State Of Uttar Pradesh vs Chandrika on 29 October, 1999

Equivalent citations: AIR 2000 SUPREME COURT 164, 1999 AIR SCW 2556, 1999 AIR SCW 4251, 1999 (8) SRJ 66, 1999 CRILR(SC&MP) 798, 1999 CRILR(SC&MP) 627, 1999 (4) SCALE 173, 1999 CRILR(SC MAH GUJ) 798, 1999 (6) ADSC 505, 1999 (6) SCC 120, 1999 CALCRILR 345, 1999 SCC(CRI) 1066, 1999 CRILR(SC MAH GUJ) 627, 1999 (2) UJ (SC) 1294, (1999) 5 JT 5 (SC), (1999) 8 JT 481 (SC), 1999 (5) JT 5, (1999) 2 MADLW(CRI) 770, (2000) 2 SCJ 226, (1999) 6 SUPREME 145, (1999) 25 ALLCRIR 1668, (1999) 4 SCALE 173, (1999) 2 CHANDCRIC 92, (1999) 3 ALLCRILR 417, (1999) 2 HINDULR 179, (1999) 3 CRIMES 137, (1999) 3 EASTCRIC 271, (1999) 3 RECCRIR 623

Author: K.T. Thomas

Bench: K.T. Thomas

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           CASE NO.:
Appeal (crl.)  1131-32 of 1999

PETITIONER:
STATE OF UTTAR PRADESH

RESPONDENT:
CHANDRIKA

DATE OF JUDGMENT: 29/10/1999

BENCH:
K.T. THOMAS & M.B, SHAH

JUDGMENT:
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JUDGMENT 1999 Supp(4) SCR 239 The Judgment of the Court was delivered by SHAH, J. Leave granted.

These appeals by special leave are filed by the State of U.P. against the judgment and order dated 28 November, 1997 passed by the High Court of Judicature at Allahabad in Criminal Appeal Nos. 2747-48 of 1980 whereby the High Court accepted the plea bargain and maintained the conviction of the respondent under Section 304 part I, I.P.C. but altered the sentence to the period of imprisonment already undergone (without stating actual period of imprisonment undergone by the respondent) plus a fine of Rs. 5000 in default of payment R.I. for six months. The respondent along with two others was charged under Section 302 read with Sections 307 and 34 I.P.C. for committing the murder of one Shyamadeo in Sessions Case No. 233 of 1980. The Sessions Judge, Ballia by his judgment and order dated 28.11.1980 convicted the respondent under Section 304 I.P.C. and

sentenced him to undergo eight years R.I. Aggrieved by the said order, respondent preferred an appeal before the High Court and at the time of hearing opted not to challenge the findings of conviction recorded by the trial Court with a view to bargain on the question of sentence. Learned Single Judge, (Malaviya, J.) accepted the bargain and allowed the appeal by observing inter alia that as the incident had taken place long back and since the appellant had been in jail for sometime both as undertrial prisoner and as a convict, it was desirable to substitute his remaining period of jail sentence as awarded by the trial court and altered the sentence as stated above. The State has challenged that judgment and order by filing these appeals. It is apparent that the order passed by the High Court is, on the face 6f it, illegal and erroneous. It appears that the learned Judge has overlooked the settled law or is unaware that concept of `plea bargaining' is not recognised and is against public policy under our criminal justice system. Section 320 Cr. P.C. provides for compounding of certain offences with the permission of the Court and certain others even without permission of the Court. Except the above, the concept of negotiated settlement in criminal cases is not permissible. This method of short circuiting the hearing and deciding the criminal appeals or cases involving serious offences requires no encouragement. Neither the State nor the public prosecutor nor even the Judge can bargain that evidence would not be led or appreciated in consideration of getting flee bite sentence by pleading guilty.

For this purpose, we would first refer to the decision in Madanlal Ram Chandra Daga etc. v. State of Maharashtra, [1968] 3 SCR 34 (Page No. 39), wherein this Court held :-

> "In our opinion, it is very wrong for a court to enter into a bargain of this character. Offences should be tried and punished according to the guilt of the accused. If the Court thinks that leniency can be shown on the facts of the case it may impose a lighter sentence. But the court should never be a party to a bargain by which money is recovered for the complainant through their agency. We do not approve of the action adopted by the High Court.."

Again the question of plea bargain was considered by this Court in Murlidhar Meghraj Loya v. State of Maharashtra, [1976] 3 SCC 684 (Para 13), and disapproved by following succinct observation:-

> "To begin with, we are free to confess to a hunch that the appellants had hastened with their pleas of guilty hopefully induced by an informal, tripartite understanding of light sentence in lieu of nolo contenders stance. Many economic offenders resort to practices the Americans call `plea bargaining', `plea negotiation', `trading out' and `compromise in criminal cases' and the trial magistrate drowned by a docket burden nods assent to the sub rosa ante-room settlement. The businessman culprit, confronted by a sure prospect of the agony and ignominy of tenancy of a prison cell, `trades out' of the situation, the bargain being a plea of guilt, coupled with a promise of `no jail'. These advance arrangements please everyone except the distant victim, the silent society. The prosecutor is relieved of the long process of proof, legal technicalities and long arguments, punctuated by revisional excursions to higher courts, the court sighs relief that its ordeal, surrounded by a crowd of papers and persons, is avoided by one case less and the accused is happy that even if legalistic

