

(1999) 02 MP CK 0022

In the Madhya Pradesh High Court

Case No : Criminal A. No. 202 of 1989

Vijay Singh Thakur (Dead), through his widow Kamlesh Thakur

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 26-02-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 229, 241, 246(3), 394(2)

Penal Code, 1860 (IPC) — Section 409, 477A

Prevention of Corruption Act, 1947 — Section 5(1), 5(2)

Citation : (1999) 2 JLJ 147 : (1999) 2 MPLJ 421

Hon'ble Judges : S.P. Khare, J

Bench : Single Bench

Advocate : Prashant Jaiswal, for the Appellant; A.P. Shukla, Dy. Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

S.P. Khare, J.

This appeal was filed by Vijay Singh. He was convicted under Sections 409 and 477A, Indian Penal Code and Section 5(1)(c) read with Section 5(2) of the Prevention of Corruption Act, 1947 on his "plea of guilty" and was sentenced to rigorous imprisonment for one year on each count. He was also sentenced to pay a fine of Rs. 5,000/- for the offence u/s 409, Indian Penal Code. He died during the pendency of this appeal. His widow Smt. Kamlesh Thakur has been granted leave under the proviso to Section 394 of the Code of Criminal Procedure, 1973 to continue this appeal as she does not want that stigma of conviction should remain attached to the name of her husband. Thus, this appeal has not abated.

Vijay Singh was Upper Division Clerk in Government Higher Secondary School, Salibada, Jabalpur. The charge against him was that on 5-11-1985 he prepared a bill for Rs. 5,000/- and deposited it in the treasury on 4-12-1985. It was for payment of advance of Rs. 5,000/- from the provident fund account of Smt. H.

Sharma who was a teacher in that school. He drew this amount on 10-12-1985 but did not make payment to her. He misappropriated this amount and falsified the relevant register of his office. The charge-sheet was filed by the Economic Offences Investigation Bureau.

On 31-1-1986 the charges were framed by the Special Judge, Jabalpur. These were read over and explained to the accused. He is said to have admitted his guilt in the following words :-

^xyrh gqbZ gS eSaus 5]000@& :- xcu fd;k FkkA esjs ;gk? pksjh gks xbZ FkhA eq>s Vh- ch- dh chekjh FkhA rfc;r Bhd ugha jgrh FkhA eSa mPprj ek/;fed fo|ky; esa mPp Js.kh fyfid FkkA th- ih- ,Q- ds 5]000@& :- eSaus cSad ls fudkys FksA esjh rfc;r vpkud [kjkC gks xbZ FkhA ;g :i;s esa ls 2]500@& esjs bykt esa [kpZ gks x;sA ckdH 2]500@& :- nsus x;k rks mUgksaus euk dj fn;kA eSaus fo|ky; ds fglkc esa ;g ugha fn[kk;k Fkk fd 5]000@& :- eSaus cSad ls M?k fd;s gSA eq>s vijk/k Lohdkj gSA**

It will thus appear that the accused has admitted misappropriation of the amount of Rs. 5,000/-. He has qualified his admission while pleading guilty that there was a theft in his house, he was suffering from T. B., he suddenly fell ill, he spent the amount of Rs. 2,500/- in his treatment and he went to pay the remaining amount but it was not taken.

The procedure of trial of warrant cases was followed in this case. After the charge was framed, read and explained the plea of the accused was recorded. According to Section 241 of the Code : "If the accused pleads guilty, the Magistrate shall record the plea and may, in his discretion, convict him thereon". For convicting an accused on his plea of guilty two things must be kept into consideration (1) the plea of guilt must be made voluntarily (2) it must be made with full understanding of the consequences. The plea of guilt must be clear, specific and unambiguous. It should be unqualified. It must show conscious admission of guilt after fully understanding its implications. It should be distinct and unequivocal. It should be without any extraneous pressure or expectation of lenient sentence. It is especially so where the charges are serious and the sentence of imprisonment is mandatory. The Judge or Magistrate has a discretion to act upon the plea of guilt keeping in view all the facts and circumstances of the case. There should be a sound and proper exercise of the judicial discretion while acting on the admission of guilt under Sections 229 241 or 246(3) of the Code.

Unless the Court is fully satisfied that the accused knew exactly what was implied by his plea of guilty and the effect of such plea, the case should be tried and the evidence should be recorded and such a plea should be considered along with the evidence on record. In *Hasaruddin Mohommad Vs. Emperor*, it was laid down that it is left to the discretion of the Presiding Judge in each particular case to determine whether in spite of the plea it is or is not desirable to enter upon the evidence. In *State Vs. Banshi Singh*, this Court made it clear that in order that a

conviction may be sustained on a plea of guilty, it must appear that the accused admitted in his pleas all the elements of the offence. In *State of H.P. v. Shri Rama Mal* 1970 Cr.LJ. 1303 (Delhi) the accused had pleaded guilty, yet he had set forth many circumstances which exonerated him. That was not treated as an unqualified admission of his guilt. It was held that it did not amount to a plea of guilty.

There is a decision of the Supreme Court of the United States in *R..J. Henderson v. T. G. Morgan* 1977 Cr.LJ. 738 in which referring to earlier decisions the law on the point was summarised. "Out of just consideration for persons accused of crime, Courts are careful that a plea of guilty shall not be accepted unless made voluntarily after proper advice and with full understanding of the consequences".

In *Thippaswamy Vs. State of Karnataka*, the Supreme Court has held that it would be clearly violative of Article 21 of Constitution to induce or lead an accused to plead guilty under a promise or assurance that he would be let off lightly and then in appeal or revision, to enhance the sentence. This decision is also a pointer in the direction that a plea of guilty should be accepted when the accused has understood fully its ultimate consequences.

In the present case, it appears that the accused made admission of the guilt without understanding its implications or consequences. The minimum punishment for the offence u/s 5(l)(c) read with Section 5(2) of the Prevention of Corruption Act, 1947 was ordinarily imprisonment for one year. The admission was qualified. The accused stated that there was theft in his house and he spent half of the amount in the treatment of his disease of tuberculosis. It is clear that the admission of guilt was not unequivocal. He expected exoneration or leniency in sentence by placing before the court the extenuating and mitigating circumstances. He did not admit the mens rea on his part. He did not make clear admission of "dishonesty" on his part which is an essential element of the offence of criminal breach of trust. He tried to persuade the Court the non-existence of dishonest intention. That was implicit in the words used by him.

The appeal is allowed. The conviction and sentence on such "plea of guilt" cannot be sustained. These are set aside. As the accused has died there can be no order of retrial.