



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 01.10.2020
PRONOUNCED ON : 06.11.2020

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Cr1.R.C(MD)No.142 of 2016

Subburaj

... Petitioner/Sole Accused

Vs.

State represented by
The Inspector of Police,
Kadambur Police Station,
Thoothukudi District.
[Crime No.1 of 2016]

... Respondent/Respondent

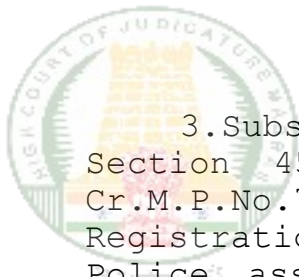
PRAYER: Criminal Revision Cases have been filed under Section 397 r/w 401 of the Criminal Procedure Code, to set aside the judgment dated 06.01.2016 passed in S.T.C.No.8 of 2016 on the file of the learned Judicial Magistrate No.II, Kovilpatti, Thoothukudi District.

For petitioner : Mr.A.Thiruvadikumar
For Respondent : Mr.A.Robinson,
Government Advocate [Cr1 Side]

ORDER

This revision case is filed as against the order of the learned Judicial Magistrate No.II, Kovilpatti, Thoothukudi District in S.T.C.No.8 of 2016 by the revision petitioner/sole accused.

2.The brief facts leading to the filing of this revision case is that the respondent Police on a regular vehicle check at Malaipatti, intercepted the TVS XL bearing Registration No.TN 69 AN 9362 and found this petitioner / owner of the two wheeler in possession of 29 Old Adventure Rum bottles, each containing 750ml. The respondent Police arrested the petitioner, seized the properties, registered a case in Crime No.1 of 2016 for the offence under Section 4(1)(a) of the Tamil Nadu Prohibition Act and filed a final report on the next day before the learned Judicial Magistrate No.II, Kovilpatti, who has also taken the final report on file in S.T.C.No.8 of 2016 and the petitioner filed a memo on the same day, admitting guilty and accordingly, the trial Court found the petitioner guilty, for the charge levelled against him, convicted and sentenced him to pay a fine of Rs.1,000/-. The petitioner/accused has also paid the said fine amount.



3.Subsequently, the petitioner filed an application under Section 457 CrPC before the concerned Judicial Magistrate in Cr.M.P.No.725 of 2016 for the release of his two wheeler bearing Registration No.TN69 AN 9362 TVS XL with a plea that the respondent Police assured him that on admitting the guilt, the offending vehicle would be returned to him and therefore, he admitted the guilt, before the Court concerned, but after that the respondent Police have proceeded with confiscation proceedings. The respondent Police has also contested the petition on the steps taken by the Department for the confiscation of the offending vehicle as per Section 14(4) of the Tamil Nadu Prohibition Act. The learned Judicial Magistrate No.II, Kovilpatti by order dated 02.02.2016 considering the rival submissions dismissed the petition filed by the petitioner in Cr.M.P.No.725 of 2016. Thereafter, the present revision case is filed by the petitioner on 07.03.2016 on the ground that the mandatory requirements of Sections 251 and 252 CrPC were not followed and he was not provided with a charge memo, was not allowed to get legal assistance and the respondent Police mislead him by referring the consequential confiscation of the vehicle, coerced him to file a memo on the plea bargaining.

4.Heard Mr.Thiruvadi Kumar, learned Counsel for the petitioner and Mr.A.Robinson, learned Government Advocate [CrI Side], appearing for the respondent Police.

5.Mr.Thiruvadi Kumar, learned Counsel for the petitioner submitted that the petitioner was mislead by the respondent Police and coerced him to file a memo admitting the offence as plea bargaining. The learned Counsel has also pointed out that the case was registered on 05.01.2016, on the next day, final report was also filed and the learned Judicial Magistrate has also taken cognizance of the final report in STC No.8 of 2016. On the very same day, without providing the charge levelled against the petitioner and the respondent Police coerced him to file a memo. Further, the learned Counsel submitted that the mandatory requirements of Section 252 CrPC were not complied with and therefore, he pleaded to set aside the orders passed by the trial Court in a mechanical manner. The learned Counsel also relied on the following the judgments:

(i) In **Gopal Vs The State**, reported in **1999 Cri.L.J.813**, wherein, this Court has held as follows:

