

Asadhulla Sarwari Vs. State

Asadhulla Sarwari Vs. State

SooperKanoon Citation : sooperkanoon.com/694005

Court : Delhi

Decided On : Oct-21-1991

Reported in : 46(1992)DLT8; 1992(22)DRJ176

Judge : R.L. Gupta, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 389

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 1859 of 1991

Appellant : Asadhulla Sarwari

Respondent : State

Advocate for Pet/Ap. : K.K. Luthra,; O.P. Malviya and; B.D. Batra, Advs

Judgement :

R.L. Gupta, J.

(1) The petitioner was convicted under Section 14 of the Foreigners Act for over staying in India in House No.B-3/156, Janak Puri, New Delhi on 11.6.90 and sentenced to imprisonment already undergone in custody during trial and also to pay a fine of Rs.5000/- or in default suffer Si for 5 months. He appealed before the learned Asj, Delhi and also applied for suspension of the sentence,. The appellate Court was of the view that the amount of fine being not very heavy did not warrant suspension.

(2) This petition has been filed under Section 482 read with Section 439 of the, Code of Criminal Procedure for quashing the aforesaid order and releasing the petitioner on bail.

(3) I have heard learned Counsel for the parties and have carefully perused the relevant provisions. It may be noted that in this case the petitioner was sentenced to imprisonment already undergone. thereforee, in essence there is no substantive sentence of imprisonment which is required to be suspended. We are only to see whether the sentence of fine can be suspended under the relevant provisions of law or not. My attention has been drawn to Section 389 of the Code which deals with suspension of sentences pending the appeal. It is also admitted before me that earlier the petitioner was directed to be released on bail on furnishing a personal bond in the sum of Rs. 5,000.00 with one surety for the like amount to the satisfaction of the trial Court. It is further admitted that later on an application was moved on behalf of the petitioner stating that he was not able to produce, a surety and, thereforee, the petitioner may be permitted to deposit the amount of the bail bond which was accordingly done. thereforee, it is a case wherein the petitioner is in a position to deposit the amount of fine and not that he cannot deposit the fine. Suspension of sentence is dealt with by sub-Section (3) of Section 389 of the Code. It says that where a convicted person being on bail is sentenced to imprisonment for a term not exceeding three years or where the offence with which he is convicted is bailable and he is on bail, the Court shall release him on bail. Unfortunately it is a case where the petitioner is not sentenced to any substantive sentence which requires to be suspended or where the offence is bailable. thereforee the suspension of sentence is not covered by section 389 of the Code. Normally in a case where there is a substantive sentence of imprisonment along with a sentence of fine, the plea generally is that the fine has been deposited and the sentence of imprisonment may be suspended. It is only in such a situation that the substantive sentence of imprisonment is suspended. Moreover, the petitioner is a foreign national and sentenced to deportation also. I case, he comes out on bail, the order of deportation may not be possible.

(4) Taking the totality of circumstances into consideration, it is not possible to suspend the sentence of fine. The revision is dismissed.

