

**Before Muhammad Hashim Khan Kakar, J**

**ABDUL GHAFAR---Petitioner**

**Versus**

**The STATE---Respondent**

Criminal Revision No.133 of 2015, decided on 23rd June, 2016.

**(a) Penal Code (XLV of 1860)---**

---Ss. 84, 302, 337, 354 & 34---Criminal Procedure Code (V of 1898), Ss.464 & 465---Act of a person of unsound mind, qatl-i-amd, shajjah, assault or criminal force to women with intent to outrage her modesty, common intention---Insanity, proof of---Accused filed application under S.464, Cr.P.C., for referring him to the Medical Board for examination being an unsound mind, during pendency of the trial---Said application was dismissed by the Trial Court---Trial Court had conducted preliminary inquiry and after examining accused had observed that; applicant/accused looked a fit person mentally, physically and psychologically; that each and every question asked to him of general nature and regarding matters of life, such as marriage, hobbies, daily activities, past moments, family relations etc., he did understand them---Trial Court proceeded with the trial of accused---Validity---When court would find that insanity was feigned one, the court was competent to reject such plea and it was not mandatory to send such accused for medical checkup and postpone the trial---Merely because accused made an application that he was of unsound mind was not sufficient for holding an inquiry under S.464 or 465, Cr.P.C.---Burden of proof of insanity lay on accused and under S.84 of P.P.C., the crucial point of time; at which unsoundness of mind should be established, was the time of the trial, when the act, constituting the offence, was committed---Medical report submitted by Standing Board, had revealed that accused was suffering from "Bipolar disorder"---Person suffering from bipolar mental illness could not be considered as a person of unsound mind---Petition of accused was dismissed by High Court.

Jalal Din v. The State 1968 PCr.LJ 187 and Black's Law Dictionary ref.

**(b) Medical jurisprudence---**

---Person of unsound mind---Scope---Bipolar disorder---Nature---"Bipolar disorder" which was also known as 'manic-depressive illness', was a brain disorder that would cause unusual shifts of mind, energy, activity levels and the ability to carry out day-to-day tasks---Bipolar disorder was of four types and all of them involved clear changes in mind, energy and activity levels---Person suffering from Bipolar disorder, could not be declared a person of unsound mind; it was mental disease, which could be characterized by periods of depression and periods of elevated mood---Petition of accused claiming that he was of unsound mind being devoid of any force, was dismissed, in circumstances.

Jalal Din v. The State 1968 PCr.LJ 187 and Black's Law Dictionary ref.

Muhammad Ibrahim Lehri for Petitioner.

Shabir Ahmed Rajput for the Complainant.

Yahya Khan, Deputy Prosecutor General for the State.

Date of hearing: 17th May, 2016.

## **JUDGMENT**

**MUHAMMAD HASHIM KHAN KAKAR, J.**---Through this criminal revision petition, petitioner, Abdul Ghaffar son of Ghulam Mustafa, has challenged the validity of order dated 22nd September, 2015 ("The impugned order"), passed by the Additional Sessions Judge-IV, Quetta ("the trial Court"), whereby an application under section 464 of the Criminal Procedure Code 1898 (Cr.P.C.), moved on behalf of the petitioner for referring him to the medical board for examination being an unsound mind, during pendency of this trial in case FIR No.133 of 2014, under sections 302, 337-ADF, 354 read with section 34 of the Pakistan Penal Code, 1860 (P.P.C.), registered at Brewery Police Station, Quetta on the report of one Mst. Pari Gul, was dismissed, with the observations that the application had been filed just to avoid trial and to prolong the proceedings and the petitioner is of sound mind and even he did not feign to be of unsound mind.

2. Mr. Muhammad Ibrahim Lehri, learned counsel for the petitioner contended that the petition is a patient of bipolar disorder and is unable to defend himself during his trial. The petitioner has appended sufficient documentary evidence in support of his claim, but the trial Court has failed to properly appreciate such documentary evidence in its true perspective. According to learned counsel, the trial Court was unnecessarily impressed by the answers given by the petitioner in response of the questions put by it. While concluding his arguments, he further submitted that the petitioners was not mentally fit, so the trial Court could not hold the trial and it was obligatory upon the trial Court to have referred the petitioner to a medical board and, after obtaining a report in either way to have decided the fate of the application as to whether the accused is mentally fit to conduct his trial.

3. On the contrary, learned Additional prosecutor General duly assisted by learned counsel for the complainant, while opposing the instant petition, contended that the petitioner is involved in a heinous offence of murder and the plea of insanity has been taken just to avoid the trial, otherwise, the petitioner is a man of sound mind and able to defend himself during the trial as observed by the trial Court. They further submitted that this plea of unsoundness of mind was never raised before the investigating officer, nor before the concerned Judicial Magistrate, enabling them to conduct an inquiry into the mental health of the petitioner, thus, at the belated stage, the said application cannot be entertained. They lastly contended that the petitioner has not provided any clue in his application that at the time of occurrence, he was suffering from fits of the mental disease and was not in sense, thus, it cannot be said that he was suffering from mental illness.

