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MCRC-47191-2025

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE GAJENDRA SINGH

MISC. CRIMINAL CASE No. 47191 of 2025*SURENDRA KUMAR THROUGH GAURESH DUBEY (NEXT FRIEND)**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

Appearance:

*Shri Manu Maheshwari, learned counsel for the applicant.**Shri Viraj Godha, learned Govt. Advocate for the respondent/State.**Shri Rakesh Kumar Laad, learned counsel for the respondent no.2.*
-----HEARD ON : 21.07.2026POSTED ON : 30.07.2026

ORDER

01. This petition under Section 528 of the BNSS, 2023 is preferred seeking following reliefs:-

(i). To set aside the order dated 10.01.2023 (Annexure- P/14) passed by the Learned Judicial Magistrate First Class, Indore in Criminal Case no. 36456/2016.

(ii). To set aside the order dated 23.07.2025 (Annexure- P/19) passed by the Learned Sessions Court, Indore in ST/118/2023, subsequent order dated 23.08.2025 (Annexure- P/20) of framing charge and all subsequent proceedings thereon.

(iii). To remand the matter to the Learned Judicial Magistrate First Class, Indore to decide the application under Section 328 of the Cr.P.C filed on behalf of the Petitioner in accordance with law.

02. The grievance of the present petitioner is that on 01.01.2010, a private complaint was filed by the respondent no. 2 before the Judicial Magistrate First Class,



Indore under Sections 406, 420, 467, 468, 471 & 120-B of the IPC against 5 persons including the petitioner herein for identical set of allegations as levelled in the Company Petition bearing No. 13/2008. In the year 2012, the petitioner suffered from a mental illness i.e. schizophrenia. Thereafter, on 02.02.2015, this Court in COMP/13/2008 was directed to winding up of the company and the Official Liquidator of this Court was appointed as Liquidator of the said company. On 17.08.2016, cognizance of the said private complaint was taken by the Chief Judicial Magistrate, Indore under Sections 406, 420, 467, 468, 471 & 120-B of the IPC against the petitioner and another. On 22.12.2017, the petitioner was granted anticipatory bail by the Sessions Court, Indore primarily on the ground of schizophrenia. I.A. No.8898/2018 was filed by the nephew of the petitioner in COMP/13/2008 before this Court to represent him in the said case as his 'next friend' given the mental illness of the petitioner. Thereafter, on 16.09.2019, the petitioner was directed to appear in person before this Court in COMP/13/2908. On 16.10.2019, an application under Section 328 of the Cr.P.C. was filed before the Judicial Magistrate First Class, Indore on behalf of the petitioner. An application under Section 328 of the Cr.P.C. was filed by on behalf of the petitioner before the Session Court, Indore in ST/118/23 wherein, it was categorically pleaded that the Magistrate committed a grave error in committing the case without deciding the application filed before it under Section 328 of the Cr.P.C. and a prayer was made to remand the case by setting aside the committal order and direct the Magistrate to decide the application under Section 328 of the Cr.P.C. filed by the Petitioner. On 23.07.2025, the Sessions Court, Indore dismissed the application filed under Section 328 of the Cr.P.C. and on the next date of hearing i.e. 23.08.2025, charges have been framed against the petitioner under Sections 406, 420, 467, 468, 471 & 120-B of the IPC by the Sessions Court, Indore.

03. Learned counsel for Respondent No. 1 has opposed the application.

04. Vide order dated 23.07.2025, the learned Additional Sessions Judge rejected



the application after recording a finding that only the medical prescriptions dated 18.03.2015 and 20.04.2016 pertaining to the Psychiatric Hospital, Indore had been produced. It was further observed that, before the Magistrate, prescriptions pertaining to the years 2012, 2013, 2014, and 2017 had been submitted; however, no medical documents had been produced after the year 2017. The Additional Sessions Judge further observed that none of the medical documents indicated that the accused/petitioner was incapable of understanding the nature of his acts. It was also observed that nothing in the order sheets suggested that the petitioner was unable to defend himself. On the contrary, the petitioner was found to be aware of the nature of the offences as well as the proceedings against him.