"The learned Counsel for the petitioner also relied on Thippeswamy's AIR 1983 SC 747 (1983 Cri LJ 1271 (Supra) and also State of Karnataka Vs Nagaraja, 1997 Cri LJ 696 (Kant) in support of his contention that "if the party is able to establish that due to plea of bargaining only, guilty memo was filed, the conviction and sentence imposed on the party is liable to be set aside and opportunity has to be given to defend the case and ultimately the Court

can dispose the case on merit." The aforesaid decisions



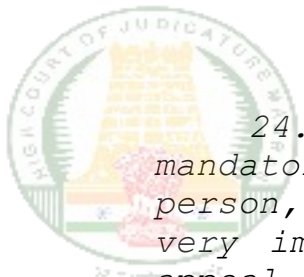
are applicable to the facts on hand. Considering the fact that the petitioner is involved in a grave crime and minimum punishment is also prescribed, it is just and necessary that an opportunity has to be given to the petitioner to defend the case and the conviction and sentence are liable to be set aside.

7.In the result, the revision is allowed and the conviction and sentence imposed on the petitioner by both the Courts below are set aside and the matter is remitted back to the trial Court with a direction to restore the case to its file and record the plea of the accused again and dispose the case on merits in accordance with law, within a period of two months from the date of receipt of records. The petitioner is also directed to appear before the trial Court on 13.07.1998."

(ii) In the case of **P.Saravanan Vs State**, reported in **2016 (2) MWN (Cr) 626**, this Court has held as follows:

"22..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 Sections 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.

23.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. 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.



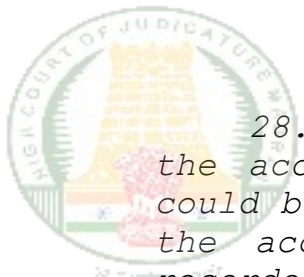
24. In the summons case, such a strict following of the mandatory provisions of Law which are intended to protect a person, who has been prosecuted for a summons offence become very important, because as per Section 375 of Cr.P.C., no appeal will lie as against conviction recorded based on the plea of 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, propriety, 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.

25. We shall now revert to the facts at our hand.

26. A perusal of the entire case records received from the trial Court, the learned Magistrate has recorded the required particulars in the S.T.C. Register in para II, in vernacular language, the learned Magistrate recorded as under:

"Language (accused present. Copies given. Questioned the offence. He has voluntarily admitted the offence. Hence, he is found guilty under Section 294(b) IPC. Accused is sentenced to pay a Fine of Rs.300 in default the shall undergo 1 week's Simple Imprisonment).

27. 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 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.



28. 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.

29. 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.

30. To obviate 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.



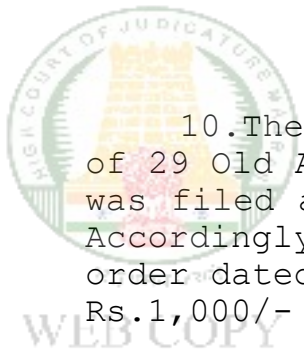
31. In view of the foregoing reasons, this Revision Petition succeeds."

6. Mr. A. Robinson, learned Government Advocate [CrI Side] submitted that this revision case has been filed belatedly only on receipt of the show cause notice issued by the competent authority for the confiscation proceeding under Section 14(4) of the Tamil Nadu Prohibition Act. On 05.01.2016, the petitioner was arrested with possession of 29 Old Adventure Rum Bottles, each containing 750 ml and the investigating agency has also filed a final report and this petitioner has also accepted the guilt by filing a memo.

7. The learned Government Advocate further submitted that as per Section 14(4) of the Tamil Nadu Prohibition Act, the competent authority namely the Additional Superintendent of Police, Prohibition Enforcement Wing, Thoothukudi has proceeded with the confiscation proceedings in respect of the offending two wheeler bearing Registration No. TN 69 AN 9362 and the show cause notice was issued on 24.01.2016, seeking explanation of the petitioner, as to why his vehicle should not be confiscated, but the petitioner has evaded the show cause notice and finally the show cause notice was affixed in his house and the competent authority vide proceedings Na. Ka. No. 02/Koo. Ka. Ka/Ma. Vee/Thood/16, dated 20.2.2016, passed the final order confiscating the offending vehicle.

