

Dulo Ram Vs. State

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Court : Delhi

Decided On : Jan-19-1968

Reported in : 4(1968)DLT511

Judge : T.V.R. Tatachari, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 386(1)

Appeal No. : Criminal Reference Appeal No. 18 of 1967

Appellant : Dulo Ram

Respondent : State

Advocate for Pet/Ap. : B.B. Vaid and; A.C. Sud, Advs

Judgement :

T.V.R. Tatachari, J.

(1) This is a reference made by the learned Sessions.Judge, Kangra, at Dharmashala, recommending the setting aside of an order of attachment issued by Shri I.P. Anand, Judicial Magistrate, 1st Class. Hamirpur, and for remitting the fine imposed upon one Dalo Ram.

(2) The said Dulo Ram was convicted by the Magistrate, 1st Class Hamirpur, on 29th April, 1966, under section 16 of the Prevention of Food Adulteration Act, and

was sentenced to six months rigorous imprisonment, and a fine of Rs. 1000.00. or in default to undergo further rigorous imprisonment for 4 months. Dulo Ram had served out the substantive sentence of imprisonment as also the imprisonment in default of payment of fine. A notice was issued to Dulo Ram by the Court of the Magistrate, 1st class, for the realisation of the fine, even though he had already served out the substantive imprisonment as well as the imprisonment in default of payment of fine. Dulo Ram pleaded inability to pay. The learned Magistrate directed the Tehsildar to hold an enquiry as regards the property, moveable or immovable possessed by Dulo Ram. It appears that the Tehsildar, after holding the enquiry, submitted his report to the Magistrate. The learned Magistrate passed an order on 18th April 1967, in which he stated that inasmuch as Dulo Ram had undergone imprisonment in default of payment of fine as well, he considered it fair and proper to make enquiries about the means which Dulo Ram possessed for paying the fine in the light of the provision in section 386 of the Criminal Procedure Code, that the said enquiries (apparently referring to the enquiry and report by the Tehsildar) revealed that Dulo Ram was the owner of house and landed property, that it was clear, therefore, that Dulo Ram was possessed of sufficient means to pay up the fine of Rs 1000/-, that what was lacking was not the means but the intention of Dulo Ram to pay the fine and that the cause was one of contumacious non payment of fine. In the result, the learned Magistrate directed that a warrant for the attachment of the property of Dulo Ram, as per the document supplied by the revenue authorities, be issued.

(3) Thereupon, Dulo Ram filed a Criminal Revision Application No. 40 of 1967 in the Court of Shri Chet Ram, Sessions Judge, Kangra at Dharmashala. The learned Sessions Judge considered the report of the revenue authorities and came to the conclusion that the said report was not correct, and that the finding of the learned Magistrate that Dulo Ram had sufficient means for payment of the fine was also not correct. He accordingly passed the order, dated 7th September, 1967, referring the matter to this Court and recommending the setting aside of the order of attachment issued by the learned Magistrate, and also the remittance of the fine imposed upon Dulo Ram

(4) The relevant portion of section 333 of the Code of Criminal Procedure runs as under :-

'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 reason to be recorded in writing it considers it necessary to do so. (2) * * * (3) Under the proviso to section 386, if the offender had already undergone the whole of the imprisonment in default of the payment of fine, the Court should not issue a warrant for the attachment and sale of any immovable property belonging to the offender, unless the Court considers it necessary to do so for special reasons to be recorded in writing.'

(5) In *Digambar Kashi Nath Bhavarthi v. Emperor*, Beaumont, C.J., referring to the policy which seems to have inspired the proviso to section 386 of the Criminal Procedure Code, observed, as follows :-

'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 apprehend that the special reasons should be reasons accounting for the fact that the fine has not been recovered before the sentence in default has been served and any reasons which are directed to that point would be relevant. It may be that the authorities, through no negligence on their part, did not know of the existence of the property or the accused may have inherited property after he served his sentence in default or there might not have been time to execute that warrant. Matters of that sort would all be special reasons for issuing a

warrant after the sentence in default had been served.'

(6) In *Jadabendra Nath Panjavi*, Emperor, Lord Williams, J. following the aforesaid decision of the Bombay High Court, observed as follows :-

'EXCEPT in special cases it seems to me both undesirable and unfair to seek to realise a fine when the sentence ordered to be served in default of payment of the fine has already been served in full; and in my Opinion the proviso is intended to deal with cases where for some sufficient reason the authorities have not been able to realise the fine before the default sentence has been served.'

