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'Courts must be careful on guilt plea'

Shibu Thomas | TNN

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Mumbai: Plea bargaining has been touted as one of the solutions to speed up the legal process in criminal cases. The Bombay high court, however, recently ruled that care has to be taken before an accused's plea of guilt is accepted at face value before a trial court. Justice A H Joshi, heading a Nagpur bench of the high court, quashed the conviction of four persons, which was based on a plea of guilt by the accused.

"Even if a plea of guilt is recorded, (it should) be done, by distinctly putting to the accused each fact alleged in the charge, if proved, would constitute an offence," said the judge. "Yet even on observing these safeguards, the court would not be relieved from its duty of being satisfied that the plea of guilt was made by the accused upon fully understanding the repercussions and with free will, and is genuine and not due to misunderstanding," added the judge.

Plea bargaining is quite

widespread in the West, especially the United States, where it is said to be the most common method of disposal of criminal cases. It is a kind of out-of-court settlement between the prosecution and the defence, where the accused agrees to plead guilty to one or more of the charges or to not contest the charges in exchange for some benefits like a lesser sentence or a lesser charge.

Though the practise of plea bargaining was outlawed in 1980 in India, it was reintroduced through the Criminal Law (Amendment) Act in 2005 where changes were made in the CrPC. Under the law, plea bargaining was applicable only with respect to offences that were not serious and for which the maximum punishment is imprisonment of up to seven years. The benefit of plea bargaining was not, however, available to accused who were charged with committing a crime against a woman or a child below the age of 14 years.

The present case before the high court related to a criminal charge which was

THE LAW IN OTHER COUNTRIES



United States: Plea bargaining is said to be the most common form of disposal of criminal cases. It can be both on the charges as well as sentence, but has to be approved by the court.

England and Australia: It is permitted to a limited extent, where the prosecutor can drop some charges once the accused pleads guilty to specific charges. There is no bargaining over a penalty which is decided by the courts.

India: Plea bargaining was introduced in 2005 and is applicable only with respect to offences that are not serious and for which the maximum punishment is imprisonment of up to seven years. It is, however, not applicable in cases relating to crime against women or a child below the age of 14 years.

levelled against four residents of Madhya Pradesh in October 2007 at a trial court in Nagpur. Initially, the accused pleaded not guilty to the charges, but later modified their stance. Subsequently, they addressed a letter from jail saying that they were languishing in prison

which had resulted in suffering for their family and pleaded guilty "of what we have been charged by the police". Their lawyers then withdrew from the case. Even though the trial court explained to them that there would be no reduction in the quantum of sentence, they

persisted. The judge then held them guilty and convicted them. In their appeals, they withdrew their plea of guilt and claimed that "some persons had said that if they pleaded guilty to the offence, they would be let off with a simple sentence".

The high court pointed to the letter admitting guilt and said that this was a case where the plea of guilt "was not in the form of admission or confession of each fact and act which constitute ingredients of offence charged". The judge added, "What the accused have admitted is the whole parcel of charges that the police have made against them, which is always a mix of imputations of facts alleged and allegations of what it means in law. This type of plea of guilt is not an admission of facts." The court said that legal counsel was also not available to the accused.

The judge agreed that the grievance of the accused was justified and ordered a fresh trial.

shibu.thomas1@timesgroup.com