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State of Karnataka Vs. Thimmanaika

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Court : Karnataka

Decided On : Jan-29-1992

Reported in : 1993(2)ALT(Cri)661; ILR1992KAR667; 1992(2)KarLJ363

Judge : Hiremath and ;Shivappa, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 251 and 252

Appeal No. : Crl. Appeal No. 285 of 1988

Appellant : State of Karnataka

Respondent : Thimmanaika

Advocate for Def. : D.L. Jagadish, Adv.

Advocate for Pet/Ap. : T.S. Mohd. Ali, SPP

Judgement :

Hiremath, J.

1. The accused-respondent was charge sheeted before the Court of Judicial Magistrate First Class, Srirangapatna under Sections 279, 337 & 304A I.P.C. It was alleged against him that on 13-2-1987 at about 6.30 AM on Mysore-K.R. Sagar road, he was driving the lorry bearing No. CMS 4617 in a rash, and negligent manner and hit a bullock cart coming on the left side of the road and as

a result the cart was completely damaged, two bullocks which were drawing the card died-due to the injuries sustained by them, two other bullocks which were tied behind were also injured and one B.K. Ramegowda who was also badly injured died later in K.R. Hospital, Mysore. Thus this was a case involving more offences than one from rash and negligent driving of the vehicle. After the accused was released on bail and case set down for hearing the proceedings show that the case which was to be taken in its usual course on 18-1-1988 was advanced to 5-1-1988 on the request made by the accused-respondent himself byfiling an application to the Court on the same day, i.e., on 5-1-1988. He stated therein that in Mandya Accident Claims Tribunal Rs 45,000/- were awarded as compensation against him and he was too poor to pay the fine amount that might be imposed by the Court in this case and therefore he made a prayer that he may be let off with a small amount of fine. Thus throughout his application what he all pleaded was for the mercy in the hands of the Court pleading his poverty and the heavy compensation which was already awarded,

2. The trial Court on his application advanced the case, recorded his plea and sentenced him to pay a fine of Rs 600/- for all the offences collectively. Perhaps the accused felt supremely happy with this result. The State having felt aggrieved by what the Supreme Court has called such lenient view as 'flea bite' sentence in cases of this nature, approached this Court under Section 337 Cr.P.C. for enhancement of the sentence.

3. Learned State Public Prosecutor has asked us to act on the plea of guilt as acted by the trial Court and according to him the trial Court committed an error in not sentencing the respondent separately for each of the offences under Sections 279, 337 & 304A IPC by imposing a fine of Rs 600/- for all the offences. This is too lenient according to the State.

4. The respondent's Counsel however has attacked the very conviction of the trial Court contending that the accused was given an impression that he. would be dealt with leniently and that it is almost plea bargaining violative of Article 21 of the Constitution and when he was labouring under that impression and the Court has acceded to his request for advancement, it does not amount to voluntary plea and

it is violative of Article 21 of the Constitution. In this behalf he has invited our attention to a Decision of the Supreme Court in the case of THIPPESWAMY v. STATE OF KARNATAKA, : 1983 CriLJ1271 in which the Supreme Court has observed that where by reason of plea bargaining the appellant pleaded guilty did not avail of the opportunity to defend himself against the charge, which is a course he would certainly not have followed if he had known that he would not be let off with a mere sentence of fine but would be sentenced to imprisonment then the conviction could not be proper. The Supreme Court also pointed out that it would be clearly violative of Article 21 of the 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. In our view, these observations squarely attract the facts of this case in as much as the accused was labouring under the impression that the trial Court would accede to whatever he had submitted in his application as a cause for taking a lenient view. All that he pleaded was extreme poverty and his inability to pay heavy fine amount. In our view when the trial Court proceeded to record accusation it impliedly gave impression to the accused to believe that what he had pleaded in the application would be acted upon. If such an impression could be gathered from the plea that the accused was making then it follows that it cannot be said that the plea was voluntary. The Court if it were to act on its own could not have allowed the application filed by the accused and prayer made therein and it ought to have proceeded on its own giving its clear mind that the accused need not be under any impression that he would be let off with a small fine amount. Failure to do so had certainty resulted in a wrong impression in his mind. We strongly disapprove of such courses to be adopted by trial Courts when the plea made by an accused person even remotely is likely to create an impression on his mind that his plea of guilt may result in his favour of leniency. It is imperative that an accused person pleading should not have any such preconceived impression of his own, and if the Court succumbs to such pleas, that certainly results in miscarriage of Justice in two ways. Firstly, even if on merits the accused is likely to be acquitted, some force may be acting on him to snatch a plea of guilt to get an order of undeserved conviction, or, the Court having given such an impression would be deprived of its free conscience and would be overpowered by an implied assurance of leniency to

the accused. We therefore find this a fit case in which the conviction of the accused itself has to be set aside and the case be remitted to the trial Court for hearing on merits.

5. Section 251 Cr.P.C. requires the Magistrate to state to the accused person the particulars of the offense of which he is accusedand he shall be asked whether he pleads guilty or has any defense to make. Under Section 252 the Magistrate may in his discretion convict the accused so pleading guilty. It is not mandatory for the Magistrate to accept the plea of guilt and to proceed to convict him. The Magistrate has to satisfy himself that the accused has completely understood the accusation that was read to him and that he pleaded guilty after completely realising the consequences that follow. Therefore it is the satisfaction of the Magistrate that the accused has understood the accusation and the particulars read to him. A Division Bench of this Court in the case of STATE OF KARNATAKA v. MALLAPPA SHIDLINGAPPA, 1980(1) KLJ 182 ruled that before accepting the plea of guilt it is the duty of the Magistrate to satisfy himself that the accused has understood the charge or the substance of accusation against him and that after understanding the same pleaded guilty and also after realising the consequences that follow. Though Section 252 does not speak of 'acceptance' of plea of guilt by the Magistrate, when it leaves to the discretion of the Magistrate to convict the accused or not it is for the Magistrate to apply his mind and decide whether he should act upon the plea of guilt keeping before him all the facts and circumstances as well as the consequences that might follow and the reasons which might have induced the accused to make such a plea. It thus becomes a judicial exercise of discretion in accepting or rejecting the plea of guilt. In our considered view for the reasons aforesaid in this case the Magistrate ought not to have accepted the plea of guilt and proceeded to convict him.

With the above observations, we reject the plea of the State for enhancement of sentence but set aside the conviction of the accused-respondent for the offense for which he was charged and remit the case to the trial court to register it in its original number and proceed to hear the case on merits without accepting the plea of guilt and dispose of the case as expeditiously as possible.

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