accused incapable of entering defence, and if the accused is found so incapable, the Magistrate shall order closure of the inquiry and deal with the accused in the

manner provided under section 330.

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.

(1A) 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 (1A) 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.

330. Release of person of unsound mind pending investigation or trial.—(1) Whenever a person if 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. ”

Section 328 of Cr.P.C. – Inquiry Into Mental Condition at Pre-Trial Stage

15. A bare perusal of Section 328 of Cr.P.C. would reveal that it deals with two categories of persons i.e. (1) persons of unsound mind, and (2) persons suffering from mental retardation. For this provision to apply, the Magistrate must have a reason to believe that the accused is of unsound mind and consequently incapable of making his defence. In such cases, as per Section 328(1), the Magistrate is duty-bound to initiate an inquiry into the mental condition of the accused, direct the examination of the accused by a civil surgeon or other medical officer designated by the State Government, examine such surgeon or other medical officer as a witness and also reduce such examination to writing. Section 328(1A) further provides that if during medical examination, the accused is found to be of unsound mind, he shall be referred to a psychiatrist or clinical psychologist for care, treatment and prognosis

of the condition and the psychiatrist or clinical psychologist, as the case may be, shall inform the Magistrate whether the accused is suffering from unsoundness of mind or mental retardation.

16. The procedure for inquiry in cases involving accused persons with mental conditions is delineated under Section 328 of Cr.P.C., with sub-section (3) addressing cases of unsoundness of mind and sub-section (4) dealing with mental retardation. In both scenarios, once the Magistrate is informed that the accused may be suffering from either condition, the first step is to assess whether such a condition renders the accused incapable of entering a defence. If the Magistrate finds the accused incapable, the next steps diverge depending on the nature of the mental condition.

17. For cases involving unsoundness of mind, the Magistrate must consider the evidence on record, hear the advocate for the accused, and may discharge the accused and deal with him in the manner provided under Section 330 of Cr.P.C. if no *prima facie* case is made out. If a *prima facie* case exists, the Magistrate is then to proceed in accordance with the procedure laid down under the proviso to Section 328(3) of Cr.P.C., which sets out that the proceedings shall be postponed for such period, as in the opinion of the psychiatrist or clinical psychologist, is required for the treatment of the accused, and order the accused to be dealt with as provided under Section 330 of Cr.P.C. *Conversely*, if the accused is found to be suffering from mental retardation, Section 328(4) empowers the Magistrate to

immediately order the closure of inquiry and proceed directly under Section 330 of Cr.P.C. Additionally, Section 328(3) allows the Magistrate, during the pendency of medical examination or inquiry, to pass appropriate orders under Section 330 of Cr.P.C. for dealing with the accused.

18. Notably, Section 328 of Cr.P.C. is applicable at the stage of an 'inquiry' since the provision begins with the expression – "when a Magistrate holding an inquiry has reason to believe…" The expression 'inquiry' is defined in Section 2(g) of Cr.P.C. as under:

> (*g*) "inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court;

19. The Constitution Bench of the Hon'ble Supreme Court in ***Hardeep Singh v. State of Punjab:*** *(2014) 3 SCC 92* has held that the stage of 'inquiry' commences, insofar as the court is concerned, with the filing of the chargesheet, and the consideration of the material collected by the prosecution that is mentioned in the chargesheet for the purpose of trying the accused. It was further held that inquiry must always be a forerunner to the trial, and the 'trial' commences only upon charges being framed against an accused. Therefore, a Court can invoke the provisions of Section 328 of Cr.P.C. anytime after a chargesheet has been filed, till the stage of framing of charge.

Section 329 of Cr.P.C. – Procedure When Unsoundness Is Discovered During the Course of Trial

20. On the other hand, Section 329 of Cr.P.C., which is almost

similar to Section 328, operates at the stage of "trial of a person", and mandates that if during the trial of any person (i.e. after the charges have been framed against an accused), it appears to the Magistrate or Court of Sessions that such person is of unsound mind and consequently incapable of making his defence, the concerned Court has to first try the fact of such unsoundness and incapacity. It further provides the procedure for medical examination of the accused, and thereafter, as to how the Court has to find out whether a *prima facie* case is made out against the accused or not, and whether to postpone the trial or discharge the accused.

