AN ASPECT OF THE PLEA OF GUILTY

By

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During the course of a criminal trial myriad problems may be thrown up for which ready and easy answers are available neither in the Statute nor in the precedents. One such problem, of infrequent occurrence though, centers round the plea of guilty indicated in several sections of the Code of Criminal Procedure, 1973 (the Code hereinafter). Similar provisions also existed in the Code of Criminal Procedure, 1898 (the Code 1898 hereinafter) repealed by the former Act. The problem is what would be the effect of a plea of guilty if made subsequent to a stage of the trial where the accused is asked to react to the charge framed. The problem was sent for deliberation and views to the District Magistracy of the districts of Goalpara, Darrang, Nagaon, Golaghat, Dibrugarh, Karimganj and Cachar. The essay attempts an answer to the problem in the light of the provisions of the Code, case law if any and of the views from the District Magistracy.

THE PROVISIONS OF THE CODE

1. In a trial before a court of sessions following three provisions in the Code namely Section 228(2), 229 and 230 speak of the plea of guilty. Where the Judge frames a charge in a Sessions Trial the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried. If the accused pleads guilty the Judge shall record the plea and may, in his discretion convict him thereon. If the accused refuses to plead, or does not plead, or claims to be tried or is not convicted on his plea of guilty the Judge shall fix a date for examination of witnesses.

Similar provisions are contained in Sections 240(2), 241 and 242 of the Code for trial of warrant cases instituted on police report by Magistrates. For warrant cases instituted otherwise than on police report provisions for the purpose can be read in Section 246(1), 246(2), 246(3) and 246(4) of the Code.

For trial of summons cases relevant provisions can be found in Sections 251, 252, 253(2) and 254 of the Code. Procedure for summary trials as mandated in Section 262 of the Code is the same. Lastly Section 313 of the Code. also provides an opportunity to the accused to admit his guilt. It is apparent on the above provisions that the statute does not provide any answer to the query as to what should happen if the accused at the stage indicated by the above provisions pleads not guilty and the next date is fixed for evidence and on that date he wants to change the plea to one of guilty. Can the Magistrate or the Sessions Judge act on such a subsequent plea of guilty ? The journey to an answer to the question would thus be an exercise in interpretation of the provisions indicated above. Are there decided cases on the point ? The statute failing one may turn to the case law, if any.

THE HIGH COURTS

2. It has already been indicated that the problem is of infrequent occurrence. Case law, therefore, is bound to be scarce. However, within the scarce resource of case law two distinct and conflicting views are discernible. One view is that on a plain reading of relevant provisions in this regard the Judge or the Magistrate having passed the stage of recording the plea of not guilty and taking the case to the next stage of recording evidence cannot turn the clock back and record a plea of guilty, accept the plea and convict an accused thereon. The other view is that there is no illegality in recording , accepting and convicting an accused on a subsequent plea of guilty, even though the accused initially pleaded not guilty and the case reached the stage of evidence.

CULCUTTA, TRAVANCORE-COCHIN, MADHYA PRADESH, GUJRAT, KERALA, MADRASS AND MYSORE

2.1 At the bottom of the pile of cases that could be discovered advocating the first view that is the view holding a subsequent plea of guilty to be illegal is LALJI RAM –Vs- CORPORATION OF CALCUTTA. AIR 1928 CAL 243 decided on 18.09.1924. The case was to be tried in accordance with procedure laid down for trial of a summons case in the Code 1898. The relevant sections were Section 242, 243 and 244 of the Code which reincarnated respectively as Section 251, 252 and 254 of the Code 1898. After one witness for the prosecution was examined the case was adjourned for further evidence. On the adjourned date of evidence the Magistrate passed an order as follows :-

> **" Lalji admits and pleads guilty and I fine him Rs.60; in default two months imprisonment."**

On revision the High Court held as follows :

> **" Having adopted the procedure prescribed by S. 244 on the footing that there was no admission of guilt on the part of the accused person the Learned Magistrate was not competent to take a further plea from the accused person of guilty and relieve himself of the duty of examining other witnesses who could be called on behalf of the prosecution for the purpose of proving the case. The result has been that in this case there has been really no evidence upon which there could be a conviction of the petitioner, and I am not prepared to hold that there was a plea of guilty with regard to the offence upon the basis of which the petitioner could have been convicted by the Magistrate.**

