

GAHC020004602019



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Crl.Rev.P. No. 15/2019

1. Shri. Samanungba Ao,
Son of Shri. Repabibo,
Permanent resident of Yimsenkong Sector,
Ungma Village, P.O/Police Station-II,
Mokokchung-798601, Nagaland.

...PETITIONER

-VERSUS-

1. The State of Nagaland,
Represented by the Public Prosecutor
to the Government of Nagaland,
Gauhati High Court, Kohima Bench.

... RESPONDENT

Advocates for the petitioner : Mr. Sentiyanger

Advocates for the respondents : Mr. Kevi Angami, P.P

:::BEFORE:::

HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of hearing : 12.08.2024

Date of Judgment & Order : 16.08.2024

JUDGMENT & ORDER (CAV)

Heard Mr. Sentianger, learned counsel for the petitioner. Also heard Mr. Kevi Angami, learned Public Prosecutor appearing for the State of Nagaland.

2. This is an application under Section 397 read with 401/482 of Cr.P.C, 1973 read with Article 227 of the Constitution of India against the impugned order dated 29.01.2007 passed by the learned Additional District & Sessions Judge, Mokokchung, Nagaland in G.R. Case No. 80/2005, by which, the appellant was convicted under Section 21(a) NDPS Act, 1985.

3. The brief facts of the case of the petitioner is that on 13.11.2005, the present petitioner was arrested with an allegation that 3(three) grams of brown sugar was recovered from his possession and accordingly, an FIR was also lodged by one Sub-Inspector Longkok Jamir, who was in-charge

of Tsuthapila check gate. Though the petitioner was initially allowed to go on bail but, as per the instructions of Sub-Divisional Police Officer, Mokokchung vide Office Communication No. MDP/CB-SDPO/05-06/1833 dated 14.11.2005 asking him to withdraw the bail bond and to immediately arrest the present petitioner and to produce him before the Court within 24 hours from the date of arrest. The articles were accordingly seized and were sent to Forensic Science & Laboratory, Assam, Kahilipara, Guwahati for examination. The report from FSL gave positive test of heroin, and after completion of the investigation, the charge-sheet was filed against the present petitioner under Section 27(b) of NDPS Act.

4. Thereafter, at the time of framing of charge, the learned counsel for the petitioner advised him to plead guilty for early disposal of the case and also stated that no harm shall cause to him even if he is discharging as Armed Branch Constable, Nagaland. Accordingly, the petitioner without having much knowledge about the law and technicalities, obeyed the advice of his engaged counsel and accordingly, pleaded guilty before this Court. Consequently, on his own plea of guilty, the petitioner was convicted by the learned Additional District & Sessions Judge, Mokokchung, Nagaland vide its impugned order dated 29.01.2007 and he was convicted under Section 21(a) NDPS Act by converting Section 27(b) NDPS Act, under which he was charge-sheeted and was sentenced to pay a fine of Rs. 8,000/- (Rupees Eight thousand) in default R.I for 4(four)

months.

5. Based on the impugned order dated 29.01.2007, the petitioner was terminated from his service as Armed Branch Constable, Nagaland vide Order No. MDP/Ro-8-07-08/148, dated 23.04.2007 by the Superintendent of Police, Mokokchung, by virtue of statutory powers conferred under Nagaland Service (Discipline and Appeal) Rules 1967 Rule 9(x) dismissed the present petitioner from service with immediate effect.

6. On being aggrieved by the termination order from service, the petitioner moved a writ petition (WP(C) No. 118(K)/2011) which was disposed vided order dated 20.03.2014, directing the petitioner to file an appeal before the concerned authority within a period of 30(thirty) days from the date of order as per the Nagaland Service Discipline and Appeal Rules seeking revocation of his dismissal order with a petition seeking condonation of delay in approaching the said forum.

7. The petitioner accordingly on 11.04.2014 filed an appeal before the Director General of Police, Nagaland, Kohima against the dismissal order dated 23.04.2007, passed by the Superintendent of Police, Mokokchung, with a prayer to condone the delay in filing the appeal. However, vide Order No. PHQ(B-X)HC/9/2011/154 dated 06.06.2014, the petitioner's appeal was dismissed by the Director General of Police, Nagaland, Kohima.