> battles might have held out some astrological hope of abstract acquittal in the expensive hierarchy of the justice-system he is free early in the day to pursue his old profession. It is idle to speculate on the virtue of negotiated settlements of criminal cases, as obtains in the United States but in our jurisdiction, especially in the area of dangerous economic crimes and food offences, this practice intrudes on society's interest by opposing society's decision expressed through predetermined legislative fixation of minimum sentences and by subtly subverting the mandate of the law. The jurists across the Atlantic partly condemn the bad odour of purchased pleas of guilt and partly justify it philosophically as a sentence concession tO a defendant who has by his plea `aided in ensuring the prompt and certain application of correctional measures to him' :
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> In civil cases we find compromises actually encouraged as a more satisfactory method of settling disputes between individuals than an actual trial. However, if the dispute...finds itself in the field of criminal law, "Law Enforcement" repudiates the idea of compromise as immoral, or at best a necessary evil. The "State" can never compromise. It must "enforce the law". Therefore open methods of compromise are impossible. [Arnold : Law Enforcement-An attempt at Social Dissection, 42 Yale, L.J.I. 19 (1932)]"

(Emphasis Added) In Ganeshmal Jashraj v. Government of Gujarat and Another, [1980] 1 SCC 363 and Thippaswamy v. State of Karnataka, [1983] I SCC 194, this Court set- aside the order passed by the High Court enhancing the sentence and remanded the matter to the Judicial Magistrate for trial of the accused in accordance with the law, as conviction and sentence were based on admission of guilt as a result of plea bargaining. In Ganeshmal Jashraj (Supra), the High Court had enhanced the sentence for the offence punishable under Section 16(l)(a)(i) of the Prevention of Food Adulteration Act, 1954 by holding that it was patently in breach of the requirement of the said Section, which provided for a minimum sentence of imprisonment for three months (now six months). This Court set aside that order by holding that there can be no doubt that when there is an admission of guilt made by the accused as a result of plea bargaining or otherwise, the evaluation of the evidence by the Court is likely to become a little superficial and perfunctory and the Court may be disposed to refer to the evidence not critically with a view to assessing its credibility but mechanically as a matter of formality in support of the admission of guilt. The entire approach of the Court to the assessment of the evidence would be likely to be different when there is an admission of guilt by the accused. Similarly, in Thippaswamy v. State of Karnataka, [1983] 1 SCC 194, Court observed that it would be 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 that sentence. In such cases, the Court of appeal or revision should 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.

This Court strongly disapproved the practice of plea bargain in Kachhia Patel Shantilal Koderlal v.State of Gujarat and another, [1980] 3 SCC 120. The Court held that practice of plea bargaining is

unconstitutional, illegal and would tend to encourage corruption, collusion and pollute the pure fount of justice. In that case accused was convicted under Section 16(f)(a)(i) read with Section 7 of the Prevention of Food Adulteration Act, 1954 by the Magistrate on the basis of plea bargaining which took place between prosecution, the defence and the learned Magistrate and accused was let-off with a nominal sentence of imprisonment till rising of the Court and a small fine. The High Court on its attention being drawn towards the order passed by the learned Magistrate initiated suo motu proceeding in the revision by issuing notice to the accused to show cause why the sentence imposed on him should not be enhanced. The High Court enhanced the sentence and sentenced the accused to imprisonment for a term of three months and a fine of Rs. 500. That order was challenged before this Court. The Court held that the conviction of the accused was based solely on the plea of guilty entered by the appellant as a result of plea bargaining between the prosecution, the defence and the learned Magistrate. The Court observed that :-

> "It is obvious that such conviction based on the plea of guilty entered by the appellant as a result of plea bargaining cannot be sustained. It is to our mind contrary to public policy to allow a conviction to be recorded against an accused by inducing him to confess to a plea of guilty on an allurement being held out to him that if enters a plea of guilty, he will be let off very lightly. Such a procedure would be clearly unreasonable, unfair and unjust and would be violative of the new activist dimension of Article 2 1 of Constitution unfolded in the case of Maneka Gandhi v. Union of India, [1978] 1 SCC 248. It would have the effect of polluting the pure fount of justice, because it might induce an innocent accused to plead guilty to suffer a light and inconsequential punishment rather than go through a long and arduous criminal trial which, having regard to our cumbrous and unsatisfactory system of administration of justice, is not only long drawn out and ruinous in terms of time and money, but also uncertain and unpredictable in its result and the judge also might be likely to be deflected from the path of duty to do justice and he might either convict an innocent accused by accepting the plea of guilty or let off a guilty accused with a light sentence, thus, subverting the process of law and frustrating the social objective and purpose of the anti- adulteration statute. This practice would also tend to encourage corruption and collusion and as a direct consequence, contribute to the lowering of the standard of justice. There is no doubt in our mind that the conviction of an accused based on a plea of guilty entered by him as a result of plea bargaining with the prosecution and the magistrate must be held to be unconstitutional and illegal."

Hence, it is settled law that on the basis of plea bargaining Court cannot dispose of the criminal cases. The Court has to decide it on merits. If accused confesses his guilt, appropriate sentence is required to be imposed. Further, the approach of the Court in appeal or revisions should be to find out whether the accused is guilty or not on the basis of evidence on record. If he is guilty, appropriate sentence is required to be imposed or maintained. If the appellant or his counsel submits that he is not challenging the order of conviction, as there is sufficient evidence to connect the accused with the crime, then also the Court's conscious must be satisfied before passing final order that the said concession is based on the evidence on record. In such cases, sentence commensurating with the crime committed by the accused is required to be imposed. Mere

acceptance or admission of the guilt should not be a ground for reduction of sentence. Nor can the accused bargain with the Court that as he is pleading guilty sentence be reduced.