



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:18.07.2019

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THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

Crl.R.C(MD)No.414 of 2019

Manimuthu

: Revision Petitioner/Sole Accused

Vs.

The State represented through
the Inspector of Police,
Woraiyur Police Station,
Trichy City.
(Crime No.387 of 2015)

: Respondent/Complainant

Prayer: Criminal Revision has been filed under Section 397 r/w 401 of Criminal Procedure Code, against the order, dated 16.06.2015 made in STC No.547 of 2015 on the file of the Judicial Magistrate No.IV, Tiruchirappalli.

For Revision Petitioner : Mr.A.Mohan

For Respondent : Mr.APG.Ohm Chairma Prabhu
Government Advocate
(Criminal side)

O R D E R

This Criminal Revision is directed against the order, dated 16.06.2015 made in STC No.547 of 2015 on the file of the Judicial Magistrate No.IV, Tiruchirappalli.

2.The respondent police registered a case in Crime No.387 of 2015 under Section 75(1)(C) of Tamil Nadu City Police Act, against the petitioner alleging that while the Sub Inspector of Police, was conducting patrol on 02.06.2015 nearby Kamatchi Amman Kovil junction at about 9.15 pm, he scolded by obscene language in public place and thereby created annoyance to public and hampering the traffic. In this connection, the learned Judicial Magistrate No.IV, Tiruchirappalli has issued a summon and subsequently, the learned Magistrate found the petitioner guilty and convicted him, based on the admission petition filed by the petitioner and he was directed to pay a sum of Rs.500/- as fine, in default to undergo one week of



simple imprisonment, by order , dated 16.06.2016 passed in STC No.547 of 2015. Aggrieved by the order of the trial court, the petitioner is before this court.

3.Heard both sides and perused the materials available on record.

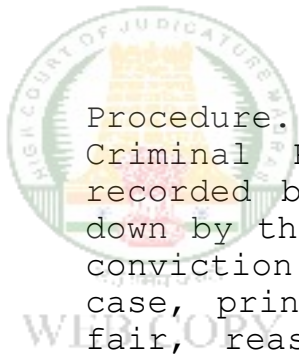
4.It is mainly argued on the side of the petitioner that the trial court failed to follow the procedure contemplated in Section 251 of Cr.P.C while convicting the accused on plea of guilty and in the instant case, the trial court has failed to record the plea of the accused and the trial court ought to have explained the substances of the accusation to the accused in summons cases and in the impugned order, there is no averment found about the same and hence, the impugned order passed by the trial court has to be set aside. In support of his contention, the learned counsel appearing for the petitioner submitted the following decisions:-

(i)1998(1)CTC 686 (Sundaram Vs. State represented by Sub Inspector of Police Adambakkam, Madras-88); and

(ii)Unreported decision of this court, dated 13.07.2016, made in Crl.RC(MD)No.354 of 2016 (P.Saravanan Vs. State of Tamil Nadu).

5.On the other hand, the learned Government Advocate (Criminal side) submitted that the revision petitioner voluntarily admitted the offence and he was also having the assistance of a lawyer and hence, he is not under duress and when he had the legal assistance, his admission is voluntary and therefore, the impugned order passed by the trial court is correct and prays for dismissal of the revision.

6.This case presents certain important questions relating to conducting of the trial in a summons case and recording of the plea of the accused and passing a judgments thereon. It is important to note that the Magistrates are dealing with life and liberty of a persons, the rights of the accused is very important. A conviction by a criminal Court leads to various unpleasent consequences. Not only the name of the person, but a whole family is involved in a criminal case. Therefore, a fair trial must be the rights of the accused is also a facet of human right. This has been stated to bring out the importance of the rights of the accused and the consequences of a conviction of a criminal Court. 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. It has clearly declared that it must be as per the procedure established by Law. It is true 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 the conviction is not recorded by the Court, it will image against the principles laid down by the Honourable Supreme Court in the Menaga Gandhi Case. The conviction would not be recorded in a fair trial. Menaga Gandhi case, principles viz., the procedure adopted by the Court must be fair, reasonable, not arbitrary is universal in nature, in his application, more particularly, they have become magnagatha in the Indian Human Rights jurisprudence.

7.The plea bargaining is widely prevalent and accepted in Western Countries. But, in Indian Criminal System as in the Western Countries, it was not so accepted. But, there are provisions in the Criminal Procedure Code possibility of fleasing plea bargaining cannot also be ruled out.

8.Of course, to some extent, under the Indian Criminal Legal System, recording of conviction based on plea of the accused is accepted. Generally, the criminal trials, in our system has 3 major classifications. They were classified depending upon the severity of the punishment prescribed for the punishment. They are summons cases, warrant cases and sessions cases. In all these type of cases, there is a provision for recording a conviction based on the plea of the accused. In a sessions case, under Section 229 and in a warrant case, under Section 241, the trial Judge can record a conviction, based on the plea and otherwise admission of the guilty alleged against him. The framers of the Code was very careful that they have given discretion to the trial Court to verify the admissions whether they are voluntary, they are free or they were obtained under torture and duress. In Sections 229 and 241 used of the word is in his discretion, the trial Court may accept the admission or may refused to accept the admission and directs the prosecution to produce the accused.

9.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 241, under Section 229 of Cr.P.C., as the case may be, case only often, the charge has been read out to the accused. The charge must be specific, unambiguous very clear and the admission by the accused must be unambiguous and unqualified uncondition.

10.It is very evident that even under Sections 229 and 241 of Cr.P.C., 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 charges/accusation made against him. Then only, he can accept the plea of the accused either under Section 229 or 241 of Cr.P.C. Therefore, it is clear that it is incumbent upon the

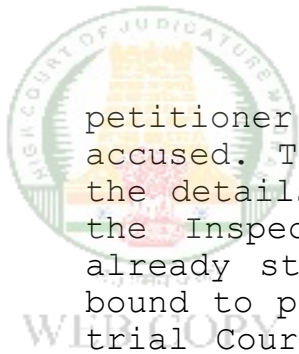


trial Court to put the charges/allegations to the accused in unambiguous language.

