

Thippaswamy

Vs

State of Karnataka

Criminal Appeal No. 671 of 1982

(P. N. Bhagwati, A. P. Sen, R. S. Pathak JJ)

25.11.1982

ORDER

1. We are of the view that this is a case in which plea - bargaining seems to have taken place, because on the appellant pleading guilty to the charge, the learned Magistrate imposed upon him only a sentence of fine of Rs. 1000 even though the offence of which he was convicted was one under Section 304-A of the Indian Penal Code. The High Court, in appeal by the State, acting upon the plea of guilty, maintained the sentence of fine and additionally imposed a substantive sentence of rigorous imprisonment for a period of one year. It is obvious that by reason of plea-bargaining, the appellant pleaded guilty and 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 me sentence of fine but would be sentenced to imprisonment. 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 should not interfere as a result of plea-bargaining. But in such a case, it would not be reasonable, fair and just to act on the plea of guilty for the purpose of enhancing the sentence. The court of appeal or revision should, in such a case, set aside the conviction and sentence of the accused and remand the case to the trial court so that the accused can, if he so wishes, defend himself against the charge and if he is found guilty, proper sentence can be passed against him.

2. We would therefore allow the appeal, set aside the order of conviction and sentence passed against the appellant and remand the case to the court of the Judicial Magistrate 1st Class, Chitradurg so that the appellant may be tried in accordance with law and if he wishes to defend himself, he should have proper and adequate opportunity to do so. While passing this Order, we may make it clear that we should not be taken to have expressed any opinion on the merits of the case against the appellant. If the appellant is found guilty as a result of the trial, the Judicial Magistrate may impose a proper sentence upon him and if on the other hand, he is found not guilty, he may be acquitted.

3. Before parting with this case, we may point out that Mr. Veerappa, learned Advocate, appearing on behalf of the respondent wanted to file an affidavit in reply to the spousal leave petition but we thought it unnecessary to grant any further time to the respondent to file such affidavit because we are disposing of the appeal on a pure question of law which does not depend on the facts of the case. Since we are remanding the case to the court of the Judicial Magistrate, we are remanding the case to the already granted to the appellant by us will continue for a further period of two weeks, in order to enable the appellant to apply for bail before the Judicial Magistrate and then it will be for the judicial Magistrate to decide whether to grant bail and on what terms.

</html