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Court : Karnataka

Decided On : Sep-21-1956

Reported in : AIR1957Kant52; AIR1957Mys52; 1957CriLJ523; ILR1956KAR308

Judge : Padmanabhiah, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 386, 386(1), 388 and 388(1); Indian Penal Code (IPC), 1860 - Sections 465 and 500

Appeal No. : Criminal Revn. Petn. No. 207 of 1956

Appellant : Siddappa

Respondent : State of Mysore

Advocate for Def. : Asst. Adv. General

Advocate for Pet/Ap. : N.K. Subbaraya, Adv.

Judgement :
ORDER

1. This is a revision petition preferred by the petitioner-accused against the order of the learned City Magistrate, Mysore, in C.C. 606/51-52 refusing to withdraw the warrant issued by him for the recovery of the flue imposed on the petitioner.

2. The facts that have given rise to this petition are briefly as follows:--

3. The petitioner was the accused in C.C. 606 of 1951-52 on the file of the learned City Magistrate, Mysore. He was prosecuted for offences under Sections 465 and 500, I.P.C. The learned Magistrate ultimately convicted the petitioner for an offence under Section 465, I.P.C., and sentenced him to undergo rigorous imprisonment for one year and also to pay a fine of Rs. 1,000 and in default 'to undergo rigorous imprisonment for a further period of six months. On appeal to the learned Sessions Judge, the said conviction and sentence were confirmed.

Then a revision petition preferred by the petitioner to this Court in L. K. Siddappa v. Lalithamma,-Criminal Revn. Petn. No. 73 of 1953, (AIR 1954 My3 119) (A), was also dismissed on 30-9-53. He was committed to jail on 10-10-53 & he underwent the substantive sentence of imprisonment. He also underwent the imprisonment fixed (or default in payment of one. He was released from jail on 16-2-55. Subsequently the learned City Magistrate issued a warrant for the recovery of the fine. The petitioner applied for its withdrawal and the learned Magistrate refused to do so. As against that order, this revision petition is preferred.

4. The contentions urged on the side of the petitioner are that both before the expiry of the substantive sentence of imprisonment and after, the petitioner notified the learned Magistrate that he (petitioner) owned properties, that facilities may be created to him to pay up the fine, that the learned Magistrate failed to comply, that he also failed to take steps to recover the fine before the substantive sentence of imprisonment and the imprisonment imposed for non-payment of fine expired, that due to these omissions on the part of the Court, the petitioner was compelled to undergo the imprisonment imposed for default in payment of fine, that he has undergone the full period of default sentence, that Section 386, Cr. P. C., is a bar to the recovery of fine, that the reasons given by the learned Magistrate for the issue of the warrant arc not valid, that he was not liable to pay the fine as he had undergone the full default sentence and that the warrant was and is liable to be withdrawn,

5. The respondent-Government oppose the application. On the main facts in the case, there is no dispute. It is conceded on the side of the respondent-State Government that the petitioner has undergone the full period of imprisonment

awarded for non-payment of fine. It is also admitted that the petitioner made an application on 2-8-54, i.e., before the substantive sentence of imprisonment expired, and again another on 25-8-54, subsequently, bringing to the notice of the learned Magistrate that he (petitioner) had properties and that he may be released so that he might make arrangements for payment of the fine amount.

It is seen that no immediate orders were passed on these applications and that the learned Magistrate finally passed an order on 30-9-54 saying that steps may be taken to recover the fine amount after the default sentence was undergone. He also ordered the withdrawal of the warrant that was issued saying that it was not necessary at that stage.

6. The main points that arise for consideration are:

1. whether it is not open to the Court to issue

a warrant for the recovery of fine When, the whole period of default sentence is served ;

2. whether the reasons given by the learned Magistrate for issuing the warrant in question are sufficient to justify the issue of the warrant after the default sentence had fully been served;

3. whether the petitioner was entitled to be released after the substantive sentence of imprisonment had been served so that he might make arrangements for payment of the fine; and

4. whether the State were not bound to take steps to recover the fine before the default sentence was served.

I would like to take these contentions one by one and dispose of the same.

7. I am of opinion that the first ground urged on the side of the petitioner, that the State is not at all entitled to issue a warrant for the recovery of fine after the full default sentence is served, is without any substance. The statement that it is not open for the State to recover the fine when once the default sentence is served out is too unqualified a statement, and it is not correct to say that under no

circumstances the State can recover the fine when the default sentence is undergone. The relevant provision dealing with this question is Section 386 (1) of the Criminal Procedure Code: that sub-section reads thus:

"Whenever an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may --

(a) issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender;

(b) issue a warrant to the Collector of the District authorising him to realise the amount by execution according to civil process against the movable or immovable property, or both, of the defaulter;

Provided that, if the sentence directs that in default of payment of the fine the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless for special reasons to be recorded in writing it considers it necessary to do so.'

It appears to me that the policy underlying this section is that generally an offender ought not to be required both to pay the fine and serve the sentence In default. The requirement under the proviso that special reasons should be given in cases where a warrant is issued for recovery of fine when the full default sentence is undergone goes to indicate that the Legislature must have felt that it is undesirable and unfair to realise the fine and that the same should not be levied when once the imprisonment imposed in default of payment of fine has been served.

But the proviso enables a warrant to be issued for recovery of fine if the whole default sentence has been sewed and if the Court considers that there are special reasons for issuing the warrant. Thus it is seen that ibis proviso negatives the contention that under no circumstance can a warrant for recovery of fine be issued when the default sentence is fully served. What is made obligatory when a Magistrate issues a warrant for the recovery of fine under these circumstances is that he should have special reasons for issuing the warrant and that he should

record them.

