



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.07.2016

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THE HONOURABLE DR.JUSTICE P.DEVADASS

Crl.R.C.(MD)No.354 of 2016

P.Saravanan

... Petitioner

Vs.

State represented by
the Inspector of Police,
Kumbakonam West Police Station,
Kumbakonam,
Thanjavur District.
(Crime No.305/2012)

... Respondent

Prayer: Criminal Revision Petition is filed under Sections 397 r/w. 401 of Cr.P.C., to call for the records and set aside the judgment dated 10.07.2012 passed in S.T.C.No.2174 of 2012 on the file of the learned Judicial Magistrate, Kumbakonam, Thanjavur District.

For Petitioner : Mr.A.Thiruvadi Kumar

For Respondent : Mrs.S.Prabha
Govt. Advocate (Crl.side)

O R D E R

In this Revision, the accused in S.T.C.No.2174 of 2012 on the file of the learned Judicial Magistrate, Kumbakonam, Thanjavur District challenges his conviction and sentence.

2. As directed, the entire case records in S.T.C.No.2174 of 2012 has been submitted by the trial Court.

3. It is alleged that on 09.07.2012, at about 6 p.m., near the Kumbakonam Government Bus Depot, to the annoyance of public, the accused hurled obscene words. Sudha, Sub Inspector of Police, Kumbakonam West Post Station brought him to her police station. She gave complaint. A case in Crime No.305/2012 under Section 294 (b) I.P.C. has been registered. She herself investigated the case. The accused was arrested. He was released on (police) station service. She interviewed and recorded statements under Section 161(3) of Cr.P.C., from Kumar and Machendran, Special Sub-Inspectors of Police. Concluding her investigation, she filed the final report for an



offence under Section 294(b) of Cr.P.C. before the concerned Magistrate's Court.

4. On 10.07.2012, the learned Magistrate took cognizance. The accused appeared before the Court. Mr.N.Sundararajan and Associate filed Memo of appearance for the accused. A petition admitting the offence has been filed.

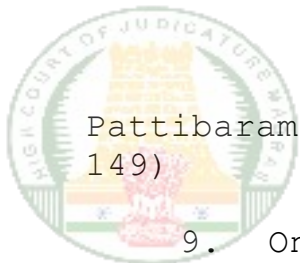
5. As per the S.T.C. extracts, on the same day, the accused seems to have been questioned, he is stated to have voluntarily admitted the offence and the learned Judge convicted him under Section 294(b) of I.P.C. and fined him Rs.300/-, in default to undergo one week simple imprisonment. He has paid the fine amount.

6. The learned counsel for the revision petitioner would contend that in the instant case, the mandatory provisions of Sections 251 and 252 in chapter XX of the Code of Criminal Procedure dealing with Trial of Summons-Cases has not been followed. Even, if the accused admit the offence, that will not dispense with complying of the said mandatory provisions of law.

7. The learned counsel for the petitioner also contended that as per Section 251 of Cr.P.C., the learned Magistrate has to put to the accused the details of the accusations in the language known to the accused and he must record the plea of the accused as nearly as possible in the words used by the accused. However, in the instant case, actually, the plea has not been recorded. There is no records to show that the plea has been put to the accused and no statement regarding the plea of the accused has also been recorded. Especially, as per Section 375 of Cr.P.C., as there is no appeal as against a case, in which the accused has pleaded guilty observing of the said mandatory provisions of law is very important. The learned counsel for the revision petitioner submitted that violation of the same will result in the entire criminal proceedings vitiated.

8. In support of his submissions, the learned counsel for the revision petitioner has cited the following decisions:

- (i) Mahant Kaushalya Das v. State of Madras (AIR 1966 SC 22)
- (ii) State of Sikkim v. Futi Sherpani (1980 CrL.L.J. 114)
- (iii) Purusottam Sabra and others v. State of Orissa (1992 CrL.L.J. 1417)
- (iv) State of Maharashtra v. Sukhdev Singh ((1992) SCC (Cri) 705)
- (v) Sashidhara Kurup v. Union of India and others (1994 CrL.L.J. 375)
- (vi) C.Subbarayudu v. State of A.P. (1996 CrL.L.J. 1472)
- (vii) B.Rajanna v. State of Karnataka (1996 CrL.L.J. 1820)
- (viii) S.Sundararaj v. State through Sub Inspector of Police, Adambakkam, Madras (1998 (I) CTC 686)
- (viii) S.Sundararaj v. State through Sub Inspector of Police,



Pattibaram Police Station, Ambattur, Chennai (2012 (3) MWN (Cr.) 149)

9. On the other hand, the learned Government Advocate (CrI.side) would submit that the revision petitioner has voluntarily admitted the offence. Then, he was also having the assistance of a lawyer. In such circumstances, he is not under duress. In his discretion, the learned Magistrate rightly accepted his plea of guilty and convicted him. The provisions of Sections 251, 252 of Cr.P.C., have been complied with. The extracts of the Summary Trial Register (S.T.C. Register), vouch safe such compliance.

