

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

% CRL. REV. P. NO. 466/2012

+ Date of Decision: 18th October, 2012

MOUSHAM ...Petitioner
! Through: Mr. R.K. Bachchan, Advocate

Versus

\$ STATE ...Respondent
Through: Mr. M.N. Dudeja, APP for the State

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+ CRL. REV. P.NO. 467/2012

SHANI ...Petitioner
! Through: Mr. R.K. Bachchan, Advocate

Versus

\$ STATE ...Respondent
Through: Mr. M.N. Dudeja, APP for the State

*** CORAM:**
*** HON'BLE MR. JUSTICE P.K.BHASIN**

ORDER

P.K.BHASIN, J:

These two revision petitions have been filed by the petitioners under Section 397 read with Sections 401 and 482 of the Code of Criminal Procedure, 1973 against the two separate judgments/orders passed by the learned Additional Sessions Judge whereby their appeals against the order passed by the trial Court holding them guilty of the commission of offence punishable under Section 2(1)(i) of The Bombay Prevention of Begging Act, 1959 were dismissed and their detention in a Certified Institution for a period of one year was also maintained.

2. The only point urged before this Court by the learned counsel for the petitioners in both these petitions was that the orders of the Courts below are liable to be set aside since the petitioners were held guilty only on their pleading guilty on the first date itself when they were produced before the trial Court and were unrepresented by any lawyer. It is the grievance of the petitioners that they should have first of all been legal aid by the trial Court itself before punishing them. This, according to the counsel for the petitioners, was the duty of the trial Court even to apprise them of their right to have legal aid at State expense. Since this was the only point urged in both the petitions and were argued also together by the same counsel, the same are being disposed of by this common order.

3. The learned counsel for the petitioners had placed strong reliance on one recent judgment of the Hon'ble Supreme Court in “Mohd. Sukur Ali vs State of Assam”, (2011) Supreme Court Cases 729 in support of the contention that the conviction of the petitioners by the trial Court without providing them the legal aid at State expense is totally unsustainable. It was also submitted that after setting aside the orders of the Courts below the cases deserve to be remanded back to the Magistrate for a *de novo* trial from the stage one in such like cases since even the appellate Court also did not take into consideration this fatal infirmity in the trial even though it was pointed out on behalf of the petitioners. Learned Additional Public Prosecutor very fairly submitted that since the conviction of the petitioners was ordered by the trial Court without any representation by a lawyer for the petitioners by recording their pleas immediately of their production in court that they were professional beggars these revision petitions could be allowed and the matters could be remanded back to the trial Court with a direction to decide the fate of the two petitioners afresh after providing them the services of *amicus curiae* keeping in view the decision of the Supreme Court cited by the counsel for the petitioners and another earlier judgment also in the case of “Suk Das vs Union Territory of Arunachal Pradesh”. (1986) 2 Supreme Court Cases 401. It was also contended that just because the petitioners were produced in a mobile court presided over by a Special Magistrate would not make any difference since the Special Magistrate could also order the

detention of the apprehended persons, though in a certified institution only, upto a period of three years on being found guilty of begging which amounts to violation of their right of free movement in the society and the same cannot be denied without a fair trial.

4. I have given my thoughtful consideration to the matter and have unhesitatingly come to the conclusion that both these petitions deserve to be allowed as the petitioners have been held guilty of being professions beggars without a fair trial which they were entitled to get even if a summary procedure was to be followed for their trial. Summary procedure does not mean no procedure at all or trial ignoring the law laid down by the highest Court of the land which has been by the learned Special Magistrate in the case of these two petitioners.

5. Both the petitioners were produced by the police before the Special Magistrate on 17th July, 2012 alongwith a complaint of their having been apprehended while they were begging and on that date the following order was passed in the case of petitioner Mausham:-

*“Present: None for the State/Accused
Accused is produced in custody by Sh. Purshotta, ASI/DAP, posted at
Anti Begging Mobile Squad of Police.*

A fresh complaint has been filed against Mausham S/o Sh. Om Prakash aged about 22 years R/o Lal Quarter, Sector-4, Rohini, Delhi. It be checked and registered. The complaint filed by a public servant in discharge of his official duties as such; there is no need to record the preliminary evidence. Accused is admitted to bail on furnishing of

Personal Bond and Security Bond in the sum of Rs. 2,000/- (Rs. Two Thousand Only) failing which he be sent to R.C.C.

