

**(1989) 12 GAU CK 0001**

**In the Gauhati High Court**

**Case No : Criminal Revision No. 249/89 : 3 (K)/88**

Longna Chahlee Konyak

APPELLANT

Vs

State of Nagaland

RESPONDENT

**Date of Decision : 12-12-1989**

**Acts Referred:**

Constitution of India, 1950 — Article 39A, 39A  
Criminal Procedure Code, 1973 — Section 207, 227  
Criminal Procedure Code, 1973 (CrPC) — Section 207, 227  
Nagaland Security Regulation, 1962 — Section 7, 7, 8, 8

**Citation : (1990) 1 GLJ 408**

**Hon'ble Judges : H.K.Sema, J**

**Bench : Single Bench**

**Advocate : B.N.Sharma, K.P.Pathak, Advocates appearing for Parties**

## **Judgement**

1. By this revision petition under Rule 16(3) of the Rules for Administration of Justice and Police of Nagaland Rules, 1934 the revisionist has challenged the order dated 3.12.86 passed by the Additional District Magistrate Man in GR Case No. 103/86 corresponding to Tizit P.S. Case No.6(6)/1986 whereby the said order the learned Addl. District Magistrate convicted the petitioner U/s 7/8 of Nagaland Security Regulation Act, 1962 and sentencing him. to undergo R.I. for 5 years and also pay a fine of Rs. 2000/ I.D to undergo R.I. for one year.

2. Heard Mr. B. N. Sarma, learned counsel for the petitioner as well as Mr. K. P. Pathak learned P. P. for the State.

3. Mr. B. N. Sarma at the outset submits that the conviction and sentence passed against the petitioner can not be sustained because the learned Court below convicted and sentenced the petitioner on the sole basis of the alleged plea of guilt. He further submits that the charge is defective as the offence LJ/s 7/8 of Nagaland Security Regulation Act, 1962 (in short N5Rj are two distinct and separate offences and such having the two separate offences club together and charge framed against the accused person under one heading is illegal and

unsustainable in law inasmuch as accused is deprived of a reasonable opportunity to answer the separate offences under which he has been charged. He further submits while convicting the petitioner under his own plea of guilt, the plea of guilt of the petitioner was not recorded. That apart, no evidence was recorded before the conviction and sentence passed against the petitioner, yet the learned Court below referred to "recording of evidence" in the order impugned. According to Mr.B. N. Sarma, this part of finding is perverse.

4. In so far as regards to the submission of Mr. Sarma that the plea of guilt was not recorded in accordance with law has sufficient force. It is now well settled position in law that the plea of guilt must be recorded in a language as nearly as possible of the accused person. Of course the Magistrate has a discretion to convict the accused person on his plea of guilt or to proceed with the trial and record further evidence. There is a catena of decision on this subject which we need not multiply as is now well settled position in law that admission of fact would mean an admission of all the facts on which the charge is founded and also an admission of guilt in respect of them. Such a plea must be recorded as nearly as possible in the very words of the accused in order to determine whether the admission of the accused really constitute the admission of all the facts, of the offence charged. In the instant case, admittedly the learned lower Court has not recorded the plea of guilt at all and on this score alone, conviction and sentence passed against the petitioner is liable to be set aside.

5. That apart, the offence U/s 7/8 of the NSR, 1962 are two separate and distinct offence. It was incumbent on the part of the learned Court below to frame charge against the petitioner on two heads so as to enable the accused to present his case effectively. In the instant case this has not been done.

6. This being the position in law, I am of the view that it would meet the ends of justice if conviction and sentence passed against the petitioner is set aside and the case is remanded back to the learned Additional Deputy Commissioner (J), Moo; to dispose of the same in accordance with law in terms of the following directions that the learned Addl. Deputy Commissioner after receipt of the case record shall issue summons to the petitioner and after giving him an opportunity of being heard and after adducing and or examining of the prosecution witnesses if any, shall pass necessary order as he deem fit and proper. The Addl. Deputy Commissioner shall also allow the petitioner to defend himself by a counsel of his own choice at the State expenses. This is now a mandatory requirement of Article 39 A of the Constitution of India. It is made clear that before charge is framed the accused must be furnished with all necessary papers, documents as required U/s 207 Cr,P. C. and" must be heard through counsel of his own choice as required U/s 227 of the Cr.P.C.

7. Before parting with the record I am constrained to add that in this case the petitioner was examined by the learned Addl. Deputy Commissioner U/s 313 Cr. P.C. In his examination the petitioner categorically states that he intend to live a peaceful and law abiding citizen and that view in mind the petitioner is now

married with Miss Yngmal Konyak from Iting Village. Mr. B. N. Sarma strenuously urged before me that the petitioner's case should be considered keeping in view this background whether remanding the case back to the Addl. Deputy Commissioner, Mon. I am leaving it to the learned Addl. Deputy Commissioner (J) Mon to decide. The conviction and sentence passed against the petitioner is set aside.

With this directions the petition is disposed of. Office to send down the case records forthwith. Furnish a copy of this order to Law Department for circulations to all the Magistrates in Nagaland.