Section 330 of Cr.P.C. – Release of Person of Unsound Mind

21. Section 330 of Cr.P.C. sets out the procedure for release of a person of unsound mind pending investigation or pending trial. Sub-section (1) and (2) of Section 330 deals with release of an accused on bail, who has been found incapable of entering defence by reason of unsoundness of mind or mental retardation, either under Section 328 or 329 of Cr.P.C., i.e. either during the course of inquiry or after the commencement of trial. Section 330(1) provides that such an accused can be released on bail if his condition does not require in-patient treatment, and a relative or friend undertakes to care for and prevent the accused from causing harm to himself or any one. However, if these conditions are not met, the accused – as per Section 330(2) – must be detained in safe custody in a suitable facility where regular psychiatric treatment can be provided, and a report must be sent to

the State Government.

22. At this stage, it is relevant to note that provisions pertaining to release on bail under Section 330(1) or (2) of Cr.P.C. may be invoked by a court in following cases: (i) during the pendency of inquiry into the unsoundness of mind by the Court and the accused's medical examination – as per Section 328(2) of Cr.P.C.; (ii) if the Court decides that a *prima facie* case is made out against the accused in respect of whom a finding of unsoundness of mind is arrived at, and the proceedings are postponed for a period which is required for treatment of accused – as per *proviso* to Section 328(3) of Cr.P.C.; or (iii) if the Court decides that a *prima facie* case is made out against the accused in respect of whom a finding of unsoundness of mind is arrived at, and the trial is postponed for a period which is required for treatment of accused – as per *proviso* to Section 329(2) of Cr.P.C.

23. On the other hand, Section 330(3) of Cr.P.C. sets out the procedure to be followed while considering the release of such an accused and whether he can be discharged or not. Firstly, it mandates that the concerned court can determine whether a person, who is found incapable of entering defence by reason of unsoundness of mind or mental retardation under Section 328 or 329 of Cr.P.C., can be released – keeping in view the nature of the act committed and the extent of unsoundness of mind or mental retardation.

24. Section 330(3) is thereafter divided into two conditional clauses. These can be summarised as under:

- Clause (a) enables the concerned Court to order the discharge and release of the accused, after considering the medical or the specialist opinion, subject to the condition that the Court shall satisfy itself that – the accused shall not do any injury to himself or to any other person. Further, such an assurance must come in the form of 'sufficient security'.
- Clause (b) provides that if the concerned Court is of the opinion that the accused cannot be discharged, the Court is vested with the power to – order the transfer of the accused to a designated residential facility. Such a facility must be meant for persons suffering from unsoundness of mind, or mental retardation. Further, the facility must provide care, as well as appropriate education and training to the accused.

25. In contrast to sub-sections (1) and (2) of Section 330 of Cr.P.C., sub-section (3) may be applicable in following cases: (i) in case of there being no *prima facie* case against an accused suffering from unsoundness of mind, who is required to be discharged – as per Section 328(3) and 329(2) of Cr.P.C.; or (ii) in case of an accused suffering from mental retardation, wherein the inquiry has to be closed or the trial cannot be held, as the case maybe – as per Section 328(4) and 329(3) of Cr.P.C.

26. In this Court's opinion, the underlying aim of Section 330(3) of Cr.P.C. is to strike a delicate balance between the safety of the public, and the rights, dignity, and well-being of an accused found to

be of unsound mind or suffering from mental retardation. Recognizing that such an accused person may lack the capacity to stand trial, this provision ensures that he is not subjected to unnecessary prosecution while also safeguarding society from potential harm. By mandating a judicial assessment of the nature of the alleged act and the extent of the mental condition, the law empowers the court concerned to decide as to whether the accused can be safely discharged upon sufficient security or needs to be placed in a specialized residential facility for care, training, and supervision.

Section 331 of Cr.P.C. – Resumption of Inquiry or Trial

27. Section 331 of Cr.P.C. provides that if the accused, who had been released under Section 330 of Cr.P.C., ceases to be of unsound mind, the inquiry or trial proceedings which had been postponed either under Section 328 or Section 329 of Cr.P.C. – are to be resumed.

28. It is material to note that this provision for resumption of inquiry or trial pertains only to persons of unsound mind, and not those who suffer from mental retardation, inasmuch as Section 328 and 329 of Cr.P.C. mandates postponement of inquiry or trial, respectively, only in case the accused suffers from unsoundness of mind and a *prima facie* case is made out against the accused.

Procedure under Chapter XXV – Mandatory in Nature

29. The provisions under Chapter XXV, including Section 328, 329 and 330, are couched in mandatory language, by use of words like 'shall'. Thus, clearly, the procedure contemplated under this chapter is mandatory in nature. It has also been held by several other High Courts that failure to follow the appropriate procedures under this Chapter can lead to vitiation of trial.

Examining the Impugned Order

30. At the outset, it is relevant to note that impugned order was passed by the learned Sessions Court, during the stage of inquiry, inasmuch as the charges had yet not been framed in this case. Therefore, the provisions of Chapter XXV of Cr.P.C., which the learned Sessions Court was required to follow and adhere to, would be Sections 328 and 330 of Cr.P.C.

