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The Plea Bargaining: An Overview

Satinder Kumar
Associate Professor,
Deptt. of Law,
Jammu University,
J & K

Abstract

In this paper an attempt is made to high light the concept of plea barging in India. As judicial system in India is overburden with large number of cases pending in various courts especially in lower court. The instrument of plea bargaining is deemed to a feasible solution to huge pendency in the court. The statutory provisions in India which provides for the mechanism of plea bargaining is discussed in this paper. The report of Justice Malimath on justice delivery system in India has been highlighted in her in. the role played by the judiciary with relevant case law is also discussed**.**

Keywords: Constitution, Plea Bargaining, Supreme Court, Cr.P.C, Statutory Provisions and Justice Delivery System.

Introduction

The plea bargaining was inserted by virtue of Criminal law amendment Act[1]. Wherein a complete chapter has been incorporated in respect of an accused against who the office in charge of the Police station forwards the report with regard to the commission of an offence, for which the penalty is in the form of other than death or imprisonment for life or for a term exceeding seven (7) years. Thereafter, the magistrate takes cognizance of an offence, for which imprisonment for a term not exceeding seven years has been provided and after proper examination of the complainant and the witnesses under section[2], issues the orders, but the same does not applies to offences which affects the socio-economic conditions of the countrye.g. frauds in business, tax evasion, fraudulent advertisement etc. or which has been committed against women, such as rape, hurting modesty of women, dowry deaths or against a child below the age of fourteen years.

Objective of the Study

The term plea bargaining was inserted by virtue of criminal law amendment Act,2005 concerning an accused against whom ,the officer in charge of the police station forwards the report with regards to the commission of an offences ,issue the orders accordingly but the same does not applies to the offences which affects the socio-economic condition of the country such as frauds in business, tax evasion etc. or which has been committed against such women such as rape, hurting modesty of women Dowerydeath etc. or against a child between age of 14 years.

Plea bargaining refer to an agreement between the defense and the prosecutor in which defendant plead guilty or not to contest criminal charges.as criminal courts have become overcrowded, prosecutor and judges feel increased pressure to move the cases quietly through the routine system of trial that takes days, weeks or even years. Thus in order to shorten the burden the concept of plea bargaining was incorporated in the criminal law. As the outcome of any trial is unpredictable but plea bargaining provides both sides with some control over the result. Therefore the doctrine of the plea bargaining is being practiced in manycountries and demand to adopt this method.

Plea Bargaining : It's Concept

Plea bargain refers to an agreement between the defense and the prosecutor in which defendant pleadsguilty or not to contest to criminal charges and in exchange of the same the prosecutors drops some of charges or reduces the charge or recommends that judge should award specific sentence that is acceptable to the defense[3] As criminal courts have become overcrowded, prosecutor and judges feel increased pressure to move cases quickly through the routine system of trial that takes days, weeks or even sometimes months whereas guilty pleas can often be arranged within a minutes. Further the outcome of any trial is unpredictable, but a plea bargain provides both prosecution and defense with some control over the result. Therefore in view of these reasons the plea bargaining is being practiced in many countries and by virtue of these factors now there is an increasing demand to adopt this practice in Indian legal system as well[4].

Approach of Indian Judiciary

Indian judiciary has adopted a very strict approach towards the plea bargaining. Actually a crime is essentially a wrong against the society as well as the state. Therefore any compromise between the accused and the individual victim of the crime or for that matter the state, should not absolve the accused from criminal liability. Hence it is this line of approach, which the Indian judiciary has been following, but the Indian legal system does not recognize the concept of plea bargaining and considers it illegal and unconstitutional.This has been reflected by the Supreme Court of India in serious of cases. In *Madan Lal Ramchandra Daga v. State of Maharashtra*,[5] which is considered to be the first case in this line, the Supreme Court of India observed.