10. I have carefully considered the rival submissions, perused the entire Trial Court records and the various decisions cited by the learned counsel for the revision petitioner.

11. This case presents certain important questions relating to conducting of trial in a summons-case and recording of the plea of the accused and passing of judgment thereon.

12. It is important to note that the learned Magistrates are dealing with life and liberty of persons. The rights of the accused is very important. A conviction by a criminal Court leads to various unpleasant consequences. Right of the accused for a fair trial itself is a facet of human right. This has been emphasised in the U.N.O.'s Universal Declaration of Human Rights, 1948. It has its repercussion in the Republic Constitution of India, 1950. Further, the International convention on Civil and Political rights, reassures this.

13. Observing of the vibrant human rights has also been emphasised in the celebrated judgment of the Honourable Supreme Court in Menaka Gandhi v. Union of India (1978 AIR 597). Even Article 21 of the Constitution of India, on the one hand, while authorising abridging of one's life and liberty it has clearly declared that it must be as per the procedure established by law.

14. It is too elementary that to punish a person, a criminal Court has to follow the provisions enshrined in the Code of Criminal Procedure. If in a case, the provisions prescribed under the Code of Criminal Procedure is not followed and conviction is recorded, it will militate against the principles laid down by the Honourable Supreme Court in Menaka Gandhi Case (supra), viz., the procedure adopted by the Court must be 'fair', 'reasonable' and 'just'.

15. Under the Indian Criminal Legal System, acting upon the <https://hcservices.ecourt.gov.in/hcservices> accused is statutorily recognised. In criminal trials, our system has three major classifications. They were so classified depending upon the severity of the punishment



prescribed for the offence. They are 'summons-cases', 'warrant-cases' and 'sessions-cases'. In all these type of cases, there is provision for recording the conviction based on the plea of the accused.

16. In a sessions case, under Section 229 Cr.P.C. and in a warrant-case, under Section 241 Cr.P.C., the Judge may record the conviction, based on the plea of guilty made by the accused. But if we see Sections 229 and 241 Cr.P.C., it is not that once the accused admitted the offence, the Judge is bound to accept it. The framers of the Code were very careful that they have given discretion to the Judge to verify the admissions whether they are voluntary, whether they are free, whether they were obtained under duress, force, torture, undue influence. Both in Sections 229 and 241 Cr.P.C., the word used is 'in his discretion', the Judge 'may' accept the admission or he may refuse to accept admission of the accused and direct the prosecution to produce the evidence.

17. It is pertinent to note that the recording of the plea of guilty both in a warrant-case and in a sessions-case, under Section 229, under Section 241 of Cr.P.C., as the case may be, comes after the charge has been framed and read out to the accused. The charge must be specific, unambiguous, very clear. And the admission by the accused must be unambiguous and unqualified and unconditional.

18. In this connection, it is relevant to extract hereunder the observations of the Honourable Supreme Court made in State of Maharashtra v. Sukhdev Singh (1992 SCC (Cri) 705) at 749:

"... According to the procedure provided in that Chapter after the case is opened as required by Section 226, if, upon consideration of the record of the case and the documents submitted therewith, the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused for reasons to be recorded. If, however, the Judge does not see reason to discharge the accused he is required to frame in writing a charge against the accused as required by Section 228 of the Code. Where the Judge frames the charge, the charge so framed has to be read over and explained to the accused and the accused is required to be asked whether he pleads guilty of the offence charged or claims to be tried. Section 229 next provides that if the accused pleads guilty, the Judge shall record the plea and may, in his discretion, convict him thereon. The plain language of this provision shows that if the accused pleads guilty the Judge has to record the plea and thereafter decide whether or not to convict the accused. The plea of guilt amounts to an admission of all the facts constituting the offence. It is, therefore, essential that before accepting and acting on the plea the Judge must feel satisfied that the accused admits



facts or ingredients constituting the offence. The plea of the accused must, therefore, be clear, unambiguous and unqualified and the Court must be satisfied that he has understood the nature of the allegations made against him and admits them. The Court must act with caution and circumspection before accepting and acting on the plea of guilt. Once these requirements are satisfied the law permits the Judge trying the phase to record a conviction based on the plea of guilt. If, however, the accused does not plead guilty or the learned Judge does not act on his plea he must fix a date for the examination of the witnesses i.e. the trial of the case. There is nothing in this Chapter which prevents the accused from pleading guilty at any subsequent stage of the trial. But before the trial Judge accepts and acts on that plea he must administer the same caution unto himself. ..."