8. It is wrong to think that serving the full term of imprisonment fixed for default in payment of fine extinguishes the liability to pay the fine; and the imprisonment imposed in default of payment of fine should not be taken as a discharge of the liability but only as a reasonable punishment for the non-payment of fine.

9. The next point that arises for consideration is the nature of the "special reasons" contemplated under Section 388 of the Criminal Procedure Code. Unfortunately the section does not give any indication as to the nature of the "special reasons' in respect of which the proviso can be applied. It appears to me that the special reasons referred to in that subsection must necessarily relate, in view of the wording of that section to reasons accounting for the fact of the non-recovery of the fine before the default sentence has been served, or any other reason in that behalf. In this connection, I would like to refer to a case of the Bombay High Court reported in Digambar v. Emperor, ILR 59 Bom 350; (AIR 1935 Bom 160) (B).

The term 'special reason' has been interpreted in that decision as reasons accounting for the fact that the fine has not been recovered before the default sentence has been served out and any other reason which is directed to that point would also be relevant. The proviso seems to me to contemplate cases in which for sufficient reasons the authorities have not been able to realise the fine before the default sentence is served, and this proviso has to be availed of by them when for no fault or negligence of their own, they arc unable to recover the fine, as, for example, they not being aware of the offender owning property before the default sentence is served, or his having come into possession of property subsequently, or his having resisted the execution of the warrant or refusal to pay the fine having had the means to pay or that the State had no time to execute the warrant or for such other reason.

10. The next point to be considered is whether any such ground existed in the present case to justify the learned Magistrate to issue the warrant in question. The reason given by the learned Magistrate in issuing the present warrant dated 26-2-55 is that the complainant in the case was ordered to be paid Rs. 500 out of the fine imposed on the petitioner. The point for determination is whether this is a

sufficient reason within the meaning of the proviso to Section 386 of the Criminal Procedure Code. I have already pointed out what the special reasons referred to in the proviso to Section 386 should be, and I am of opinion that the payment of compensation to the complainant would not be one of such reasons.

On the other hand, I am of opinion that the order that a portion of the fine had to be paid to the complainant as compensation was still more the reason for the State to have issued the warrant earlier before the default sentence was served. In the Bombay case already referred to, i.e., ILR 59 Bom 350: (AIR 1935 Bom 160) (8), it is pointed out that the payment of compensation is not a relevant factor to be considered nor can it be considered a sufficient reason for issuing the warrant for the recovery of fine when the full default sentence is undergone. Therefore, reasons like, that the offender is of a dangerous character or that the offence is of a serious nature or that the complainant has been awarded compensation out of the fine amount are not, in my opinion, sufficient for issuing a warrant for recovery of fine when once the default sentence Is fully served out.

11. In the present case, I am of opinion thatthe non-recovery of fine before the default sentencewas served is mainly due to the inaction on the partof the respondent-State. Admittedly the petitionermade two applications to the learned Magistrate bringing to his notice that the (petitioner) had properties.In spite of this knowledge on the part of the Statethey did not choose to take steps to recover the finebefore the default sentence was 'undergone. As amatter of fact, two warrants were issued before thedefault sentence commenced to run: the Grist warrantwas issued on 14-10-55 and that was returned unexecuted on the ground that there were only ladies andchildren in the house of the petitioner.

I do not know why the State did not pursue the matter and failed to recover the fine. The petitioner had both movable and immovable properties to the knowledge of the respondent-State. They could have very easily recovered the fine amount if they had only made up their mind. The second warrant issued on 2-7-54 was also not executed. The warrant with which we are now concerned is the warrant dated 26-2-55 which has been issued after the default sentence has fully been served.

The learned Magistrate did not pass orders immediately on the two petitions filed by the petitioner and he ultimately passed an order on 30-9-54, not to the effect that the fine may be recovered but to the effect that the fine may be recovered after the default sentence was served out. This order of the learned Magistrate is neither proper nor valid, and is against the spirit of Section 386, Cr. P. C.

12. It was next contended that it is not the duty of the Court to take steps to recover the fine but that it is the duty of the offender to pay up the fine and get himself released. I do not think that this is a correct proposition of law. Section 386 of the Criminal Procedure Code speaks of recovery of the fine. It provides that whenever an offender has been sentenced to pay a fine the Court passing the sentence may take action for the recovery of the fine.

It appears to me that Section 386, Cr. P. C. casts ft duty on the State to recover a fine imposed on an offender by a Court of law. As pointed out in the case reported in In re. B. R. Krishna Morthy, 15 Mys LJ 334 (C), it is the primary duty of the Court sentencing an offender to fine, to make attempts to recover the fine in the first instance and make the offender to undergo imprisonment only in the event of this failure to pay the same.

Therefore, though the State were aware even before the default sentence commenced to run that the petitioner was possessed of property, that he was also willing to pay up the fine and that he had no objection for the State to recover the fine, yet they failed to take steps to recover the same. Under these circumstances, I am of opinion that the learned Magistrate had no justification to issue the warrant in question.

13. There is no substance in the contention of the accused that the Court was bound to release him after the expiry of the substantive sentence of imprisonment so that he might make arrangements to pay up the fine: and reliance is placed on Section 388 (1), Cr. P. C., in support of the above contention.

As can be seen from the clear wording of that section, that provision applies to cases where an offender is sentenced to fine only, and is not applicable to cases where imprisonment and fine are imposed on an offender. This is the principle

enunciated in the case reported in Emperor v. Mohamed, AIR 1954 Rang 11 (D). For these various reasons, I am of opinion that the order of the learned Magistrate issuing the warrant in question is liable to beset aside.

14. In the result, the order of the learned Magistrate is set aside and this revision petition is allowed.

15. Order set aside.