

**Sukumaran Vs. State**

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**Court :** Kerala

**Decided On :** Mar-11-1993

**Reported in :** 1993(2)ALT(Cri)96; 1993CriLJ3228

**Judge :** L. Manoharan, J.

**Acts :** Code of Criminal Procedure (CrPC) , 1974 - Sections 31, 248, 428, 429 and 429(2); [Indian Penal Code \(IPC\), 1860](#) - Sections 53, 64, 65, 376, 380, 392, 451, 457 and 461

**Appeal No. :** Crl. M.C. No. 265 of 1993

**Appellant :** Sukumaran

**Respondent :** State

**Advocate for Def. :** Public Prosecutor and; K.I. Abdul Rasheed, Adv.

**Advocate for Pet/Ap. :** T.R. Raman Pillai (Amicus Curiae)

**Judgement :**

ORDER

**L. Manoharan, J.**

1. The question that calls for an answer in this Crl. M.C. is whether sentence in default of payment of fine can be directed to run concurrently with substantive

sentence.

2. Petitioner is a prisoner undergoing sentence in Sessions Case No. 32 of 1986 of the Assistant Sessions Judge, Irinjalakuda. He sent a representation which was treated as Crl. M.C. No. 265/93. On an earlier occasion he sent another representation which was numbered as Crl. M.C. No. 1144 of 1989. A learned Judge of this Court disposed of the said Crl. M.C. along with Crl. M.C. No. 1221 of 1989 by order dated 16-3-1990. Petitioner was the accused in several other cases. Paragraph 3 of the said order adverts to the report submitted by the Superintendent, Central Jail, Viyyur and states that the petitioner has to undergo a total substantive sentence of imprisonment for 60 years and to pay a fine of Rs. 20,000/- in default to undergo imprisonment for two years more. It is also stated that, 14 years and 29 days had been set off under Section 248, Cr. P.C. and that he has earned a remission by one year five months and eight days till 13-12-1989. The learned Judge in para 7 of the order directed : 'Accordingly, I direct that the sentence against the petitioner will run concurrently with the sentence awarded in S.C. No. 32 of 1986 by the Assistant Sessions Judge, Irinjalakuda, as confirmed by this court effective from 18-12-1986.'

3. In the petition, the petitioner's complaint is that, the Jail Authorities insist that he has to remit Rs. 20,000/- as fine imposed on him in C.C. Nos. 213 of 1985, 103 of 1986, 150 of 1986 and 217 of 1986. According to him, in view of the order of this court in Cr. M.C. No. 1144 of 1989 he is not liable to pay fine nor is he liable to suffer the default sentence in the event of non-payment of fine. Thus, the precise question is whether this court's direction that the sentences against the accused would run concurrently with the sentence awarded in S.C. No. 32 of 1986 by the Assistant Sessions Judge, Irinjalakuda will in any way affect the sentence of fine and the default sentences.

4. Except stating that the sentences against the petitioner will run concurrently with the sentences awarded in the said S.C. 32 of 1986, no specific direction is made in the said order as to the sentence of fine. Now the question is as to the effect of the said direction. Under law the sentence of imprisonment and sentence of fine are distinct and different.

5. Section 31 of the Cr. P.C. would show that, the normal rule is that the sentences should be consecutive unless the court directs the same to run concurrently; and it is clear from the wording of the Section itself, the imprisonment referred to in the said Section is substantive sentence of imprisonment. There is no provision in the Code for directing imprisonment in default of payment of fine to run concurrently with the substantive sentence of imprisonment awarded for any other offences in the same case or at different trials. In this connection Section 429 of the Cr. P.C. also is relevant. Section 429(2) of the Cr. P.C. enjoins that, effect shall not be given to the award of imprisonment in default of payment of the fine until the person has undergone the further sentence or sentences; and Section 428 of the Cr. P.C. which deals with set off also states that, the set off can be only to the sentence of imprisonment other than imprisonment in default of payment of fine.