18. It is very evident that even under Sections 229 and 241 of Cr.P.C., only after reading out the charges (see Sections 228 and 240 Cr.P.C.) containing the necessary elements or ingredients of the offence in the language known to the accused and the Judge after satisfying himself that the accused has understood the charges/accusations levelled against him, he can accept the plea of the accused. Therefore, it is clear that it is incumbent upon the Judge to put the charges/allegations to the accused in an unambiguous language. This is one of the right of the accused. This is also a 'matter of principles of natural justice'. It is also 'a matter of hear before condemn'.

19. Section 251 of Cr.P.C. in substance analogues to Sections 229 and 241 of Cr.P.C. Section 251, in chapter XX of the Cr.P.C., deals with recording the plea of the accused in a summons case. Before the present Code of Criminal Procedure of 1973, in the Old Code of Criminal Procedure, 1898, in Section 243, there was a provision as in Section 251 of the present Code of 1973 to record the plea of the accused in summons-cases. But, under the Old Code, in Section 243, the language employed is such that even at the stage of recording the plea, while reading out the accusations to the accused, the Judge shall ask the accused to show cause why he shall not be punished. This led to an apprehension in the mind of the accused that the Judge has pre-determined and in any way he will be punished. However, this apprehension has been obviated under the new Code of Criminal Procedure, 1973.

20. Now it is relevant here to notice Sections 251 and 252 of Cr.P.C. They runs as under:

"51. Substance of accusation to be stated. When in a summons- case the accused appears or is brought before the Court, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked whether he pleads guilty or has any defence to make, but it



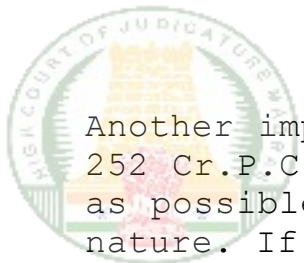
shall not be necessary to frame a formal charge.

252. Conviction on plea of guilty. If the accused pleads guilty, the Magistrate shall record the plea as nearly as possible in the words used by the accused and may, in his discretion, convict him thereon."

21. Now, a comparative analysis of the provisions of Section 229 (Sessions-Case), Section 241 (Warrant-Case) and Sections 251, 252 (Summons-Case) dealing with recording of plea of the accused shows that there is a marked difference. As per Section 252 of Cr.P.C., the learned Judge is bound to record the plea of the accused as nearly as possible in the words of the accused. However, this phrase is absent both in Sections 229 and 241 of Cr.P.C. The reason being as we have already stated, at the time when the plea is to be recorded in a Sessions-case under Section 229 of Cr.P.C. and in a warrant case, under Section 241, charges have been already read over to the accused under Sections 228 or 240 Cr.P.C., as the case may be. However, in a summons case, under Section 252 of Cr.P.C. before recording the plea of the accused, no charges were read over to the accused. It is pertinent to note that as per Section 251 of Cr.P.C., in a summons-case no formal charge need be framed.

22. So, in a summons-case putting the accusations to the accused under Section 251 of Cr.P.C. is very important. It is intended to give an opportunity to the accused to meet the case/accusations as against him. As already stated, it is also 'a matter of principles of natural justice'. It is also 'a matter of rights of the accused'. It is also 'a matter of principle of fair hearing'. When the accused admit the offence under Sections 251 of Cr.P.C., and under Section 252 of Cr.P.C., the Judge may accept it provided it is unqualified, unambiguous, clear cut and voluntary, (see GENERAL A.S.VAIDYA'S MURDER Case (1992 SCC (Crl.) 705). The Judge can also refuse to accept his plea and direct the prosecution to produce the witnesses, because as and when an accused admit the offence under Section 251 of Cr.P.C., under Section 252 Cr.P.C., it is not incumbent upon the Judge to immediately accept the plea and convict the accused. Such a discretion has been given to the trial Court under Section 252 of Cr.P.C.

23. A reading of the provisions of Section 251 of Cr.P.C., makes it clear that the Judge must clearly put to the accused what the accusations are as against the accused, the particulars of it, what the penal provisions of law the accused has violated and it gives an opportunity to the accused to put forth his defence, so as to enable the Judge to appreciate the same in the light of the evidence adduced or materials produced by the prosecution. This requirement in Section 251 of Cr.P.C., is mandatory in nature. Not following it makes the trial vitiated.



