

Paras Nath and ors. Vs. State

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Court : Allahabad

Decided On : Jul-28-1967

Reported in : AIR1969All116; 1969CriLJ350

Judge : G.C. Mathur, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 386(1), 401 and 401(1); [Indian Penal Code \(IPC\), 1860](#) - Sections 64, 68 and 69

Appeal No. : Criminal Revn. No. 1950 of 1963

Appellant : Paras Nath and ors.

Respondent : State

Advocate for Pet/Ap. : R. Pandey, Adv.

Disposition : Application dismissed

Judgement :
ORDER

G.C. Mathur, J.

1. The 27 applicants are members of the Samyukt Socialist Party of India. In connection with the Food Agitation, they entered the court of the Additional Sub-Divisional Magistrate, Gyanpur, Varanasi, and interrupted the judicial proceedings

which were going on there. The learned Magistrate, on September 25, 1964, convicted them for contempt of court and sentenced each one of them to a fine of Rs. 50 and, in default of payment of fine, to undergo simple imprisonment for 15 days. As the applicants did not deposit the fines, they were sent to jail and warrants for realisation of the fines were also issued. On October 2, 1964, the applicants were released from jail under an order passed by the State Government under Section 401 Cr. P. C. The relevant portion of this order reads:

'The Government remits under Section 401 of the Code of Criminal Procedure, 1898, unexpired period of substantive sentence of imprisonment and sentence in lieu of fine of such prisoners who were convicted in Food Agitation during August and September, 1964, and whose unexpired period pertains to substantive sentence of imprisonment and sentence in lieu of fine remains to be served for one month or less on 2nd October, 1964, and direct their release on Gandhi Jayanti on 2nd October, 1964.'

On the release of the applicants, the learned Magistrate withdrew the warrants for realisation of fines which had been issued. Subsequently, the learned Magistrate referred the matter regarding the realisation of fines to the State Government and was ultimately informed that the fines had not been remitted. He accordingly issued fresh warrants for realisation of the fines. On March 19, 1965, an application was filed by the applicants before the learned Magistrate, contending that, since the remaining sentence of imprisonment had been remitted, it meant that the sentence of fine had also been remitted by the State Government and prayed that the warrants issued for realisation of the fines be withdrawn. This application was rejected by the learned Magistrate on April 6, 1965. Against the order of the learned Magistrate, the applicants filed two revisions before the learned Sessions Judge, Gyanpur. The learned Sessions Judge was of the view that the State Government had no power under Section 401 Cr. P. C. to remit a sentence of imprisonment in default of payment of the fine. He was further of the view that, even if the applicants could be said to have served out the sentence of imprisonment in default of payment of the fine, the fine could still be realised as it had not been remitted by the Government. He accordingly dismissed the revisions. The applicants have now come up in revision to this Court.

2. The first question, which arises for consideration in this case, is whether a fine can still be recovered after the defaulter has undergone the whole of the imprisonment awarded in default of payment of the fine. The provisions, which govern imposition of the sentence of imprisonment in default of payment of the fine, are Sections 64, 68 and 69 of the Indian Penal Code. These Sections stand thus:--

'64. In every case of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment, and in every case of an offence punishable with imprisonment of fine, or with fine only, in which the offender is sentenced to a fine, it shall be competent to the court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence.

68. The imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law.

69. If, before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate.'

There is no provision in the Indian Penal Code like Section 68 providing that, on the undergoing of the whole period of imprisonment, the fine shall not be recoverable. The procedure for recovery of such fines is provided for in Section 386 of the Code of Criminal Procedure. Sub-section (1) of Section 386 Cr. P. C. which is relevant, provides:

'386(1) 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.'

The absence of any specific provision to the effect that the fine shall not be realisable if the whole of the period of imprisonment for default has been undergone and the language of the proviso to Sub-section (1) of Section 386 Cr. P. C. lead to the conclusion that the undergoing of imprisonment awarded in default of payment of the fine does not operate as a discharge or satisfaction of the fine which may nevertheless be levied in the manner prescribed by Section 386 (1) Cr. P. C. Where the offender has undergone the whole of the sentence of imprisonment in default of payment of the fine, the warrant for the levy or realisation of the fine will not be issued, unless the court considers it necessary to do so for special reasons to be recorded in writing. In the present case, admittedly, no special reasons have been recorded by the learned Magistrate for issuing the warrant and if, in law and fact, the applicants have undergone the whole of the period of imprisonment of 15 days imposed upon them in default of payment of the fine, the issue of the warrants would be illegal as they were issued contrary to the provisions of the proviso to Sub-section (1) of Section 386 Cr. P. C.

3. The next question, therefore, which arises for consideration, is whether the applicants have, in fact and law, undergone the period of 15 days' imprisonment awarded to them in default of payment of the fine. Factually, they have not undergone the 15 days' imprisonment as they were released on October 2, 1964, before completing that period. The case of the applicants is that the remaining period of their imprisonment in default of payment of the fine was remitted by the State Government under Section 401 Cr. P. C. and, therefore, they must be

deemed to have undergone the entire period of imprisonment. Section 401 Cr. P. C. confers the power to suspend or remit sentences. Sub-section (1) of this section, which is relevant, reads thus:--

401 (1) When any person has been sentenced to punishment for an offence, the appropriate Government may at any time without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.'

