

(1975) 10 SHI CK 0004

In the High Court Of Himachal Pradesh

Case No : Criminal Revision No. 10 of 1974

Mehar Chand Bharadwaj

APPELLANT

Vs

The State of Himachal Pradesh

RESPONDENT

Date of Decision : 23-10-1975

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 412

Penal Code, 1860 (IPC) — Section 427

Police Act, 1861 — Section 34

Citation : (1975) 4 ILR HP 761

Hon'ble Judges : Chet Ram Thakur, J

Bench : Single Bench

Advocate : M.R. Vasudeva, for the Appellant; B. Sita Ram, General, for the Respondent

Final Decision : Allowed

Judgement

Chet Ram Thakur, J.—The Petitioner was convicted u/s 34 of the Police Act and u/s 427 of the Indian Penal Code. He was fined Rs. 15/-on the former count and the same amount of fine was imposed in respect of the latter count by the Sub-Divisional Magistrate, Rampur. Both these offences were tried summarily and the learned Magistrate, it appears, recorded a plea of guilty and hence convicted and sentenced him as stated above.

2. Before the learned Sessions Judge, the learned Counsel for the Petitioner had taken up a plea that the Petitioner was a Government servant and under the Police Rules he could not be tried summarily, but this contention of the Petitioner was repelled by the learned Sessions Judge. The second submission made was that the Sub- divisional Magistrate did not apply his mind to the facts of the case before passing the order and this contention was also repelled and the learned Sessions Judge held that the conviction was based on the own plea of the Petitioner and it was not open to the Petitioner to say that no case was made out.

3. In this Court the learned Counsel for the Petitioner has also reiterated the

same submissions. It is true that under the Police Rules a police official cannot be tried summarily, but there is nothing wrong if he has been tried summarily. However, it was not desirable to try him summarily as the conviction is likely to result in the dismissal of the Petitioner from service. In *Subramanya Aiyar v. Queen* 6 Mad 396 a head constable of police was prosecuted on a charge of criminal intimidation and was tried summarily and was convicted. It was held by the Madras High Court that though he could be legally tried summarily for the offence yet a summary trial was not desirable in view of the serious consequences which arose out of it. Similarly, in *Chiranjilal Vs. Ram Sarup*, it was held that though it might be legal to use summary procedure in trying a particular case it did not always follow that it was desirable in every case, for an offence which might seem very grave when regarded only from the point of view of the section applicable may be in the light of its particular circumstances of trivial nature, whereas, on the other hand, the consequences following on conviction of what is in itself a trivial offence may be so grave as to render a summary trial unsuitable. So, in view of the above decision the summary trial of the Petitioner though was legal but was not desirable in view of the consequences arising out of it to try him summarily and, therefore, in these circumstances the submission of the learned Counsel for the Petitioner is correct and the learned Sessions Judge had erred in repelling this submission in view of the position of the Petitioner and the serious consequences that may follow on his conviction by the criminal court.

4. It is undoubtedly true that there is a plea of guilty recorded and on the basis of the plea of guilty an appeal u/s 412 of the Code of Criminal Procedure, 1898 is barred except to the extent and the legality of the sentence but this is a revision petition and the Court is not precluded from exercising this power in order to prevent any miscarriage of justice. It would be apparent from the register maintained for the cases to be tried summarily that the report against the Petitioner was made by the police on 14th November, 1972, and it was stated therein that he was found drunk and he had broken a glass-pane of the window of the bus by hurling a stone. He was arrested and was taken to the medical officer who examined him at 2.30 P.M. and found that the Petitioner had a staggering gait, could not move in a straight line and that, in his opinion, he was heavily drunk. Thereafter the Petitioner was immediately taken before the Magistrate on the same day after 2.30 P.M. and he convicted and sentenced the Petitioner on the basis of a plea of guilty recorded by him. From this what appears is that the accused was tried in a hot haste and was not allowed sufficient opportunity to think of his defence especially when he was found to be under the influence of liquor, as opined by the doctor. The Petitioner, therefore, was not in a sober condition to make a statement and on that basis this plea of guilty cannot be said to be legally recorded. The plea of guilt must be recorded in the accused's own words and the record shows it is written that he tacitly pleaded guilty. Therefore, this plea otherwise also is quite illegal and the order is liable to be set aside.

5. I, therefore, allow this revision petition, set aside the conviction and sentence passed and acquit the Petitioner. The fine, if paid, shall be refunded.