

Gopal Vs. the State

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Court : Chennai

Decided On : Jun-12-1998

Reported in : 1999CriLJ813

Judge : A. Ramamurthi, J.

Acts : Arms Act - Sections 3, 5, 25 and 25(1B); ;Arms (Amendment) Act 1983 ;
[Constitution of India](#) - Article 21

Appeal No. : Cri. Revn. Case No. 896 of 1997

Appellant : Gopal

Respondent : The State

Advocate for Def. : Karthikeyan, Govt. Adv. for Public Prosecutor

Advocate for Pet/Ap. : K. Veeraraghavan, Adv.

Disposition : Petition allowed

Judgement :

ORDER

A. Ramamurthi, J.

1. The petitioner/Accused No. 1 has preferred the revision against the order of the learned Additional District Judge-cum-Chief Judicial Magistrate, Chengalpattu in

C.A. No. 27/92, confirming the judgment of the learned Judicial Magistrate, Thirukalukkundram, convicting the petitioner for an offence punishable under Section 5(i) of Arms Act read with 25(i)(a) of Arms Act, as amended by Act 1983 imposing a sentence of rigorous imprisonment for three years and to pay a fine of Rs. 100/-, in default, to suffer rigorous imprisonment for one month and also under Section 3 of the Arms Act read with 25(1-B) of Arms Act imposing rigorous imprisonment for one year and to pay a fine of Rs. 100/-, in default, to suffer rigorous imprisonment for one month.

2. The case of the prosecution in brief is as follows:-

On 24-7-91 near Buckingham Canal one km. away from Ceylon Refugee Camp at Salavan Kuppam, the petitioner and another person were in possession of the arms without any valid licence. The charge sheet was filed against them and they pleaded guilty to the charge and based on this, they were convicted and aggrieved against this, the petitioner preferred an appeal before the Sessions Court and the Appeal was also dismissed and aggrieved against this, the present revision is filed.

3. The learned counsel for the petitioner contended that the plea of policy by the petitioner is not voluntary and he had been made to plead guilty promising that he would be let off with the fine. The docket entry filed also would show that even on the date when the charge sheet filed i.e. on 26-5-92, the memo has been filed pleading guilty. The counsel who appeared for the petitioner also filed an affidavit, pointing out the circumstance under which the memo was filed. In view of the decision in *Thippeswamy v. State of Kamataka* : 1983 CriLJ1271 , the plea bargaining is illegal and violative of Article 21 of the Constitution. No summons were also issued to the petitioner for appearance on 26-5-92, thereby indicating that there was influence on the part of the police against the petitioner. Both the courts below wrongly came to the conclusion and ultimately convicted the petitioner without giving any opportunity.

4. Learned counsel for the petitioner firstly contended that the copy of the docket entry is filed in this case to show that even on 26-5-92, a memo has been filed, pleading guilty relating to the charge sheet. Admittedly, the charge sheet was filed

against the petitioner and another person on 26-5-92 and on the very same date, the copies prepared by the police seem to have been furnished to the parties. The case was adjourned to 27-5-92 and on the said date, the charges were framed and questioned. They pleaded guilty to the charge and the case was adjourned to 28-5-92 and on the said date only, the sentence was imposed,. Based on the memo filed by the petitioner on 26-5-92, the learned counsel contended that it will give a clue that only at the instigation and assurance of the police that if admitted, a lenient, view will be taken and because of this plea bargaining only, the memo was filed even on the said date when the charge sheet was filed. It is necessary to point out that no summon was issued to the petitioner calling upon him to appear before that Court on the said date. Normally, since it is a grave crime, after filing of the charge sheet it will be taken on file and summons will be issued. Although the copies were prepared by the police, there is a duty case on the Court to verify the same and thereafter only, it can be furnished. There is no such entry in the docket to show that the copies prepared by the police were duly certified by the Court.

5. The learned public prosecutor contended that it is a new contention raised by the petitioner only for the first time before the revision Court and no such contention was raised in the Appellate Court. No doubt, in the lower appellate Court such a view has not been taken but it does not mean that there would be bar preventing the petitioner from raising such a plea. Now additional grounds have also been filed to the petition, to show that on the assurance given by the respondent only the memo was filed on 25-5-92. When once the petitioner is able to establish by recorded material that even when the charge sheet was filed, the memo was filed, would only strengthen the case of the petitioner that due to the influence of the police only, the guilty memo was filed on the same day. Moreover, the advocate who had filed the memo for and on behalf of the petitioner has also filed an affidavit now to show under what circumstance the memo was filed on the said date. If these things are taken together, it will lead to the irresistible conclusion that because of plea bargaining only, such a memo was filed and, as such, it is a violation of Article 21 of the Constitution. The present contention of the respondent that such a plea was not taken in the lower appellate Court cannot be given much weight. Considering the facts and circumstances of the case it has been established by record that even on the date of the filing of the charge sheet,

the guilty memo was filed.

6. The learned counsel for the petitioner also relied on Thippeswamy's : 1983 CriLJ1271 (supra) and also State of Karnataka v. Nagaraja : ILR 1996 KAR1947 in support of his contention that 'if the party is able to establish that due to plea of bargaining only, guilty memo was filed, the conviction and sentence imposed on the party is liable to be set aside and opportunity has to be given to defend the case and ultimately the Court can dispose the case on merit.' The aforesaid decisions are applicable to the facts on hand. Considering the fact that the petitioner is involved in a grave crime and minimum punishment is also prescribed, it is just and necessary that an opportunity has to be given to the petitioner to defend the case and the conviction and sentence are liable to be set aside.

7. In the result, the revision is allowed and the conviction and sentence imposed on the petitioner by both the Courts below are set aside and the matter is remitted back to the trial Court with a direction to restore the case to its file and record the plea of the accused again and dispose the case on merits in accordance with law, within a period of two months from the date of receipt of the records. The petitioner is also directed to appear before the trial Court on 13-7-1998.

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