

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.712 of 2018

Arising Out of PS. Case No.-22 Year-2017 Thana- PATLIPUTRA District- Patna

Rakesh Kumar @ Pintu @ Fauzi son of Ram Uchit Mahto, resident of
Village- Shivnar, P.S. Mokama, District- Patna.

... .. Petitioner

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar with Mr. Imran, Advocates
For the Respondent/s : Mr. Rajesh Kumar, APP

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL JUDGMENT

Date : 30-10-2018

This revision application has been preferred against the order dated 18.5.2018 passed by Additional Sessions Judge, 11th , Patna in Sessions Trial 725 of 2017, arising out of Patliputra Junction P.S.Case No. 22 of 2017 whereby learned Additional Sessions Judge has been pleased to find the petitioner guilty for the offences under Sections 399, 401 of the Indian Penal Case and Sections 25(1-B)(a) & 26 of the Arms Act and sentenced him to undergo rigorous imprisonment for seven years and fine of Rs.5000/- with default clause under Section 399 IPC, R.I. for five years and fine of Rs.5000/- with default clause under Section 401 IPC, R.I. for two years and fine of Rs.5000/- with default clause under Section 25(1-B)(a) of the Arms Act and R.I. for five years and five of Rs.5000/- with default clause under Section 26 of the Arms Act.

2. Prosecution case has been initiated on the self statement of S.I Rajnandan, STF, Patna, stating, inter alia, that he received secret information of assembly of some miscreants at or near the Patliputra Junction, Patna, the informant along with police party reached station after informing higher



officials and near tempo stand at Patliputra Junction the police party found three persons with small bag standing there and on seeing the police party the miscreants tried to flee away but they were nabbed by the police party and on enquiry they disclosed their names as Rakesh Kumar @ Fauzi @ Pintu (petitioner), Drone Kumar and Hemant Kumar Singh and on search a loaded country made pistol with three live cartridges and one empty cartridge and Rs.90/- were recovered from the possession of petitioner Rakesh Kumar and from possession of others two persons the articles of regular use were recovered.

3. On the basis of aforesaid statement of informant, Patliputra Junction P.S.Case No. 22 of 2017 was registered for the offences under Sections 25(1-B)(a), 26 and 35 of the Arms Act and police after investigation submitted charge sheet against the petitioner and two other accused persons under Sections 399, 401 of the Indian Penal Code and Sections 25(1-B)(a), 26 and 35 of the Arms Act. Thereafter cognizance was taken against the petitioner and other two accused persons under the aforesaid sections and case was committed to the court of sessions.

4. It appears that while the case was pending for framing of charge and 18.5.2018 was the date fixed for framing of charge, on that day the petitioner has been convicted and sentenced to imprisonment as mentioned above, on his pleading guilty by the impugned order dated 18.5.2018. The aforesaid order is challenged in this revision application.

5. Contention of learned counsel for the petitioner is that in sessions case framing of charge is mandatory and learned trial court has not followed the mandatory provisions of Sections 226 and 228 of the Code of Criminal Procedure and without complying with the aforesaid mandatory



provisions of Criminal Procedure Code the accused petitioner was found guilty on his pleading of guilt. It has further been submitted that petitioner has filed an application pleading guilty under the impression that he would be given sentence to the period already undergone by him during trial and as such he accepted his guilt but severe punishment was awarded to the petitioner and further submitted that there was no Lawyer representing the petitioner and learned trial court also did not inform the petitioner that Lawyer at the expenses of State may be provided to him. It has also been submitted that pleading of guilt recorded by the trial court on the basis of application of the petitioner cannot be treated as voluntary and before recording the plea of guilty the trial court has not explained the consequences of pleading guilty as trial court has to find out the reasons behind the plea of guilty and the trial court without going into the reason behind of plea of guilty has convicted the petitioner. It has also been contended that the application has been filed by the petitioner pleading his guilt under some duress and expectation of lessor punishment.

6. Further contention of learned counsel for the petitioner is that the impugned order dated 18.5.2018 finding the petitioner guilty and sentenced him against the mandatory provisions of Sections 226 and 228 of Cr.P.C. and also without proper application of mind by the trial court or without explaining the implication of the accepted guilt to the accused person is not sustainable in the eye of law.

7. On the other hand, learned counsel for the State has defended the order passed by learned trial court and submitted that there is nothing illegal in the impugned order.



8. So far criminal trial is concerned, whether it is summons case or warrant case or sessions case the right of accused is very important and even Article 21 of the Constitution of India, on the one hand, while authorising the life and liberty of a person can be abridged or taken away, clearly declared that it must be as per the procedure established by law and as such a person may be punished by a criminal court only after following the law enshrined in Criminal Procedure Code.

