



2025:KER:57810

O.P (Crl) No.692/2024

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE G.GIRISH

WEDNESDAY, THE 6TH DAY OF AUGUST 2025 / 15TH SRAVANA, 1947

OP(CRL.) NO. 692 OF 2024

SC NO.256/2019 OF DISTRICT Court & SESSIONS Court, THRISSUR

PETITIONER/FATHER OF ACCUSED:

JOSE

AGED 77 YEARS

S/O PYLOTH, KANDAMKULATHI HOUSE, ALOOR DESOM & VILLAGE,
MUKUNDAPURAM TALUK, THRISSUR., PIN - 680683

BY ADV SRI.RAJESH CHAKYAT

RESPONDENT/STATE & MOTHER OF DECEASED:

- 1 THE SUB INSPECTOR OF POLICE
CHALAKUDY POLICE STATION THRISSUR DISTRICT,
PIN - 680307
- 2 SHEELA JOSE
AGED 55 YEARS
W/O M.O.JOSEPH, MALAPPAN HOUSE, SHA ROAD,
CHALAKUDY P.O, THRISSUR DISTRICT., PIN - 680307

BY ADVS.

SHRI.SARATH BABU KOTTAKKAL

SMT.ARCHANA VIJAYAN

SMT PUSHPALATHA M.K., SR. PUBLIC PROSECUTOR

THIS OP (CRIMINAL) HAVING BEEN FINALLY HEARD ON
29.07.2025, THE COURT ON 06.08.2025 DELIVERED THE
FOLLOWING:

**"CR"****J U D G M E N T**

What shall be the proper course to be adopted by the Trial Court when an accused, against whom the trial was once postponed, consequent to the enquiry under Section 329 Cr.P.C, is brought back with the report that he is fit to stand trial? Is the Trial Court required to refer the matter under Section 105 of the Mental Health Care Act, 2017 to the Mental Health Review Board, at that stage? Should the accused be given an opportunity, before proceeding with the trial, to show that he is still incapable of making a defence? These are the issues to be resolved in this Original Petition, filed under Article 227 of the Constitution of India by the father of the accused in S.C No.256/2019 on the files of the Sessions Court, Thrissur.

2. The aforesaid case relates to the commission of uxoricide by the accused who slashed the neck of his wife at the bedroom of their house, after disrobing her and laying her prone in the bed under the pretext that he wanted sexual intercourse with her.

3. While the Trial Court was about to proceed with the framing of charges, the petitioner approached with a contention that the accused is suffering from paranoid schizophrenia, and that he



cannot stand trial. Treatment records were produced before the Sessions Court in support of the above contention. Accordingly, the Trial Court sent the accused for examination at the Mental Health Centre, Thrissur. After subjecting the accused to observation and examination for about 10 days, the Psychiatrist concerned submitted report before the learned Sessions Judge confirming that the accused suffers from paranoid schizophrenia, and that he cannot stand trial. The Trial Court examined the above Psychiatrist and handed over the accused to the custody of the petitioner with a direction that the accused should be examined by a Medical Board constituted for analysing his mental condition. Accordingly, a Medical Board consisting of a senior and a junior Consultant Psychiatrist of Government Mental Health Centre was constituted. They examined the accused and submitted a report before the Trial Court. On the basis of the above report, the Senior Consultant Psychiatrist was examined before the Trial Court. Since the above Medical Officer stated before the Trial Court that there is improvement in the mental ailment of the accused due to medications, and that he is fit to stand trial, the Trial Court listed the matter for framing charges to 15.01.2021. Aggrieved by the above move, the petitioner herein



preferred W.P.(C) No.1466/2021 before this Court for a direction to constitute a Medical Board under Section 329(1A) Cr.P.C. The aforesaid writ petition was disposed of with the observation that it was for the Trial Court to take a decision in the matter based on the medical reports, and after conducting an enquiry, as contemplated under Section 329(2) Cr.P.C. It was accordingly directed that, for facilitating such enquiry, the trial in S.C No.256/2019 shall be deferred by a period of six weeks and that the Trial Court shall consider the necessity of institutionalised treatment of the accused. Accordingly, the petitioner produced the accused before the Sessions Court, which sent him for institutionalised treatment. Since the Medical Officer concerned reported that the accused was not fit to stand trial, the treatment continued. However, on 16.10.2021, the Trial Court passed an order to release the accused from the Mental Health Centre, since a report was received stating that the accused is fit to stand trial. Accordingly, the Trial Court again resolved to proceed with the framing of charges against the accused. Thereupon, the petitioner filed O.P(Crl) No.477/2021 before this Court alleging violation of the provisions contained in Sections 328 and 329(2) of Cr.P.C. As per the judgment dated 08.11.2023, this Court directed the



