

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE SIDE JURISDICTION  
CRIMINAL WRIT PETITION NO. 2126 OF 2016

Sham Bholaram Bhatia

.....Petitioner

V/s.

The State of Maharashtra and another

....Respondents

Mr. Sudeep Pasbola a/w Mr. Rahul Arote Advocate for Petitioner.

Mr. V. H. Venegaonkar Advocate for Respondent CBI

Mrs. A. A. Mane APP for the State.

**CORAM : SMT. SADHANA S. JADHAV, J.**

**DATED : JUNE 23, 2016.**

**PC :**

Heard.

- 2) Rule. Rule made returnable forthwith with the consent of the parties.
- 3) Petitioner herein is accused in C.C. No. 966/PW/2015 pending before Additional Chief Metropolitan Magistrate 3<sup>rd</sup> Court, Esplanade, Mumbai, questions the procedure adopted by the learned Magistrate in the course of framing of charge on 10/06/2016. It is a matter of record that initially case was registered as Special Case No. 88 of 2001 and was pending before CBI Court. At one stage proceedings were stayed by the Hon'ble Apex Court.
- 4) On 10/06/2016, learned Magistrate has observed as follows:

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“Learned Advocate for Accused no. 2 stated that accused no. 2 is patient of kidney transplant and hip transplant and hence today, he could not appear before this Court. As the matter is 'Time Bound' by the order of Hon'ble Supreme Court of India, it is vital to proceed with the matter expeditiously. However, through the view of expedite trial of the case Ld. Advocate for the accd no. 2 is directed orally to obtain the signed plea of the Accused no. 2 today itself and submit to the Court”.

Soon thereafter, the plea of the accused no. 2 purportedly recorded by the Advocate for the accused was produced before the Court and was marked at Exhibit 105.

5) Section 240 (1) & (2) of Code of Criminal Procedure, 1973 reads as follows:

**“240. Framing of charge –** (1) If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried”.

6) The connotation of very section would indicate that it is mandatory upon the Court to explain the charge to the accused and ask him personally as to whether he pleads guilty or claims to be tried. In the present case, Advocate who was appointed by the accused to defend him in the case was directed to obtain the signature of the accused as if framing of charge was an idle formality and would have no consequence on the evidence to be recorded at the time of trial. Learned Trial Court had only considered the aspect that the trial has been expedited without considering that any and every accused has a right to a fair trial and that recording of plea as an idle formality would cause prejudice to the accused. It would occasion a failure of justice in the eventuality that the accused has not understood the charge which is to be framed against him. It is only after understanding the allegations levelled against him as explained by the court, the accused would have an opportunity to admit the charges or claim to be tried in the said case.

7) Learned counsel for the Respondent has submitted that on health grounds, accused had filed several applications seeking exemption and the same are granted in the interest of justice. It is pertinent to note that learned Magistrate had not issued any bailable or non-bailable warrant against the

accused to secure his presence for the purpose of framing of charge. Learned counsel for the Respondent CBI in support of the order passed by the learned Magistrate has placed reliance upon the Judgment of the Hon'ble Apex Court in the case of **Willie (William) Slaney V/s State of Madhya Pradesh [A.I.R. Supreme Court 1956 p 116]** which is a Judgment of the 5 judges. The Hon'ble Apex Court while deciding the issue as to whether framing of charge is just a ritualistic formula, has observed as follows:

*“Is the charge to be regarded as a ritualistic formula so sacred and fundamental that a total absence of one, or any departure in it from the strict and technical requirements of the Code, is so vital as to cut at the root of the trial and vitiate it from the start, or is it one of many regulations designed to ensure a fair and proper trial so that substantial, as opposed to purely technical, compliance with the spirit and requirements of the Code in this behalf is enough to cure departures from the strict letter of the law ?*

The Hon'ble Apex Court further observed:

*“The object of the Code is to ensure that an accused person gets a full and fair trial along certain well-established and well-understood line that accord with our notions of natural justice. If he does, if he is tried by a competent court, if he is told and clearly understands the nature of the offence for which he is being tried, if the case against him is fully*

*and fairly explained to him and he is afforded a full and fair opportunity of defending himself, then, provided there is substantial compliance with the outward forms of the law, mere mistakes in procedure, mere inconsequential errors and omissions in the trial are regarded as venal by the Code and the trial is not vitiated unless the accused can show substantial prejudice. That, broadly speaking, is the basic principle on which the Code is based”.*

8) Learned counsel for the Respondent has rightly relied upon the said Judgment. The Hon'ble Apex Court has also held that it is a pre-requisite that accused shall be told and shall clearly understand the nature of the offence for which he is being tried. If the case against him is fairly explained to him.

9) In the present case, the procedure adopted by the Magistrate is in violation of not only the observations of the Hon'ble Apex Court in the case *cited supra* but utter violation of section 240 (2) of Code of Criminal Procedure, 1973. It is the pre-requisite of any trial that the accused shall be given to understand the nature of the offence for which he is being tried. In the present case, defence Advocate for the accused was directed to only obtain the signature of the accused. There was no occasion for the accused to understand the nature of the offence for which he was being tried. Learned Magistrate would fail in his duty in complying with the mandate of section

240 (2) of Code of Criminal Procedure, 1973 explaining the nature of accusations against him. The Cr.P.C. obligates that in warrant cases, hearing the accused before framing charge is mandatory. The trial judges cannot frame charge in a cavalier manner without assistance from the prosecution or defence. In order to overcome the pedantic practice, it would be ideal for the prosecution to file draft charge and the accused be given an opportunity of oral hearing.

10) Learned counsel for the Respondent submits that section 240 (1) & (2) only contemplates the procedure. It is true that it is a procedure but a mandatory procedure which goes to the root of the matter. The violation of the same would deprive the accused of a fair trial. Framing of charge in such a manner cannot be challenged subsequently as it goes to the very root of the matter and the objection is to be raised at the first given point of time. It is true that Advocate for the accused ought not to have deviated from his professional ethics and ought not to have undertaken to get the plea signed by the accused. This court is of the opinion that the accused had not understood the charge or the nature of the accusations for which he was being tried. Hence, it has not only caused prejudice but would deprive the accused of a

fair trial. The procedure adopted by the learned Magistrate would be abuse of process of Law and hence, petition deserves to be allowed.

11) Learned counsel for the Petitioner, upon instructions submits that accused would remain present before the Court on 27/06/2016. Learned counsel for the Petitioner submits that accused/petitioner in person or through Advocate desires to make submissions at the stage of framing of charge.

12) In view of the above discussion, order directing the Advocate to get the plea signed deserves to be quashed and set aside. Hence, following order.

(i) Writ petition is allowed in terms of prayer clause (b).

(ii) The order dated 10/06/2016 passed by learned Addl. Chief Metropolitan Magistrate 3<sup>rd</sup> Court, Esplanade, Mumbai in C.C. No. 966/PW of 2005 is hereby quashed and aside.

(iii) Accused/Petitioner is directed to remain present before the Court on 27/06/2016.

(iv) Learned Magistrate shall hear the Accused/his Advocate at the stage of framing of charge, explain the nature of accusations and then pass appropriate orders in accordance with Law.

- (v) Rule is made absolute in the above terms.
- (vi) Writ Petition stands disposed of.

**(SMT. SADHANA S. JADHAV, J.) 9)**