9. So far the present case is concerned, the same is triable by a court of sessions and from perusal of the certified copy of the complete order sheets, which has been called for by this Court, it appears that the case was committed to the court of sessions and the file was received in the trial court on 19.12.2017 after commitment and it further appears that by order dated 25.4.2018 the case was fixed for framing of charge and the accused persons were directed to remain physically present and on 18.5.2018 accused petitioner Rakesh Kumar appeared and filed a self written petition for pleading him guilty stating that he has felt guilty for the criminal acts committed by him and now he wants to confess his guilt and on the basis of that petition the petitioner was found guilty under Sections 399, 401 IPC as well as under Sections 25(1-B)(a) and 26 of the Arms Act and, accordingly, he has been convicted under the above sections and later on sentenced as stated above.

10. So far Chapter XVIII of Code of Criminal Procedure deals with the trial before a court of session and Section 226 Cr.P.C. provides as follows :

“226. Opening case for prosecution.- When the accused appears or is brought before the Court in pursuance of a commitment of the case under section 209, the prosecutor shall open his case by



describing the charge brought against the accused and stating by what evidence he proposes to provide the guilt of the accused.”

Thereafter Section 227 of Cr.P.C. provides for discharge of accused and Section 228 Cr.P.C. provides for framing of charge, which is as follows :

“228. Framing charge.- (1) If, after such consideration an hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which -

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, [or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate] shall try the offence in accordance with the procedure for the trial of warrant cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.”

As such, the aforesaid provisions clearly provide that only after reading of the charges containing the necessary elements or ingredients of the offences in the language known to the accused and the trial Judge after satisfying himself that he has understood the charge/accusation made against him, then only he can accept the plea of accused either under Section 229 or 241 of Cr.P.C. and therefore it is clear that it is incumbent upon the trial court to put the charges/allegations to the accused in unambiguous language before punishing him on the plea of guilt which is also a matter of principle of



natural justice and another form of the Rule of (adiya attam pattam) hearing before punishment.

11. Hon'ble Apex Court in a case of **State of Maharashtra vs. Sukhdev Singh and another : 1992 SCC (Cri) 705** has held in paragraph 52 of the said judgment as follows :

“52. Even on first principle we see no reason why the court could not act on the admission or confession made by the accused in the course of the trial or in his statement recorded under Section 313 of the Code. Under Section 12(4) of the TADA Act a Designated Court shall, for the purpose of trial of any offence, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session so far as may be in accordance with the procedure prescribed in the Code for the trial before a Court of Session, albeit subject to the other provisions of the Act. The procedure for the trial of Session cases is outlined in Chapter XVIII of the Code. 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 tantamounts 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 case 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. This plea of guilt may also be put forward by the accused in his statement recorded under Section 313 of the Code. In the present case, besides giving written confessional statements both Accused 1 and Accused 5 admitted to have been involved in the commission of murder of General Vaidya. We have already pointed out earlier that both the accused have unmistakably, unequivocally and without any reservation whatsoever admitted the fact that they were responsible for the murder of General Vidya. It is indeed true that Accused 1 did not name Accused 5 as the driver of the motor cycle, perhaps he desired to keep him out, but Accused 5 has himself admitted that he was driving the motor cycle with Accused 1 on the pillion seat and to facilitate the crime he had brought the motor cycle in line with the Maruti car so that Accused 1 may have an opportunity of firing at his victim from close quarters. There is, therefore, no doubt whatsoever that both Accused 1 and Accused 5 were acting in concert, they had a common intention to kill General Vaidya and in furtherance of that intention Accused 1 fired the fatal shots. We are, therefore, satisfied that the learned trial Judge was justified in holding that



Accused 1 was guilty under Section 302 and Accused 5 was guilty under Section 302/34 IPC.”

12. The above judgment of Hon'ble Apex Court also disclosed that as per procedure prescribed in Chapter XVIII the case is to be 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 and if 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 and the same shall be read over and explained to the accused and accused is required to be asked whether he pleads guilty of the offence charged or claims to be tried and Section 229 then provides that if the accused pleads guilty, the Judge shall record the plea and may convict him thereon. However, the aforesaid provisions, which are mandatory in nature, have not been complied with in this case. No charge has been framed as it appears from the order sheet and as such charge has not been explained to the accused to understand the accusation against him, rather the case was fixed for framing of charge and on that day itself petitioner filed a self written petition pleading him guilty.



The impugned order also discloses that the trial court has not explained the implication on accepting the plea of guilt by the petitioner as well as whether the petitioner understood the accusation against him and on such petition trial court has held him guilty and passed order of punishment, which does not appear to be proper in accordance with law.

13. In view of discussions made above, the impugned order dated 18.5.2018 finding the petitioner guilty for the offences under Sections 399, 401 IPC as well as Sections 25(1-B)(a) and 26 of the Arms Act and sentencing him as mentioned above are set aside. The matter is remitted back to the trial court for framing of charge and to proceed further in accordance with law. It will be open to the petitioner either to accept the guilt or to contest the case.

14. Accordingly, this revision application is allowed to the extent indicated above

(Vinod Kumar Sinha, J)

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