

SC. 241/10 (CIS 467/15)

Order dated 25.08.2025

Today is fixed for passing order on the application filed by the accused persons under section 329 Cr PC.

3 accused on CB are present by filing appearance.

Ld. P.P. in charge and Ld. Advocate for the accused are present.

The application under section 329 Cr PC is taken up for passing order.

Briefly stating, the application under section 329 Cr PC has been filed for the accused claiming that the accused are patient of unsound mind and the accused should be treated and case may be proceeded after their treatment.

In the present case this court proceeded with the trial. The accused participated in the trial. All the prosecution evidence were examined and all of them were thoroughly cross examined after getting proper instruction of the accused. Now at the time of questioning of the accused under section 313 Cr PC such application was preferred by the accused under section 329 Cr PC. It is pleaded that the accused had mental problem and they are incapable of understanding the consequence of their act.

The Ld PP in charge objected the application and contended that the accused are capable of understanding the proceeding and no material were produced before the court to show that the accused had mental incapacity of any nature at any time.

The relevant statutory provision is Section 329 Cr. PC, which reads thus:-

“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.”

Going by the statutory provision, the essential condition for the applicability of this Section is that it must appear to the Court that the accused brought before it is of unsound mind. The word ‘appears’ in the provision is guidance for construction. It refers to a circumstance with some indication that makes it appear to the judge that the accused is of unsound mind and consequently incapable of making his defence. Forming such an opinion one way or another constitutes the first stage of the proceedings. Such opinion is necessary to make out if the accused is mentally participating in the process of trial.

The question which raises here is whether the court is always bound to conduct a detailed enquiry whenever counsel of the accused raises the point that the accused is of unsound mind. Now, if there is something in the demeanor of the accused or in the facts of the case, which raises doubt in the mind of the court that the accused is of unsound mind and consequently incapable of making his defence, it is obligatory on the court to try the said fact before

proceeding with the trial into the charge. The court has to record medical and other documents as may be produced before it if it necessitates embracing upon the next stage. In I. V. Shivaswami vs. State of Mysore AIR 1971 SC 1638, the Supreme Court held that the Section requires that there should be an enquiry if it appears to the Sessions Judge that the accused was insane, but if it does not appear to him so, it is not necessary that he should conduct a regular enquiry under the second limb. The Supreme Court observed that this does not mean that whenever a counsel raises a point before a Sessions Judge, he has to straight away hold an elaborate enquiry into the matter. If, on examining the accused, it does not appear to him that the accused is insane, it is not necessary that he should go further and send for and examine the medical witnesses and the other relevant evidence. Of course, if he has any serious doubt in the matter, the Sessions Judge should hold a proper enquiry.

In this case the Ld counsel for the accused referred to the medical report of District Hospital Alipurduar and the report of Superintendent, Alipurduar District Correctional Home in respect of the accused Parimal Roy. It was suggested in the report dated 03.07.2019 Memo No. APD /DH/758/19 submitted by Superintendent District Hospital Alipurduar that in-patient treatment of accused Parimal Roy is not required at present and he is advised to take medicine. During the entire course of trial commencing from the year of 2011, no such plea of unsound mind was ever taken up by the accused. The proceeding before the Court would reveal that the accused have actively participated in the trial. The witnesses were examined by the counsel for the defence after getting proper instructions from the accused and in the examination under Section 313 Cr PC, the accused were found to be capable of answering all questions put to them.

Thus, it appears to this court that no enquiry under section 329 Cr PC is required since the accused did not appear to be insane in view of the discussion made herein before.

Hence, the prayer of the accused under section 329 Cr PC stands rejected.

Fixing 18.09.2025 for argument.

Accused to be present on date fixed.

Addl. Dist. & Sessions Judge,
FTC-I, Alipurduar.

Additional Dist. & Sessions Judge,
1st Fast Track Court, Alipurduar.