4. I have heard learned counsel for the parties and have gone through the documents appended with the revision petition with their valuable assistance. In order to set at rest the controversy between the parties, it would be appropriate and advantageous to reproduce herein below the provision of section 465(1) of the Cr.P.C., which reads as under:--

**"465. Procedure in case of person sent for trial before Court of Session or High Court being lunatic.**-(1) If any person before a Court of Session or a High Court appears to the court at his trial to be of unsound mind and consequently incapable of making his defence, the court shall, in the first instance, try the fact of such unsoundness and incapacity, and if the court, is satisfied of the fact, it shall record a finding to that effect, and shall postpone further proceedings in the case."

5. The abovementioned provision of law clearly postulates that such provisions should be adhered to, if any accused, before a Court of Session or a High Court, appears to the Court at his trial to be of unsound mind and, consequently, incapable of making his defence, the Court shall in the first instance, try the fact of such unsoundness and incapacity, and if the Court is satisfied of the fact, it shall record a finding to that effect and shall postpone further proceedings in the case. An inquiry under the above provision of law shall not be held merely because the accused has made a request. This shall only be undertaken, where it appears to the Court, from its own observations or from any other factor that the accused is incapable of making his defence because of unsound mind. In the instant case, the record reveals that the trial Court conducted preliminary inquiry and, after examining the petitioner, has observed as under:--

"After perusal of the record, and observing the appearance, attitude, behaviour, mental and physical conditions of the accused while appeared before court and talking with the accused show that the accused is not of unsound mind and I am of the opinion and have no reasons to believe that the accused is of unsound mind and consequently incapable of making his defence. He looks a fit person mentally, physically and psychologically. Each and every question asked to him of general nature and regarding matters of life such as marriage, hobbies, daily activities, past moments, family relations etc he did understand them."

6. It is manifest from the above observations that the trial Court was satisfied and had reason to believe that the accused/petitioner was mentally fit and, as such, proceeded with the trial. It is by now settled by the superior Courts that where Court finds that insanity is feigned one, the Court is competent to reject such plea and it is not mandatory to send such accused for medical checkup and postpone the trial. It is worth mentioning that merely because the accused makes an application that he is of unsound mind is not sufficient for holding an inquiry under Section 464 or 465 of the Cr.P.C. Where a trial Judge with a view to satisfy himself, puts certain questions to the accused and then comes to the conclusion that the said accused did not seem to be of unsound mind and incapable of making his defence, it was right in not holding an inquiry under the said Sections.

7. It is also pertinent to mention here that, at present, as contended by learned Deputy Prosecutor General, case of the petitioner is not at all that at the time of commission of the alleged offence, he was suffering from any mental disease, hence is entitled for any special concession. The only stance of the petitioner is that to know his mental condition, his medical

checkup may be got conducted. Keeping in view the request of the petitioner, the jail authorities were directed to get the applicant examined by a Psychiatrist from Sandeman Provincial Hospital, Quetta. In pursuance of the said directions, the petitioner was examined by the Balochistan Provincial Standing Medical Board, Quetta, consisting of Professor Dr. Ghulam Rasool, Head of the Department of Psychiatry, Dr. Muhammad Nasir Khan, Consultant Physician, Surgeon Ghulam Sarwar Consultant General Surgeon, Medical Superintendent and convener of Provincial Standing Medical Board Quetta. The Board, after examining the petitioner, opined as under:--

"In our opinion Mr. Abdul Ghaffar is suffering from Bipolar Affective Disorder, while currently he is stable and is of sound mind. Keeping in view of his current mental state examination he is able to proceed the proceedings of Honourable Court."

8. It is also by now established that the burden of proof of insanity lies on the accused and under Section 84 of the P.P.C., the crucial point of time, at which unsoundness of mind should be established, is the time, when the act, constituting the offence, is committed. In this respect reference can be made to the case of "Jalal Din v. The State" (1968 PCr.LJ. SC 187).

9. The medical report submitted by the Standing Board revealed that the petitioner is suffering from Bipolar disorder. According to the medical jurisprudence that Bipolar disorder, which is also known as manic-depressive illness, is a brain disorder that causes unusual shifts in mood, energy, activity levels and the ability to carry out day-to-day tasks. There are four basic types of the Bipolar disorder; all of them involve clear changes in mood, energy and activity levels. These modes range from periods of extremely "up" elated, and energized behaviour to various and "down" or hopeless periods.

10. Admittedly, a person suffering from Bipolar disorder cannot be declared as a person of unsound mind. The person of unsound mind is one, who from infirmity of mind is incapable of managing himself or his affairs. The term, therefore, includes insane person. According to the Black Law Dictionary, insanity is a condition, which render the affected person unfit to enjoy liberty of action because of the unreliability of his behaviour with concomitant danger to himself and others. In law, the term denotes that degree of mental illness, which negates the individual's legal responsibility of capacity. Under section 84 of the P.P.C., nothing is an offence, which is done by a person, who, at the time of committing an offence, by reason of unsoundness of mind, is incapable of knowing the nature of the act or that whatever he is doing is wrong or contrary to law.

11. Keeping in view the above mentioned legal provisions and the mental status of the petitioner in the light of medical report submitted by the Balochistan Provincial Standing Medical Board, Quetta. I am of the view that a person suffering from bipolar mental illness cannot be considered as a person of unsound mind. It is a mental disease, which can be characterized by periods of depression and periods of elevated mood.

Due to all the above mentioned, the instant criminal revision petition, being devoid of any force, is dismissed.