(7) In *Ajit Singh Mehal Singh v. the State*, Falschaw, J. observed as follows:-

'THERE does not appear to be any authorities of what constitutes special reasons within the meaning of the proviso, but I would venture to express the opinion that the fine should only be realised after the full term of imprisonment in default has been undergone if there is abundant proof that the convict person had ample means to pay the fine but contumaciously refrained from doing so, or if the realisation of the fine was equitably necessary in order to compensate an injured party, or if the sentence of imprisonment imposed in default had been manifestly inadequate.'

(8) In *Siddappa v. State of Mysore*, Padmanabhaiah, J. observed as follows -

'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,'

and then following the decision in *Digambar Kashi Nath Bhavarthi v. Emperor*, the learned judge observed as follows : -

'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 are 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 toher reason.'

(9) In Hari Singh v. The State', B. P. Peri, J. observed as follows ;-

'Aplain reading of the proviso to section 386 of the Code of Criminal Procedure suggests that if an offender has fully served the sentence of imprisonment in default of payment of fine ordinarily no warrant should be issued for the realisation of the fine unless there are special reasons for doing so. The special reasons are those which have some relation to the failure on the part of the State to recover fine before the offender finished his term of imprisonment in default of fine.'

(10) Keeping in view the principles laid down in the above mentioned decisions, it has to be seen whether the special reasons contemplated by the proviso exist in the present case. The learned Magistrate did nto set out any reason, and much less any special reason in his order, dated 18th April, 1967. He did nto address himself to the question as to whether any effort was made by the State to realise the fine before Dulo Ram underwent the imprisonment in default of payment of the fine. The learned Magistrate merely referred to the report of the Tehsildar that Dalo Ram was the owner of house and landed property, and concluded there from that Dalo Kara was possessed of sufficient means to pay up the fine, and yet contumaciously refused to pay the fine. As pointed out in the decisions mentioned above, the special reasons mentioned in the proviso are those which have some relation to the failure on the part of the State to recover the fine before the offender finished his of term of imprisonment default of payment of fine. No such special reason exists in this case and was nto mentioned by the learned Magistrate. Such a reason cannto be inferred merely from the lact that the offender was found to bs possassed of sufficient means. There must have been an effort on the part of the State to realise the fina, and it must have been shown that the State, in spite of its efforts, failed to realise the fine.

(11) In the present case, however, the learned District Judge, on an examination of the report of the Tehsildar, came to the conclusion that the said report was

incorrect, and that the finding of the learned Magistrate that Dulo Ram was possessed of sufficient means was also incorrect. It was pointed out by the learned District Judge that the Tehsildar attached a sketch of the house of Dulo Ram and a copy of the Jamabandi for the year 1962 pertaining to the land owned and possessed by Dolo Ram. The sketch of the house was not drawn according to any scale, the estimate of the value of the house at Rs. 2,000.00 made by the Tehsildar was not based on any data or schedule, and no details of measurement were given by that Tehsildar. No details or particulars as to the size of the house or as to what kind of house it is, were given by the Tehsildar. The learned District Judge, therefore, rightly came to the conclusion that the assessment of the value of the house at Rs 2,000.00 by the Tehsildar was wholly arbitrary, and was not based on any data or other reliable factors. As regards the land owned by Dulo Ram, the extent of the same was shown as only half of 3 kanals, i. e. 1 kanals. The land revenue for the entire extent of 3 kanals is shown as 42 paise, and, therefore, the land revenue in respect of the share of Dulo Ram is only 21 paise. Thus, the income from the said 1 kanals of land can only be meagre, and no evidence of the income therefrom was furnished by the Tehsildar. The learned District Judge also found that though at the time of his prosecution Dulo Ram was running a small shop, the same was closed down after his imprisonment, and that he was making his livelihood by manual labour. The learned District Judge was, therefore, right in coming to the conclusion that the property possessed by Dulo Ram has not sufficient means, was not based on correct appreciation of the evidence on the record, and that the said order should be quashed.

(12) Accordingly accept the commendation of the learned Sessions Judge, and set aside the order of the learned Magistrate passed on 18th April, 1967 directing the issue of a warrant for the attachment of the property of Dulo Ram and for realisation of the fine from him.

(13) Since no effort was made by the State to realise the fine before Dulo Ram underwent imprisonment in default of the payment of fine, and the requirements of section 386, Criminal Procedure Code, and the proviso thereof, are not thus satisfied, I also remit the fine imposed upon Dulo Ram, as recommended by the learned District Judge.

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