

Keshav Datta Misra Vs. State

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Court : Allahabad

Decided On : Feb-05-1965

Reported in : AIR1967All276

Judge : Gyanendra Kumar, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 386(1); [Indian Penal Code \(IPC\), 1860](#) - Sections 70

Appeal No. : Criminal Revn. No. 25 of 1964

Appellant : Keshav Datta Misra

Respondent : State

Advocate for Def. : R.P. Singh, Adv.

Advocate for Pet/Ap. : T. Rathore

Disposition : Application allowed

Judgement :

ORDER

1. The applicant was convicted by the Assistant Sessions Judge, Allahabad, on 31-8-1955 in four sessions trials Nos. 51, 51/1, 51/2, 51/3 of 1954. The sentences were made consecutive with the result that the total period of substantive sentences in the four cases came to 12 years, apart from a total fine of Rs. 13,000

and in default, two years rigorous imprisonment in each case, that is, eight years in all. On appeals by him, James, J. by his judgment and order dated 2-12-1957, while confirming the conviction of the applicant, reduced the sentences considerably. The substantive sentences of imprisonment were made concurrent with the result that they came to a total period of five years only. Likewise, the sentences of fine were also reduced and aggregated Rs. 8,000. In default of payment of fine the applicant was ordered to undergo rigorous imprisonment for six months in each case, that is, two years in all.

2. While serving out his aforesaid sentences of imprisonment the applicant had made two applications dated 19-2-1958 and 27-6-1958 from Jail to the District Magistrate, Allahabad, requesting him to realise the amounts of fine by selling his house No. 407 (501 New) Colonelganj, Allahabad, or else to allow him to sell it by private negotiations in order to pay off the fines. Yet another application dated 14-11-1959 was made by his wife, as a consequence whereof the sale proceedings for the applicant's house were started, but the same were quashed by an order of the High Court dated 23-1-1962. The result was that in spite of repeated efforts of the applicant, the amounts of fine were not realised by the District Magistrate, so that the applicant had to undergo two years rigorous imprisonment in default. After serving out his substantive sentences of imprisonment as well as those in default of payment of fines, the applicant was released from jail on 16-10-1961. However, a letter of authority dated 14-7-1962 was issued by the Assistant Sessions Judge to the Collector, Allahabad for realisation of the amounts of fine by execution according to the Civil Process in terms of Section 386 of the Code of Criminal Procedure. This was objected to by the applicant on the grounds that he had never evaded the payment of fines and had actually requested the District Magistrate to realise the same by sale of his house, but he did not care to do so and now that he had served out the full terms of imprisonment in default of payment of fines, the same were not liable to be realised by sale of his property. Reliance was placed upon the provisions of Section 386 of the Code of Criminal Procedure to the effect that if the offender had undergone the whole of the imprisonment in default of payment of fine, no Court shall issue a warrant for attachment and sale of his property, unless for special reasons to be recorded in writing, it considers it necessary to do so. In the instant case, the Assistant Sessions Judge had not

recorded any special grounds or reasons for proceeding against the property of the applicant for realisation of fines, in spite of his having served out the whole of imprisonment in default. It is true that on revision, the learned Sessions Judge had recorded special reasons why the applicant's property should be proceeded against, irrespective of the fact that he had already undergone the entire period of imprisonment in default of payment of fine. It may, however, be pointed out that under the proviso to Section 386, Cri. P. C. the special reasons have to be recorded primarily by the Court which issues a warrant for attachment and sale of the offender's property and not by its appellate or revisional authority.

3. It was further contended for the applicant that at any rate, in terms of Section 70 of the Indian Penal Code, the fine could be levied at any time within six years of the passing of the sentence by the trial Court, where the period of imprisonment was not longer than six years as is the case here. In the present case the applicant was convicted and sentenced by the Assistant Sessions Judge on 31-8-1955, so the fine could be levied only upto 30-8-1961. But in the instant case, the Assistant Sessions Judge had issued a letter of authority for the purpose to the Collector, Allahabad, as late as on 14-7-1962, well beyond the prescribed period of six years. The learned Assistant Sessions Judge had dismissed this objection on the footing that the sentences had been reduced by the High Court by its judgment and order dated 2-12-1957 and therefore the fines could be realised by means of attachment and sale upto 2-12-1963. Being dissatisfied against the aforesaid order of the Assistant Sessions Judge, the applicant went up in revision before the Sessions Judge, Allahabad, which was also dismissed by him on 16-9-1963. However, the Sessions Judge did not make any observation with regard to the alleged bar of six years limitation prescribed under Section 70 of the Indian Penal Code.

4. Before me, Mr. T. Rathore, learned counsel for the applicant, has laid particular stress on the provisions of Section 70 of the Indian Penal Code and has urged that the six years bar of limitation contemplated in that section is absolute and that after the efflux of that period it was no longer open to the Assistant Sessions Judge to institute proceedings for the realisation of fine by attachment and sale of the property of the offender. The relevant portion of Section 70 of the Indian Penal

Code runs:

'The fine, or any part thereof which remains unpaid, may be levied at any time within six years after the passing of the sentence.'

Regarding the starting point of the aforesaid period of six years, Mr. Rathore has relied upon the case of Palakdhari Singh v. State of Uttar Pradesh, AIR 1962 SC 1145, wherein their Lordships have observed as under:--

'It was next argued that the final order which is the terminus a quo under Section 70 of the Indian Penal Code is the order of the High Court passed in revision on May 13, 1953 and from that date the proceedings for recovery are within time. But the language of Section 70 prescribes the terminus a quo to be the date of 'passing of the sentence' by Court which passes such order and the filing of appeal or revision does not, unless specifically ordered, arrest the operation of the order of passing of the sentence of conviction. In the present case the limitation started from the date of conviction by the Panchayati Adalat and not from the date of dismissal of Revision by the High Court.'

From the above quoted observations of their Lordships of the Supreme Court, it is abundantly clear that in the instant case the period of limitation for the levy of fine shall have to be computed from the date of the conviction by the Assistant Sessions Judge, that is from 31-8-1955 and not from the date of the judgment of James, J. modifying the sentences by his order dated 2-12-1957. That being so, the present proceedings for levy of fine initiated by the Assistant Sessions Judge by his order dated 25-8-1962 are obviously beyond the period of limitation prescribed under Section 70 of the Indian Penal Code.

5. In Ramaswamy Iyer v. Union of India, AIR 1963 Bom 21 it has been laid down by a Division Bench of the Bombay High Court, 'that the meaning of the expression 'levy' in Section 70 of the Indian Penal Code is to seize for the purpose of collecting the fine or to enforce an execution for a certain sum'. In this view of the matter, it is not necessary that the proceedings for 'levy' of fine should terminate within six years after the passing of the sentence. On the other hand, what Section 70 of the Indian Penal Code contemplates is that the proceedings for

levy of fine should commence within that period. In the instant case, the present proceedings for realisation and levy of fine from the offender have commenced well beyond the period of six years computed from the date of the passing of the sentence by the Assistant Sessions Judge on 31-8-1955

6. I, therefore, allow the revision and quash the orders of the Assistant Sessions Judge dated 25-8-1962 and of the Sessions Judge dated 16-9-1963 and hold that the amount of fine cannot now be realised from the applicant, inasmuch as the proceedings for its levy have become barred by limitation prescribed under Section 70 of the Indian Penal Code.

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