A Division Bench of the Travancore –Cochin High Court dealing with a summons case and considering the provisions of Section 242 and 244 of the Code 1898 held similarly. The Division Bench referred to AIR 1928 Cal 243 as above. The facts of the Division Bench decision dated 25.09.1956 reported in DAVEED CHELLAYAN –Vs- THE STATE, AIR 1957 Travancore-Cochin 89 were these. When the accused was brought before the Magistrate on 27.10.1955 pursuant to the provisions of Section 242 of the Code. 1898 the Magistrate asked the accused whether he had committed the offence mentioned in the charge. The accused pleaded not guilty. The case was adjourned to 07.1.1955 and on that day, a statement signed by the accused in which he admitted his guilt was filed in Court. The Magistrate questioned the accused on the Statement. The accused admitted that he had signed the statement and that he had committed the offence. The Magistrate convicted the accused without taking evidence. On a reference by the Sessions Judge the High Court held thus :-

> **"Having recorded the plea of not guilty, the Magistrate was bound to proceed with the examination of the witnesses and dispose of the case on the merit.**
>
> **There is no provision in the Criminal Procedure Code authorizing the Magistrate to question the accused a second time as to whether he pleaded guilty or not and to convict him on the plea of guilty."**

In SHIVNARAYAN –Vs- STATE 1960 JLJ 1015 from the Madhya Pradesh High Court in a case under the Motor Vehicles Act after the court completed the stage of the case under Section 243 of the Code. 1898 upon the accused pleading not guilty, the Court began recording prosecution evidence as mandated under Section 244, when the accused moved an application stating his willingness to plead guilty. The Magistrate thereupon examined the accused under Section 342 of the code 1898 and on his plea of guilty convicted the accused under Section 112 of the Motor Vehicle Act 1939. The High Court held the procedure to be illegal and quashed the conviction.

The question arose before the Gujrat High Court in relation to a warrant case in JAYANTI LUXMAN –Vs- STATE OF GUJRAT 1964(2) CRI.L.J 86 decided on 21.03.1963. Considering the provisions of old Section 251-A, 255 and 256 which are the predecessors of Section 249, 241 and 246 of the Code the High Court held thus :

> **"The charge was read over to the applicant and he pleaded not guilty. After some evidence was recorded he told the Magistrate that he was guilty. The learned Magistrate, thereupon accepted the plea of guilty and convicted him thereupon without discussing the evidence. The stage of convicting an accused person on the plea of guilty comes when the charge is read over to the accused. If, at that stage, the accused pleads not guilty, the learned Magistrate cannot convict him without recording evidence and without appreciating evidence which is recorded. In the present case, the learned Magistrate was not right in accepting the plea of guilty at a subsequent stage."**

The consistent view of the Madras High Court as reflected in several judgments is in conformity with the views of other High Courts noticed so far. IN RE, M. KUPPUSWAMY 1968 CRI.L.J. 416 decided on 29.04.1966 was again a summons case. On the first day of hearing on being questioned under Section 242 of the Code 1898 the accused pleaded not guilty. On the next day of hearing the case was adjourned as the witnesses for the prosecution were not ready. The case was adjourned for another date. On that day the accused filed a memo admitting the offence. Accused was convicted on this plea but was released on probation. The High Court on revision held after considering the provisions of Section 242, 243, 244 and 245 of the Code 1898 that

there is "no provision in the Code to justify the procedure" adopted by the Magistrate. "There is no provision contemplating the filing of a memorandum by the accused admitting his guilt after the initial stage under S. 243, Criminal P.C."

The second reported case from the Madras High Court is IN RE, R. KOTHANDPANI, AIR 1968 Mad 59 decided on 29.07.1966. In that case one out of the three accused pleaded guilty at the outset as soon as the charge was framed. He was duly convicted on the plea of guilty. The second accused initially pleaded not guilty but after some of the prosecution witnesses were examined he filed a Written Memorandum pleading guilty. The Magistrate accepted this subsequent plea of guilty and convicted him. The following is quoted from the Judgment :-

> **" It would appear that it was brought to the notice of the Magistrate that according to the Judgment of this Court in C.A. 231 and 383 of 1966 (Mad) it was not open to the Magistrate to have accepted the plea of guilty of S.R. Subramaniam after he had initially pleaded not guilty."**

The Judgment in C.A. 231 and 383 of 1966 (Mad) was held to be correct.

