

Free Legal Aid

The question, whether an accused who on account of his poverty is unable to afford legal representation for himself in a trial involving possibility of imprisonment imperilling his personal liberty, is entitled to free legal aid at State cost and whether it is obligatory on him to make an application for free legal assistance or the Magistrate or the Sessions Judge trying him is bound to inform him that he is entitled to free legal aid and inquire from him whether he wishes to have a lawyer provided to him at State cost : if he is not so informed and in consequence he does not apply for free legal assistance and as a result he is not represented by any lawyer in the trial and is convicted, is the conviction vitiated and liable to be set aside, has been appropriately addressed by the Supreme Court. This question is extremely important because we have almost 50% population which is living below the poverty line and around 70% is illiterate and large sections of people just do not know that if they are unable to afford legal representation in a criminal trial, they are entitled to free legal assistance provided to them at State cost.

It is now well established as a result of the decision of this Court in Hussainara Khatoon's case (1979) 3 SCR 532 : (AIR 1979 SC 1369) that "the right to free legal service is clearly an essential ingredient of reasonable, fair and just procedure for a person accused of an offence and it must be held to be implicit in the guarantee of Article 21. This is a constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or incommunicado situation and the State is under a mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so require, provided of course the accused person does not object to the provision of such lawyer". The Apex Court pointed out that it is an essential ingredient of reasonable, fair and just procedure to a prisoner who is to seek his liberation through the court's process that he should have legal service available to him. The same view was taken by a Bench of the Supreme Court earlier in *M. H. Hoskot v. State of Maharashtra*, (1978) 3 SCC 544 : (AIR 1978 SC 1548). It may therefore now be taken as settled law that free legal assistance at State cost is a fundamental right of a person accused of an offence which may involve jeopardy to his life or personal liberty and this fundamental right is implicit in the requirement of reasonable, fair and just procedure prescribed by Article 21. Of course, it must be recognised that there may be cases involving offences, such as, economic offences or offences against law prohibiting prostitution or child abuse and the like, where social justice may require that free legal service may not be provided by the State. There can in the circumstances be no doubt that the appellants were entitled to free legal assistance at State cost when they were placed in peril of their personal liberty by reason of being accused of an offence which if proved would clearly entail imprisonment for a term of two years.

But the question is whether this fundamental right could lawfully be denied to the appellants if they did not apply for free legal aid. Is the exercise of this fundamental right conditioned upon the accused applying for free legal assistance so that if he does not make an application for free legal assistance the trial may lawfully proceed without adequate Legal representation being afforded to

him ? Now it is common knowledge that about 70% of the people living in rural areas are illiterate and even more than that percentage of the people are not aware of the rights conferred upon them by law. Even literate people do not know what are their rights and entitlements under the law. It is this absence of legal awareness which is responsible for the deception, exploitation and deprivation of rights and benefits from which the poor suffer in this land. Their legal needs always stand to become crisis oriented because their ignorance prevents them from anticipating legal troubles and approaching a lawyer for consultation and advice in time and their poverty magnifies the impact of the legal troubles and difficulties when they come. Moreover, because of their ignorance and illiteracy, they cannot become self-reliant : they cannot even help themselves. The law ceases to be their protector because they do not know that they are entitled to the protection of the law and they can avail of the legal service programme for putting an end to their exploitation and winning their rights. The result is that poverty becomes with them a condition of total helplessness. This miserable condition in which the poor find themselves can be alleviated to some extent by creating legal awareness amongst the poor. That is why it has always been recognised as one of the principal items of the programme of the legal aid movement in the country to promote legal literacy. It would in these circumstances make a mockery of legal aid if it were to be left to a poor, ignorant and illiterate accused to ask for free legal services. Legal aid would become merely a paper promise and it would fail of its purpose. This is the reason why in *Khatri v. State of Bihar* (1981) 2 SCR 408 : (AIR 1981 SC 928), we ruled that the Magistrate or the Sessions Judge before whom an accused appears must be held to be under an obligation to inform the accused that if he is unable to engage the services of a lawyer on account of poverty or indigence, he is entitled to obtain free legal services at the cost of the State. We deplored that in that case where the accused were blinded prisoners the Judicial Magistrate failed to discharge his obligation and contented himself by merely observing that no legal representation had been asked for by the blinded prisoners and hence none was provided. We accordingly directed “the Magistrates and Sections Judges in the country to inform every accused who appears before them and who is not represented by a lawyer on account of his poverty or indigence that he is entitled to free legal services at the cost of the State” unless he is not willing to take advantage of the free legal services provided by the State. We also gave a general direction to every State in the country “..... to make provision for grant of free Legal service to an accused who is unable to engage a lawyer on account of reasons such as poverty, indigence or incommunicado situations,” the only qualification being that the offence charged against an accused is such that, on conviction, it would result in a sentence of imprisonment and is of such a nature that the circumstances of the case and the needs of social justice require that he should be given free legal representations. It is quite possible that since the trial was held before the learned Additional Deputy Commissioner prior to the declaration of the law by this Court in *Khatri v. State of Bihar* (supra), the learned Additional Deputy Commissioner did not inform the appellants that if they were not in a position to engage a lawyer on account of lack of material resources they were entitled to free legal assistance at State cost and ask them whether they would like to have free legal aid. But it is surprising that despite this declaration of the law in *Khatri v. State of Bihar* (supra) on 19th December 1980 when the decision was rendered in that case, the High Court persisted in taking the view that since the appellants did not make an application for free legal assistance, no unconstitutionality was involved in not providing them legal

representation at State cost. It is obvious that in the present case the learned Additional Deputy Commissioner did not inform the appellants that they were entitled to free legal assistance and inquire from them whether they wanted a Lawyer to be provided to them at State cost. The result was that the appellants remained unrepresented by a lawyer and the trial ultimately resulted in their conviction. This was clearly a valuation of the fundamental right of the appellants under Article 21 and the trial must accordingly be held to be vitiated on account of a fatal constitutional infirmity, and the conviction and sentence recorded against the appellants must be set aside.

[Suk Das vs. Union Territory Of Arunachal Pradesh; 1986-(092)-CRLJ -1084 –SC]