31. The records of the case reveal that the chargesheet in this case was filed on 30.01.2016. It is important to note that alongwith the chargesheet, the investigating officer (I.O.) had filed an IQ Certificate of the accused, issued by IHBAS in the year 2009. The matter was put up for scrutiny and consideration of charge on 15.03.2016. On 19.04.2016, the learned Sessions Court had directed the investigating officer to file the report *qua* the mental condition of the accused before the next date of hearing. It is evident that at this stage, the learned Sessions Court had reason to believe that the accused in this case may be of unsound mind and consequently incapable of making

his defence.

32. On 26.05.2016, the learned Sessions Court directed that a report in respect of fitness of accused to stand trial and his current mental status be called from the Medical Board, IHBAS, and the I.O. was directed to requisite the said report. The report dated 16.09.2016, prepared by the Medical Board IHBAS was received by the learned Sessions Court on 01.10.2016, wherein it was opined by the Medical Board that the accused had been diagnosed as a case of severe mental retardation. The said report was authored by a medical board of four doctors/experts, comprising one Assistant Professor of Psychiatry, two Associate Professors of Psychiatry, and one Director and Chairman of the Medical Board.

33. The contents of the aforesaid report are set out below:

> "The patient Neeraj was examined by the Standing Medical Board at IHBAS on 14.09.2016. The Medical Board opined that patient is a diagnosed case of Severe Mental Retardation (S.Q. = 26) without behavioural problems. On examination, patient is not found fit to stand trial on assessment using the parameters: 1. Ability to understand charges. 2. Ability to understand the consequences, 3. Ability to defend oneself in the Court of law…"

34. Thereafter, the learned Sessions Court was pleased to summon Dr. Amit Garg, Assistant Professor, IHBAS with the relevant medical records of the accused as well as the report dated 16.09.2016. However, on 13.04.2017, Dr. Vijender Singh, Associate Professor of Psychiatry, who was also a member of the medical board, had appeared before the learned Sessions Court. He was examined as

CW-1 and his statement was recorded by the learned Sessions Court, which is extracted hereunder:

> "Statement of **Dr. Vijender Singh**, Associate Professor of Psychiatry, Member of Standing Medical Board, IHBAS.
>
> **ON S.A.**
>
> Based on the detailed evaluation and subsequent Medical Board examination held on 14.09.2016, the patient (accused Neeraj) has been diagnosed as a case of severe mental retardation(SQ=26) without behavioural problems. Patient was assessed by Medical Board for his fitness to stand trial which is assessed by using three parameters i.e. 1) Ability to understand charges 2) Ability to understand consequences and 3) Ability to defend oneself in the Court of Law.
>
> On assessment of the Medical Board of which I was the member, using these parameters, patient was found unfit to stand trial. Report in this regard is bearing my signatures at point A and the same is now Ex. CW-1/A. I identify the signatures of Chairman and other members of the Board in the said report at point B, C & D. Usually this kind of mental condition is by birth and is continuous. As per the current scientific knowledge, this condition is unlikely to improve as there is no treatment for this kind of condition."

35. Thus, it was deposed by Dr. Vijender Singh that the accused Neeraj had been diagnosed as a severe case of mental retardation, and he was found unfit to stand trial. It was also deposed that such a mental condition is by birth and is continuous, and as per current scientific knowledge, there is no treatment of this kind of condition.

36. In this Court's opinion, the learned Sessions Court had followed the mandate of Section 328(1) and (1A) of Cr.P.C. in its true spirit, by getting the accused examined by the medical board at IHBAS, and summoning and recording the statement of concerned

medical expert as CW-1. The learned Sessions Court thereafter formed an opinion that the accused herein was neither capable of understanding the nature of act committed by him at the time of commission of offence (considering his IQ certificate dated 02.02.2009) nor was he capable of entering a defence.

37. In view of the above, the learned Sessions Court had to now resort to Section 328(4) of Cr.P.C. – that is to order closure of inquiry and deal with the accused in the manner provided under Section 330 of Cr.P.C.

38. The procedure, as set out under Section 330 of Cr.P.C., has already been discussed in the preceding paragraphs. It was incumbent upon the learned Sessions Court to conduct an assessment under Section 330(3) of Cr.P.C. to determine whether the accused, considering the nature of the alleged act and the extent of mental retardation, could be discharged and safely released upon sufficient security, or could not be discharged and was required to be sent to a suitable residential facility for care, education, and training.