It is first to be seen whether Section 401(1) Cr. P. C. empowers the State Government to remit a sentence of imprisonment awarded in default of payment of fine. In *Abdul Gani v. State of Madhya Pradesh*, AIR 1951 Nag 342, a Division Bench of the Nagpur High Court has observed:

'When a person undergoes imprisonment in default of payment of fine, it is obvious that that imprisonment can come to an end in one of these three ways: efflux of time, payment of fine or remission of fine. In our opinion, there is no scope under Section 401, Cr. P. C. for merely remitting a sentence in default of payment of fine. For, what that section speaks of is a remission of the punishment for an offence. Now, here, the punishment is really payment of fine and under Section 401 what the Government can do is to remit that punishment wholly or in part. In other words, what that section appears to us to empower the Government is to remit in whole or in part a substantive sentence, whether of fine or imprisonment (because that would be the punishment for the offence awarded by the Court), passed on a person but not imprisonment in default of payment of fine. Imprisonment in default of payment of fine is suffered by a person not because he committed an offence but because he has failed to pay the fine inflicted on him for the offence. There is thus, in our opinion, a distinction between the sentence of imprisonment awarded to a person for committing an offence and the sentence of imprisonment ordered to be undergone by such person in default of payment of fine.'

Learned counsel for the applicants has not contested the proposition that Section 401 provides only for the remission of sentences imposed by way of punishment for the offence for which the offender has been convicted; but he contests the view

of the Nagpur High Court that a sentence of imprisonment in default of payment of fine is not punishment for the offence. According to him, such a sentence is also punishment for the offence. To test this argument, let us consider a case where an offence is punishable with fine alone. If a person is convicted of such an offence and is sentenced to pay a fine and by the sentence it is further provided that, in default of payment of the fine, the offender shall undergo imprisonment for a specified period, can it be said that the imprisonment is punishment for the offence? Obviously not; for a punishment of imprisonment is not permissible for the offence. Then what is the nature of this sentence of imprisonment? It can only be punishment for the default in payment of the fine which is permissible under Section 64 IPC. Let us take another case where an offence is punishable with imprisonment and fine both. If, for such an offence, an offender has been sentenced to the maximum term of imprisonment and also sentenced to pay a fine and it is directed that, in default of payment of the fine, he shall undergo imprisonment for a specified period, can it be at all said that the sentence of imprisonment in default of payment of the fine is punishment for the offence? Again, the answer must be no; for, if it were to be treated as punishment for the offence, then the sentence of imprisonment would be more than the maximum permissible for the offence. We may now consider an ordinary case where an offender has been sentenced to a substantive sentence of imprisonment and a fine and, in default of payment of the fine, to undergo further imprisonment. Does the punishment for the offence consist of three items, namely, the substantive sentence of imprisonment, the fine and the imprisonment in default of payment of the fine or of only two of the items? If he undergoes the substantive sentence of imprisonment and pays the fine, he cannot be required to undergo the imprisonment imposed in default of payment of the fine.

But, if he undergoes the substantive sentence of imprisonment and, in addition, the sentence of imprisonment in default of payment of the fine, he can still be required to pay the fine. In all events, he must undergo the substantive sentence of imprisonment and pay the fine. Therefore, it appears that the punishment for the offence, for which he has been convicted, is the substantive sentence of imprisonment and the fine and the sentence of imprisonment in default of payment of fine is not punishment for the offence for which the offender has been convicted

but is punishment for failure to pay the fine. Learned counsel for the applicants relied upon the words 'direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term' occurring in Section 64 I. P. C. in support of his contention that the imprisonment in default of payment of the fine is also a sentence or punishment for the offence I am unable to accept this interpretation. It is to be noticed that the words are not 'in lieu of payment of the fine' but are 'in default of payment of the fine'. It is not that the two are alternative punishments for the offence.

The sentence of imprisonment in default of payment of the fine is not punishment for the offence for which the offender has been convicted but is punishment for his failure to pay the fine imposed upon him by way of punishment for the offence. The sentence of imprisonment in default of payment of the fine, not being punishment for the offence for which the offender is convicted, cannot be remitted by the State Government under Section 401(1) Cr. P. C. The order of the State Government under Section 401 Cr. P. C. in the pre-sent case remitting the remaining period of the sentence of imprisonment imposed upon the applicant in default of payment of the fine is beyond the powers of the State Government and is illegal and is ineffective in remitting this part of the sentence. In law, therefore, the sentence of 15 days' imprisonment imposed upon the applicants in default of payment of the fine of Rs. 50 remains and, they having served out only a portion of that sentence, can be legally sent to jail to serve out the remaining period of imprisonment until, in the meantime, the fine is paid and the provisions of section 68 or 69 I. P. C. are attracted. The applicants cannot be said to have, either in fact or in law, undergone the whole of the term of imprisonment awarded to them in default of payment of the fine.

The proviso to Section 386(1) Cr. P. C. is not attracted to their cases and it was not necessary for the learned Magistrate, before issuing warrants for realisation of the fines, to have recorded any special reasons why he considered it necessary to issue such warrants. The applicants' contention that the warrants were issued in violation of the provisions of the proviso to Section 386(1) Cr. P. C. has not been substantiated. The argument of learned counsel for the applicants that, since it was on account of the illegal action of the State Government in releasing them

from jail prematurely before they had undergone the whole of the term of imprisonment which they were ready and willing to do, they could not be deprived of the benefit of the proviso to section 386(1) Cr. P. C. cannot be accepted. That proviso can only apply if the conditions mentioned therein are satisfied. In the view that I have taken, those conditions are not satisfied.

4. The revision application is without force and is hereby dismissed. The stay order dated October 21, 1965, is vacated.

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