On the basis of Kalandra and after giving fair opportunity to hear the accused, a case u/s 2(1)(i) of the Bombay Prevention of Begging Act, 1959 is made against the accused. Therefore a notice u/s 251 Cr.P.C. served upon the accused to which he pleaded guilty without any threat, inducement and promise from anyone and does not claim trial. Accusation has been explained to the accused in vernacular (Hindi) and he has been cautioned that the accused is not required to plead guilty and he has been told about the consequences also, and despite the consequences being told, the accused has voluntarily pleaded guilty.

On being enquired, the accused voluntarily admitted before the Court that he was arrested while found begging from the passerbys in the DTC Bus at Rafi Marg, New Delhi-110001 at Red Light at 10.05 am and a sum of Rs. 75/- (Rs. Seventy Five only) in the form of coins and notes of different denominations as alms was recovered on his search as per his Personal Search Memo. He further added that he is unmarried and uneducated. He further deposed that he is living in Delhi Lal quarter at Sector-4 in Rohini with his family consisting his parents and brothers. Earlier they were living in Motia Khan, Paharganj, New Delhi. He further deposed that his father and other brothers are doing private job and are earning enough to maintain and support the whole family but he receives alms being his traditional work and he received alms by playing musical instrument (Dhole/Dhapli) in the buses. He further added that he does not want to do any work or labour and is committed to receive alms. Social Investigation Report (SIR) of P.O. was called for and on the basis of a summary enquiry conducted in terms of Section 5(1) of the BPB Act, 1959, the accused person was found begging and committed an offence of begging u/s 2(1)(i) of the BPB Act, 1959 and guilty of the offence charged and he is a professional beggar. I am satisfied that the accused voluntarily pleaded guilty and thereafter accused is guilty for the offence charged and is accordingly convicted U/s 5(5) of the Bombay Prevention of Begging Act, 1959.

I have heard the convict and IO on sentence and also considered the documents and evidence produced before me. Social investigation Report

has also been reflected that the accused is a young boy of 22 years and is of sound health and is capable of doing any type of job whether hard or light and he is not a person who is supposed to be depend on begging for surviving in Delhi. As he has stated that his father and brothers are doing private jobs and are earning enough to maintain and support the whole family. Being a young healthy and sound boy he is capable for doing any work whether light or heavy work but to avoid hard work or labour he is begging while is capable of putting hard work on the pretext that receiving alms is his family work which reflects that the accused is a beggar by profession as he does not have any necessity or duress as he is living with his father, mother and brothers who are earning enough which also shows that the begging is no compulsion for him but he begs just to fulfil the demand of money and to abstain from doing any kind of work or putting hard work and as such he has no defence of necessity or under duress. He was caught for receiving alms by passer-bys in DTC bus at Rafi Marg, New Delhi-1. On being asked, when he is physically fit and of sound health and is capable to carry on any type of work whether light or heavy, why he is begging, he could not satisfactory answer before the Court. Seeing the circumstances, antecedents and background of the accused it is but apparent that the accused is a professional beggar. Therefore, he is required to be kept in Certified Institution. Accordingly in accordance with Section 5(5) of the Bombay Prevention of Begging Act, 1959, I order to be kept the convict Mosham/S/o Sh. Om Prakash for a period of one year. A copy of this order is given to the accused free of cost through RCC, Department of Social Welfare, NCT Delhi located at Kingsway Camp, Delhi. File be consigned to Record Room.

Order be announced in the open Mobile Court on this 17th Day of July, 2012.”

6. The proceedings recorded in the case of petitioner Shani on the same day are as under:-

“A fresh complaint has been filed against Shani S/o Sh. Varda Lal aged about 20 years R/o Lal Quarter, Sector-4, Rohini, Delhi. It be checked and registered. The complaint filed by a public servant in discharge of his official duties as such; there is no need to record the preliminary evidence. Accused is admitted to bail on furnishing of Personal Bond and Security Bond in the sum of Rs.2,000/- (Rs. Two Thousand Only) failing which he be sent to R.C.C.

On the basis of Kalandra and after giving fair opportunity to hear the accused, a case u/s 2(1)(i) of the Bombay Prevention of Begging Act, 1959 is made against the accused. Therefore a notice u/s 251 Cr.P.C. served upon the accused to which he pleaded guilty without any threat, inducement and promise from anyone and does not claim trial. Accusation has been explained to the accused in vernacular (Hindi) and he has been cautioned that the accused is not required to plead guilty and he has been told about the consequences also, and despite the consequences being told, the accused has voluntarily pleaded guilty.