In our opinion, it is very wrong for a court to enter into a bargain of such a 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 lightersentence.But the court should never be a party to bargain by which money is recovered for the complaint through their agency.*

In view of the above referred case it follows that there ought to be distinction which should be made between strict construction of penal statutes which deals with crimes of aggravated nature vis-à-vis the nature of the activities of the accused which can be checked under the ordinary criminal law. Therefore in the back drop of the same in joint *CTO v. Young Men's Indian Association (Regd)*[6], It was lays down that in a criminal trial or a quasi-criminal proceedings, the court is entitled to consider the substance of the transaction and accordingly should determine the liability of the offender. But in a taxing statue the strict legal position and not the substance of the transaction is determinative of the taxability. But this distinction does not exist in law, even in construing and applying criminal statutes any reasoning based on the substance from transaction is discarded.

Therefore the court must ascertain the intention of the legislatures by directing its attention not merely to the clause to be construed but to the entire status, accordingly it must compare the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs[7].

The *Balkrishna Chhaganlal Soni v. State of W.B*[8]*, the* Hon'ble High Court held that these rules do not apply because the accused (respondent) had not acquired possession of these gold biscuits by purchase or otherwise within the meaning of these rules. Such a narrow construction will emasculate these provisions and render them ineffective as a weapon for combating gold smuggling.

However the High Court was in error in adopting too narrow a construction which tends to stultify the law. In next case of *Murlidhar Meghraj Loya v. State of Maharashtra*[9]*,* again the question of plea bargain was considered and the court expressed that these arrangements please everyone except the distant victim, the silent society. It is ideal to speculate on the virtues of negotiated settlements of criminal cases in United States but in our jurisdiction, especially in the area of economic crimes and food offences this practice is introduced in the society by opposing society's decision to have predetermined legislative fixation of minimum sentences subverting the mandate of law. Therefore the courts should subscribe the view that state can never compromise, rather it must enforce the law.

Later on the same line of approach in *Ganesh Mal Jashraj v. Govt of Gujarat*[10], the Supreme Court set aside the order passed by the high court enhancing the sentence and remanded the matter to the judicial magistrate for the 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. Further the Court observed that in case of admission of guilt by the accused the evaluation of evidence by the Court is likely to become a little superficial and perfunctory and the court may be disposed to refer the evidence with a view to assess its creditability as a matter of formality in support of admission of guilt by the accused.

In *State of A.P.V. Bathu Prakasa Rao*[11], it was held that the rule of strict construction does not prevent the court in interpreting a statute according to its currentmeaning and applying the language. Thus psychiatric injury caused by silent telephonic calls was held to amount to 'assault' and bodily harm under sections[12] of the act.

In *Tinsukhia Electric Supply v. State of Assam*[13], the court stated that no doubt it is true that if a statute is vague and meaningless, the same could be declared void and the same is not tested for arbitrariness or unreasonableness.

Further in the case of *Shailash Jasvantbhai v. State of Gujarat*[14], the Court observed that Law as a corner stone of the edifice of 'order' should meet the challenges confronting the society and in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual position.

Recently in state of *Karnataka v. Raju*[15], wherein the trial court imposed custodial sentence of seven years, convicting the respondent for rape of minor. The High Court reduced the sentence to three and half years and held that socio-economic status, religious, race, caste or creed of the accused or the victim is irrelevant considerations in sentencing the accused. However in India the view is that the punishment must be proportionate to the crime. Therefore in *Dalbir Singh v. State of Haryana*[16]. the Court opined.

> *"A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must always keep in mind that if he is convicted of theoffence for causing death of a human being due to his callous driving, he cannot escape from sentencing of jail. Accordingly same is the role which the courts are supposed to play, particularly at the level of trial courts for lessening the high rate of motor accidents due tocareless driving.*

However, in *Rattan Singh v. State of Punjab*[17], the Court held that sentencing must have a policy of correlation. The punishment must be accompanied by the components like potential injury

to human life. The state should attach better driving course, when the punishment is for driving offences.

In the *State of Punjab v. Prem Sagar*[18], wherein the respondents were directed to be released on probation on bond of Rs 20,000. The court observed that in our judicial system, we have not been able to develop legal principles withregard to sentencing. The Superior Courts except making observations with regard to the object for which punishment is upon an offender, have not issued any guidelines. Whereas other developed countries have done so.

