

**State Vs. Krishna Pillai and**

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**Court :** Kerala

**Decided On :** Oct-27-1952

**Reported in :** 1953CriLJ1265

**Judge :** Koshi, C.J. and; Govinda Pillai, J.

**Appellant :** State

**Respondent :** Krishna Pillai and ;madhavan Pillai

**Judgement :**

ORDER

Koshi, C.J.

1. The State has filed this petition to rectify certain illegalities concerning the sentence the learned Additional Sessions Judge of Quilon passed against accused 1 in Sessions Case No. 23 of 1951 on the file of the Quilon, Sessions Court. Two persons were tried in that case for commission of offences punishable under Sections 307 and 104, T.P.C. and Section 4(3), Travancore Explosive Act, Act 13 of 1116. While acquitting accused 2 of the offences with which he stood charged the learned Judge convicted accused 1 under Section 324, T.P.C. (Voluntarily causing hurt by dangerous weapons or means) and under Section 4(3), Explosive Act (Possession of dangerous explosives). In respect of the former offence he was sentenced to undergo rigorous imprisonment for one year and regarding the latter a fine of Rs. 100 was imposed. In default of payment of the

fine he was to undergo rigorous imprisonment for three months, but the judgment directs that the substantive sentence under Section 324 and the sentence of imprisonment in default of payment of the fine shall run concurrently. It is this direction that the two sentences of imprisonment should run concurrently that the State takes exception to. That direction is clearly illegal, but the learned Judge fell also into another error when he ordered the accused to undergo rigorous imprisonment in default of payment of the fine in respect of the offence under Section 4(3) of the Explosive Act which offence is punishable with fine only.

2. The judgment was pronounced on 31.10.1951 but this petition has been filed only on 11.10.1952. The State obtained a certified copy of the judgment so early as 5.1.1952. Notice of the petition was given to the accused who is still serving his sentence in the Central Jail but he was not represented before us nor had he asked for any arrangement to be made for him to be present in court at the hearing. The application purports to be under Section 561-A, Criminal P.C. and Article 227 of the Constitution.

3. The proper course for the State to rectify the errors in the judgment was to invoke the revisional jurisdiction of this Court or to cause a reference to be made to this Court by the appropriate court. While we do not desire to attempt here to define the extent or the limits of our jurisdiction under Section 561-A or Article 227 we do not hesitate to say that we do not feel satisfied that this is a proper case where the extraordinary jurisdiction under either provision should be invoked to correct the errors pointed out. The State could have got them rectified by suitable action in proper time. No explanation is given for the failure to do that or for the inordinate delay made to file this petition. There remains only four days for the full term of one year to expire.

The jurisdiction of the trial court to impose a sentence of imprisonment in default of payment of fine is merely permissive. It is not imperative to award a term of imprisonment in default of payment of a fine. Section 64, Penal Code (Section 53, Travancore Code) only states that it shall be competent to the court to impose a sentence of imprisonment for nonpayment of fine. Further, imprisonment in default of payment of fine does not liberate an accused person from his liability to pay the

fine imposed on him. Such imprisonment does not serve as a discharge or satisfaction of the fine, but is imposed as a punishment for nonpayment. The fine would remain alive for collection for six years after the passing of the sentence. Assuming the accused counter-petitioner has no means now to pay the same, it can be recovered from any property acquired by him within the period specified, Even his death will not discharge from the liability any property which would, after his death be legally liable for his debts. (Section 70, Penal Code, corresponding to Section 59, Travancore Penal Code). Regard being had to those considerations we do not think it necessary or proper to interpose an order now which will have the effect of extending the period of the counter-petitioner's incarceration in jail by a further period of three months. It is really improper for a trial court to impose a heavy fine on a person who has not the means to pay it.

4. While declining to pass any order now rectifying the errors we shall, however, show how the sentence passed is in violation of the mandatory provisions of the law bearing on the matter. The State, as stated already, takes exception to the imprisonment awarded for non-payment of the fine having been made to run concurrently with the substantive sentence under Section 324, Penal Code. Section 64, Penal Code, which authorises a Court to award a sentence of imprisonment in default of payment of the fine expressly enacts that such imprisonment shall be in excess of any other imprisonment to which the offender may have been sentenced, or to which he may be liable under a commutation of a sentence. Nothing more need, therefore, be said to show that the learned Judge's direction is illegal.

Reference may be made in this connection to the cases reported in - Emperor v. Mitho Maru Machi AIR 1942 Sind 80 (A) and - Public Prosecutor v. Balla Venkayya AIR 1944 Mad 448 (B). The latter case does not refer to Section 64, Penal Code, but the former, if we may say so, rightly points out that Section 35, Criminal P.C., must be read with the satisfaction of the Penal Code. Section 35, Criminal P.C. though not so expressed deals only with cases of substantial punishment by imprisonment for distinct offences in the same case. The Code makes no provision for directing imprisonment in default of payment of fine to run concurrently with the substantive sentence of imprisonment awarded for any other offence tried in the

same case. Sections 395 and 398 may usefully be referred to in this context. These sections keep in view the provision in Section 64, Penal Code, adverted to earlier. When a sentence of imprisonment is to be in default of payment of a fine, the sentence of imprisonment in default must be consecutive to any substantive sentence of imprisonment which may have been passed upon the accused. The Sind Case referred to which is a Bench ruling further points out that there is no difference in principles between a case where two sentences of imprisonment are imposed in default of fine and a case where there is a substantive sentence of imprisonment and a sentence of imprisonment in default of payment of a fine.

Emperor v. Subrao Sesharao AIR 1926 Bom 62 (C) and - Perumal Mudaliar v. S.I. Rly. Co. Ltd. AIR 1937 Mad 407 (D) are cases where two sentences of imprisonment imposed in default of payment of fine were directed to be undergone concurrently. Such direction was held to be bad. Without more ado we have no hesitation to hold that the learned Judge was clearly in error when he ordered that the imprisonment awarded in default of payment of the fine should be undergone concurrently with the substantive sentence under Section 324.

5. We have said that this is not the only error about the sentence the learned Judge passed in the case. An offence under Section 4(3) of the Explosive Act is an offence punishable with fine only, The nature of the imprisonment that could be awarded with respect to such an offence in case default is made to pay the fine imposed is specified in Section 67, Penal Code. Section 67 (Travancore Section 56). enacts:

If the offence be punishable with fine only, imprisonment which the court imposes in default of payment of the fine shall be simple....

It surprises us that the State which made an application to rectify an error made by the trial Judge in the sentence he passed in the case overlooked this provision which happens to be favourable to the accused counter-petitioner. The learned Judge's order offends Section 67 as well.

6. As indicated earlier we content ourselves by pointing out these errors. The petition is dismissed.

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