6. Yet another section to be noticed in this connection is Section 53, IPC; there fine is dealt with an a distinct punishment Section 64 of the IPC in this context is of importance. The same deals with sentence of imprisonment for non-payment of fine and it states that the default of sentence shall be in excess of any other imprisonment to which the offender may have been sentenced or to which he may be liable under the commutation of the sentence. Thus when Section 64, IPC itself enjoins that, default sentence should be in excess of the sentence awarded to him or to which he is liable under the commutation of sentence, it is clear, without doing violence to the said provision default sentence cannot be directed to run concurrently with substantive sentence. It is thus demonstrably clear from a reading of Sections 53 and 64, IPC that, substantive sentence and sentence in default of fine are two distinct sentences, and hence they cannot be made concurrent.

7. A direction that a sentence in default of payment of fine to run concurrently thus being illegal, the High Court is entitled to correct the same when the illegality is brought to its notice. In the decision in *Shedu Tatma v. Hari Jha*, AIR 1958 Patna 35 : (1958 Cri LJ 80) (DB) the trial Magistrate directed the sentence in default of payment of fine to run concurrently with the substantive sentence and the same mistake was repeated by the Sessions Judge. The High Court held that the said mistake could be corrected by the High Court on a reference made by the

Sessions Judge although a revision filed in the High Court by the convict was earlier dismissed in limine.

8. In the decision in *State of Uttar Pradesh v. Bati*, AIR 1950 All 625 : (1950 All LJ 447) also, it is held that, an order directing the sentence in default of payment of fine to run concurrently with substantive sentence is illegal and that such direction being against mandatory provision of law, the court has power to correct such an error.

9. As noticed, the order in Crl. M.C. No. 1144 of 1989 does not direct that the sentence in default of payment of fine will run concurrently with substantive sentence. In the decision in *State of Kerala v. Sreedharan*, 1967 KLT 1014 also it is held that, a sentence of imprisonment in default of payment of fine cannot be allowed to run concurrently with substantive sentence of imprisonment. The said view is reiterated in the decision in *State v. Raman*, 1970 KLT 1018 in which it is also held that, the provision enabling to direct sentences to run concurrently can refer only to substantive sentences and not to sentences of imprisonment in default of payment of fine. The only other provision to be noticed in this connection is Section 65, IPC which provides that the sentence in default of payment of fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine. The four cases in which the petitioner is sentenced to pay fine are C.C. Nos. 213 of 1985, 103 of 1986, 150 of 1986 and 217 of 1986 of the Court of the Judicial Magistrate of First Class, Kodungallur. In these cases, apart from sentencing him under Section 457, IPC, he was also sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs. 5,000/- in default to payment of fine to undergo rigorous imprisonment for six months for the offence under-Section 392, IPC. Thus, there was a total fine of Rs. 20,000/- and the aggregate default sentence would come to rigorous imprisonment for two years. In Sessions Case No. 32 of 1986, he was sentenced to undergo rigorous imprisonment for 10 years under Section 376(g) IPC, rigorous imprisonment for three years for the offence under Section 380, IPC, rigorous imprisonment for four years for the offence under Section 392, IPC, rigorous imprisonment for two years for the offence under Section 451, IPC and rigorous imprisonment for one year for the offence under

Section 461, IPC. Of course, there was a direction that those sentences would run concurrently. Thus, the accused had to undergo rigorous imprisonment for 10 years in Sessions Case No. 32 of 1986. For the purpose of Section 65, IPC it need be noticed that, the default sentence does not exceed one-fourth of the maximum under Section 392, IPC or the maximum sentence under Section 376, IPC. Thus, the sentence in default of payment of fine is in conformity with Section 65, IPC also.

10. From the above, it is clear that the contention of the petitioner that by virtue of the order in Crl. M.C. No. 1144 of 1989 he is not liable to pay the fine and also is not liable to undergo imprisonment in default of payment of fine is unsustainable. Consequently the Crl. M.C. is liable to be dismissed, which accordingly is hereby dismissed.

I place on record my appreciation and gratitude for the learned and able assistance given by Sri T. R. Raman Pillai, Senior Advocate.

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