Heard.

05. Learned counsel for the State has opposed the petition.

Perused the record.

06. The statutory scheme (Sections 328 to 331 of Cr.P.C.) contemplates the procedure to be followed when the Court deals with an accused person of unsound mind. Section 328 of the Code provides the procedure to be followed in case the accused is a lunatic. Under Sub-section (1), when a Magistrate holding an inquiry has reason to believe that the person against whom the inquiry is to be 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 officers as a witness, and shall reduce the examination to writing. Sub-section (2) provides that pending such examination and inquiry, the Magistrate may deal with such person in accordance with the provisions of Section 330 of Cr.P.C. Sub-section (3) provides that if the Magistrate is of the opinion that the person referred to in Sub-section (1) is a person of unsound mind and consequently, incapable of making his defence, he shall



record a finding to that effect and shall postpone further proceedings in the case. Section 329 of Cr.P.C provides the procedure in case of a person of unsound mind tried before Court. Under sub-section (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 postpone further proceedings in the case. Section 331 provides the procedure for resumption of inquiry. Under sub- section (1), whenever an inquiry or a trial is postponed under Section 328 or Section 329 the Magistrate or Court, as the case may be, at any time after the person concerned has ceased to be of unsound mind, resume the inquiry or trial, and require the accused to appear or be brought before such Magistrate or Court. Under Sub- section (2), when the accused has been released under Section 330, and the sureties for his appearance produce him to the officer whom the Magistrate or Court appoints on this behalf, the certificate of such officer that the accused is capable of making his defence shall be receivable in evidence.

07. Therefore, when in the committal proceedings, the learned Magistrate finds materials or circumstances to doubt the capacity of the accused to stand for trial, he is bound to proceed as provided under Section 328. If the Magistrate has reason to believe that the accused produced before him is of unsound mind and, consequently, incapable of making his defence, the Magistrate shall cause that accused to be examined by the civil surgeon or such Medical Officer as the State Government directs. The Magistrate shall inquire into the fact of such unsoundness of mind and shall examine the said surgeon or Medical Officer. If, on such inquiry, the Magistrate is satisfied that the accused is of unsound mind and therefore incapable of making his defence, he shall record a finding to that effect. He shall then postpone the further



proceedings in the case. The Magistrate can proceed with the case only if, upon conducting the inquiry, he is satisfied that the accused is not of unsound mind and consequently not incapable of making his defence. If he records a finding under subsection (3) that the accused is incapable of making his defence consequent to the unsoundness of mind and postpones the further proceedings in the case, he shall then proceed as provided under Section 331 of the Code.

08. On 7.7.2018, by way of Act 10 of 2017, the Mental Healthcare Act, 2017 came into force. Section 105 of the Act deals with the procedures to be followed in a judicial process where any proof of mental illness of a person is produced. Section 105 reads thus:-

"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 the Board shall, after examination of the person alleged to have a mental illness either by itself or through a committee of experts, submit its opinion to the Court."

09. "Mental illness" is defined in Section 2(s) of the Act as follows:-

"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;"

10. Under Section 105 of the Mental Healthcare Act, if any proof of mental illness is produced and is challenged by the other side, the Court shall refer the same for further scrutiny to the Board concerned, and the Board shall, after examination of the person alleged to have a mental illness, either by itself or through a committee of experts, submit its opinion to the Court. The opinion of the Board referred to in Section



105 of the Mental Healthcare Act shall form the foundation of the decision of the Court on the question of whether the trial in respect of the person could be proceeded or not.

