

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION 13 OF 2019

PRATIK SHETVEREKAR

... Applicant

Versus

STATE AND ANOTHER

... Respondents

Shri A.V. Pavithran, Advocate for the applicant.

Shri Pravin N. Faldessai, Additional Public Prosecutor for the respondents.

Coram:- NUTAN D. SARDESSAI, J.

Reserved on : 03rd April 2019

Pronounced on : 16th April, 2019.

FINAL ORDER:

1. The applicant had invoked the jurisdiction of this Court under Section 482, 397 CrPC and Article 227 of the Constitution of India assailing the order dated 28/02/2009 pursuant to which the learned Additional Sessions Judge, Panaji upheld the order passed by the learned JMFC, Ponda dated 20/08/2018 and dismissed his appeal while ordering him to undergo the sentence of imprisonment and payment of fine as ordered by the learned JMFC, Ponda. Being aggrieved thereby, the applicant is before this Court assailing the

said judgment.

2. It was the contention of Shri Pavithran, learned Advocate for the applicant that the learned JMFC had convicted the applicant without giving him the benefit of probation and by recording his plea of guilty and sentenced him under Section 185 of the Motor Vehicles Act, 1988(the Act, for short) to suffer simple imprisonment for a period of one week, to pay a fine of ₹2,000/- and in default to suffer further simple imprisonment for a period of one month. The applicant was not literate and was not aware of the consequences of the plea recorded by the learned JMFC and which resulted in the said order by the learned JMFC and which came to be upheld in appeal by the learned Additional Sessions Judge, North Goa, Ponda. It was next his contention that the conviction was per se illegal as there was no requirement of suspension of license for the offence punishable under Section 185 of the Act. The substance of accusation explained to the applicant was also not in consonance of the predicates of Section 251 and 252 Cr.PC and the offence was governed under the summons triable procedure. He placed reliance in **B. Rajanna vs State Of Karnataka** [1996 CrLJ 1820], **State Of Maharashtra vs Sharad Keshav And Ors.** [AIR 1967 Bom 52]

and **Mahant Kaushalya Das v/s. State of Madras** [AIR 1966 SC 22(V 53 C 6)] to substantiate his case and to pray for quashing of the conviction and sentence passed against him.

3. Shri P. Faldessai, learned Additional Public Prosecutor on behalf of the State distinguished the judgment in B. Rajanna(supra) and submitted that the substance of accusation was explained to the applicant. The case of the applicant that he was not aware of the consequences of pleading guilty was contrary to the records and as the impugned order would reveal in so many terms. He adverted to the provisions of Section 375 CrPC and pressed for the dismissal of the revision application. On his part he placed reliance in **State of Punjab Versus Saurabh Bakshi** [(2015) 5 SCC 182]. He also adverted to Sections 21 and 22 of the Act and submitted that there were ample powers in the Magistrate to order the suspension of the license and therefore there was no illegality in the order under challenge and the revision had to be dismissed.

4. I would consider their submissions, the relevant provisions of the Act, the judgments relied upon as also the relevant provisions of Cr.PC and decide the application accordingly.

5. A cursory perusal of the proceeding sheet produced by Shri Pavithran, learned Advocate for the applicant would reveal that as on 20/08/2018 the applicant had remained present in person when he was informed of his right to avail free legal aid at the expense of the State but who had declined to engage any advocate and or to avail of free legal aid. Thereupon he had been furnished with the copy of the police report in compliance with Section 207 CrPC and then the particulars of the offence punishable under Section 185 of the Act were read over and explained to him to which he pleaded guilty. Thereafter the applicant was explained the consequences of pleading guilty and specifically informed that his plea may entail a term of imprisonment apart from a sentence of fine and that he should not expect any leniency because he had pleaded guilty and offered time for reflection to reconsider his plea. The record bears out that he had fully understood the consequences of pleading guilty and that his plea was well informed, clear, voluntary and unequivocal and that he did not require any time for reflection and the same was accepted thereafter followed by his conviction based on his plea.

6. A perusal of this record would indicate that after furnishing the copies of the chargesheet to him in compliance with Section 207

CrPC, the learned Magistrate had not given him any opportunity to take back the records and reflect on the same and /or to consult any Advocate of his choice. A mere incantation that he had not wished to appoint any Advocate or to avail of free legal aid by itself which would not absolve the learned Magistrate of his duty to ensure that the applicant did in fact understand the consequences of recording the plea. Moreover one fails to understand what was the haste for the learned Magistrate to proceed to record the plea on the very same day of furnishing the police records to the applicant and without giving any time for reflection to the applicant to seek better Counsel and thereafter to record his plea at a later date.