8. Aggrieved to the said order passed by the Director General of Police, Nagaland, the petitioner again approached this Court by filing another writ petition (WP(C) No. 164(K)/2014. However, the same was dismissed vide judgment and order dated 12.08.2016.

9. Thereafter, on being aggrieved to the impugned order dated 29.01.2007, passed by the learned Additional District & Sessions Judge, Mokokchung, Nagaland in G.R. Case No. 80/2005, by which the petitioner was convicted under Section 21(a) NDPS Act, the petitioner had filed the present revision petition.

10. It is submitted by Mr. Sentianger, learned counsel for the petitioner that it is well settled that plea of guilty does not automatically merit conviction. In this context, he also made a reference to the order passed by Division Bench of this Court in case of ***State of Mizoram vs. Ramengmawia*** reported in ***2006 (1) GLT 762*** and emphasized on paragraph Nos. 23 & 24 of the said judgment, wherein, it has been held that :

"23. before the conviction of the accused is based entirely on his plea of guilt, the Court must take care to ensure that the plea of the accused is voluntary, clear, unambiguous and unqualified, that the accused understands the nature of the

allegations made against him and admits them and that the accused admits all such facts, which are necessary and essential to constitute the offence.

24. What further logically follows is that the Court must also be satisfied that the facts placed before it in support of the plea of guilt are in themselves sufficient to sustain the offence charged with. In other words, the Court must have before it all such facts, which are essential to constitute the offence and such facts must be admitted by the accused before the plea of guilt of the accused is acted upon or conviction is based thereon."

11. Mr. Sentianger, learned counsel for the petitioner further submitted that the plea bargaining is discouraged by the Indian law and in that context he made a reliance on the decision of Hon'ble Supreme Court in case of ***Thippaswamy vs. State of Karnataka*** reported in ***(1983) 1 SCC 194***.

12. He further submitted that as per allegation the contraband was recovered from on the body charge of the petitioner as it is alleged that the contraband was kept inside the socks of the petitioner. But there was no proper compliance of Section 42(2), 50 & 57 of NDPS Act, which are the mandatory provision to be complied with. The present petitioner being

an illiterate person having no knowledge of law and technicalities, he pleaded guilty only as per advice of his engaged counsel, without knowing about the consequences pleaded guilty.

13. Mr. Sentianger, learned counsel for the petitioner further relied on the decision of Madras High Court in ***Raja vs. State in Criminal Appeal (MD) No. 115/2008***, wherein, in paragraph 10 of the said judgment, it has been held as:

"10. This Court finds considerable force in the submission made by the learned Amicus Curiae. The prosecution has f(a)iled to produce any material to show as to the compliance of Section 42(2), 50 and 57 of NDPS Act and it is under mandate as per the provisions of the above said Act to comply with the same. The appellant/accused, being a semi-literate, seems to have given a wrong advice by the counsel appearing for her and she pleaded guilty to the charges framed against her. The trial court, before imposing the sentence, ought to have put the appellant/accused on notice as to the quantum of sentence, but it has failed to do so and has inflicted a severe sentence of four years rigorous imprisonment with the default sentence, though, finds it is a small quantity."

14. Mr. Sentianger, learned counsel for the petitioner further submitted that the order of conviction has been passed without applying his judicial

mind. There is no observation made by the learned Court below while convicting the accused/petitioner regarding the voluntariness of the present petitioner and there is no any observation also that the accused/petitioner voluntarily pleaded guilty before the learned Court below. In that context, he also relied on the decision of Division Bench of this Court which was reported vide **2022 (2) GLT 707 (Limatoshi vs. The State of Nagaland & Anr., Kohima, Nagaland)** and stressed on paragraph No. 15 of the said judgment, which reads as under:

"15. The law is by now well settled that when a conviction of an accused is based entirely on his plea of guilt, the court must take care to ensure that the plea of the accused is voluntarily, clear, unambiguous. The accused needs to be clarified and the accused must understand the nature of the allegation made against him and the accused must admit all such facts which are necessary and essential to constitute the offence. The law is also well settled that while convicting a person taking recourse to the provision of Section 229 of the Cr.pche court must have before it all such facts which are essential to constitute the offence and such facts must be admitted by the accused before plea of guilty on the accused is acted upon. The law is also equally settled that Section 229 gives discretion to the court to proceed with the trial even if the accused pleads guilty and such discretion need to be exercised judiciously with proper application of mind."

