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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE V.G.ARUN

TUESDAY, THE 8TH DAY OF JUNE 2021 / 18TH JYAISHTA, 1943

CRL.REV.PET NO. 227 OF 2021

CC 2059/2014 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-I,
PARAPPANANGADI

REVISION PETITIONER/S:

RASEEN BABU K.M.
AGED 29 YEARS
S/O.MUHAMMEDALI, KAKKAMOO LACKAL HOUSE, PANAYI,
ANAKKAYAM P.O., MALAPPURAM DISTRICT, PIN - 676
509.
BY ADV D.ANIL KUMAR

RESPONDENT/S:

THE STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM - 682 031.
BY PP T.R.RENJITH AND SR.PP.C.S.HRITHWIK

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 08.04.2021 ALONG WITH CRL.R.P.No.228/2021, THE
COURT ON 08.06.2021 DELIVERED THE FOLLOWING:

Crl.R.P.Nos.227 and 228 of 2021

2

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TUESDAY, THE 8TH DAY OF JUNE 2021 / 18TH JYAISHTA, 1943

CRL.REV.PET NO. 228 OF 2021

CC 2058/2014 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-I,

PARAPPANANGADI

REVISION PETITIONER/S:

RASEENBABU.K.M

AGED 29 YEARS

S/O. MUHAMMEDALI, KAKKAMOOOLACKAL HOUSE, PANAYI,
ANAKKAYAM P.O., MALAPPURAM DISTRICT, PIN-676509.

BY ADV D.ANIL KUMAR

RESPONDENT/S:

THE STATE OF KERALA

REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM-682031.

OTHER PRESENT:

PP T.R.RENJITH AND SR.PP.C.S.HRITHWIK

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
08.04.2021 ALONG WITH CRL.R.P.No.228/2021, THE COURT ON
08.06.2021 DELIVERED THE FOLLOWING:

"CR"

ORDER

Dated this the 8th day of June, 2021

The petitioner stands convicted by the Judicial First Class Magistrate Court-I, Parappanangadi in C C.Nos. 2058 of 2014 and 2059 of 2014, arising from Crime Nos. 625 of 2014 and 626 of 2014 of the Tirurangadi Police Station. The incident leading to registration of the crimes occurred on 02.06.2014 at about 10.15 a.m, when the accused allegedly obstructed the procession taken out from the Thrikkulam Government High School, Chemmad in connection with the school admission festival and assaulted some of the volunteers. Crime No. 625 of 2014 was registered for offences under Sections 143, 147, 353 read with 149 of the IPC and Section 35 (*sic*) of the

Kerala Prevention of Disturbances of Public Meetings Act, 1961. Crime No.626 of 2014 was registered for the offences under Sections 143, 147, 148, 341, 323, 324 read with 149 of IPC. All accused were convicted by the trial court on their pleading guilty of the offences. Upon conviction, the accused were sentenced to pay fine for each offence. The judgments are challenged mainly on the ground that the procedure adopted by the trial court in finding the accused to have pleaded guilty was patently illegal.

2. Heard Sri. D. Anilkumar, learned Counsel for the petitioner and Sri. T.R. Renjith, learned Public Prosecutor.

3. Sri.Anilkumar contended that the conviction of an accused based on his plea of guilty results in that person being convicted and punished without trial and hence the Magistrates

are bound to ensure that the plea is voluntary, clear and unambiguous and is put forth after understanding the implications of such admission. According to the learned Counsel, a monosyllabic 'yes' elicited as an answer to the pointed question as to whether the petitioner had committed the offences mentioned in the charge, will not satisfy the aforementioned requirements. It is submitted that the petitioner was not made aware of the consequences of his pleading guilty and the unknowing act has resulted in the petitioner being denied appointment, in spite of the inclusion of his name in the ranked list of Constable (Telecommunication). It is argued that the impugned judgment is bad for non-application of mind, which is evident from the conviction and sentence imposed under Section 35 of the Kerala Prevention of Disturbances of Public Meetings Act,

1961, despite the enactment having only three sections. Support for the argument is mustered by relying on the decision of the Apex Court in Jupudi Anand Gupta v State of Andhra Pradesh [(2019) 14 SCC 723].

4. In reply, the learned Public Prosecutor highlighted the limited scope for interference with the judgments where the conviction is based on the admission of guilt by the accused.