7. It appears that the learned Magistrate was overzealous in seeing the back of the applicant and in that process had recklessly proceeded to record his plea. Apart from this aspect of the matter, the learned Magistrate could not have ordered the suspension of license for the period specified in the order when Section 185 of the Act dealt only with driving by a drunken person and which entailed the punishment specified therein. Moreover i find myself in agreement with the contention of Shri Pavithran, learned Advocate for the applicant that there was a duty on the learned Magistrate to

explain the contents of Section 185 of the Act to the applicant and the consequences which would flow as a punishment thereto and then to have proceeded to record his plea accordingly. A reading of the order of the learned Magistrate does not at all indicate that the ingredients of the offence under Section 185 of the Act were explained to the applicant while recording the substance of the accusation and the plea of guilty came to be recorded in a most mechanical and perfunctory manner.

8. A reading of Section 251 CrPC which is contained in Chapter XX CrPC dealing with the trial of summons- cases by Magistrates reads that when in a summons - case the accused appears or is brought before the Magistrate, 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. A reading of this Section with the substance of accusation would indicate that the learned Magistrate had not followed the predicates of Section 251 CrPC and had mechanically recorded the plea on explaining the substance of accusation. It required the Magistrate to state the particulars of the offences of which he is accused to be stated to him and then asked

whether he pleads guilty or has any defence to make before proceeding to record his plea and which had not been done in the manner envisaged under Section 251 CrPC. Section 252 CrPC deals with the conviction on a plea of guilty and reads that 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. Therefore it is not as if the Magistrate is required to convict the accused no sooner he records his plea but a discretion is vested in the Magistrate to decide whether to convict him or not and/or to give him time for introspection.

9. **B. Rajanna**(supra), challenged in the petition the order passed by the Metropolitan Magistrate, Traffic Court-III, Bangalore City convicting him for the offence punishable under Section 92(o) & (p) of the Karnataka Police Act and sentencing him to pay a fine of ₹150/-. A petty-chargesheet was filed before the Metropolitan Magistrate alleging the commission of the said offence against the petitioner in respect of the occurrence which took place on 27/02/1991 unlike the order passed on the following day i.e. 28/02/1991. It was alleged that he was standing on the public-road and was drunk and was abusing in a foul language and thereby

committed breach of peace for which he was produced before the Magistrate on 28/02/1991 who adopted the summary procedure to try him.

10. In **B. Rajanna**(supra), the learned Single Judge of the Karnataka High Court considered Chapter XXI of CrPC dealing with the trial of the summary case by the Magistrate under Sections 251 and 252 in particular and observed at para 9 that the rule embodied in Section 252 of the Code was a very salutary rule, being necessary for the protection of the accused and the proper administration of justice. The superior Court is entitled to be satisfied that what was treated by the Magistrate to be an admission of the offence is really such an admission. It is not difficult to conceive of cases in which the superior Court and the Magistrate may differ upon the construction to be placed upon the statements of the accused person. By not recording the admission of the accused as nearly as may be in his own words the Magistrate disregarded the provision of Section 252 of the Code. The safeguard provided in Section 252 CrPC, namely, that the plea must be recorded as nearly as possible in the words used by the accused is a wholesome provision and any departure from this would not be in the interest of justice as superior

Courts must know what question was put to the accused and what was his real answer, to decide for itself if the plea of guilt was really so.

11. In **B. Rajanna**(supra), the learned Single Judge further observed that the fact that the offence was petty was not relevant for this purpose as conviction in a petty offence may also carry the stigma and may affect persons in many ways. It was further observed in paragraph 10 that the requirement of Section 252 of the Code are mandatory in character and violation of these provisions vitiates the trial and renders the conviction invalid. The requirement of the Section is not a mere empty formality but is a matter of substance intended to secure proper administration of justice. It is important that the terms of the Section are strictly complied with because the right of appeal of the accused depends upon the circumstances whether he pleaded guilty or not and it is for this reason that the legislature requires that the exact words used by the accused in his plea of guilty should, as nearly as possible, be recorded in his own language in order to prevent any mistake or misapprehension. In the facts at large the learned Single Judge found that the learned Magistrate had not recorded the plea of the

accused in his own words as nearly as possible. There was no material to show that the petitioner had sufficient opportunity to make up his mind. The incident took place on 27/2/1991 and he was produced before the Magistrate on 28/2/1991 and the plea of the accused was recorded on that day. In the circumstances, it was found that the order passed by the Magistrate convicting and sentencing the accused was liable to be set aside and allowed the petition.