11. The Sanhita came into effect on 1.7.2024. Chapter XXVII of the Sanhita deals with the provisions as to accused persons of unsound mind. The relevant provisions in the present fact situation are Sections 367 and 368 of the Sanhita, which are extracted below:-

"367. Procedure in case of accused being person of unsound mind

(1) When a Magistrate holding an inquiry has reason to believe that the person against whom the inquiry is being held is a person 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 medical officer as a witness, and shall reduce the examination to writing.

(2) If the civil surgeon finds the accused to be a person of unsound mind, he shall refer such person to a psychiatrist or clinical psychologist of Government hospital or Government medical college 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 intellectual disability:

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 Government medical college.

(3) Pending such examination and inquiry, the Magistrate may deal with such person in accordance with the provisions of section 369.

(4) If the Magistrate is informed that the person referred to in sub-section (2) 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 369:

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 369.

(5) If the Magistrate is informed that the person referred



to in sub-section (2) is a person with intellectual disability, the Magistrate shall further determine whether the intellectual disability 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 369.

368. 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 of mind 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.

(2) If during trial, the Magistrate or Court of Session 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 psychiatrist 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 Government medical college.

(3) If the Magistrate or Court is informed that the person referred to in sub-section (2) is a person of unsound mind, the Magistrate or Court 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 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 369:

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.

(4) 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 intellectual disability, he or it shall not hold the trial and order the accused to be dealt with in accordance with section 369."



12. Sections 367 and 368 are almost pari materia with Sections 328 and 329 of the Code. The fundamental difference between the relevant provisions in the Code and the Sanhita is that, in the Code, protection is extended to a person of unsound mind or a person suffering from mental retardation who is incapable of entering defence by reason of such unsoundness or mental retardation whereas, in the Sanhita, the protection is extended to a person of unsound mind or a person suffering from intellectual disability.

13. The Mental Healthcare Act, 2017 defines "mental illness" as 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 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.

14. A conjoint reading of the Mental Healthcare Act and the relevant provisions in the Sanhita indicates that the Legislature has given a wider canvass to the phrase 'incapability of making defence' by incorporating the term "intellectual disability". While enacting the Sanhita, the Legislature has noted of the definition of the term "mental illness" provided in the Mental Health Care Act, 2017.

15. The fundamental objective of the scheme of the relevant statutes is to provide a fair and impartial trial to the accused. It has the demonstrable object that the accused should not be prejudiced. A fair trial is to be conducted in such a manner that it would ostracize injustice, prejudice etc. In a criminal trial, the accused, who is of unsound mind or is faced with intellectual disability in such a manner that he is not able to comprehend the gravity of the charges levelled against him, would not be in a position to explain the criminal acts alleged against him. He is the only competent person knowing his acts relating to the incriminating circumstances. It is his fundamental right to provide this vital information to his counsel. This is the essential



reason that provisions have been engrafted in the Code, in the Sanhita and in the Mental Healthcare Act, which lay down that an enquiry or trial of a person who is incapable of defending himself due to the disability must be postponed till he can understand the proceedings. Denial of such protection will deny his fundamental human right to have a fair trial, as provided in Article 21 of the Constitution of India. It is trite that there is not even a need for an application under the relevant Chapter to try the fact of unsoundness or intellectual disability; rather, it is the mandatory duty of the Court.

16. The material produced before the Sessions Court was sufficient to establish a *prima facie* case regarding the petitioner's incapacity, warranting a reference to a psychiatrist/psychologist for care, treatment, and submission of a medical report. Accordingly, the present M.Cr.C.No.47191/2025 is **allowed** and the impugned order 23.07.2025 (Annexure-P/19) is **set aside**, and the Sessions Judge shall proceed with the case in accordance with Sections 368(3) and 368(4) of the BNSS, 2023.

17. The prayer for remanding the matter to the Magistrate is not tenable, as the inquiry may be conducted either by the Magistrate or by the Sessions Court. The order dated 23.08.2025 (Annexure-P/20) is subject to outcome of enquiry.

C.C. as per rules.

(GAJENDRA SINGH)
JUDGE

VS