The *BalramKumawat v. Union of India*[19], It was pointed out that distinction between mammoth and elephant ivory is that mammoth belongs to an extinct species and the ivory of elephant isof an extant living animal, since mammoth is an extinct species and what is being used for carving is its fossil which is called ivory, therefore they cannot be included in the term "ivory" within the meaning of the provision of the Art[20].

In *State of U.P. v Chandrika*[21], The Supreme Court reiterated the law related to plea bargaining. It opined that it is now a settled law that concept of plea bargaining is not recognized and it is against the public policy under the Indian Criminal Justice system and further observed that the concept of negotiated settlement in criminal cases is not permissible. Therefore neither the state nor the public prosecutor or even the judge can bargain that evidence which would not be led or appreciated in considerationof getting flee bite sentence by pleading guilty.

Thus Indian jurisprudence recognizes plea bargaining as unconstitutional, illegal and immoral. The Apex Court condemnedthe plea bargaining categorically on the philosophy, that this practice intrudes on society's interests by opposing society's decision expressed through pre-determined legislative fixation of minimum sentences by subtly subverting the mandate of the law. However inspite of such unanimous and strictmandate of the Indian judiciary there is perceived a wave of changing dimension because of heavy burden of cases to be discharged and demand for speedier justice.

Concluding Observations

It is concluded that despite the strict approach adopted by the Supreme Court, India is witnessing a changing trend towards the acceptance of the concept of plea bargaining. Both the legal luminaries and the legislatures are of the view that the concept of plea bargaining would be beneficial for Indian legal system for the advantage of handling the massive criminal loads, which has affected the legal system for long. It is this temptation which has persuaded the legislatures to incorporate this concept intothe Indian Legal system.

Furthermore the present speed of dispensing justice, it is amiracle if a case is decided in one's lifetime. During the last 10 years, the number of cases pending before Supreme Court has declined considerably, due to changes in the procedures as well as various amendments made by the Govt. But the High Courts in the country are not so lucky, as they are burdened under a huge pendency of cases. The position with regard to district courts and subordinate courts has not changed much; even though the rules were amended repeatedly witha view to administer speedy justice. Actually with the increase in population the number of cases has gone up andwith an increase in the number of laws, litigation has also increased, and to all this the inadequate infrastructure, inadequate strength of judges and supporting staffhave all gone to contribute towards delays because of the inability of thestates in one voice that they just do not have the money to expand the judicial services.

The absence of speedy justice is keeping away many litigants as a large number of persons have to be kept in judicial lock ups and the cases against them move at a snail's pace. If the trials are speeded up and a large number of criminals, instead of being sent to lock upsare kept under control being placed on probation, the states will be able to save huge amounts of money.

In the present system people spend longer period in the judicial lock up. The right to speedy trial is not expressly guaranteed constitutional right in India. Because speedy trial is the essence of criminal justice and delay in trialitself constitutes denial of justice.

Further justice Malimath committee on criminal justice reforms also advocated for the introduction of plea bargaining. Accordingly union legislatures in India introduced the criminal law (amendment) Bill 2003 which has now taken the shape of law[22] under the Act[23] and a full-fledged chapter namely plea bargaining has been inserted in the Code of Criminal Procedure. Under this system the accused or his counsel plead guilty in exchange of reduction of sentence and the accused having less than 7 years imprisonment can file an application for plea bargaining in the court in which such offences is pending for trial, but barring the plea bargaining in the cases of offence, committedagainst women or child below the age of 14 years and the offences, affecting socio-economic condition of the country.

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10. (1980) 1 SCC 363 : 1980 SCC (Cri) 239; See also *Thippaswamy v. State of Karnataka* (1983) (1) SCC 194 : 1983 SCC (Cri) 160.
11. (1976) 3 SCC 301 : 1976 SCC (Cri) 395.
12. Section 20 and 47, the offence Adjust the person Art, 1861.
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