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IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 17.02.2020
CORAM
THE HONOURABLE MR.JUSTICE R.MAHADEVAN
Crl.R.C.No.92 of 2020
and
Crl.M.P.No.528 of 2020

Baskar Kumar

..Petitioner/Accused

Vs

State rep. by
the Inspector of Police,
D1, Triplicane Police Station
Chennai. .. Respondent/Complainant

Prayer:- Criminal Revision Case filed under Section 397 read with 401 of Cr.P.C. praying to set aside the judgment dated 13.12.2019 passed by the learned II Metropolitan Magistrate, Egmore at Chennai, in C.C.No.8816/2019.

For Petitioner : Mr.R.Abdul Mubeen

For Respondent : Mr.K.Prabakar, APP

ORDER

Challenging the judgment dated 13.12.2019 passed by the learned II Metropolitan Magistrate, Egmore, Chennai, in C.C.No.8816/2019, the petitioner/accused has preferred this Criminal Revision.

2.The case of the prosecution is that the petitioner along with two other accused involved in Cr.No.13/2019 of Bidhannagar South Police Station, West Bengal, was arrested on 09.02.2019 at Triplicane, Chennai and on 10.02.2019, transit warrant was obtained from the 13th Metropolitan Magistrate Court and the accused were kept at D1 Triplicane Police Station; and at 16.20 hours, when the defacto complainant Tr.Adhirkumar Dey PC-566 was in-charge of the said arrested persons, the petitioner stated that he has stomach ache, due to which, he was taken to toilet behind the police station; while returning, the petitioner pushed the defacto complainant to let go of his hand and escaped and thereby, he committed the offences punishable



under sections 224 and 353 IPC.

3.The complaint lodged by the defacto complainant was registered as Crime No.105 of 2019 by the respondent police. After investigation, the charge sheet was filed and the same was taken on file as CC.No.8816 of 2019 by the learned II Metropolitan Magistrate, Egmore, Chennai. Subsequently, the petitioner was furnished with copy of the charge sheet as required under Section 207 Cr.P.C. He filed a guilty memo on 12.12.2019. When he was questioned, he also pleaded guilty. Based on the same, the Court below under Section 241 Cr.P.C. convicted the petitioner for the offences under sections 224 and 353 IPC and sentenced him to undergo rigorous imprisonment for three months in respect of each offence. It was ordered to run the sentence concurrently and the period of imprisonment already undergone was set off under Section 428 Cr.P.C. Aggrieved over the said conviction and sentence passed by the Court below, the petitioner has come up with this Criminal Revision Case.

4.According to the learned counsel for the petitioner, the petitioner is not conversant with the Tamil language and he could not understand the question relating to the charges framed against him; he did not have the privilege to take the assistance of the translator or interpreter to understand the charges framed against him and/or the question put forth by the Court below; he was not aware that he was pleading guilty to the charges; and he does not admit any of the charges framed against him. The learned counsel further submitted that the Court below failed to record the circumstances under which the accused filed the guilty memo. Stating so, the learned counsel sought to set aside the judgment impugned herein. In support of his contention, he relied on the following decisions of this Court:

(i) In Sundaram v. State [1998 (I) CTC 686], at paragraph nos.10 and 11, it was held as follows:

"10. I have also pursued the relevant records, but I fail to see that the learned Magistrate had recorded the admission of the accused as nearly as possible in the words used by him. That apart, the learned government Advocate appearing on behalf of the respondent is not in a position to satisfy this Court that the learned Judicial Magistrate had followed the procedure laid down in the said decisions, before convicting and punishing the petitioner, on the statement of pleading guilty by the petitioner.



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11. Therefore, I am obliged to set aside the order of conviction and sentence dated 23.6.94 in S.T.C.No. 2202 of 1994 on the file of the learned Judicial Magistrate No.2, Poonamallee, and remit the matter to the learned Judicial Magistrate No.2, Poonamallee, with a direction to conduct a de novo trial and pass appropriate orders within a period of six months from the date of receipt of this order."

(ii) In S.Sundararaj and another v. State [2012 (3) MWN (Cr.) 149], at paragraph nos.7 and 8, it was observed thus:

"7. In the case decided by the Apex Court in Mahant Kaushalya Das Vs. State of Madras [AIR 1966 Supreme Court 22], the particulars of the offence were explained by the interpreter, who was the Bench Clerk, to the accused and the plea of guilty by the accused was also interpreted to the Court by the same Bench Clerk and thereafter he was convicted acting upon such conviction and the order of conviction was challenged by him on almost identical grounds as raised herein and report was called for from the concerned Judicial Magistrate regarding the allegations made therein and it was argued by the learned counsel for the accused/appellant that the Magistrate has not complied with the mandatory provisions of Section 243 Cr.P.C. and the appellant was deprived of the substance of a fair trial and the conviction of the appellant is legally invalid. The Supreme Court accepted the contention so raised and having found that the plea of guilty made by the appellant was interpreted by the Bench Clerk and the admission was not recorded as nearly as possible as contemplated under Section 243 of Cr.P.C., is pleased to hold the same is in violation of the mandatory procedure which rendered the trial vitiated and the order of conviction legally invalid.