15. Mr. Sentianger, learned counsel for the petitioner further submitted that in a warrant case, it is not proper to convict the accused only on plea of guilty without taking further evidence. In this context, he relied on the decision of this Court passed in criminal revision petition No. 03/2012, dated 16.01.2013.

16. Mr. Sentianger, learned counsel for the petitioner accordingly submitted that the case may be remanded back to the learned Additional District & Sessions Judge, for fresh trial of the case by setting aside the impugned order of conviction dated 29.01.2007, providing an opportunity to the present petitioner to contest the case and to face the trial.

17. Mr. Kevi Angami, learned Public Prosecutor for the State respondent submitted that in this regard that the present petitioner appeared before this Court with a petition for revision after more than 1000 days, though it is a fact that the delay has already condoned by this Court. Further, he submitted that earlier 2(two) writ petitions were filed before this Court, wherein, it is stated under oath that he had pleaded guilty before the learned trial Court below. Thus, it is seen that he voluntarily pleaded guilty before the learned Court below on the basis of which, the order of conviction was passed against him.

18. Mr. Angami, learned Public Prosecutor further submitted that it will also send a wrong precedent to the society, if the petition is allowed which

is filed after a long gap of more than 1000 days with a petition for setting aside the order of conviction which was passed by the learned Court below only considering the fact that he pleaded guilty before the Court voluntarily.

19. After hearing the submissions made by the learned counsel for both sides, it is seen that the present petitioner was arrested in connection with G.R. Case No. 80/2005, arising out of Mokokchung PS-I Case No. 0032/2005. And the charge-sheet was accordingly filed against the present petitioner under Section 27(b) of NDPS Act. But, at the time of consideration of charge, the present petitioner/accused pleaded guilty before the learned Additional District & Sessions Judge, Mokokchung, Nagaland on 29.01.2007 and on the basis of guilty pleaded by the present accused/petitioner at the time of consideration of charge, he was convicted under Section 21(a) of NDPS Act by altering the Section from 27(b) of NDPS Act, under which he was charge-sheeted. After conviction, he was sentenced to pay a fine of Rs. 8,000/- (Rupees Eight thousand) in default R.I for 4(four) months.

20. But, it is the case of the petitioner that he was not aware of the law and technicalities of law and for which, he simply pleaded guilty as per advice of his engaged counsel who ensured that if he pleads guilty the case will be disposed of at early stage and the same will not affect in his carrier. Accordingly, as per advice of his engaged counsel he pleaded

guilty before the learned Court below and on the basis of which he was convicted at the time of consideration of charge of the same case.

21. But after conviction order passed by the learned District & Sessions Judge, Mokokchung, Nagaland, he was terminated from his service vide order No. MDP/RO-8-07-08/148 dated 23.04.2007 by virtue of statutory powers conferred under Nagaland Service (Discipline and Appeal) Rules 1967 Rule 9(x) dismiss the present petitioner from service with immediate effect.

22. And thereafter, the petitioner preferred 2(two) numbers of writ petition as well as he also filed an application before the concerned authority for his reinstatement but the same was dismissed by the concerned authority.

23. On the other hand, it is the case of the State respondent that conviction order was passed by the learned Additional District & Sessions Judge, Mokokchung, Nagaland, as the accused/petitioner pleaded guilty before the learned Court below on the day of framing of charge.

24. It is further the case of the State respondent that the accused /petitioner voluntarily pleaded guilty before the learned Court below and accordingly, by altering the charge to 21(a) of NDPS Act, the charges were also read over and explained to the accused/petitioner to which, he

pleaded guilty and accordingly, conviction order was passed by the learned Additional District & Sessions Judge, Mokokchung, Nagaland. More so, the present petition has been filed after more than 1000 days, though the condonation petition was allowed by this Court.

25. But, from the order passed by the learned Court below, it is seen that there is no reflection in the order regarding his satisfaction that the accused pleaded guilty voluntarily, though it is reflected in the order that the accused admitted that the seized articles were recovered from his possession. Apart from that, there is no other reflection in the order that charges were properly explained to the accused/petitioner, neither there is any reflection regarding the satisfaction of the Court about the voluntariness of the accused/petitioner.