Sessions Court, Thrissur, to conduct an enquiry, as contemplated under Section 329 Cr.P.C. It was further directed that the framing of charges in S.C No.256/2019 shall be deferred till the enquiry is completed. Accordingly, the learned Sessions Judge directed the Government Mental Health Centre, Thrissur, to have an observation and certification of the mental status of the accused. The Government Mental Health Centre, Thrissur, constituted a team consisting of one Junior Consultant Psychiatrist and one Clinical Psychologist, and subjected the accused to observation for a period of 13 days. Thereafter, a report dated 13.08.2024 was submitted before the learned Sessions Judge stating that the accused is fit to stand trial, but he needs to continue medications and regular follow-up under a Psychiatrist for long term to maintain the current improved status. On receipt of the above report, the learned Sessions Judge examined the Junior Consultant Psychiatrist, who was one of the signatories to the above report. She deposed before the Trial Court in tune with the observations and recommendations in the report dated 13.08.2024. It is thereafter that the learned Sessions Judge took the impugned decision to proceed with the hearing on charge under Section 227 Cr.P.C and posted the case to 09.09.2024.



4. In the present petition, the petitioner would contend that his son is still suffering from the incurable mental illness of paranoid schizophrenia, and that he is not capable of making a defence in the case pending before the Sessions Court. According to the petitioner, the accused was again admitted and treated at a private hospital from 07.09.2024 to 21.09.2024 for the serious mental ailment suffered by him. The petitioner challenges the impugned decision of the learned Sessions Judge on the following grounds:

i) The Sessions Court did not follow the procedures prescribed under Sections 328 and 329 Cr.P.C before deciding to proceed with the framing of charges against the accused.

ii) The Sessions Court did not follow the mandate of Section 105 of the Mental Health Care Act, 2017, which required it to refer the case to the Mental Health Review Board.

5. Heard the learned counsel for the petitioner and the learned Public Prosecutor representing the State of Kerala.

6. A perusal of the case records and the procedures followed by the Sessions Court, Thrissur, would reveal that the accused in S.C No.256/2019 was subjected to the procedures envisaged under Section 329 Cr.P.C, with the intervention of this Court on two



occasions, towards providing institutionalised psychiatric treatment to him and postponing the trial, pending the above course of treatment. It is, after such prolonged treatment having been administered to the accused, that Ext.P6 report dated 13.08.2024 was submitted by the team consisting of a Junior Consultant Psychiatrist and Clinical Psychologist, who were deputed by the Government Mental Health Centre, Thrissur, to subject the accused to mental evaluation and treatment. In the above report dated 13.08.2024, the accused is stated to be having paranoid schizophrenia, which required continued medications and regular follow-up under Psychiatrists for a long term to maintain the current improved status. It was further stated in that report that he is fit to stand trial.

7. The Junior Consultant Psychiatrist, who is one of the signatories to the above report, was examined by the learned Sessions Judge before taking the decision to proceed with the hearing on framing of charges. However, it is seen from Ext.P7, which is the copy of the deposition of the above witness that, apart from a formal affirmation of the findings and recommendation in Ext.P6 report, nothing has been stated by the above Psychiatrist in connection with the competence of the accused to make his defence



in the criminal prosecution against him. It is very important to note that the petitioner herein, who was all along pursuing this matter about the incapability of his son to stand trial in the criminal prosecution launched against him, was not given an opportunity to cross-examine the above witness and to elicit the particulars relating to the mental condition of the accused, as well as the reasons why it has been stated in Ext.P6 that he is fit to stand trial.

8. It is in this context that the challenge raised by the petitioner about the non-compliance of the requirements of Section 329 Cr.P.C by the Sessions Court, subsequent to Ext.P6 report, assumes significance. Section 329 Cr.P.C reads as follows:

"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 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 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.]”

9. As per sub Section (1) of Section 329 Cr.P.C, if it appears to the Court during trial that the accused is of unsound mind and consequently incapable of making his defence, the Court shall try the fact of such unsoundness and incapacity before proceeding with the matter and record a finding to that effect, and postpone further proceedings in the case.

10. Sub Section (1A) of Section 329 Cr.P.C requires the Court or Magistrate to refer the person to a Psychiatrist or Clinical Psychologist for care and treatment, if the accused is found to be of unsound mind and consequently incapable of making his defence. The Psychiatrist or Clinical Psychologist, to whom the accused is referred, has to report to the Court or Magistrate, whether the accused is suffering from unsoundness of mind. The proviso to sub Section (1A) of Section 329 Cr.P.C confers the right on the accused to prefer an appeal to a Medical Board consisting of Head of Psychiatry unit in the nearest Government hospital and a faculty member in Psychiatry in the nearest medical college, if he is aggrieved by the



information so given by the Psychiatrist or Clinical Psychologist to the Court or Magistrate.

