

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

+ **W.P(CRL) 508/2015**

% Reserved on: 04.08.2015  
Date of Decision: 07.08.2015

MRS GOVINDRAJ AMUTHA ..... Petitioner  
Through: Mr. Ashwin Vaish, Mr. Vinod  
Pandey and Mr. V. Thomas,  
Advocates

versus

CUSTOMS ..... Respondent  
Through: Mr. Rahul Mehra, Standing  
Counsel (Crl.) with Jamal Akhtar  
and Mr. Amrit Singh, Advs. for the  
State  
Mr.Satish Kumar, Senior Standing  
Counsel for respondent

**CORAM:**  
**HON'BLE MR. JUSTICE ASHUTOSH KUMAR**  
**ASHUTOSH KUMAR, J:**

1. Mrs.Govindraj Amutha questions the validity and tenability of the judgment and order of conviction dated 27.9.2014 passed by the learned ASJ/Special Judge, NDPS, Dwarka Courts, New Delhi in S.C No.4/3/13 whereby she has been convicted under Sections 22/23 read with Section 28 of the NDPS Act, 1985 and has been sentenced to undergo Rigorous imprisonment for 10 years, fine of Rs.1 lakh and in default of payment of such fine, simple imprisonment for six months for the offence under

Section 22 read with Section 28 of the NDPS Act, 1985 and rigorous imprisonment for 10 years, fine of Rs. 1 lakh (in default simple imprisonment for six months) for offence under Section 23 read with Section 28 of the NDPS Act, 1985, the sentences having been ordered to run concurrently with the benefit of Section 428.

2. It has been contended on behalf of the petitioner that the fundamental right of the petitioner has been violated in as much as even though she had pleaded not guilty and had claimed to be tried, the Trial Court on the basis of a letter submitted by the petitioner in desperation, pleading guilty in a way, convicted the appellant without application of mind or following the requirements of law for convicting a person in a sessions triable case. The further ground of challenge is that the petitioner was not afforded the facility of a translator even though she did not understand the language in which the evidence was recorded.

3. Since the Trial Court accepted the statement of the petitioner as an acceptance of guilt, no appeal could have been filed except for the legality/severity of the sentence.

4. Hence the present petition.

5. The facts giving rise to the conviction of the petitioner is as hereunder.

6. Ms.Parul Sharma (PW.3) Air Custom Officer received specific information on 1.2.2013 that the petitioner who was going to Malaysia by

Flight No.MH 0191 was in possession of narcotic drugs. The petitioner was found in the bay area from where she was brought to the Customs office. After observing the formalities namely intimation under Section 50 of the NDPS Act, 1985, the baggage of the petitioner was searched. A white crystal powder like substance weighing 4.915 kgs was found in the baggage of the petitioner. Two samples of 5 gram each were taken out from the said powder like substance and were marked subsequently. The petitioner was also in possession of mattresses in which also narcotic substance was found to be concealed. A total of 9.720 kgs of the narcotic substance was recovered. In her statement under Section 67 of the NDPS Act, 1985, the petitioner disclosed that the substance in question was being carried by her on behalf of one Ebrahim for a consideration amount of Rs.10,000/- and free air ticket. The samples of the substance reacted positive for Ketamine Hydrochloride, a narcotic drug.

7. A complaint, therefore, was lodged against the petitioner. She was put on trial. Charges were framed on 29.4.2013 under Sections 8/22/23/28 and 29 of the NDPS Act, 1985.

8. The petitioner pleaded not guilty and claimed to be tried. The charge and the claim of the petitioner to be tried are being reproduced hereunder:-

**CHARGE**

*I, S.C. Rajan, Additional Sessions Judge/Special Judge (NDPS), Dwarka Courts, New Delhi do hereby charge you Govind*

*Raj Amutha w/o Sh.Kosi Mani, r/o 1/2, Paugai, Darasukam, Kumbakonam, Tamil Nadu, as under:*

