

**The State of Mysore Vs. Bheemal**

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**Court :** Karnataka

**Decided On :** Feb-25-1971

**Reported in :** 1971CriLJ1261

**Judge :** M.S. Nesargi, J.

**Appellant :** The State of Mysore

**Respondent :** Bheemal

**Judgement :**

ORDER

**M.S. Nesargi, J.**

1. In this petition, the State has contended that the sentence passed by the Munsiff-Magistrate, Chittapur on the respondent on 17-3-1970 in C. C, No. 165/3/70, is not according to law.

2. The few facts necessary for a decision in this case are as follows:

A charge sheet was filed against the respondent alleging that at about 11 a.m. on 24-12-1969 the respondent was found in possession of two bottles each containing 650 M. L. of illicitly distilled liquor and as such he had committed an offence punishable Under Section 34 of the Mysore Excise Act, 1965 (hereinafter referred to as 'the Act'). On the respondent being produced before the learned

Magistrate, the learned Magistrate put the substance of the accusation to the respondent as follows: It is alleged by the prosecution that you were found in possession of I. D. Liquor of two bottles and same was seized under a panchanama. Show cause why you should not be convicted Under Section 34, Excise Act.

The respondent stated that he was not at all guilty of the offence alleged against him.

3. The records received from the lower court go to show that later on, on the very same day, typed application (unstamped) appears to have been filed under the L. T. M. of accused Bheemal (i.e. the respondent). The L. T. M. is not at all endorsed to show as to who identified the same. That application reads as follows:

May it please your honour.

In the above mentioned case my statement was recorded and by mistake I could not plead guilty due to some misunderstanding. The Excise Inspector has recovered two bottles of I. D. liquor from me. I plead guilty. I am the first offender and pray for mercy.

Hence I pray that

My plea may be recorded and I may be released on due admonition.

It is below this application that the learned Magistrate has passed the following order.

I accept the plea of guilty and sentence him to pay a fine of Rs. 15/- in default to undergo S. I. for 7 days.

4. Strangely enough, the order sheet maintained by the lower court does not at all disclose that in the first instance i.e., when the substance of the accusation was read over to the respondent, the respondent pleaded not guilty and later on he filed a typed application containing a plea of guilty. I am unable to see why the order sheet is not maintained as required to be maintained. It our. to. as per the rules, depict the proceedings in a case as they transpire on a particular day. The

lower courts will do well to adhere to the rules of practice and to see that the order sheets are maintained properly so that no room for doubt or suspicion is allowed.

5. The State contends that the sentence of fine of Rs. 15/- and in default to undergo S. I. for 7 days is less than the prescribed minimum, as found in the amended provisions of Section 34 of the Mysore Excise (Amendment) Act, 1970. ' The learned Government Pleader appearing for the State urged that the Mysore Excise (Amendment) Act. 1970 came into force- from 23-12-1969 and therefore the amended provisions govern this case because this offence was committed on 24-12-1969. There is force in this contention. But, I find that, for the reasons to be mentioned in the course of this order, the conviction passed by the learned Magistrate against the respondent is not sustainable in law.

6. Section 242 of the Code of Criminal Procedure lays down that in cases tried as summons cases, substance of the accusation should be stated to the accused when the accused appears or is brought before Magistrate and the say of the accused is to be recorded. This cases to show that the accused be present when the substance of the accusation is read over to him by the Magistrate. As to how the substance of the accusation is to be read over to an accused when the accused is absent because of exemption from appearance granted him is a different aspect of the matter.

In this case, what is being considered is the procedure to be followed by a Magistrate when an accused appears before him or is brought before him. It is the duty of the Magistrate to explain the substance of the accusation to the accused so as to make him understand fully the implications of the same and then proceed to record what the accused states before him. It is thus seen that the law envisages the plea to flow from the mouth of the accused himself. There is no provision in Chapter XX of the Code of Criminal Procedure dealing with the trial of summons cases by Magistrate to record the plea of an accused on two occasions.

It is, no doubt, clear from the proceedings that transpired before the learned Magistrates narrated above the plea of the respondent had been recorded and the respondent had pleaded not guilty. But, once again later on the same day a typed application, purporting to be under the L. T. M. of respondent was presented and

that appeared to contain a plea of guilty and that plea was accepted by the learned Magistrate and relied upon to base conviction against the respondent. In my opinion, the procedure adopted by the learned Magistrate is not according to law. He could not have relied upon the contents of the said application as the plea put forward by the respondent to the substance of the accusation put Under Section 242 of the Code of Criminal Procedure.

7. It is generally observed that recording of pleas especially in cases not involving grave charges appears to be done by the lower courts in rather a mechanical manner. It is to be remembered in this connection that whenever there is plea of guilty, discretion still vests in the courts to decide whether, it should or should not be accepted and relied upon. That goes to show that the courts are required to be very observant when pleas of such nature are put forward by accused.

The way in which the plea is put forward is important, because it is on that basis that the court has to decide whether the plea put forward appears to be voluntary and true.. After recording a plea of guilty, it is, in my opinion, necessary for the courts to look into the papers produced by the prosecution in order to find out whether the plea of guilty should be accepted or not. If it appears from the documents and the papers produced by the prosecution that even on the facts disclosed by such papers there is no likelihood of the charge levelled against a particular accused being satisfactorily established, the courts should not use the discretion vested in them in favour of accepting the plea of guilty.

In view of all these matters, it is, in my opinion, absolutely essential that the courts should be very observant while recording the plea and the Courts should see that the plea flows from the very lips of the concerned accused.

8. In the case on hand, it is clearly seen that the learned Magistrate ought to have been put on guard before accepting the plea of guilty alleged to be contained in the said typed application produced later on on 17-3-1970. The reason is that the very person, viz., the respondent had pleaded not guilty earlier on that day and later on, had changed his version and had put in a typed application. In the typed application, it is clearly mentioned that he may be released on due admonition. That indicates that there was every likelihood of extraneous influence having been

brought to bear on the respondent. The learned Magistrate has ignored all these aspects and has mechanically proceeded to accept the plea alleged to be contained in the said application. This is, in my opinion, indiscreet use of the judicial discretion vested in him by law.

9. In view of the aforementioned facts, circumstances and reasons, I hold that the conviction and sentence passed on the respondent is to be set aside and therefore allow this petition and set aside the conviction and sentence passed against the respondent by the Munsiff-Magistrate, Chitapur in. C. C. No. 165/3/70 on 17-3-1970 and direct the papers to be remitted back to the court of the Munsiff-Magistrate, Chitapur for disposal of the case afresh according to law bearing in mind the observations made in the body of the order above.

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