11. Further, it is pertinent to note that even in Section 251 of Cr.P.C., it is stated that no formal charge need be framed in a summons case. So, stating to the accused the accusation as against him in a summons case under Section 251 of Cr.P.C. become very important. It is giving an opportunity to the accused to meet the case/accusation as against him, as already stated, it is also a matter of principles of natural justice. It is also in furtherance of rights of the accused. When the accused admit the offence under Section 251 of Cr.P.C., and under Section 252 of Cr.P.C., the Judge can accept it provided it is unqualified, unambiguous, clear cut and voluntary, otherwise, he can refused to accept the plea, he can direct the prosecution to produce the witness, because as and when an accused admit the offence under Section 251 of Cr.P.C., it is not incumbent upon the Judge to immediately accept the plea. Such a discretion has been given to the trial Court under Section 252 of Cr.P.C. One thing is clear, a reading of the provisions of Section 251 of Cr.P.C., makes it clear that the trial Judge must clearly put to the accused what the accusation as against him, what penal provision of law he is violated, what is the reasons therefor and it gives an opportunity to the accused to put forth his defence, so as to enable the trial Court to appreciate the same and to appreciate his defence in the light of the evidence adduced by the prosecution.

12. A reading of Section 251 of Cr.P.C., will clearly shows that the requirement in Section 251 of Cr.P.C., is mandatory in nature. Not following him will make the very prosecution vitiated. In the summons case, such a strict following of the mandatory provisions of Law which are intended to protect a person, who has been prosecuted for a summons offence become 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 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. Then, it is legality, proprietary, regulatory can be questioned under the concurrent revisional jurisdiction of this Court and the High Court under Sections 397 r/w. 401 of Cr.P.C. In this connection, Section 401 of Cr.P.C. may also be read. Therefore, in this case, no appeal is available to the accused vide Section 375 of Cr.P.C. rightly he is questioning the conviction and sentence recorded by the trial Court now under Section 397 of Cr.P.C.

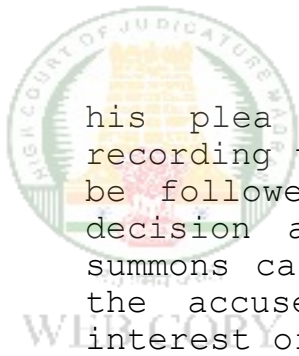
13. On perusal of the impugned order, there is no records to show that the accusation as alleged as against the revision



petitioner by the Woraiyur Police Station has been put to the accused. There is no statement in the case records indicating that the details of the accusation as found in the final report filed by the 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, of course in column No.11 of the STC register, what was stated in Vernacular Language does not show that Section 251 of Cr.P.C. has been complied with. In other words, column No.11 of the S.T.C. Register does not reveal that the details of the accusation has been made against the accused has been put to the accused and the plea of the accused given by him, in his words as nearly as possible has been recorded.

14.In such circumstances, it shall be deemed that the accused has not at all been put to the accused it could be stated that the accused has not been explained to the accusation as against him and his plea has been recorded as nearly as possible in the words of the accused. Therefore, the provisions under Section 251 of Cr.P.C. has been completely violated. Consequently, the conviction recorded under Section 252 of Cr.P.C., which has to follow the plea recorded under Section 252 of Cr.P.C. itself is be vitiated.

15.It is the matter of grave concern that the salutary provisions intended and ensuring fair trial has been completely not followed to punish a person, to slab a person with conviction by a Criminal Code is to serious the matter. At the same time, it will play a havoc in pursuing a conviction his life and it will be a black mark in his career. Therefore, the trial must be fair trial. The trial Court without following the mandatory provisions of Law certainly will not be fair trial. It will be a trial as against Law. The trial proceedings will be invalid. The product of as such a trial will not be followed in the eye of Law. To obvious this kind of difficulties and to afford reasonable opportunity to the accused and confirming the rights of the accused, the learned Magistrate should put the accusation levelled as against the accused by the prosecution in ambiguous language and also record the plea of the accused whether he plead guilty or no guilty, in which he answered the question. If the language of the Court is not known to him or he is a person having different language, which is not the Court is conversion explain to him the accusation as against him with the assistance of a translator/interpreter. In such circumstances, he will have the full opportunity. In such circumstances, the opportunity of natural justice got followed and the trial will be fair trial and it will be satisfying the mandatory requirement of Section 251 of Cr.P.C. After following such a procedure under Section 251 of Cr.P.C., and if the accused plead guilty and



his plea is free, voluntary, unambiguous and unqualified and recording the conviction under Section 252 of Cr.P.C. certainly will be followed. They hoped that the learned Magistrate will take a decision as a guidance while dealing with such a situation in summons cases which will go in a long way to protect the rights of the accused and also enable the prosecution to safeguard the interest of the accused.

16.In view of the foregoing reasons, this Revision Petition succeeds and the same is **allowed**. The conviction recorded and the sentence awarded in S.T.C.No.547 of 2015 by the learned Judicial Magistrate No.IV, Tiruchirappalli, dated 16.06.2015 are set aside. The fine amount already paid shall be refunded.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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To

- 1.The Judicial Magistrate No.IV, Tiruchirappalli.
- 2.The Inspector of Police,
Woraiyur Police Station, Trichy City.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.A.MOHAN, Advocate SR-76674.

**Judgment made in
Cr1.R.C (MD) No.414 of 2019
18.07.2019**

CS (11.11.2019) 6P 5C