39. In the present case, the learned Sessions Court simply discharged the accused after noting that there was no ground to proceed against him, and only directed the father of the accused to furnish a surety bond in the sum of Rs. 10,000/- . The observations in the impugned order, in this regard, are as under:

> " In facts of the case, there is no ground to proceed against accused Neeraj. Accordingly, accused Neeraj is discharged

from the present case.

Father of the accused Neeraj is directed to furnish a surety bond in sum of Rs.10,000/- U/s 437-A Cr.P.C."

40. As noted above, the provision of Section 330(3) of Cr.P.C. is framed in mandatory terms, and requires the concerned court to consider the nature of alleged act and the extent of unsoundness of mind or mental retardation. Further, the *proviso* therein clearly contemplates two alternatives available to the Court upon finding that the accused is incapable of making a defence due to unsoundness of mind or mental retardation: *first*, the Court may order the discharge of the accused, if sufficient security is furnished ensuring that the accused shall not cause harm to himself or to others; and *second*, if such discharge is not deemed safe or appropriate, the Court may instead order transfer of the accused to a residential facility where appropriate care, education, and training may be provided.

41. *Clearly*, the procedure provided under Section 330, specifically sub-section (3), was not followed by the learned Sessions Court. The Sessions Court neither undertook any analysis of the nature of the alleged act committed by the accused nor assessed the degree and extent of his mental retardation to arrive at a reasoned conclusion as to whether he could be safely discharged. There is also no indication in the impugned order that the learned Sessions Court considered any medical or specialist opinion to satisfy itself that the accused would not pose a danger to himself or to others if released. In the

alternative, if the accused could not be safely released, the Court was under a statutory obligation to explore the option of referring him to a designated residential facility under clause (b), which also went unconsidered.

42. The consequences of the learned Sessions Court's failure to adhere to the mandate of Section 330(3) of Cr.P.C. cannot be overlooked. This Court is fully mindful of the legal protections extended to individuals suffering from mental retardation or unsoundness of mind. Such protections are rooted in compassion and in the understanding that a person who is incapable of comprehending the nature or consequences of his actions should not be subjected to criminal prosecution in the ordinary course. However, this Court is equally conscious of the corresponding duty to ensure the safety of society at large. It must be remembered that while the law shields individuals with mental disabilities from unwarranted criminal liability, it does not – and cannot – permit a blind discharge of such individuals into society without a proper and informed judicial assessment.

43. When a court fails to follow, in letter and spirit, the steps required to be followed under Section 330(3) of Cr.P.C., it effectively abdicates its responsibility both towards the accused and towards the society. Persons suffering from mental retardation may not understand the illegality or consequences of their actions, but the risk of repeated harmful behaviour to the other members of the

community remains very real. In such circumstances, Section 330(3) of Cr.P.C. plays a crucial role. It exists precisely because the law recognizes that while such persons may not be criminally liable in the conventional sense, they may still pose a threat – either to themselves or to others – if not placed under appropriate supervision or care. That is why the provision mandates the court to carefully consider the nature of the act committed, assess the degree of the mental condition, seek medical or specialist opinion, and then, only upon being satisfied, release the accused with adequate safeguards or refer him to a designated facility equipped to provide the necessary care and rehabilitation.

44. If courts remain unaware of these statutory obligations or fail to follow them, it would not only amount to a grave procedural irregularity, but also create a vacuum where neither the rights of the mentally disabled nor the safety of the public are protected. Judicial adjudications must strike this balance and must not allow such important legal duties to be reduced to a mere formality. At the cost of repetition, it is to be noted that the very objective of Section 330 of Cr.P.C. is to balance the rights of the accused with the safety of the community, and to ensure that accused persons suffering from unsoundness of mind, or mental retardation (which is considered more severe), are not released without proper safeguards or judicial satisfaction regarding their conduct and capability of being managed in their **own** homes.

The Decision

45. Thus, in the considered opinion of this Court, the omission to follow the mandate of Section 330(3) of Cr.P.C. in this case renders the impugned order legally unsustainable.

46. Accordingly, this Court holds that the impugned order dated 29.04.2017 is vitiated for non-compliance with the provisions of Section 330 of Cr.P.C., which are mandatory in nature. The impugned order is thus set aside, to the extent it simply discharges the accused Neeraj without following the procedure set out in Section 330(3) of Cr.P.C.

47. The matter is remanded back to the learned Sessions Court for passing an order afresh insofar as compliance with Section 330 of Cr.P.C., which relates to release of accused persons, is concerned.

48. With above directions, the present revision petition is disposed of.

49. Copy of this judgment be forwarded to the concerned Sessions Court for information and compliance.

50. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

APRIL 21, 2025/zp

(Corrected & uploaded on 22.05.2025)