On being enquired, the accused voluntarily admitted before the Court that he was arrested while found begging from the passer bys in the DTC Bus at Rafi Marg, New Delhi-110001 at Red Light at 10.05 am and a sum of Rs. 87/- (Rs. Eighty Seven only) in the form of coins and notes of different denominations as alms was recovered on his search as per his Personal Search Memo. He further added that he is unmarried and uneducated. He further deposed that he is living in Delhi Lal quarter at Sector-4 in Rohini with his family consisting his parents and brothers. Earlier they were living in Motia Khan, Paharganj, New Delhi. He further deposed that his father and other brothers are doing private job and are earning enough to maintain and support the whole family but he receives alms being his traditional work and he received alms by playing musical instrument (Dhole/Dhapli) in the buses. He further added that he does not want to do any work or labour and is committed to receive alms. Social Investigation Report (SIR) of P.O. was called for and on the basis of a summary enquiry conducted in terms of Section 5(1) of the BPB Act, 1959, the accused person was found begging and committed an offence of begging u/s 2(1)(i) of the BPB Act, 1959 and guilty of the offence charged and he is a professional beggar. I am satisfied that the accused voluntarily pleaded guilty and thereafter accused is guilty for the offence charged and is accordingly convicted U/s 5(5) of the Bombay Prevention of Begging Act, 1959.

I have heard the convict and IO on sentence and also considered the documents and evidence produced before me. Social investigation Report has also been reflected that the accused is a young boy of 20 years and is of sound health and is capable of doing any type of job whether hard or light and he is not a person who is supposed to be depend on begging for surviving in Delhi. As he has stated that his father and brothers are doing private jobs and are earning enough to

maintain and support the whole family. Being a young healthy and sound boy he is capable for doing any work whether light or heavy work but to avoid hard work or labour he is begging while is capable of putting hard work on the pretext that receiving alms is his family work which reflects that the accused is a beggar by profession as he does not have any necessity or duress as he is living with his father, mother and brothers who are earning enough which also shows that the begging is no compulsion for him but he begs just to fulfil the demand of money and to abstain from doing any kind of work or putting hard work and as such he has no defence of necessity or under duress. He was caught for receiving alms by passer-bys in DTC bus at Rafi Marg, New Delhi-1. On being asked, when he is physically fit and of sound health and is capable to carry on any type of work whether light or heavy, why he is begging, he could not satisfactory answer before the Court. Seeing the circumstances, antecedents and background of the accused it is but apparent that the accused is a professional beggar. Therefore, he is required to be kept in Certified Institution. Accordingly in accordance with Section 5(5) of the Bombay Prevention of Begging Act, 1959, I order to be kept the convict Shani/S/o Sh. Varda Lal for a period of one year. A copy of this order is given to the accused free of cost through RCC, Department of Social Welfare, NCT Delhi located at Kingsway Camp, Delhi. File be consigned to Record Room.

Order be announced in the open Mobile Court on this 17th Day of July, 2012.”

7. It is clear from both these identical orders of the learned Special Magistrate that both the petitioners have been convicted without even providing them any legal aid which they were entitled to get at State expense. They were not even given any opportunity to avail of the benefit of bail given to them and straightaway their detention in a certified institution for a period of one year was also ordered. In the two judgments of the Hon'ble Supreme Court referred to already, one

of which was cited by the learned counsel for the petitioners and the other one was cited, very fairly, by the learned Additional Public Prosecutor it was held that right of an accused in a criminal case, where upon conviction he can be ordered to be imprisoned, to be represented by a lawyer at State cost when the accused cannot afford that facility is a fundamental right guaranteed under Article 21 of the Constitution of India and further that it is the Court's duty to inform the unrepresented accused that he could get legal aid at State cost even if the accused does not request for legal aid and the conviction of any accused without representation by a lawyer amounts to violation of his fundamental right under Article 21 and his trial has to be held to be vitiated on account of a fatal constitutional infirmity. This serious infirmity in the trial of the petitioners has been ignored even by the appellate court also.

8. Thus, both these revision petitions are allowed. The orders dated 17th July, 2012 of the Special Magistrate and that of the Additional Sessions Judge holding the petitioners guilty of begging are set aside and their fresh trial in accordance with law is ordered. For that purpose the cases shall be taken up by the Magistrate concerned now on 9th November, 2012 at 2 p.m. The bail orders dated 17th July, 2012 would now stand revived and the petitioners would be at liberty to avail of the same subject of course to their complying with the conditions of bail. In case the petitioners choose to have their representation by any

private counsel they would be at liberty to do so, otherwise legal aid at State expense shall be provided to them.

P.K. BHASIN, J

OCTOBER 18, 2012