The third reported case of the Madras High Court is IN RE SELVI AND ANOTHER, 1975 CRI. L.J 113 decided on 19.06.1974. There the case was for an offence under Section 8(b) of the Suppression of Immoral Traffic in Women and Girls Act, 1956. The two accused when questioned under Section 243 of the Code, 1898 pleaded not guilty . It was held that :-

> **" It there is no admission on the part of the petitioners entailing a conviction in terms of Section 243, Cr.P.C. the inevitable duty of the Magistrate is to record evidence under Section 244 Cr.P.C. The Code does not warrant the subsequent admission of guilt on the part of the petitioners, when once there is a denial of the offence under Section 242, Cr.P.C. Clearly, the procedure followed by the learned Magistrate is opposed to law……"**

The view expressed as above drew strength from 1968 Cri. L.J. 416 (Supra) as also from In re Latha Cr. R.C. No. 1158 of 1972 decided on 17.01.1974.

Next in ARAVINDA –Vs- RAVINDRA SINGH AND ANOTHER, 1981 CRI. L.J. 155 the Madras High Court relied on KOPPUSWAMY (Supra) held in effect that once the stage under Section 240(2) of the Code 1973 is passed unless a fresh trial is ordered on alteration of the charge there can be no going back to the stage of Section 240(2), of the Code nor any scope for filing any application admitting the guilt.

Lastly, IN RE THILLAN 1982 Mad L.J. (CRI) 595 a digest whereof can be read in 1983 CRI. L.J. NOC 68 (MAD) speaks of the illegality of a subsequent plea of guilty. The Mysore High Court also is of the same view as above. K.P. HANUMAPPA –Vs- THE STATE OF MYSORE, 1972 CRI. L.J. 699 was a warrant case instituted on a police report. Procedure under Section 251-A of the Code 1898 needed to be followed in that case. The Magistrate recorded a subsequent plea of guilty on a charge under Section 379 I.P.C., convicted accused thereon and sentenced the accused persons to pay a fine of Rs. 25/- each. Para 4 of the Judgment clinches the point thus :-

> **"That being the procedure that has got to be followed by the Magistrate, he was wholly wrong in recording the plea of the accused which is contrary to law and again recording a subsequent alleged plea which is not at all contemplated under law and convict the accused on the basis of such a plea."**

PATNA AND ALLAHABAD

2.2. The second view that there is no illegality in recording, accepting and convicting an accused on subsequent plea of guilty though he pleaded not guilty either in so many words or in effect at the procedural stage of the trial provided by the Code is reflected in three cases two emanating from the Allahabad High Court. The full report of only two cases one each from Patna and Allahabad High Court could be perused. Only brief notes of the third case from the Allahabad High Court was read preparatory to this essay.

In SHYAMA CHARAN BHARTHUAR AND OTHERS –Vs- EMPEROR, AIR 1934 Patna 330 decided on 21.03.1934, Patna High Court was considering a batch of Criminal Appeals arising out of a Sessions Trial. After fifty two prosecution witnesses were examined and the major portion of the trial was completed fourteen among the accused persons filed an application pleading guilty. The Sessions Judge asked each of the fourteen accused whether he had filed the application. Each of them also orally pleaded guilty to the charge under Section 121 –A of the Penal Code. Eventually the Sessions Judge

convicted all the fourteen under Section 121-A I.P.C. In the appeal before the High Court amongst others the contention urged was that "a plea of guilty offered after the accused has claimed to be tried is not within the contemplation of the Code." Referring to Section 271 of the Code. 1898 (Now Section 228 of the Code) 1973. The High Court held that when an accused in the course of the trial withdraws his claim to be tried and pleads guilty the Court is entitled to record the plea and either accept it or continue the trial." Such a recording of a subsequent plea of guilty and acting upon it has been held to be at the most a mere irregularity curable under Section 537 of the Code 1898 equivalent to Section 465 of the Code.

