

**State Vs. Thomba**

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**SooperKanoon Citation :** [sooperkanoon.com/124567](http://sooperkanoon.com/124567)

**Court :** Guwahati

**Decided On :** Nov-03-1970

**Judge :** R.S. Bindra, J.C.

**Appellant :** State

**Respondent :** Thomba

**Prior history :** R.S. Bindra, J.C. 1. Shri H. Tomba was convicted Under Section 25(1)(a) of the Indian Arms Act on 8-5-1969 on the plea of guilty alleged to have been entered by him, and he was sentenced to a fine of Rs. 100/- or in default 45 days' rigorous imprisonment. The State felt aggrieved with the sentence imposed and so filed the instant revision petition praying that the sentence should be suitably enhanced. It was mentioned in the revision petition that in view of the prevalent law and order situat

**Judgement :**

R.S. Bindra, J.C.

1. Shri H. Tomba was convicted Under Section 25(1)(a) of the Indian Arms Act on 8-5-1969 on the plea of guilty alleged to have been entered by him, and he was sentenced to a fine of Rs. 100/- or in default 45 days' rigorous imprisonment. The State felt aggrieved with the sentence imposed and so filed the instant revision petition praying that the sentence should be suitably enhanced. It was mentioned in the revision petition that in view of the prevalent law and order situation in the

Territory of Manipur it was essential that some corporal punishment should have been awarded to the convict.

2. When the revision petition came up for hearing in this Court, Shri Priyananda Singh, representing the convict, challenged the validity of the conviction itself. It was conceded by the learned Government Advocate that it was open to the convict in the present revision to show cause against his conviction. Sub-section (6) of Section 439, Criminal P.C. provides that notwithstanding anything contained in the section, any convicted person to whom an opportunity has been given under Sub-section (2) of showing cause why his sentence should not be enhanced shall, in showing cause, be entitled also to show cause against his conviction. Therefore, it is lawful for this Court to examine and adjudge the correctness or otherwise of the objection raised on behalf of the respondent respecting the validity of his conviction.

3. The contention of Shri Priyananda Singh was that after the charge had been read over and explained to the accused H. Tomba by the trial Court, the latter never formally called upon the former to plead to the charge, and that as such the provisions of Sub-section (5) of Section 251-A, Criminal P.C. had been violated with the consequence that the trial stands vitiated. Sub-section (5) enacts that if the accused pleads guilty, the Magistrate shall record the plea and may, in his discretion, convict him thereon. Shri Priyananda Singh emphasised the words 'shall record the plea' used in the sub-section to reinforce the contention about the invalidity of the trial. He also invited the Court's attention to the record prepared by the Sub-Divisional Magistrate to demonstrate that the plea of guilty had never been recorded at all. The charge-sheet contains the recital in the Magistrate's hand that the charge was read over and explained to the accused in the language known to the latter and that 'he has pleaded guilty to the charge'. His plea however was never recorded. The charge sheet of course bears the signature of the accused in the left margin. In the judgment itself it is stated that the charge had been read out and explained to the accused and that 'he has pleaded guilty stating that he made the gun'. It is not possible to spell out from what is recorded on the charge-sheet and in the judgment what precise words had been used by the accused while pleading to the charge. According to the recitals in the judgment,

the accused may have stated only that 'he had made the gun', for the words 'he has pleaded guilty stating that he made the gun' in the judgment are susceptible of that interpretation. The learned Government Advocate was unable to contend that it is possible for this Court to make out from the record of the trial Court in what manner and in what language the accused had pleaded guilty to the charge. It would be highly unsafe, under the circumstances, to attribute a plea of guilty to the accused merely on the conclusion recorded firstly in the writing made by the Magistrate on the charge-sheet and then in the judgment itself.

4. Apart from the factual infirmities just mentioned, there is a serious legal lacuna in the case arising out of non-recording of the alleged plea of guilty. Sub-section (5) of Section 251-A, Criminal P.C. enjoins in peremptory language that 'the Magistrate shall record the plea' of guilty entered by the accused. Therefore, non-recording of such plea means flouting the mandatory legislative injunction and the consequence that must follow is that the trial itself is invalidated. The learned Government Advocate was unable to satisfy this Court that non-recording of the plea of guilty under Sub-section (5) is only a curable irregularity and not an illegality vitiating the trial. True, that Shri Priyananda Singh was also not able to cite any authority to buttress his submission that non-recording of plea under Sub-section (5) nullifies the trial. However, in the case of *Mahamda v. State* A.I.R. 1952 Ajmer 4, it was held that the conviction cannot be sustained on a plea of guilty allegedly entered by the accused but not recorded specifically.

5. There are two other provisions in the Code which are almost analogous to Sub-section (5) of Section 251-A, Criminal P.C. The first provision is to be found in Section 243, Criminal P.C. which falls in Chapter XX bearing the heading 'of the trial of summons cases by Magistrates', and the other is Sub-section (2) of Section 255, Criminal P.C. which finds place under Chapter XXI with the heading 'of the trial of warrant cases by Magistrates.' The latter provision relates to warrant case instituted otherwise than on police reports. The language used in the two provisions is almost identical with that employed in Sub-section (5) of Section 251-A. Section 243 states that the admission of the accused 'shall be recorded as nearly as possible in the words used by him', while Sub-section (2) of Section 255 provides that 'the Magistrate shall record' the plea of guilty entered by the

accused. There is abundant authority that the provisions of Section 243 are of mandatory nature and that the failure to comply with the same would vitiate the trial and render the conviction legally invalid. Attention is invited in this respect to the cases of *Sarsibala v. State* : AIR1962 Pat244 and A.I.R. 1961 Assam 19, *Surath Chandra v. State*. The Assam High Court happened to observe in the latter case that the provisions of Sections 242 and 243, Criminal P.C. are very salutary and are necessary for protection of the accused and for a proper administration of justice which would inspire confidence in the administration. Magistrates have to remember, it was pointed out, that an order convicting an accused on his own admission is not a final order, as it is open to revision by a superior Court which has to be satisfied that what the Magistrate thought to be an admission of an offence by the accused, was really such an admission, and that where the admission of the accused is not recorded, the superior Court is deprived of the chances of forming its own independent conclusions which might often result in serious miscarriage of justice.

6. If the provisions of Section 243 are mandatory in nature, as is apparent from the language used by the Legislature and also from the interpretation placed upon it by the High Courts, the provisions of Sub-section (5) of Section 251-A and Sub-section (2) of Section 255, which are identically worded, must be held to be mandatory in nature and any violation thereof must vitiate the trial. If the non-recorded plea of the accused is considered by the trial Court as amounting to plea of guilty and conviction is founded thereon, there would be nothing on the record except the recorded conclusion of that Court to enable the superior Court to adjudge the contention of the accused that he had not entered the plea of guilty in case he happens to go in appeal or revision against the order of conviction. Therefore the statutory provisions apart, practical considerations demand that if the alleged plea of guilty is not recorded, the conviction founded thereon should not be maintained. There is no room for doubt on the point that in the present case the Magistrate had completely violated the provisions of Sub-section (5) of Section 251-A, Criminal P.C. by not recording at all the alleged plea of guilty entered by the accused. Consequently, on accepting the contention of Shri Priyananda Singh, I quash the conviction and sentence of Shri H. Tomba and remand the case to the trial Court for fresh trial according to the provisions of the law.