*That on 01.02.2013, you were intercepted at IGI Airport while you were going to Malaysia by flight no.MH 0191 and you were found in possession of 9.720 kg.ketamine from your baggage. You also entered into a criminal conspiracy with one Abraham for possessing, export of the recovered substance in contravention of the provisions of NDPS Act and thereby committed an offence punishable u/s 8/22/23/28 & 29 of NDPS Act within my cognizance.*

*And I hereby direct that you be tried by this court on the above said charge.*

*(S.C. Rajan)  
ASJ/Spl.Judge (NDPS)  
Dwarka/New Delhi  
29.4.2013*

*The charge has been read over and explained to the accused who is questioned as follows:*

*Q. Do you plead guilty or claim trial?*

*Ans. I plead not guilty and claim trial.*

*RO&AC  
G.AMUTHA*

*(S.C. Rajan)  
ASJ/Spl.Judge (NDPS)  
Dwarka/New Delhi  
29.4.2013*

9. It has been submitted on behalf of the petitioner that on 5.6.2013, 21.8.2013, 28.11.2013, 12.2.2014, 16.4.2014 and 14.8.2014 the counsel for the petitioner did not appear. As a result thereof some of the witnesses could not be cross examined.

10. On 25.4.2014, the petitioner expressed her inability to afford a counsel and a legal aid counsel was provided to her. The legal aid counsel also failed to appear in the Court on 16.5.2014.

11. Till 3.7.2014 only three witnesses had been examined by the prosecution. The legal aid counsel provided to the petitioner fell ill and because of her illness there could be no representation on 14.8.2014 also. It was under such circumstances that an application was filed by the petitioner stating that she pleads guilty and that she was carrying Ketamine Hydrochloride at the instance of someone and she served as a carrier.

12. The application of the petitioner is being reproduced below:-

- 1) *That I, Govindraj Amutha, w/o Sh.Kosimani was arrested on February 1, 2013 by Custom officials at IGI Airport with 9.720 kgs. Ketamine.*
- 2) *That I am married with 2 children all boys. Being a mother I am worried about my children although they are major but since I came inside I have no idea of their whereabouts. Also children of their age are the most vulnerable targets of social evils.*
- 3) *That being a mother, my motherly instincts and separating from children have now affected my mental health and I spend sleepless nights thinking about them. I have lost all of my senses and I am just a living like a lifeless person.*
- 4) *That I want to finish my case by pleading guilty.*
- 5) *That I was carrying the ketamine hydrochloride which was supplied by someone and I am the carrier only.”*

13. The petitioner was perhaps misled into believing that if she pleaded guilty, a lesser sentence would be imposed on her and may be

that she would be allowed to let go for the period she had already undergone in custody. Such misconception was further buttressed by the fact that in a similar case where an accused pleaded guilty of carrying a controlled substance namely Ephedrine Hydrochloride was sentenced to a period of 15 months which he had already undergone.

14. From the Trial Court judgment it appears that after the examination of PW.6 on 19.9.2014, the petitioner had filed an application pleading her guilt. Since the petitioner could understand and comprehend Tamil language only, one Tamil knowing Court employee was called and with his help, the petitioner was made to understand the consequences of her pleading guilty in the case. The learned Trial Court has recorded that the legal aid counsel also tried to make the petitioner understand the consequences of her pleading guilty but the petitioner insisted for the same.

15. The statement of the petitioner was thereafter recorded by the learned Trial Court which is as hereunder:-

*“Statement of accused Govindaraj Amutha w/o Sh.Kosimani D/o Govindraj r/o Padugai Darasukam Kumbakonam, Tamil Nadu.*

*Without Oath*

*I am the accused in the present case filed by Customs against me. On 01.02.2013 I was apprehended by the customs authorities when I was going to Malaysia from IGI Airport New Delhi from Flight No.MH 0191. During examination of my bag 9.720 kgs ketamine was recovered and since then I am languishing in jail and facing*

*trial and my application in this respect filed by my Ld. Counsel is Ex.P1 bears my signatures at point A and my counsel at point B. Now I want to plead guilt in the present case. I have understood the consequences of my pleading guilt in this present case through my counsel and the translator Sh. C. Jagadishan. Even though, I am pleading guilt in the present case on my own without any pressure or coercion from any side independently and I am ready to face the punishment and to pay the fine if so imposed upon me.*

