

**Mayanna Vs. State of Mysore**

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**Court :** Karnataka

**Decided On :** Jan-17-1966

**Reported in :** AIR1967Kant40; AIR1967Mys40; 1967CriLJ386; ILR1966KAR252; (1966)1MysLJ124

**Judge :** M. Santhosh, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 386 and 386(1); Mysore Prohibition Act - Sections 58

**Appeal No. :** Criminal Revn. Petn. No. 346 of 1965

**Appellant :** Mayanna

**Respondent :** State of Mysore

**Advocate for Def. :** B.K. Ramachandra Rao, H.C. Govt. Pleader

**Advocate for Pet/Ap. :** Tilak Hegde, Adv.

**Judgement :**

ORDER

1. The petitioner had been convicted of an offence under Section 58(f) of the Mysore Prohibition Act and sentenced to one month's simple imprisonment and a fine of Rs. 500/-, in default, to one month's S. I. The petitioner underwent the substantive sentence of one month's simple imprisonment, and as he did not pay

the fine of Rs. 500/-, he also suffered the sentence of one month's S. I. passed in default of payment of fine. The said judgment of the court sentencing him was passed on 12-7-1962. On 24-8-1964, that is, about two years after the petitioner had undergone the sentence of imprisonment, the trial court issued a warrant of attachment of the joint family properties of the petitions for the recovery at the fine of Rs. 500. The petitioner has come up in revision questioning the propriety of the issue of such warrant.

2. Sri Tilak Hegde, learned counsel on behalf of the petitioner, has questioned the propriety of the order passed by the learned Magistrate. He contends that as per the proviso to Section 386 of the Code of Criminal Procedure. If the offender has undergone the whole period of imprisonment in default,, no court shall issue a warrant unless for special reasons to be recorded in writing it considers it necessary to do so. In this case, no special reasons have been given by the learned Magistrate. He also stressed the fact that there is a delay of more than two years by the authorities in taking proceedings to recover the fine amount. He further contends that joint family properties of the petitioner cannot be attached and sold in execution of a warrant under Section 386, Cr. P. C. The court below simply held that the petitioner had sufficient properties for payment of the fine and this is not a special reason justifying the recovery of the fine two years after the petitioner had undergone the period of imprisonment in default of payment of fine.

3. I am of opinion that there is considerable force in the argument advanced by the learned counsel for the petitioner. The proviso to Section 386 specifically says that if the offender has undergone the period of imprisonment in default of payment of fine, no court shall issue a warrant for the recovery of the fine unless there are special reasons for doing so. The only reason given by the learned Magistrate is that the petitioner has got sufficient joint-family properties for paying the fine amount. This may be only a reason for the recovery of the amount and not a special reason justifying the issue of a warrant, particularly, two years after the petitioner has undergone the period of imprisonment. The fact that the petitioner has joint-family properties belonging to himself and his three brothers is a matter which could have been found out if only the authorises had been a little diligent in trying to recover the fine amount imposed on the petitioner. The policy of the law

appears to be that in general an offender ought not to be required both to pay the fine and serve the sentence in default unless there are some special reasons justifying such action.

4. Sri Hegde has relied on *Siddappa v. State of Mysore*, reported in AIR 1957 Mys 52. Considering Section 386 Cr. P. C. Padmanabiah has stated that the proviso seems 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 default or negligence of their own, they are unable to recover the fine. His Lordship also held that it is not a correct proposition of law to say 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. He further held Section 386 Cr. P. C. casts a duty on the State to recover a fine imposed on an offender by a Court of law. According to the decision, 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 undergo imprisonment only in the event of his failure to pay the same, In the instant case there is no explanation at all why the authorities never took any steps for two long years to recover the fine imposed on the petitioner. It is not the case of the State that the petitioner came by these properties after the order of the Court. The properties being admittedly joint-family properties, the petitioner acquired right in the said properties by birth.

5. Sri Hegde also contended that the properties attached being admittedly joint-family properties, distress warrant could not be issued where the sentence in default of payment of fine is served out, for recovery of the fine against the Joint-family properties. He has relied on *Chandrika Singh v. The State of Bihar*, reported in AIR 1954 Pat 288 in support of his said contention. The said decision states that it is not open to the Magistrate while proceeding under Section 386 Cr. P. C. to order execution of distress warrant against the joint-family property of the accused.

6. Sri Hegde has also contended that the Court would be justified in issuing a warrant after the accused had undergone the full period of imprisonment, not in cases where he has got sufficient means, but only in cases where he has got

ample means. He submits that the petitioner has very little properties and if he is required to pay the fine, his entire share of properties will have to be sold in which case his family will be ruined. The petitioner preferred to undergo imprisonment for an additional period of one month in default of payment of fine so as to retain the small extent of land on which he and his family are depending for their subsistence. He has cited *Ajit Singh Mehal Singh v. The State*, reported in AIR 1951 Punj 331, wherein Falshaw, J. stated that under the proviso to Section 386 (1) the fine should only be realised after the full term of imprisonment in default has been undergone if there is abundant proof that the convicted person had ample means to pay the fine but contumaciously refrained from doing so.

7. The learned High Court Government Pleader has contended that the order of the learned Magistrate is correct and proper. He has relied on *Digamber Kashinath Bhavarthi v. Emperor*, reported in AIR 1935 Bom 160. In the said decision, their Lordships have considered what are the special reasons referred to in the proviso to Section 386. If the authorities did not know the existence of properties or in cases where the accused has inherited property after he has served the sentence in default or in cases where there has been no time to execute the warrant, these would constitute special reasons. But the very same decision emphasises the fact that the want of knowledge of the authorities should not be due to their negligence.

In this particular case, as already stated, there can be no doubt that the authorities were negligent. If they had made some efforts, they could have found out that the petitioner had joint family properties. The said decision also states that in issuing warrants the Court should follow the policy underlying the proviso to Section 386. That policy appears to be that in general an offender ought not to be required both to pay the fine and to serve the sentence in default. But the proviso enables a warrant to be issued for recovery of the fine, even if the whole sentence in default has been served, if the Court considers that there are special reasons for issuing the warrant. I am therefore of opinion that this decision is not of any assistance to the respondent.

8. As the learned Magistrate has not given any special reasons as required by the proviso to Section 386 Cr. P. C., there is want of diligence and a delay of over two

years in taking steps for the recovery of the fine amount, I am! of opinion that this is not a fit and proper case wherein a warrant should be issued against that petitioner. When the petitioner has chosen to undergo imprisonment in default awarded, with the object of saving his joint family properties by which he and his family live, it would be improper and unfair, after he has undergone the default sentence, to take proceedings to deprive him of his livelihood.

9. In the result, this revision petition is allowed and the warrant issued under Section 386 Cr. P. C. to recover the fine amount from the petitioner is hereby set aside.

10. Revision allowed.

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