7.1. It is observed by the Supreme Court that the requirement of Section is not merely an empty formality but is a matter of substance intended to secure proper administration of justice and it is important that the terms of Section are strictly complied with because the right of appeal of the accused depends upon the circumstance whether he pleaded guilty or not and it is for this reason the



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legislature requires that the exact word 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. The Supreme Court has also referred to the Judgments of Madras High Court and other High Courts reported in (1) ILR 15 Mad 83 (Queen Empress Vs. Erungadu), (2) ILR 62 Calcutta 1127 (Sailabala Dasi Vs. Emperor) & (3) AIR 1952 Allahabad 212 (Mukandi Lal Vs. State) for the legal proposition that the violation of Section 243 of Cr.P.C. was sufficiently serious to invalidate the conviction of the accused. Section 243 of the old Act is akin to Section 251 of Cr.P.C., 1973 and the observations of the Supreme Court, Division Bench of Karnataka High Court and the views expressed by our High Court are squarely applicable to the facts of the present case.

8. In the present case, the accused admittedly pleaded guilty and convicted for the offence on the one and the same day ie., on 14.03.2007. Though the case decided by our High Court stands on the better footing that the accused was given time till evening to plead guilty or to defend the case, the High Court found that the same does not amount to reasonable opportunity, as contemplated under law, whereas no such time at all is given to the petitioners in the instant case. Thus the serious allegations raised on the side of the learned counsel for the petitioners has full force of law and the entire proceedings is liable to be vitiated for violation of procedure laid down under Section 251 of Cr.P.C. and the order of conviction passed in the same is to be held totally bad in law and vitiated and is hence set aside. Following the Apex Court judgment as referred to above, the matter is remanded back for fresh disposal in accordance with law."

(iii) In the order dated 13.07.2016 passed by this Court in Cr1.RC.(MD)No.354 of 2016, it was observed as follows:

"15. There is no records to show that the accusation as alleged as against the revision petitioner by the Kumbakonam West 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 Sub-Inspector of Police has been explained to the accused. As already stated, as per Section 251 of



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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.

16. 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.

17. 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



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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.

18. In view of the foregoing reasons, this Revision Petition succeeds. The conviction recorded and the sentence awarded in S.T.C.No.2174 of 2012 by the learned Judicial Magistrate No.II, Kumbakonam dated 10.07.2012 are set aside. The fine amount already paid shall be refunded."

(iv) In the order dated 15.02.2019 in CrI.RC.No.471 of 2012, this Court held thus:

"9. The records forwarded by the Court below, on perusal show that the guilt memo was filed by the accused on 11.04.2008 pursuant to the dismissal of her bail petition. The accused has pleaded guilty quoting specific reason and further pleaded to the Court that the period of her Imprisonment may be treated as period of Sentence. In the impugned order, the learned Magistrate though has accepted the guilty plea, had not whispered whether he offered time for reflection to the accused before passing the judgment based on her guilty memo. Further, the guilty memo of the accused does not bear the seal of the Prison Authority. Under what circumstances and when this guilty memo reached the Court is also not been recorded by the learned Magistrate. Under the said circumstances, this Court holds that the judgment of the trial Court is erroneous and perverse and Hence, liable to be set aside.



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10. While holding the impugned order as perverse, considering the facts of the case, in the interest of justice, this Court also record that the revision petitioner herein need not put to any further incarceration for the said offence. Having already been in prison from 11.03.2008 till 27.04.2012, (the date of which this Court has suspended the sentence while admitting the revision petition) the said period of imprisonment shall be the period of sentence.

11. It is necessary to record as a future guidance to the Learned Magistrates who accept the guilty plea that before acting upon such guilty memo, the Presiding Officer should ensure that the said memo is a voluntary one and it has emanated from the proper source. Before acting upon the guilty memo, adequate time to the accused should be offered to reflect upon the guilty plea. While imposing sentence, based on the guilt plea, the Presiding Officer should always consider the previous conduct of the party, nature of offence and the possibility of indulging in similar offence in future. After considering all these three facts, appropriate sentence should be imposed.

12. With these above observation, the Criminal Revision Petition is disposed of...."

(v) In the order dated 10.07.2019 passed by this Court in CrI.RC(MD).No.414 of 2019, this Court, after following the aforesaid decisions, allowed the criminal revision by setting aside the conviction and sentence passed by the learned Magistrate, on the basis of the guilty memo filed by the accused therein.