8. The learned Government also submitted that the petitioner was also informed about his right to retrieve the vehicle by paying the amount determined by the authority and his right to participate in the public auction. But, the petitioner has moved an application before the concerned Judicial Magistrate under Section 457 CrPC in Cr. M. P. No. 725 of 2016 for the release of vehicle on the very same ground raised in this revision case and the learned Judicial Magistrate by his order dated 02.02.2016 has dismissed the said application. The petitioner has not preferred any appeal as against the order of the learned Judicial Magistrate. He would further submit that the petitioner is not the first time offender, he has already involved in a similar offence in Crime No. 63 of 2015, for the offence under Section 4(1)(a) of the Tamil Nadu Prohibition Act, on the file of the Kadumbur Police Station and in that crime number also he has admitted the guilt and he was convicted with a fine of Rs. 1,000/- on 18.05.2016. But the petitioner has not chosen to prefer any revision as against the order dated 18.05.2015. But in this case, since the confiscation proceedings has been initiated under Section 14(4) of the Tamil Nadu Prohibition Act, the present revision case has been filed with baseless allegations that he was coerced to file a plea bargaining petition.

9. This Court paid its anxious consideration to the rival submissions made and also perused the available records.



10.The petitioner was arrested on 05.01.2016 with a possession of 29 Old Adventure Liquor Bottles, on the next day the final report was filed and the petitioner has also filed a memo admitting guilt. Accordingly, the learned Judicial Magistrate No.II, Kovilpatti by order dated 06.01.2016 convicted and sentenced the petitioner to pay Rs.1,000/- as fine.

11.The respondent Police has proceeded with the confiscation proceedings as contemplated under Section 14(4) of the Tamil Nadu Prohibition Act and a show cause notice was issued on 24.01.2016. Only thereafter, this petitioner, who evaded the show cause notice filed the petition before the learned Judicial Magistrate No.II, Kovilpatti in Cr.M.P.No. 725 of 2016 for the release of vehicle with same averments that he was assured by the respondent Police that once he admitted his guilt, the offending vehicle would be returned to him, but they have proceeded with the confiscation proceedings, considering the rival submissions made in that petition, the learned Judicial Magistrate No.II, Kovilpatti vide his order dated 02.02.2016 dismissed the petition filed under Section 457 CrPC and the petitioner has not preferred any appeal. In the petition filed under Section 457 CrPC, the petitioner has not taken a such a plea that he has not committed the offence. His contention was that the respondent Police assured him that the vehicle would be returned, if he pleads guilty.

12.The learned Government Advocate has also relied upon the involvement of the petitioner, in yet another similar offence in Crime No.63 of 2012 on the file of the Kadambur Police Station. This petitioner even in the year 2015 had involved in a similar offence under Section 4(1)(a) of the Tamil Nadu Prohibition Act, admitted the guilt, was convicted and sentenced with a fine of Rs.1,000/- by order dated 08.05.2015.

13.The petitioner has not preferred any appeal as against the said conviction dated 08.05.2015. Similarly, the petitioner has not preferred any appeal as against the order passed by the learned Judicial Magistrate No.II, Kovilpatti in Cr.M.P.No.725 of 2016 and the competent authority under the Tamil Nadu Prohibition Act has also proceeded further with the confiscation of the vehicle and passed the final order of confiscation on 20.02.2016 and that order of confiscation was also not challenged and the offending vehicle was also auctioned on 29.08.2019.

14.The facts and circumstances relied in the above cited judgments cannot be applied to the present case. The petitioner is a habitual offender, also involved in a similar offence in the year 2015, pleaded guilty, convicted and sentenced with a fine of Rs.1,000/- on 18.05.2015. But, he did not challenge the same and also in the petition filed in Cr.M.P.No.725 of 2016, he has not taken any ground that he has not committed any offence and he was



assured that on pleading guilty, the vehicle would be returned to him.

15.Considering the facts and circumstances in this case, the ratio laid down in the above cited judgments cannot be applied to this case.

16.In the light of the above discussion, the revision case is dismissed. The judgment dated 06.01.2016 passed in S.T.C.No.8 of 2016 by the learned Judicial Magistrate No.II, Kovilpatti, Thoothukudi District is hereby confirmed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

- 1.The Judicial Magistrate No.II,
Kovilpatti,
Thoothukudi District.
- 2.The Inspector of Police,
Kadambur Police Station,
Thoothukudi District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to: The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

Cr1.R.C(MD)No.142 of 2016

06.11.2020

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