26. The plea taken by the petitioner that he pleaded guilty only on instructions/advice of his engaged counsel also cannot out rightly be rejected, as being a layman the accused/petitioner may not be aware about the law as well as the other technicalities of law. More so, he also may not be aware about the consequences of conviction which would affect his carrier or the service.

27. More so, the learned Court below had passed the order of conviction without recording any further evidence and without any satisfaction regarding the voluntariness of the accused/petitioner while he pleaded

guilty before this Court.

28. However, the plea taken by the petitioner in regards to non-compliance of Section 42(2) NDPS Act as well as non-compliance of Section 50 & 57 of the NDPS Act may consider or these are the matters are to be decided at the final stage of hearing. But considering all aspects of the case, it is seen that without going through the merit of the case or without recording any further evidence, the accused/petitioner was convicted at the stage of consideration of charge as he pleaded guilty before the learned Court below.

29. More so, from the judgment relied by the learned counsel for the petitioner passed by Division Bench of this Court as stated above wherein it expressed the view that "*when conviction of an accused is based entirely on his plea of guilty, the Court must take care to ensure that the plea of accused is voluntary, clear and unambiguous*" and the said judgment of the learned Division Bench passed by this Court also relied on the decision of the Apex Court and emphasized on paragraph Nos. 5, 6 & 7 of the said judgment, which reads as under:

"5. While considering the present reference, what strikes us is that the entire conviction of the accused under Section 302 IPC rests on the accused person's plea of guilt. The questions, therefore, which stare at us, most prominently, are: (i)

whether it is legally permissible to convict a person of a serious charge, such as, murder on his own plea of guilt and if so, what cautions are required to be applied, for this purpose, by the Court and (ii) whether, in the facts and circumstances of the present case, the plea of guilt, acted upon by the learned Court below, is legally sustainable ?

6. While considering the questions posed above, it may be noted that a Sessions Court's power to convict an accused on his plea of guilt is embodied in Section 229 of the Code of Criminal Procedure, 1973. This section corresponds to Section 271(2) of the Code of Criminal Procedure, 1898. Though there is slight variation in the language of Section 229 of the present Code, it substantially remains the same as in Section 271(2) of the old Code. According to Section 229, if the accused pleads guilty, the Judge shall record the plea and may, in his discretion, convict thereon.

7. A careful analysis of the provisions of Section 229 Cr.PC makes it clear that though there is no legal impediment, on the part of the Court of Sessions, to convict a person on his own plea of guilt, discretion does vest in the Court to convict or not to convict an accused based entirely on his plea of guilt. Since no discretion can be exercised by a Court arbitrarily, the

exercise of the discretion to convict or not to convict an accused on his plea of guilt can also not be arbitrary and is, in fact, Governed by sound judicial principles and precedents.

30. In the instant case also, it is seen that there is no reflection in the order as to whether the plea of the accused/petitioner was voluntarily clear and unambiguous. The conviction order was immediately passed at the time of consideration of charge only on the plea of guilty of the accused/petitioner.

31. So, considering all the aspects of the case, the order of conviction dated 29.01.2007, passed by the learned District & Sessions Judge, Mokokchung, Nagaland, in connection with G.R. Case No. 80/2005, Section 21(a) NDPS Act, 1985 and sentencing him to pay a fine of Rs. 8,000/- (Rupees Eight thousand) in default R.I for 4(four) months is hereby set aside and quashed. The matter is accordingly remanded back to the learned Additional District & Sessions Judge, Mokokchung, Nagaland, for a fresh trial. As the case is of the year 2007, the learned trial Court below is hereby directed to complete the trial expeditiously preferably within 6(six) months.

32. The accused/petitioner is hereby directed to appear before the learned District & Sessions Judge, Mokokchung, Nagaland, with an application for bail and face the trial accordingly.

33. With the above observation, this criminal revision petition stands allowed and disposed of.

34. Registry to do the needful and send back the case record before the learned District & Sessions Judge, Mokokchung, Nagaland.

JUDGE

Comparing Assistant