5. Per contra, the learned Additional Public Prosecutor appearing for the respondent submitted that the petitioner voluntarily admitted his guilt and he was also having the assistance of a lawyer and he is not under duress and hence, the judgment passed by the Court below is correct and the same warrants no interference by this Court.

6. Heard both sides and perused the records.

7. Concededly, the petitioner was charged for the offences under Sections 224 and 353 IPC. Before the trial Court, the petitioner accepted his guilt by filing a guilty memo. Having considered the said admission of guilty on the side of the



petitioner, the learned Magistrate has convicted him for the said offences and sentenced him to undergo three months rigorous imprisonment in respect of each offence. The said judgment of conviction and sentence is challenged in this Criminal Revision by the petitioner/accused, stating that the learned Magistrate has not followed the requirement as mandated under Section 241 Cr.P.C, while convicting the petitioner on the basis of the guilty memo filed by him.

8.For better appreciation, Section 241 Cr.P.C is extracted hereunder:

“241. Conviction on plea of guilty, the accused pleads guilty, the Magistrate shall record the plea and may, in his discretion, convict him thereon.”

9.This Court has no quarrel with the observations made in the decisions relied on the side of the petitioner. However, on a perusal of the materials placed before this Court, more particularly, guilty memo dated 12.12.2019 filed by the petitioner, in the light of the provision of Section 241 Cr.P.C as extracted above, it is manifest that the petitioner was having the assistance of a lawyer and he has pleaded guilty of the offences charged, voluntarily without any pressure, after understanding the charges framed against him and consequences thereupon. The petitioner has also reiterated his stand in the guilty memo filed by him. The learned Magistrate has considered all the relevant materials available on record and exercised the option under Section 241 Cr.P.C and convicted the petitioner, in view of the guilty memo filed by him admitting the guilt that he has committed the offences as charged by the prosecution.

10.Generally, it is proper and customary for the Court to give credence to an accused for pleading guilty to the charge. But no credence need be given, if the plea of guilty in the circumstance is inevitable or the accused has no alternative, but to plead guilty. In the present case, the petitioner was caught red handedly and the charges were framed against him, based on Section 161 (3) Cr.P.C statements of the official witnesses and hence, he has no other option except to admit his guilt and the petitioner accordingly, filed the memo of guilty, based on which, the Court below has passed the judgment impugned herein.

11.At this juncture, it may not be out of sight to quote the observation of the Gujarat High Court in State Of Gujarat vs Thakorlal Keshavlal Rana and another [(1991) 1 GLR 71], which run thus:



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"12....ordinarily whenever any accused person finds himself inextricably caught up in a case and feels further helplessly sure of himself that no amount of efforts can possibly wriggle him out of the clutches of law and a noose of irrefutable evidence that surrounds his neck, he mellows down and with a view to make best of the bargain out of the worst of the predicament deceptively humbles down to the feat of the Court pleading guilty with crocodile tears of repentance in his eyes begging mercy for the sentence. Thus, the possibility of such pleas by accused being bogus, deceptive and fraud on the Court and statute, cannot be ruled out. Every Court is expected to guard itself against such clever moves of the accused. The mischief scheme and the game of the accused is pleading guilty is worth understanding. What happens is, a clever accused deliberately, trickily pleads guilty and takes chance to get away with the benefit of a sentence which is lighter than the minimum prescribed. When such order comes to be challenged by way of appeal or for the enhancement of sentence, once again the very accused very conveniently comes out with a right or wrong defence of plea bargaining by tendering an affidavit keeping once again the Court of law at distance from passing a particular sentence against him. Now once the defence of plea bargaining is successfully taken, the higher Court is bound to remand the case. Thus when the case is so remand, at a belated stage of fresh trial, often the prosecution evidence, is found to have lost its some edge, freshness and vitality possibly impairing its success at the end of the trial, whereby the accused ultimately stands to gain. In fact, such type of accused are capable of taking entire law and justice machinery for joy-ride frustrating the prosecution case and defeating the ends of justice. It is this picture which must be present and alive to the mind of every Court, the Public Prosecutor or any other complainant in charge of the case when accused pleads guilty and prays for mercy more particularly in cases of inflexible minimum sentence fixed under the Act."

12. In the ultimate analysis, this Court finds no infirmity or illegality in the judgment so passed by the Court below.



13. In fine, this Criminal Revision Case stands dismissed. Consequently, connected Miscellaneous Petition is also dismissed.

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s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The II Metropolitan Magistrate,
Egmore, Chennai.

2. The Inspector of Police,
D1, Triplicane Police Station
Chennai.

3. The Superintendent
Central Prison
Puzhal -I
Chennai

4. The Public Prosecutor,
High Court, Madras - 104.

+1 cc to Mr. R. Abdul Mubeen Advocate sr13334

Cr1.R.C.No.92 of 2020

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