*Sd/-  
RO&AC*

*sd/-  
(S.C. Rajan)  
ASJ/Spl.Judge (NDPS)  
Dwarka/New Delhi  
19.9.2014*

16. Thereafter the Trial Court, accepting the plea of guilt of the petitioner namely her carrying 9.720 kgs of Ketamine Hydrochloride, convicted her under Sections 22/23 read with Section 28 of the NDPS Act, 1985 and sentenced her to undergo RI for 10 years under both counts, fine of Rs.1 lakh under each head with the default stipulation.

17. The Trial Court judgment evinces complete non application of mind after such a plea of guilt was made by the petitioner.

18. Section 229 of the Code of Criminal Procedure provides that if an accused pleads guilty, the Judge shall record the plea and may, in his discretion, convict him thereon.

19. A plain reading of Section 229 makes it very clear that the Court has a discretion to convict an accused when he/she pleads guilty. The proper exercise of this discretion is of considerable importance especially

when the accused is absolutely unaware of the language of the Court or the language in which the Court proceedings are conducted and is illiterate. It is precisely for this reason that the Courts in India do not accept such pleas of guilt and proceed to take evidence in such cases. This practice of not accepting plea of guilt in certain circumstances is highly preferable lest the evidence which may be taken in the case might disclose that no offence was committed by the accused. The Trial Court misdirected himself in acting upon the plea of guilt in a serious case of Narcotic Drugs and Psychotropic Substances Act. The Trial Court ought to have proceeded with the trial in right earnest as some of the prosecution witnesses had already been examined after the petitioner had pleaded not guilty and had claimed to be tried in terms of Section 229 of the Code of Criminal Procedure. Once the Trial Court records the claim of the accused to be tried, the same ought not to have been lightly reviewed on an application by an accused, out of desperation and wrong conception that lesser sentence would be awarded in case the accused pleaded guilty. A joint reading of Sections 229 and 230 of the Code of Criminal Procedure further makes it clear that if an accused claims to be tried and pleads not guilty, date would be fixed by the Trial Court for examination of witnesses.

20. In the case in hand the Trial Court ought to have appreciated that the petitioner was a daily wage coolie with two sons to fend for. Admittedly, the petitioner was not well versed either in Hindi or English,

the language used in the Court. Till the time when the application pleading guilty by the petitioner was filed, she was not afforded the benefit of interpretation of evidence in terms of Section 279 of the Code of Criminal Procedure.

21. Under such eventuality it was highly improper for the Trial Court to have accepted the statement of the petitioner as her acceptance of the guilt.

22. In Ram Kumar vs. State of U.P, 1998 CrL.Journal 1267 (Allahabad), the Division Bench had the occasion to deal with this aspect. Paras 8, 9 and 10 of the aforesaid judgment is very instructive and are reproduced hereunder:-

*“8. There is another aspect of the matter which is also of considering importance. It has been settled by a catena of decisions not to act upon a plea of guilty in case of serious offences like murder. A layman accused when he pleads guilty is likely to be more concerned with the physical act and not advert to the various ingredients constituting the offence. Whether the acts constitute murder is a mixed questions of law and fact. To a common man there is no difference between killing and murder but in law the act of the accused may amount to an offence under Section 302, I.P.C. or 304 Part I, I.P.C. or under Section 304, Part I, I.P.C. and the sentence to be awarded in each case will differ. For deciding the nature of the offence the court should have before it the details of the occurrence, the motive and the circumstances under which the act was, done and for this purpose it is not only desirable but essential that the entire evidence be placed before the court.*

*9. The principle that in a serious case a finding of conviction should not be recorded on the plea of guilty, was stated a century*

ago by this court in *Queen Empress v. Bhadu* ILR(1896) All 120 in the following words:

*In this country it is dangerous to assume that a prisoner of this class understands what are the ingredients of the offence under Section 302 of the Indian Penal Code, and what are the matters which might reduce the act committed, to an offence under Section 304. Even in England it used to be the practice of some Judges, and probably is still, although they were not bound to do so, to advise persons pleading guilty to a capital offence to plead not guilty and stand their trial.*