Then one can read a similar view expressed in the digest of a case reported in Allahabad Law Journal. The full report could not be reached by the Writer. The digest of 1968 All L.J. 776 reads thus :-

> **"Where the accused does not initially plead guilty but confessed his guilt voluntarily and after due warning of the consequences during subsequent proceedings, the Magistrate is competent to convict the accused on the basis of such confession without further proceedings with the trial."**

The last case in the group is RAM KISHAN –Vs- STATE OF U.P. 1996 CRI.L.J 440. A Division Bench of the Allahabad High Court delivered the above judgment in a criminal appeal against conviction and sentence of life imprisonment in a murder trial.

Accused Ram Kishan had no counsel of his own. When the charge under Section 302 I.P.C. was framed and explained to him on 02.1.1987 he pleaded not guilty and claimed to be tried. On the next date 02.02.1988 an Amicus Curie was appointed and the Sessions Judge only asked the accused how his wife was murdered. In reply the accused admitted his guilt and narrated the entire circumstances. The Sessions Judge warned the accused that his plea of guilty alone can be made the basis of conviction. The Sessions Judge also recorded his satisfaction that the plea is voluntary without any mental or physical torture or coercion. The Sessions Judge then examined PW1. The witness was cross-examined. Then statement under Section 313 of the Code was recorded. The High Court held that in the circumstances it was not necessary to examine PW1 and proceeded to observe that "even if the trial Judge had recorded the statement, the legal effect of the acceptance of guilt does not stand minimized at all." On the crucial contention urged in the appeal to the effect that after the stage indicated in Section 229 of the Code has passed the subsequent admission of guilt cannot be recorded was disposed of by observing thus :- "there is nothing in the Cr.P.C. to prevent such a plea being

recorded and thereafter on its basis conviction can safely be recorded". It is remarkable that the next Section 230 of the Code. was not considered and yet it was further held :-

> **"There is no reason to restrict the applicability of Section 229 Cr.P.C. to a particular date or occasion but the purport of Section is obvious that plea of guilt can be advanced by an accused at any stage of the trial after framing charge."**

JUDICIAL OFFICERS

3. As indicated in the preface to this essay the problem at hand was sent for solution to eleven Judicial Officers recruited in 2004, posted in seven districts mentioned in the preface.

Only six of the officers have responded. Views of the Judicial Officers are summarized in this part.

Sri Chandragshu Chaturvedy from Goalpara attempted a solution on the basis of general principles of criminal jurisprudence. A few illustration from a charge under Section 379/411 I.P.C with the help of provisions of the Evidence Act particularly Section 17, 18, 30, 58 and 106 led him to conclude thus :-"Attempt to solve the problem with available materials leads me to only one conclusion that if the accused wishes to plead guilty during the evidence stage, his plea should be entertained and the discretion at par with those while framing charge should be exercised".

Sri Kuntal Sarma Pathak posted at Golaghat besides considered all the decisions except the two Allahabd and the Mysore decisions mentioned in Part 2 above considered the possibility of a subsequent plea of guilty being the result of plea bargaining deprecated by several Supreme Court decision such as AIR 1980 S.C. 854, AIR 1983 S.C. 747 and AIR 2000 S.C. 164. Special mention also requires to be made of AIR 1957 Madras 795 which strikes a note of discordance within the Madrass High Court cases considered in Part 2 . His final conclusion is this :

> **"I am of the view that though there is no provision provided by the Criminal Procedure Code to record the plea of guilty for the second time, when in the first instance the accused pleaded innocence, but there is no specific bar in the Code for acceptance of such subsequent plea."**

Finally he seems to suggest that for offences entailing lighter punishment subsequent plea of guilty is alright but not so for offence like murder or rape.

Sri Rafique Ahmed Tapadar from Silchar reasoned thus :- The recording of the plea at the stage prescribed in the Code is mandatory but conviction is discretionary. Since conviction is discretionary at the earliest stage it is not proper to convict an accused on a subsequent plea of guilty alone. The Court would consider the evidence on record alongwith his plea of guilt. Apart from two among the cases from the Madrass High Court he considered the Mysore, Gujrat and RAM KISHAN (supra) from Allahabd High Court, all noticed in Part 2 of the writing.