5. On scrutiny of the diary extract and records received from the lower court, it is seen that the court charge in the cases was framed and read over to the accused on 09.03.2017. Thereafter, the accused were asked whether they had committed the offences and they answered in the negative. This plea of not guilty was recorded and the cases posted for prosecution evidence. After a few adjournments, the cases were

taken up on 24.04.2018, on which day, the question whether the accused had committed the offences was repeated. This time the accused answered 'yes'. This answer was treated as pleading of guilt and the accused were convicted. Surprisingly, in the questionnaire containing the replies given by the accused, the answer of the first accused to the question whether he had committed the offences, is not seen entered. Having noted this patent defect, I find substance in the contention of the petitioner that the plea was recorded in a very casual manner. The legality of the said procedure, which would decide the sustainability of the petitioner's conviction, is the issue to be decided.

6. Being the contextually relevant provisions, Sections 240 and 241 of Cr.P.C are extracted hereunder;

"240. Framing of charge.—(1) If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused. (2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried.

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

7. The elaborate procedure prescribed in the above Sections makes it abundantly clear that, conviction of an accused based on the plea of guilty is not an empty formality. The procedure prescribed has to be followed strictly, since acceptance of the plea would result in an accused

being convicted without trial. In this regard it is apposite to consider the legal meaning of the word "plead" which is 'to make, deliver, or file any pleading'; 'to conduct the pleadings in a cause'; 'interpose any pleading in a suit which contains allegations of fact,' 'to deliver in a formal manner the defendant's answer to the plaintiff's declaration, or to the indictment, as the case may be'. The meaning of the word 'guilty' in legal dictionaries is as follows:

"Having committed a crime or tort; the word used by a prisoner in pleading to an indictment when he confesses the crime of which he is charged, and by the jury in convicting".

Therefore, going by the meanings of the words 'plea and guilty, the term 'pleading guilty' should be require a positive and informed act of admitting all the elements of the offence/s. Mere lip service or a monosyllabic 'yes', in reply to a pointed question by the court, cannot, under any

circumstance, be equated with, or accepted as, pleading of guilt by the accused.

8. Yet another mandatory requirement is of the Magistrate recording the plea of guilty, which is a matter of substance intended to aid the administration of justice. In Surath Chandra v. State (A.I.R. 1961 Gau 19), the High Court of Assam reminded the Magistrates that an order convicting an accused on his own admission is not a final order as it is open to revision and the superior Court should be satisfied that what the Magistrate thought to be the admission of an offence by the accused was really such an admission. No doubt, when the admission of the accused is not recorded, the superior Court is deprived of the opportunity of forming its own independent conclusion. This may often result in serious miscarriage of justice.

9. In the decision in Mahant Kaushalya Das v State of Madras (AIR 1966 SC 22), the Apex Court, though in the context of Section 243 of the old Code (corresponding to Section 252 of the Code of 1973), held as under;

"6. It cannot be disputed in the present case that there has been a violation by the Magistrate of the requirements of Section 243 of the Criminal Procedure Code which states:

"243. If the accused admits that he has committed the offence of which he is accused, his admission shall be recorded as nearly as possible in the words used by him; and, if he shows no sufficient cause why he should not be convicted, the Magistrate may convict him accordingly.

It is stated by the Magistrate in his report that the particulars of the offence were explained to the appellant by the Bench Clerk Shri M. Sukumara Rao and that the plea of guilty by the appellant was interpreted to the Court by the same Bench Clerk. It is manifest from the record that the admission of the appellant has not been recorded "as nearly as possible in the words used by him", as required by Section 243 of the Criminal Procedure Code. It is true that in the judgment dated March 22, 1963 the Magistrate has said that the appellant "pleads guilty", but the record contains no indication whatsoever as to what exactly the appellant admitted before the Magistrate. In our opinion, the requirements of Section 243 of

the Criminal Procedure Code are mandatory in character and a violation of these provisions vitiates the trial and renders the conviction legally 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 circumstance 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. It has been held by the Madras High Court in *Queen-Empress v. Erugadu* [ILR 15 Mad 83] that the violation of the procedure in Section 243 of the Criminal Procedure Code was sufficiently serious to invalidate the conviction of the accused. The same view has been taken by the Calcutta High Court in *Shailabala Dasee v. Emperor* [ILR 62 Cal II 27] and by the Allahabad High Court in *Mukandi Lal v. State* [AIR 1952 Allahabad 212] . In our opinion, these cases correctly lay down the law on the point."