*The accused is charged with a capital offence, and it need hardly be pointed out that the usual practice in such cases is not to accept the plea of guilty, but to proceed to record evidence and base the order of conviction or acquittal according to the reliability or unreliability of that evidence.*

*Again in Dalli v. Emperor* MANU/UP/0325/1922: AIR 1922 All 233(1) it was held as follows:

*In a case of murder it has long been the practice not to accept the plea of guilty. After all murder is a mixed question of fact and law and unless the court is perfectly satisfied that the accused knew exactly what was necessarily implied by his plea of guilty, the case should be tried.*

*In Mst. Shukia v. Emperor* AIR 1992 All 266 it was held as follows:

*The Rule is that when an accused is on his trial on a capital charge, it is not expedient that the court should convict him even upon a plea of guilty entered before the trial court itself. As a matter of practice the court should in its discretion, put such a plea on one side and proceed to record and consider the evidence, in order to satisfy itself, not merely of the guilty of the accused, but of the precise nature of the offence committed and the appropriate punishment for the same.*

*Similar view was taken by Calcutta High court as early as in the year 1885 in Netai Lusker v. Queen Empress* ILR Cal 410 and by Bombay High court in *Emperor v. Chinia Bhika Koli* (1906) Cri LJ 337.

10. *Almost all the High Courts of the country have taken the view that the court should not act upon the plea of guilty in serious offences but should proceed to take the evidence as if the plea had been one of not guilty and should decide the case upon the whole evidence including the accused plea. We do not consider it necessary to 'refer to those decisions in detail. As mentioned earlier the appellant had pleaded not guilty and as such there was no occasion for the court to record a finding of conviction as contemplated by Section 229, Cr.P.C. The prosecution having led no evidence to prove its case, the conviction of the appellant has to be set aside.'*

23. Section 375 of the Code of Criminal Procedure reads as hereunder:-

*375. No Appeal in certain cases when accused pleads guilty. Notwithstanding anything contained in section 374, where an accused person has pleaded guilty and has been convicted on such plea, there shall be no appeal,-*

*(a) if the conviction is by a High Court; or  
(b) if the conviction is by a Court of Session, Metropolitan Magistrate or Magistrate of the first or second class, except as to the extent or legality of the sentence.*

24. Normally the plea of guilt would be regarded as a waiver of the right of appeal except as to the severity or the legality of the sentence. In the present case, the plea of guilt of the petitioner is more a statement out of frustration and desperation and not a statement accepting the guilt. A plea of guilt made by an accused under such circumstances namely lack of knowledge and understanding, poverty, desperation, lack of proper advice, unavailability of experienced counsel may not be accepted as a

plea of guilt and Section 375 of the Code of Criminal Procedure would not come in the way of preferring an appeal against the judgment and order of conviction. Such an appeal, if so filed ought not only to be heard on the question of sentence.

25. This Court is of the considered opinion that the Trial Court adopted an erroneous approach in accepting the plea of guilt of the petitioner. Since the statement of the petitioner was actuated by a misconception, it ought not to be treated as a plea of guilt.

26. Under such circumstances, the petitioner is given the liberty to prefer an appeal against the judgment and order of conviction which would be entertained by the appellate Court without any caveat of Section 375 of the Code of Criminal Procedure.

27. This Court is loathe in remitting the case back to the Trial Court for taking evidence and writing out a fresh order for the simple reason that the grounds taken in this writ petition could be appreciated by the appellate Court. It would be open for the appellate Court to decide the course of action in case such an appeal is filed.

28. It would only be expedient, in the circumstances, to state that in case the appeal is preferred by the petitioner against the judgment and order of conviction, the appellate Court would consider the entire aspect of the matter and would thereafter decide about condoning the delay if at all in preferring the appeal.

29. The petition is disposed of in terms of the aforesaid.

**AUGUST 07, 2015**  
**K**

**ASHUTOSH KUMAR, J**