Sri Jaspal Singh and Sri Kaushik Hazarika posted at Dibrugarh responded as follows :-

The relevant Sections like 231, 242 etc. of the Cr.P.C make it imperative for the Court to record evidence for prosecution after the stage of recording the plea is passed. The use of the word "shall" in all those sections prima-facie shows that the Court is bound to follow the mandate of these sections. The Code does not warrant the subsequent admission of guilt . The accused in a sense is estopped to take a different stand later on. Apart from law there may be other factors such as hope of lenient view by the Court or an intention to short circuit the long pendency of the case, which directly or indirectly tend to affect the voluntariness or truth of the subsequent plea. Section 313 (I) (a) also does not accommodate a subsequent plea of guilty. Of the cases considered in Part-2 above, 1968 Cr.L.J. 416, 1964 (2) Cr.L.J 86, 1975 Cr.L.J. 113 and 1983 Cr.L.J NOC 68 (Mad) were considered.

Lastly Sri Roushan Lal, Judicial Magistrate 1st Class, Mangaldoi sent a ten page detailed argument to conclude that there is no bar in convicting a person on the basis of his confessional statement recorded under Section 313(1) (a) of the Code. He opened the argument by summarizing the view of the High Courts as reflected in 1972 Cr.L.J. 699 (Mysore) and 1964 Cr.L.J 86 (Gujrat) already considered earlier in this Writing. He completed the argument by citing AIR 1953 S.C. 468, 1964 (1) Cr.L.J. 730 (S.C.) on section 342 of the Code 1898, both considered by the Supreme Court in AIR 1992 S.C. 2100. Indeed it appears that the conclusion reached is based on AIR 1992 S.C. 2100, which neither the other Judicial Officers nor the writer as well was able to discover. It will be necessary to examine closely this Supreme Court Judgment for which the next part of the essay would be the proper and adequate place. This part may be ended by noting that like the High Courts the Judicial Officers are also divided in their opinions on the question. Of the six officers according to three subsequent plea of guilty can neither be recorded nor acted upon. Other three support the recording and acting upon such a subsequent plea of guilty. There is also within each of the two groups difference in emphasis as to recording of such a plea and acting upon such a plea. It has already

been indicated that the overwhelming majority of the High Courts going by the mandate of the provisions of the Code does not support recording and acting upon a subsequent plea of guilty.

THE SUPREME COURT

4. Till date that is the 13th of March 2006 no decision of the Supreme Court declaring the law on the point could be discovered. However, Sri Roushan Lal one of the Judicial Officers entrusted with the project could find STATE OF MAHARASHTRA –VS- SUKHDEO SINGH, AIR 1992 S.C. 2100 (herein after SUKHDEO) CONTAINING SOME OBSERVATIONS OF THE supreme Court on the issue. These observations would require close examination and understanding.

In SUKHDEO in the trial court the charge against all the five accused were framed on the 2nd September, 1988. Sukhdeo and Zinda two among the accused were eventually given the death sentence and the death reference before the Supreme Court related to these two only. All the five accused pleaded not guilty to the charges framed and claimed to be tried. After recording of the plea of the accused the proceedings were adjourned to 19th September 1988. On that date accused No.1 orally informed the Trial Judge that he had killed Gen. Vaidya and did not want to contest the case. The trial Judge gave him time to reflect till 26th of September when the accused No.1 admitted his guilt by filing a Written Statement marked Ex- 60-A. After that the Court examined around one hundred twenty prosecution witnesses and about one thousand documents were exhibited in the case. At the close of prosecution evidence both the accused filed Written Statements admitting their guilt. These statements were marked as Ex-919 and Ex 922. They also supported their Written Statements in their oral answers when questioned under Section 313 of the Code.

In the above background the Counsels for each of the accused urged that since there is no evidence against the accused nor circumstances appearing in the prosecution evidence implicating the accused the accused should not have been examined at all under Section 313 of the Code. It was also contended on behalf of accused No.1 that evidence against the accused No.1 was so thin and weak even if it was taken as proved the Court would not have been in a position to convict him and as such it was unnecessary to examine him under Section 313 of the Code. The Supreme Court summarized the question requiring an answer in these words :-

> **"The question then is can a conviction be based on such an admission of guilt made in the**

Written Statements followed by the Oral Statements under Section 313 of the Code."

