

Research Paper—Law



March, 2010

PLEA BARGAINING : AN APPRAISAL



***Dr. (Smt.) Roma Mukharji**

****Asstt. Prof. (Law) Govt. State Law College, Bhopal**

Criminal trial in various offences is subject matter of District and Session Court while trying the offence a common thing which comes to my knowledge is that the procedure adopted by the judiciary is lengthy and complicated. Inserting the chapter of plea bargaining in Criminal Procedure Code 1973¹ has made an attempt to remove the drawback of procedural technicalities etc.

The concept of plea Bargaining is applicable on the offences punishable for imprisonment which may extend to 7 year i.e. the jurisdiction of Chief Judicial Magistrates and is not applicable on the socio-economic offences, offences punishable with death sentences life imprisonment and imprisonment which may extend to more than 7 years.

America is the birth place for this development however in the beginning, plea bargaining was said to be unconstitutional² as takes away a person right to a trial by jury. Later on, US Supreme Court refused to invalidate the concept.

Their Lordship stated, plea bargaining benefits both side and that a guilty plead suggested some hope for success in rehabilitation. But on the concept of rehabilitation, the court said that specially in death sentence rehabilitation should not be allowed. How-ever in this case the accused asserted him innocence throughout.³ In *Santiobello Vs. New York*⁴ Court brought another change in favour of Plea bargaining.

The Court viewed that plea bargaining is more beneficial concept in the interest of the State as it enables the State, for rapid and efficient disposal of case. Today about 85 to 90% of all criminal cases are settled though plea bargains in

America yet it is not universally accepted and its process is criticised, some 'Victim right' groups feel it is immortal for the criminal to serve less time. The time will say how much the plea bargaining is fruitful in criminal cases.

Plea Bargaining in India : The technicalities and time consuming nature of law especially in disposal of criminal cases in also a problem. The NDA Govt. noticed this problem and constituted a committee of two judges of Kerala and Karnataka High court. NDA Govt. requested the committee to facilitate the earlier disposal of criminal cases and to reduce the burden of the courts.

They further pleaded the success of Plea Bargaining system in USA in reducing the burden of court especially in criminal justice. Accordingly the Draft Criminal Law (Amendment) Bill 2003 was introduced in the Parliament and accordingly section 265A to 265L in Cr.P.C. 1973 has been inserted known as "plea bargaining." After inserting the chapter of Plea Bargaining in Cr.P.C. 1973 the court exercised it in *Sakha Ram Bandekar* case who was first grade employee of Reserve Bank of India, Mumbai, who cheated the Govt. of India by issuing vouchers against factious names and thus obtaining wrongful gain⁵ of Rs. 1.48 crores the case was investigated by CBI and the so called employee was arrested and brought before the court wherein he pleaded for bail and submitted an application for plea bargaining.

The Court rejected the application of plea bargaining of the basis of objection raised by prosecutor. Another case wherein the District Court exercised the jurisdiction of plea bargaining in 2009 is *Music Industry* case.

In this cases, the District Court examined a case of corrupting CDs which were in number 22,000 and the prosecuting side claimed Rs. 12 lakhs as compensation under copyright Act. the accused submitted an application before the court for plea bargaining and after hearing the application, the prosecutor agreed to finalise this case for a compensation of Rs. 12 laksh by reducing he amount of charge of Rs. 100 per CD to Rs 60 Per CD.

The Court directed that the defendant must pay Rs 2 lakhs to the State Govt. as a fine and Rs. 10 lakhs to the victim. Thus this is the first case in which the plea bargaining has been utilized by the District Court.

After critical appreciation of Plea bargaining the result which comes is that Plea barraging is not the appropriate machinery for the settlement of criminal case as it has several defects like the admission of guilt should not be made ground to reduce the sentence. It should not be treated as right of the accused person.

(2) Plea bargaining if accepted, it would encourage corruption.

(3) Plea barraging rejects the concept of mensrea which is a fundamental principle in criminal justice.⁶

(4) Plea bargaining destroys the fundamental principle of criminal justice as the court after examining the application of plea bargaining from accused, has to act upon it.

After considering merit and demerit of plea barraging. I opined that though plea bargaining has many defects it has many advantage also. It reduces the burdened of criminal cases, encourages court to provide speedy and cheap justice, encourages the tendency of making confession, provides an opportunity to the victimized party to reach the conclusion that they be made free from the tedious processes of court.

It also facilitates the victimized party to receive compensation in less time, it also protect state's interest to bear the cost of the accused. Keeping in view as stated above, insertion of chapter XXII A is a wise step of Parliament.

REFERENCE

1 See section 265 a to 265 L of Cr.P.C. 1973 2 United States Vs. Jackson (1968) 390 US. 570 3 North Carolina vs. alfore (1970) 400 US 25 41971 (404) US 257 5 Refer section 23 of the Indian Penal Code 1860 6.Refer section. 265 (e) sub sect (3) (4) Cr.P.C. 1973