10. In *Jupudi Anand Gupta (supra)*, the decision in *Mahant Kaushalya Das* was followed and the conviction of the appellant, based on his alleged plea of guilty, which the trial court had failed to record, was set aside. The proposition

laid down by the above decisions is that the plea of guilty should not only be recorded, but such recording should, to the extent possible, be in the words spoken by the accused.

11. The relevant provisions and the precedents discussed above mandate compliance of the following requirements before acting upon the pleading of guilt by an accused;

(i) The Magistrate should frame the charge, specifying the offences alleged against the accused;

(ii) The charge should be read over and explained to the accused;

(iii) The accused should be asked whether he pleads guilty of the offence/s with which he is charged;

(iv) The accused should plead guilty after understanding the seriousness of the

allegations and the implications of pleading guilty. The plea should be voluntary and expressed in clear and unambiguous terms.

(v) The Magistrate should record the accused's plea of guilty in the words of the accused, to the extent possible.

(vi) The Magistrate, after considering all relevant factors should exercise his discretion and decide whether to accept the plea of guilty or not

(vii) If the plea is accepted, the accused can be convicted and suitable punishment imposed.

12. Incidentally, the question whether an accused, who had pleaded not guilty at the stage of framing charge, could be permitted to plead guilty at a later stage, also arises for consideration. Under the Code of Criminal Procedure, the opportunity to plead guilty is

provided only under Sections 229, 241 and 252, for Sessions, Warrant and Summons cases respectively. This opportunity arises immediately after the charge/accusation is framed/stated. In Santosh v State of Kerala (2003(2) Crimrs 141), a learned Single Judge has opined that the plea of guilt can be advanced by an accused at any stage of the trial after framing charge. Relevant portion of the Judgment reads as under;

"No doubt, there is no specific provision in the Cr.P.C. enabling the court to permit an accused to withdraw his claim to be tried and convict him on a plea of guilty subsequently. But as contended by the learned counsel for the petitioner, there is also no prohibition in the Cr.P.C. to record the plea of guilty in the course of trial and convict the accused on his subsequent admission of guilt. The object of trial is to investigate the offence and to find out the truth. When the guilt is admitted by the accused and the admission is found to be voluntary, there is no reason why the court should not allow him to withdraw his claim to be tried and plead guilty. In this connection it is relevant to note the decision of the Patna High Court in Shyama Charan Bharthuar and Ors. v. Emperor AIR

1934 Patna 330. It was held in that case that there is no implication that when an accused in the course of the trial withdraws his claim to be tried and plead guilty, the court is not entitled to record the plea either accept it or continue the trial. An identical question came up for consideration before the Allahabad High Court in Ram Kishun v. State of U.P 1996 Crl.L.J. 440. The Allahabad High Court held that a plea of guilt can be taken at any stage of trial after framing charge. The court observed that the necessity of evidence would arise only if and when the charge is not accepted. There is no reason to restrict the applicability of S. 229 of the Cr.P.C. to a particular date or occasion but the purport of section is obvious that plea of guilt can be advanced by an accused at any stage of the trial after framing charge. If an accused is allowed to withdraw his claim to be tried and plead guilty, an earlier termination of the trial can be secured and wastage of the precious time of the court can be avoided."

In my considered opinion, the dictum in Santhosh requires reconsideration in the light of the subsequent introduction of Chapter XXIA to the Code vide Act 2 of 2006, providing for plea bargaining before the court in which the offence is 'pending trial'.

13. As far as the instant case is concerned, the petitioner having pleaded not guilty at the first instance, recording of the monosyllabic answer 'yes' in the questionnaire prepared at the stage of framing charge, cannot, under any circumstance, be termed as pleading of guilt by the petitioner, based on which the court could have convicted him. As such, the judgments convicting the petitioner are liable to be set aside.

In the result, the criminal revision petitions are allowed by setting aside the conviction and sentence imposed on the petitioner. C.C Nos. 2058 of 2014 and 2059 of 2014 are remitted to the Judicial First Class Magistrate Court-I, Parappanangadi for retrial in accordance with law.

Sd/-
V.G.ARUN
JUDGE

Scl/

APPENDIX OF CRL.REV.PET 227/2021

PETITIONER'S/S EXHIBITS:

ANNEXURE I- TRUE COPY OF THE NOTICE DATED 09.02.2021
RECEIVED BY REVISION PETITIONER FROM THE GOVERNMENT OF
KERALA.

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