Then considering the contents of Ex-60A, Ex-919 and Ex-922 and the Oral Statements under Section 313 of the Code. by the two accused persons, the Supreme Court again pinpointed the contention calling for determination thus :-

"It is in this background that we must examine the impact of their admissions in their statements under S.313 of the Code."

Then followed a detailed discussion regarding the content, the scope and the use of the provisions of the Section 313 (old 342) of the Code during the course of which apart from three cases from the High Courts three earlier decisions of the Supreme Court namely AIR 1953 S.C. 468, AIR 1968 S.C. 110 and 1964(1) Cri.L.J. 730 were noticed. The point argued, framed and decided in the case thus was the content, the scope and use of the provisions of Section 313 of the Code. However the long consideration of the point starting from para 45 and ending in para 53 of the Judgment does contain three sentences in para 52, which in the precedent ruled system of ours, may tend to be misunderstood as a law declared by the Supreme Court on the question at hand. The three sentences in para 52 are these :-

" Even on the first principle we see no reason why the Court could not act on the admission or confession made by the accused in the course of the trial or in his statement recorded under S.313 of the Code."

Then after considering the provisions of Section 226 to 229 of the Code relating to Sessions Trial in Chapter XVIII of the Code, the Supreme Court proceeded to state thus :-

"There is nothing in this chapter which prevents the accused from pleading guilty at any subsequent stage of the trial. But before the trial Judge accepts and acts on that plea he must administer the same caution unto himself."

In the context of the facts and the point involved in the case the above three sentences are not integral to the reasoning leading to the conclusion or law declared on Section 313 of the Code. In other words even if the above three sentences were not there in the Judgment the reasoning on the interpretation of Section 313 of the Code would not have been affected in the least. The Supreme Court was not dealing with a case where there infact was a subsequent plea of guilty properly so called. Plea of guilty when examined under Section 313 of the Code cannot obviously be equated with a plea of guilty made by the accused

at the stage indicated by the several sections of the Code enumerated earlier. The Written Statement Ex-919 and Ex-922 in the case are within the mandate of section 233 (2) of the Code, which the Supreme Court did not notice. The Supreme Court did not comment on Ex-60-A which was the precursor of Ex-919. If at all only Ex 60-A having been filed without any sanction of law contained the seeds of a subsequent plea of guilt. But there was no recording of the plea nor its acceptance by the court nor any arguments by counsel and a decision by the Supreme Court on Ex-60-A. Thus SUKHDEO cannot be an authority for a proposition which did not fall for consideration in that case. It is well settled that a question not raised before the Supreme Court cannot be the ratio of the case decided by the Supreme Court. This may be concluded by quoting the following from A-ONE GRANITES –VS- STATE OF U.P. (2001)3 SCC 537-

> **"11. This question was considered by the Court of Appeal in Lancaster Motor Co. (LONDON) Ltd. –Vs- Bremith Ltd. (1941) IKB 675 and it was laid down that when no consideration was given to the question, the decision cannot be said to be binding and precedents sub-silentio and without arguments are of no moment".**

The above Judgment of the Supreme Court traced the sub-silentio doctrine from the three Judge decision of the Court in MUNICIPAL CORPORATION OF DELHI –VS- GURNAM KAUR (1989)1 SCC 101 relevant paras whereof are para 10, 11 and 12 through STATE OF UP –VS- SYNTHETICS AND CHEMICALS LTD (1991)4 SCC 139 relevant paras whereof are para 40, 41 and 42 to ARNIT DAS –VS- STATE OF BIHAR, (2000)5 SCC 488 para 20 whereof reads thus :-

> **" A decision not expressed, not accompanied by reasons and not proceeding on a conscious consideration of an issue cannot be deemed to be a law declared to have binding effect contemplated by Article 141. That which has escaped in the Judgment is not the ratio decidendi. This is the rule of sub-silentio, in the technical sense when a particular point of law was not consciously delivered."**

Even though the point about a subsequent plea of guilty did not fall for consideration by the Supreme Court in SUKHDEO or for that matter in any other decision of the Supreme Court known to the writer has the Supreme Court decided the point by considering all the relevant law and precedents SUKHDEO would have the authority of a persuasive precedent that is of an obiterdicta. But in SUKHDEO the Supreme Court had no occasion to consider Section 4, 464, 465 of the

Code as also the Five Judge decision of the Supreme Court in W. SLANEY –VS- STATE OF M.P. AIR 1956 S.C. 116.