11. As per sub Section (2) of Section 329 Cr.P.C, the Magistrate or Court shall further determine whether the unsoundness of mind renders the accused incapable of entering defence and record a finding to that effect, if so found. The aforesaid Section further provides for the discharge of the accused, if the Court or Magistrate, upon examination of the record of evidence produced by the prosecution and hearing the Advocate of the accused, finds that there is no prima facie case made out against the accused. As per the proviso to the aforesaid Section, the Magistrate or Court shall postpone the trial for such period, as in the opinion of the Psychiatrist or Clinical Psychologist, required for the treatment of the accused, if it is found that a prima facie case is made out against the accused.

12. As per sub Section (3) of Section 329 Cr.P.C, if the Magistrate or Court finds a prima facie case against the accused, who is incapable of entering defence by reason of mental retardation, the accused shall be dealt with, in accordance with Section 330 Cr.P.C, instead of proceeding with the trial.



13. Section 331 and Section 332 of the Code of Criminal Procedure (Section 370 and Section 371 of BNSS) deal with the resumption of enquiry or trial, after the accused ceases to be of unsound mind. For the sake of convenience and easy reference, the aforesaid Sections are extracted hereunder:

"331. Resumption of inquiry or trial.—(1) *Whenever an inquiry or a trial is postponed under section 328 or section 329, the Magistrate or Court, as the case may be, may 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.*

(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 in this behalf, the certificate of such officer that the accused is capable of making his defence shall be receivable in evidence.

332. Procedure on accused appearing before Magistrate or Court.—(1) *If, when the accused appears or is again brought before the Magistrate or Court, as the case may be, the Magistrate or Court considers him capable of making his defence, the inquiry or trial shall proceed.*

(2) If the Magistrate or Court considers the accused to be still incapable of making his defence, the Magistrate or Court shall act according to the provisions of section 328 or section 329, as the case may be, and if the accused is found to be of unsound mind and consequently incapable making his defence, shall deal with such accused in accordance with the provisions of section 330."



14. As per sub-Section (1) of Section 331 Cr.P.C, the Court concerned has to require the appearance or production of the accused before it when the accused has ceased to be of unsound mind. Sub- Section (1) of Section 332 Cr.P.C enables the Court to proceed with the trial, if it considers him capable of making his defence. Sub-Section (2) of the aforesaid Section mandates that if the Court considers the accused to be still incapable of making his defence, it shall act according to the provisions of Sections 329 and 330 Cr.P.C. Thus, the pertinent aspect involved is the satisfaction of the Court concerned as to whether the accused is capable of making his defence or incapable of making his defence. The finding in the above regard has to be arrived by the Court not by merely perusing the report of the Medical Officers concerned. The Medical Officer, who is competent to state about the treatment administered to the accused, the mental condition of the accused and the reasons why he was found to have attained the capability of standing trial, shall be examined in detail before the Trial Court on the above aspects. It is also highly necessary that the accused or the person representing him should be afforded with an opportunity to cross-examine such Medical Officer and confront the above witness, if the accused is



having a case that he has not regained the capability to stand trial. After considering all the above relevant aspects and applying the judicial mind upon it, the Trial Court has to take a decision as to whether the accused is capable of making a defence, so that it could proceed with the trial against the accused. In case the Trial Court finds that the accused is still incapable of making his defence, the procedures which the Trial Court earlier followed with regard to the postponement of the trial and further treatment of the accused, has to be adopted. This is what exactly Sections 331 & 332 Cr.PC. provides to be done, when the accused is brought back before the Court concerned after the first round of procedures under Section 329 Cr.PC. Thus, the Trial Court is expected to follow the enquiry to that limited extent as stated above before taking the decision as to whether the trial has to be resumed. Needless to say that giving opportunity to the accused or the person representing him to participate in such limited enquiry, is having paramount importance. Any denial of affording such opportunity to an accused or the person representing him, would vitiate the proceedings initiated by the Trial Court towards resuming the trial in the case against the accused.



15. Now, the next question to be considered is whether the Trial Court was bound to refer the case to the Mental Health Review Board, as per the provisions under Section 105 of the Mental Healthcare Act, 2017. For the sake of convenience and easy reference, the aforesaid Section is extracted hereunder:

"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."

16. A plain reading of the aforesaid provision would reveal that the purpose of that provision is to enable the Court to get the opinion of the Mental Health Review Board constituted under Section 73 of the said Act, when the proof of mental illness is the subject matter of dispute in a proceeding before that Court. Obviously, the legislative objective behind incorporating the aforesaid Section is that, in matters relating to disputed mental illness, the Courts concerned should, instead of deciding it on the basis of its own perceptions, get the opinion of the Board which consists of a panel of



members capable of evaluating the mental condition of a person in a scientific and systematic manner.

