
(1955) 09 GAU CK 0005
In the Gauhati High Court

Haobijam Chaoyaina Singh

APPELLANT

Vs

Heisnam Mangi Singh and Others

RESPONDENT

Date of Decision : 21-09-1955

Acts Referred:

Penal Code, 1860 (IPC) — Section 403, 419

Citation : (1955) 09 GAU CK 0005

Hon'ble Judges : Brij Narain, J.C.

Bench : Single Bench

Judgement

Brij Narain, J.C.

1. This is an application in revision on behalf of Haobijam Chaoyalma Singh, convict against the order of the learned Sessions Judge, Manipur, dated 29-7-1955 passed in Criminal Appeal No. 66 of 1955 by which conviction of the petitioner dated 19-7-1955 and sentence of 2 months" R. I. imposed on him u/s 403, I. P. C. in Criminal Case No. 687 of 1954 of the Court of Senior Extra Assistant Commissioner, were upheld.

2. It appears that the opposite parties Nos. 1 and 2 made a complaint on 29-12-1954 against (1) Hairemban Koireng Singh (2) Oinam Dhwajh Singh and (3) Haobijan Chaoyaima Singh, the present petitioner u/s 419, I. P. C., for alleged misappropriation of pecuniary help given by the Government for distribution to the workers of Thanga people who had helped the construction of the road from Sendra to Noirang.

According to the complainants (opposite parties Nos. 1 and 2) about 700 prajas of Thanga constructed a new road known as Thanga Road, and when the construction of the said road was in progress from Sendra to Noirang, the Deputy Commissioner, Manipur, Principal Engineer and the Adviser in charge of Land Settlement, Manipur, visited the place and they were glad to find the work done and the Deputy Commissioner promised to afford pecuniary help to the workers for the work already performed, and he also promised to take over the said road

by the Government.

Shri Y Tombi Singh, Executive Engineer, P. W. 3, gave a cheque of Rs. 3,000/- to Mairembam Koireng Singh accused No. 1 and the complainants believed that out of this sum Rs. 750/- were meant for Thanga public and this sum was misappropriated by the present petitioner. The learned Magistrate who tried this case discharged the accused No. 1 on 19-7-1955 and the accused No. 2 was also discharged on the same date, but the present petitioner (accused No. 3) was convicted on the ground that he pleaded guilty. An appeal was filed by the petitioner in the Court of the learned Sessions Judge, Manipur, but it was rejected on the ground that no appeal was maintainable u/s 412 of the Code of Criminal Procedure. The petitioner has now come to this Court in revision.

3. Two points have been urged in this revision. The first contention on behalf of the petitioner is that the present case could not proceed in view of the provisions of Section 403, Cr. P. C., which runs as follows:

403(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remain in force, not be liable to be tried against for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made u/s 236, or for which he might have been convicted u/s 237.

(2) to (5)...

"Explanation,- The dismissal of a complaint, the stopping of proceedings u/s 249, the discharge of the accused or any entry made upon a charge u/s 273, is not an acquittal for the purposes of this section.

4. The petitioner did not file any paper from the C. C. Criminal case instituted on 8th July, 1954 of 1954-55 in the Court of the learned Magistrate, and so it could not be known whether the present prosecution was based on the same facts which have been alleged in the earlier case or not.

The petitioner tried to produce a copy of the complaint dated 8th July 1954 and also a copy of the final report which was made in that case by the S. I. Shri I. S. Singh on 10th August 1954, and these documents go to prove that the former case was not tried at all and it did not result in the acquittal of the present petitioner. It, further, does not appear from these documents that the former case related to the facts on the basis of which prosecution was started. As such the first contention of the petitioner has no force.

5. The second contention of the petitioner stands on a totally different footing. It has been contended that the learned Magistrate was not justified in convicting the petitioner on the basis of his statement and on the alleged plea of "guilty". I have been taken through the statement of the petitioner which was recorded by the learned Magistrate and it runs as follows : --

Q. What is your occupation?

A. I am a business man.

Q. Is it a fact that you received Rs. 750/- for Thanga people as wages for making Sendra Thanga road from the P.W. 2?

A. I am not the only man who have received the amount of Rs. 750/-. Oinam Nityal Singh Salam Goura Singh, Khwaireakpam Ningthouba Singh, Oinam Yaima Singh Salam Khumenjao Singh, Salam Iboton Singh etc. received with me from Koireng the accused No. 1. But the accused No. 2 did not receive the money. He only heard and saw us receiving it.

Q. Have you given the amount to the complainant etc.?

A. No. because P.W.'s 1, 4, 5 and 6 did not participate in making the road. The amount of Rs. 750/- has been spent for making the bridge at Komjil and in purchasing Joti (chain for dragging) for boat, in building a doctor's house etc.