W. SLANEY (Supra) traces the antinomy between curable irregularity and incurable irregularity relating to breach of the procedure, prescribed by the Code 1898 from SUBRAMANIA IYER'S CASE 28 Ind App. 257 (P.C.) which for the first time described the above two categories as "irregularity" and "illegality". The old sections of the Code were 535 and 537 which reincarnated in the current Code as Section 464 and 465. The supreme Court was considering the effect of total absence of a charge in a trial and an error in framing of the charge. Three excerpts from three separate but concurring judgments in the case appear apposite for the present purpose. The excerpts from para (14), (16), (82) and (97) read thus :

(14) "The swing of the pendulum has been away from technicality, and a greater endeavour has been made to regard the substance rather than the shadow and to administer justice fairly and impartially as it should be administered; fair to the accused, fair to the State and fair to the vast majority of the people for whose protection penal laws are made and administered."(*underlining supplied***)**

(16) "The real question is not whether a matter is expressed positively or is stated in negative terms but whether disregard of a particular provision amounts to substantial denial of a trial as contemplated by the Code.."(*underlining supplied***)**

(82) "The scope of the decision in 28 Ind App 257 (PC) has become so circumscribed that it is doubtful if it applied to the generality of cases of omission and defects that come before the courts, excepting where they bring about the result that the trial was conducted in a manner different from that prescribed by the Code. "(*underlining supplied***)**

(97) "Is the framing of a charge and the recording of the plea of the accused merely a ritual or a fundamental provision of the Code concerning procedure in a Criminal Trial ? I think it is the latter. Are the express provisions of the Code as to the manner in which a trial is to proceed to be ignored, or considered as satisfied merely because the Court explained to the accused as to what he was being tried for ? I apprehend not. For to do so is to replace the provisions of the Code by a procedure unwarranted by the statute itself."(*underlining supplied***).**

The upshot of what has been narrated above is that the three sentences quoted above from SUKHDEO fall in both the exceptions, namely, rule of sub-silentio and being per incuriam, to be a law declared by the Supreme Court on the question at hand regarding the validity of a subsequent plea of guilty.

CONCLUSION

5. The mandate of Section 4 of the Code is clear that trial shall be conducted in accordance with the provisions of the Code. In general the provisions of the Code direct the Court how to proceed with the trial and do not direct the accused as to what he should do or refrain from doing. It cannot be assumed that whatever is not expressly prohibited by the Code is permissible. Apart from the above a subsequent plea of guilt smacks of plea bargaining which is still not permitted by law of the Country. A subsequent plea of guilty has the potential of being abused by a clever accused to postpone and thwart a trial at his will and work against the need for speedy justice. The breach of the provisions of the Code indicating the stage when the plea of guilty to be recorded will "bring about the result that the trial was conducted in a manner different from that prescribed by the Code" resulting in an illegality.

The law laid down by the High Courts of Calcutta, Travancore Cochin, Madhya Pradesh, Gujrat, Madras and Mysore in this regard being in consonance with the provisions of the Code is correct. The decisions of the High Courts of Patna and Allahabad being per incuriam do not lay down the correct law. The Courts are required by the Code to record the plea of guilty or otherwise in the stages of trial indicated by the specific provisions of the Statute and in answer to the question under Section 313 of the Code. The recording and acting on a plea of guilty in any intermediate stage of the trial will be an illegality within SUBRAMANIA IYER (Supra) and W. SLANEY (Supra) amounting to conducting a trial different from the procedure prescribed by the Code. Till the law is altered by the Legislature or by the highest Judiciary through interpretation the above appears to be the law on the question of validity of a subsequent plea of guilty.