17. It is pertinent to note that in the enquiry contemplated under Sections 328 & 329 Cr.PC, it is not the mere question whether a person is having mental illness, which the Court concerned is expected to embark upon. On the other hand, the cardinal aspect to be decided in such enquiry is whether the accused facing trial in a case is capable of making a defence, or incapable of making a defence due to unsoundness of mind. Even if an accused is found to be having mental illness, he is bound to undergo trial if his mental illness is not of such gravity which would render him incapable of making his defence. Therefore, the mere assessment as to whether the accused is having mental illness or not, by referring the matter to the Mental Health Review Board, would not serve any purpose, unless the opinion sought to be obtained is whether the unsoundness of mind of the accused is of such an extent which would render him incapable of making his defence. The purpose to be accomplished in the above regard could be fulfilled by resorting to the procedures envisaged under Sections 328 & 329 Cr.PC.



18. It is to be noted that as per Section 74 of the Mental Healthcare Act, 2017, the medical experts in the panel of the above Board are two members, of whom one is a Psychiatrist and the other is a Medical Practitioner. As per the provisions contained in Sections 328 & 329 Cr.PC., the accused require to be examined by Psychiatrist or Clinical Psychologist in the usual course. As per the proviso to the above Sections, a Medical Board consisting of head of the Psychiatry Unit of the nearest Government Hospital and a faculty member in Psychiatry in the nearest Medical College has to be constituted if the accused prefers an appeal against the report of the Psychiatrist or Clinical Psychologist, who had initially evaluated his mental condition. Thus, it could be seen that a more comprehensive and scientific framework, when compared with Section 105 of Mental Healthcare Act, 2017, is provided under Sections 328 & 329 Cr.PC for the evaluation of the mental condition of the accused. That being so, a reference under Section 105 of the Mental Healthcare Act, 2017, cannot be said to be a mandatory or inevitable requirement if the Trial Court has scrupulously followed the procedures under Sections 328 & 329 Cr.PC. Thus, the contention of the petitioner that the failure of the Sessions Court to refer the matter to the Mental Health



Review Board under Section 105 of the Mental Healthcare Act, 2017, has vitiated the procedures, is bereft of merit.

19. As far as the present case is concerned, it is seen that the petitioner herein, who represents the accused, did not get the opportunity to participate in the enquiry conducted by the learned Sessions Judge after the receipt of Ext P6 report that the accused is fit to stand trial. That being so, it is highly necessary to pass the necessary orders to enable the petitioner to participate in the enquiry and cross-examine Junior Consultant Psychiatrist who was examined before the Sessions Court in respect of the contents of Ext P6 report. Thus, the relief sought for in this original petition, has to be allowed to that limited extent.

In the result, the petition stands allowed in part as follows:

(i) The Sessions Court, Thrissur, is directed to afford an opportunity to the petitioner to cross-examine the Junior Consultant Psychiatrist, who was examined before that Court while accepting Ext P6 report (marked as Ext C1 before the Trial Court).

(ii) The Trial Court shall also permit the petitioner to adduce evidence on his part with regard to the mental illness of the accused, if he so prefers.



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(iii) After considering all the relevant aspects so brought out, the learned Sessions Judge shall take a decision afresh as to whether the trial has to be proceeded with in the case against the accused.

(sd/-)

G. GIRISH, JUDGE

jsr/DST



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APPENDIX OF OP (CRL.) 692/2024

PETITIONER EXHIBITS

Exhibit P1	A TRUE COPY OF THE RELEVANT PAGES OF FINAL REPORT IN CRIME NO.410/2018 OF CHALAKUDI POLICE STATION
Exhibit P2	A TRUE COPY OF THE RELEVANT PAGES OF TREATMENT RECORDS OF LAIJO
Exhibit P3	A TRUE COPY OF THE MEDICAL REPORT DATED 23/02/2021
Exhibit P4	A TRUE COPY OF THE JUDGMENT IN WP (C) 1466 OF 2021 DATED 08/03/2021
Exhibit P5	A TRUE COPY OF THE JUDGMENT DATED 08.11.2023 IN O.P.CRL.NO.477/2021
Exhibit P6	A TRUE COPY OF THE REPORT DATED 13.08.2024 ISSUED FROM GOVERNMENT MENTAL HEALTH CENTER, THRISSUR
Exhibit P7	A TRUE COPY OF THE DEPOSITION GIVEN BY DR.ROOPASREE, JUNIOR CONSULTANT (PSYCHIATRY) IN S.C.NO.256/2019
Exhibit P8	A TRUE COPY OF THE DISCHARGE SUMMARY DATED 21.09.2024 ISSUED BY SACRED HEART MISSION HOSPITAL; PULLUR
Exhibit P9	A TRUE COPY OF THE PRINT OUT OF E Court SERVICES DATED 02.09.2024 IN S.C.NO.256/2010 ON THE FILE OF PRINCIPAL DISTRICT AND SESSIONS Court, THRISSUR