Another important aspect in a summons-case is that as per Section 252 Cr.P.C., the plea of the accused shall be recorded 'as nearly as possible in the words of the accused'. It is also mandatory in nature. If it is not done, the trial is vitiated.

24. In summons-cases, such strict following of the provisions of law is intended to protect the accused becomes very important, because as per Section 375 of Cr.P.C., no appeal will lie as against conviction recorded based on the plea of the accused. But, notwithstanding the provisions of Section 375 of Cr.P.C., if a conviction recorded and the sentence awarded based on the plea of guilty made by the accused is not in accordance with law and it is in violation of settled principles of law and the mandatory provisions of law its legality, propriety, regulatory can be questioned under the concurrent revisional jurisdiction of the Sessions Court and the High Court under Section 397 of Cr.P.C.

25. We shall now revert back to the case at our hand.

26. The learned Magistrate has recorded the required particulars in the S.T.C. Register in column 11, in vernacular language, the learned Magistrate recorded as under:

“எதிரி முன்னிலை நகல் வழங்கப்பட்டு, குற்றம் பற்றி வினவ, எதிரி தம்மிச் சையாக குற்றத்தை ஒப்புக் கொண்டார். எனவே, எதிரியை தண்டித்து, 294 (பி) இ.த.ச அபராதம் ரூ.300/-, கட்டத் தவறினால் மெ.கா.த. 1 வாரம்.”

(Accused present. Copies given. Questioned the offence. He has voluntarily admitted the offence. Hence, he is found guilty under Section 294(b) I.P.C.. Accused is sentenced to pay a fine of Rs.300/- in default he shall undergo 1 week simple imprisonment.)

27. There is no records to show that the accusations made as against the accused by the Kumbakonam West Police Station has been put to him. There is no accused statement indicating that the details of the accusation as found in the final report filed by the Sub-Inspector of Police has been explained to the accused. As already stated, as per Section 251 of Cr.P.C., the trial Court is bound to put the accusation to the accused. There is nothing in the trial Court records to show that the plea of the accused has been recorded as nearly as possible in the words of the accused. What is stated in column No.11 of the STC register is not sufficient to show that the requirement of Sections 251 and 252 of Cr.P.C. have been complied with in this case. Column No.11 of S.T.C. Register does not reveal that the details of the accusation made against the accused has been put to him and his plea has been recorded as nearly as possible in his words.

28. In such circumstances, it shall be deemed that the accusation has not at all been put to the accused and it could also be stated that the accusations against the accused have not been explained to the accused. And his plea has not been recorded. Therefore, in the instant case the provisions of Sections 251, 252



of Cr.P.C. has been completely violated.

29. It is a matter of grave concern that the salutary provisions ensuring fair trial has been completely not followed to punish a person. To slap a person with conviction by a Criminal Court is too serious a matter. It will play a havoc in his pursuing an avocation, it will be a black mark in his career. Therefore, the trial must be fair trial. A trial without following the mandatory provisions of law will not be a fair trial. The trial proceedings will be invalid. The product of such a trial will not stand in the test of Law. Thus, in the present case, the conviction recorded under Section 252 Cr.P.C. in violation of the mandatory provisions of law in Sections 251 and 252 Cr.P.C. are vitiated.

30. To obviate this kind of difficulties and to afford reasonable opportunity to the accused confirming rights of the accused, the learned Magistrates should put the accusations levelled as against the accused in unambiguous language and also record the plea of the accused whether he pleads guilty or denies the offences in the words used by him to the extent possible. If the language of the Court is not known to him or his language, is not known to the Court, then with the assistance of a translator/interpreter, the accusations shall be explained to him. The accusations must be typed in a separate sheet and it shall be read over and explained to the accused and his plea whether he pleads guilty or denies the offence, must be recorded below the statement of the accused as nearly as possible in the words used by the accused.

31. In view of the foregoing, this Revision succeeds. The conviction recorded and the sentence awarded in S.T.C.No.2174 of 2012 by the Trial Court dated 10.07.2012 are set aside. The fine amount already paid shall be refunded to the revision petitioner.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar (CS)

To

1. The Chief Judicial Magistrate,
Kumbakonam, Thanjavur District.

<https://hccs.judiciary.gov.in/> 2. The District Magistrate, Kumbakonam.



3. The Inspector of Police,
Kumbakonam West Police Station,
Kumbakonam, Thanjavur District.

4 The Government Advocate (Criminal side),
Madurai Bench of Madras High Court, Madurai.

5. The Section Officer (Criminal Section),
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.A.Thiruvadikumar, Advocate, Sr.No.36445

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JM/NGM-MP/26.07.2016/9P-7C

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13.07.2016