Q. Have you got previous conviction?

A. No.

After the charge was framed another question was put to this petitioner as follows:

Q. Do you plead guilty?

A. Yes, I plead guilty.

6. The above questions were put to the accused on the basis of the statements of H. Thadoi Singh, complainant, Shri Prafulla Chandra Singh, S.D.O., Shri Y. Tombi Singh, Executive Engineer, H. Tonjao Singh, H. Gulamjat Singh and H. Nangi Singh complainant. I have been taken through the evidence of these witnesses and I find that the only complainant H. Hangi Singh has made some statement about the dishonest intention of the present accused in the following words:

Since Koireng accused No. 1 said that he paid the amount to the accused No. 2 and also since accused No. 2 said that he paid it to the accused No. 3, it is the accused No. 3 who has misappropriated the public money (wages for the work of the road) I do not know how much was the amount.

7. H. Gulamjat Singh and H. Tonjao Singh as H. Thadoi Singh stated that the accused Nos. 2 and 3 had misappropriated the amount in question. As such the evidence on the record does not clearly appear to disclose that the present petitioner alone misappropriated any money and the learned Magistrate convicted the present petitioner u/s 255(2) Cr. P. C. on the ground that the petitioner pleaded "guilty". It is now to be seen whether the statement of the petitioner reproduced above amounts to his pleading "guilty".

8. A plea of guilty is in admission of all the facts on which the charge is founded,

as well as an admission of guilt in respect of them. A plea of guilty in a Criminal Court can only be made in response to a charge and an informal admission as to guilt does not amount to a formal plea of guilty and such admission has not in fact or law the same binding effect as a plea of guilty.

In *Hem Chandra v. Emperor* AIR 1935 Cal 681 (A), where the statement of the accused began by saying that he was guilty but the body of the statement disclosed that the accused meant not "guilty", it was held that the statement was no confession of guilt. Similarly in *Emperor v. Gulam Raza* AIR 1925 Lah 153 (B), where the accused admitted that he obstructed the road under mistake without admitting that danger for injury was caused to any person, it was held that the accused could not be convicted on this admission u/s 283. In *Basant Singh v. Emperor* AIR 1926 Lah 406 (C), it was held that an accused person does not plead to a section of a criminal statute.

He pleads guilty or not guilty to the facts alleged to disclose an offence under that section; vide also *Bahadur Singh V. Emperor* AIR 1932 Lah 363 (D), These rulings clearly show that before an accused can be convicted on a plea of "guilty" it must be established that he has admitted all the facts on which his charge is founded as well as guilt in respect of them. In the present case as has been pointed out above the petitioner did not admit that he ever retained any amount with any dishonest intention.

9. A plea of guilty, no less than a confession, must be received with caution and the exact words of plea of guilty should be recorded vide *Emperor v. Abdul Hussain Shamsuddin* 5 Bom LR 999 at p. 1000 (E), and 18 All WN p. 1889 (Sic). The prosecution ought to have proved the alleged offence by cogent evidence and mere non-denial by the accused is not enough for his conviction, vide *R.N. Basu (for B. Parshottam Das Tandon) Vs. Emperor*

The exact words used by the petitioner referred to above did not show that he dishonestly retained any sum with him, even though he received it. In *Emperor v. Akub Ali Mazumdar* AIR 1920 Cal 522 (G) it has been held that a plea of guilty cannot be dissociated from the statement that accompanied it, and if the statement of the present petitioner is read as a whole it becomes clear that the petitioner never admitted that he was guilty of criminal misappropriation,

10. A plea of guilty operates as waiver of the accused's right to question the legality of his conviction made on such a plea, taut before a bar of this section can apply against a convicted person u/s 412 Cr. P. C. it must be clear that the plea of guilty is really such a plea. In the present case this has not been done, and so the conviction of the petitioner on the basis of the plea of "guilty" cannot be deemed to be proper.

11. It has been contended by the learned Advocate for the opposite parties that the legality of a conviction passed on a plea of "guilty" cannot be taken into consideration by (his Court, and reliance has been placed on AIR 1920 Cal 522 (G) referred to above. But I think Section 412 Cr. P. C. does not curtail the

powers of the High Court in revision regarding examination of the legality of conviction in cases of plea of "guilty vide Emperor Vs. Nana Shahu Sonavane, in which it was held that an accused person who pleads guilty before a Magistrate and is convicted can contend in his application for revision that his conviction is illegal; vide also Krishna Chandra Sinha Vs. Emperor, in which it has been clearly held that the powers of the High Court in revision are not restricted by Section 412 Cr. P. C., and in Re Arunachala Goundan AIR 1948 Mad 492 (J) and others where also it has been laid down that Section 412 Cr. P. C. does not apply to revision before High Court, vide also Ali Hossein v. Emperor AIR 1930 Rang 349 (K).

12. In view of these rulings, I think this Court is competent to go into the question of illegality of the conviction of the petitioner even though it is on the basis of an alleged plea of "guilty", I have shown above that the petitioner did not admit that he dishonestly retained any Government money With him. His vague statement in answer to the last question put to him cannot amount an admission, of all the facts on which a charge u/s 403 is founded.

I am, therefore, of opinion that the conviction of the present petitioner & the sentence imposed on him cannot legally be sustained, and so I set aside The order passed by the learned Sessions Judge and the trying Magistrate, and I send back the case to the learned Magistrate for trial de novo on the merits according to law after giving the petitioner an opportunity for producing his defence. The revision is thus allowed.