12. In **Sharad Keshav**(supra), the Opponents No.1 to 5 alongwith 5 other persons were prosecuted for an offence under Section 5 of the Bombay Prevention of Gambling Act and out of these 10 persons, Sudhakar was also prosecuted separately for an offence under Section 4 of the said Act. The pleas of the accused were recorded by the learned Magistrate on 02/08/1965 and the particulars which were read and explained to the accused were "Offence complained of - Under S. 5 P. G. Act. You all were found in common gaming house in Sudhakar Dhenge's rented house in 13/7/1965 at 9 P.M.". Plea recorded for the accused Nos. 2, 3, 5 and 8 is "I am guilty". As regards the accused No. 9 it is "I plead guilty". On the basis of this admission of the guilt, the learned

Magistrate has convicted the accused Nos. 2, 3, 5, 8 and 9, namely the respondent Sharad and 4 others under Section 5 of the Bombay Prevention of Gambling Act and sentenced them to pay a fine of ₹200 and in default rigorous imprisonment for 30 days.

13. In **Sharad Keshav**(supra), they challenged the conviction in revision before the Sessions Judge Nagpur who found the conviction defective and illegal on three grounds and held that it was not permissible to the learned Magistrate to convict some of them on admission and to acquit or convict others on evidence. It was also the finding of the learned Sessions Judge that the particulars that were explained to the accused were not proper and that the formulation of the substance of accusation did not amount to an offence and therefore it was fatal to convict them based on the admission. Thirdly the learned Session Judge held that the plea had not been recorded by the learned Magistrate in the manner it should have been recorded under the Code inasmuch as it should have been in the words of the accused as nearly as possible and what was recorded by the learned Magistrate was his own inference or conclusion. The High Court while dealing with the appeal of the State found that the order of the learned Magistrate convicting the

respondents on their plea of guilty would be prejudicial and must be set aside. The learned Sessions Judge has also rightly observed that the plea of the accused has not been properly recorded by the learned Magistrate. The different ingredients of the offence had to be put to the accused and their explanation ought to have been asked on each such part. If the presumptions under Section 5 of the Act were to be raised, the accused had to be asked whether the place where they were found was a common gaming house and should have been then asked as to whether they were gaming or were present there for the purpose of gaming or whether any gaming was going on at the place. On each of these matters, their explanation ought to have been taken and if they had admitted all these parts, then the question whether they should be convicted or not would have arisen. On the particulars as put to the applicants-accused, the offence was not brought home to the applicants and the conviction of the applicants on the basis of their pleading guilty was not proper. Thereby finally held that the learned Sessions Judge was right in recommending that the conviction and the sentence of the accused shall be set aside.

14. In **Mahant Kaushalya Das**(supra), a three Judge Bench of

the Hon'ble Apex Court held that the requirements of Section 243 CrPC are mandatory in character and a violation of these provisions vitiates the trial and renders the conviction invalid. Section 243 being a provision of a special character, takes precedence and override the general provision of Section 362(2)(A) of the Code. Mahant Das challenged his conviction under Section 4 (1) (a) of the Madras Prohibition Act and the sentence of one year Rigorous Imprisonment and a fine of ₹50 or in default rigorous imprisonment for one month in appeal brought by Certificate granted under Article 134(1)(C) of the Constitution of India. He was arrested by the police and immediately produced before the VIII Presidency Magistrate on the same day under a charge under Section 4 (1) (A) of the Madras Prohibition Act on the allegation that he was in possession of 3,960 grams of Ganja concealed in a wooden box in the Matam premises without any permit. He was convicted by the Magistrate to rigorous imprisonment for one year and a fine ₹50, in default to rigorous imprisonment for one month.

15. **Mahant Kaushalya Das**(supra), preferred a Criminal Appeal in the High Court alleging that his eye-sight was very bad and defective, that he was an illiterate person, not acquainted with

English or Tamil or with any other South Indian language and that he only knew Hindi as it was spoken in Uttar Pradesh. He also complained that he had no time to consult either his lawyer or his disciples, that the proceedings were rushed through with undue haste, that he did not really plead guilty to the charge and that he never really understood the implications of the offence or the proceedings before the Magistrate. He filed an affidavit in support of the appeal before the High Court in regard to these allegations and thereupon a Judge called for a report from the VIII Presidency Magistrate and thereupon the High court confirmed the conviction and dismissed the appeal.

16. In **Mahant Kaushalya Das**(supra), it was contended on his behalf that the Magistrate did not comply with the mandatory provisions of Section 243 CrPC, that the appellant had been deprived of the substance of a fair trial, and that the conviction of the appellant was legally invalid. It was also submitted on behalf of his behalf that the necessary ingredients of the offence of possession of the contraband article under Section 4 (1) (a) of the Madras Prohibition Act had not been established as a matter of law. In those circumstances the Hon'ble Apex Court held that in the case

before them, there had been a violation by the Magistrate of the requirements of Section 243 of the Cr.PC. It was contended on behalf of the respondent-State that under Section 362 (2) (A) CrPC it was sufficient if the Magistrate made a memorandum of the substance of the examination of the accused and that it was not necessary to record the actual words used by him. Their Lordships observed in their opinion that Section 362 (2)(A) Cr.PC had no application in a case where the accused pleads guilty and the special provisions of Section 243 CrPC would be attracted and for those reasons allowed the appeal and set aside the conviction.

17. In **Saurabh Bakshi**(supra), the Hon'ble Apex Court was dealing with the concept of adequacy of quantum of sentence imposed by the High Court under Section 304A of the Indian Penal Code (IPC) after maintaining the conviction of the respondent of the said offence as the prosecution had proven the charge that the respondent had caused death of two persons by rash and negligent driving of a motor vehicle. In that context a reference was made to the judgment in *State of Punjab v/s. Balwinder Singh and others* [(2012) 2 SCC 182] where the Apex Court had observed at paragraph 13 as below:

"13. Bearing in mind the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families, criminal courts cannot treat the nature of the offence under Section 304-A IPC as attracting the benevolent provisions of Section 4 of the Probation of Offenders Act. While considering the quantum of sentence to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly inform himself that he cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion. He cannot and should not take a chance thinking that a rash driving need not necessarily cause any accident; or even if any accident occurs it need not necessarily result in the death of any human being; or even if such death ensues he might not be convicted of the offence; and lastly, that even if he is convicted he would be dealt with leniently by the court. He must always keep in his mind the fear psyche that if he is convicted of the offence for [pic]causing death of a human being due to his callous driving of the vehicle he cannot escape from a jail sentence. This is the role which the courts can play, particularly at the level of trial courts, for lessening the high rate of motor accidents due to callous driving of automobiles."

18. In **Saurabh Bakshi**(supra), the Hon'ble Apex Court later at paragraph 17 by quoting the judgment in *Guru Basavaraj alias Benne Settappa vs. State of Karnataka* [(2012) 8 SCC 734] that "we may note with profit that an appropriate punishment works as an eye- opener for the persons who are not careful while driving vehicles on the road and exhibit a careless attitude possibly harbouring the notion that they would be shown indulgence or lives of others are like "flies to the wanton boys". They totally forget that the lives of many are in their hands, and the sublimity of safety of a human being is given an indecent burial by their rash and negligent act. There can hardly be any cavil that there has to be a proportion between the crime and the punishment. It is the duty of the court to see that appropriate sentence is imposed regard being had to the commission of the crime and its impact on the social order. The cry of the collective for justice which includes adequate punishment cannot be lightly ignored." This judgment was in the facts of that case where the aspect of recording the plea of guilt was not at large and the High Court while dealing with the appeal had reduced the imprisonment for rash and negligent driving causing the death of two persons from one year to 24 days of imprisonment already

undergone by the respondents. This judgment with respect does not advance the case of the respondent.

19. Shri Pavithran, learned Advocate had otherwise submitted in reply that he had taken the appropriate grounds in the memo of appeal which bear out that he had made out a case even before the Appellate Court that the substance of accusation was not properly explained nor understood by him and that he had not understood the consequences of the plea of guilty and was taken aback on hearing the order passed by the learned Magistrate. Shri P. Faldessai, learned Additional Public Prosecutor tried to buttress a case that the Magistrate was well within his powers to order the suspension of the driving license by inviting attention to Sections 21 and 22 of the Act. Section 21 of the Act deals with the suspension of the driving license in certain cases which on its bare reading would not apply to the case of the applicant. Insofar as Section 22 is concerned which deals with suspension or cancellation of driving license on conviction, the same is also not attracted to the case of the applicant inasmuch as the charge was framed against him only under Section 185 of the Act. Therefore there is much force in the contention of Shri Pavithran, learned Advocate for the applicant that the conviction was

also vitiated as the Magistrate had not only proceeded to convict him under Section 185 of the Act but had gone ahead even to the extent of suspending his license. To that extent also it must be said that the impugned sentence was vitiated.

20. The learned Appellate Court while dealing with the appeal of the applicant was mainly swayed by the order of the learned JMFC which had indicated that the substance of accusation was explained to him and he was explained the consequences of pleading guilty and thereupon his plea of guilt was recorded followed by the sentence of punishment and fine. The learned Appellate Court failed to look into the predicates of Sections 251 and 252 Cr.P.C. r/w. Section 185 of the Act and fell in line in the view adopted by the learned Magistrate while dismissing the appeal and upholding the sentence of imprisonment and fine. It is apparent from the order of the learned Magistrate that no time was given to the applicant for reflection and the entire exercise was done on the date of his appearance in the Court on 20/08/2018. Besides the judgment in **B. Rajanna, Sharad Keshav and Mahant Kaushalya Das**(supra) would squarely support his case and in view thereof the order passed by the Appellate Court confirming that of the learned Magistrate

cannot be sustained. i therefore pass the following :

ORDER

The revision is allowed quashing and setting aside the judgment and order passed by the learned Additional Sessions Judge, Ponda confirming the order of the learned Magistrate.

NUTAN D. SARDESSAI,J.

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