**Narayan Singh Vs. the State**

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**SooperKanoon Citation** : sooperkanoon.com/751101

**Court** : Rajasthan

**Decided On :** Feb-23-1967

**Reported in** : AIR1968Raj46

**Judge** : B.P. Beri, J.

**Acts** : Code of Criminal Procedure (CrPC) , 1898 - Sections 423

**Appeal No.** : Criminal Revn. Appln. No. 58 of 1967

**Appellant** : Narayan Singh

**Respondent** : The State

**Advocate for Def.** : G.M. Mehta, Deputy Govt. Adv.

**Advocate for Pet/Ap.** : J.S. Saluja, Adv.

**Disposition** : Petition dismissed

**Judgement** :
ORDER

**B.P. Beri, J.**

1. Narayan Singh, a truck driver, was convicted by the Munsiff-Magistrate, Bharatpur under Section 338 of the Indian Penal Code to six months' rigorous imprisonment. On appeal the learned Sessions Judge, Bharatpur mentioned the

conviction but altered the sentence to one month's rigorous imprisonment and to pay a fine of Rs. 200 and in default of the payment of fine to undergo 2 months' rigorous imprisonment He has come up in revision before me.

2. The only point on which this revision application was admitted and which was urged before me is whether the alteration of the sentence by the learned Sessions Judge amounts to enhancement of punishment.

3. Section 423(1)(b), omitting the unnecessary part of it, reads as follows:--

'or (2) alter the finding, maintaining the sentence or, with or without altering the finding, reduce the sentence, or, (3) with or without such reduction and with or without altering the finding, alter the nature of the sentence, but, subject to the provisions of sentence 106, Sub-section (3), not so as to enhance the same.'

The short question which falls for consideration in this case is whether the alteration of sentence by the learned Sessions Judge amounts to enhancement or not. The controversy where substantive sentence is reduced and sentence of fine has been added or increased amounts to an enhancement of punishment or not has been the subject matter of several decisions of various High Courts The leading case on the subject is a Full Bench decision of the Madras Court in Bhakthavatsalu Naidu v. Emperor, (1907) ILR 30 Mad 103 (FB). The learned Judges expressed the opinion that where the aggregate period of imprisonment awarded on appeal is to any extent less than the period of the original sentence, the fact that a fine is imposed by the Appellate Court is no enhancement of the sentence within the meaning of Section 423 of the Code of Criminal Procedure.

In the case before the learned Judges the appellate court had reduced the sentence of one month to 5 days but had imposed in addition thereto a fine and in default of the payment of fine to 2 weeks' imprisonment. It was held that the appellate court could do it without violating the provisions of Section 423 Cr. P. C. The reasoning of theMadras case appealed to Coldstream, J. in Barkhandi v. Emperor, AIR 1931 Lah 159(1) who observed that when the aggregate period of imprisonment which the accused may have to undergo is to any extent less than the period of the original sentence, the fact that a fine is imposed by the appellate

court would not in law be an enhancement of the sentence. A similar view was expressed by Waller and Cornish, JJ. of the Madras High Court in Subba Goundan v. Emperor, AIR 1930 Mad 193 and curiously enough without any reference to the Full Bench decision of their own Court.

Same was the answer of Hemeon, J. in Shivdas Singh Ajodhya Singh v. King-Emperor, AIR 1949 Nag 140 where the sentence of six months' imprisonment and a fine of Rs. 100 or in default thereof further imprisonment for period of six months awarded by the trial Court on an appeal was reduced to the sentence already undergone but the fine was increased to Rs. 600 or in default to a further term of six months, the learned Judge observed that it was no enhancement of sentence. In another decision of the Lahore High Court -- Prabhu Dayal v. Emperor, AIR 1937 Lah 195 -- Din Mohmmad J. adopted the view taken in Subba Goun-den's case, AIR 1930 Mad 193. Same is the view expressed in a recent judgment of the High Court of Andhra Pradesh in Mahadoo v. State of Hyderabad, AIR 1953 Hyd. 303 where ILR 30 Mad 103 (EB), AIR 1931 Lah 159(1) and AIR 1949 Nag 140 cases were followed.

There is one more case to which reference may be made. It is earlier in point of time to the Full Bench Madras case but is equally enlightening. It is Queen-Empress v. Chagan Jagannath, (1899) ILR 23 Bom 439 wherein Parsons and Ranade JJ. considered a case where an accused was convicted of criminal breach of trust and sentenced to nine months' rigorous imprisonment but on appeal although the conviction was upheld, the sentence was altered to one of six months' rigorous imprisonment and a fine of Rs. 1,000 was added and in default of payment of fine the accused was to undergo a further term of three months' rigorous imprisonment. It was held that the alteration of sentence did not amount to enhancement. This authority has also been followed in some of the cases referred to above.

Mr. Saluja's argument is that where a sentence of fine is imposed and the punishment provided in default of payment of fine is undergone the liability to pay the fine still persists and, therefore, the accused suffers from an awful anxiety which adds to the totality of his punishment. It, therefore, amounts to an

enhancement of sentence. In support of his contention he relied on Kirpa Ram v. Emperor, 16 Cri LJ 603 = (AIR 1914 Lah 539 (1)). The learned Judges noticed this aspect of the matter in the following words, --

'No doubt in some cases an alteration of this kind might be equivalant to an enhancement. The convict might be a poor man to whom the order of fine would be a heavier punishment than the imprisonment and, as is pointed out in King-Emperor v. Sagwa, (1901) ILR 23 All 497 = 1901 All WN 176, the fine can, under Section 70. Indian Penal Code, be levied even after the imprisonment awarded in default has been undergone, such imprisonment not being a discharge of the fine.'

4. Fine is one of the modes of punishment envisaged in Section 53 of the Indian Penal Code. It is correct that it is a punishment in pocket and its impact is directly dependent on the condition of the purse of the person on whom it is imposed. The authors of the Code have in one of their notes eloquently put it thus. 'In imposing a fine, it is always necessary to have as much regard to the pecuniary circumstances of the offender as to the character and magnitude of the offence. The mulct which is ruinous to a labourer is easily borne by a tradesman, and is absolutely unfelt by a rich zamindar'. These considerations no doubt should weigh at the time of initial imposition of penalty but in considering the provisions of Section 423 Cr. P. C. the ordinary rule, subject to certain exceptions, to my mind is that if the substantive sentence of imprisonment and the sentence imposed in default of payment of fine when added do not exceed the original sentence awarded to the appellant then the sentence cannot be said to have been enhanced.

My reasons for this view are that 16 Cri LJ 603 = (AIR 1914 Lah 539(1)) case was decided on 12-12-1914. In 1923 Section 386 of the Code of Criminal Procedure had an amendment, namely, '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 reasons to be recorded in writing it considers it necessary to do so.' The result of this provision evidently is that it is not as a matter of routine that where fine has not been paid and sentence in default thereof

has already been undergone that a court of law would levy the recovery of the penalty. Although the provisions of Section 70 of the Indian Penal Code provide that undergoing the sentence in default of payment of fine is no discharge of that liability and that such liability persists for a period of six years but its recovery can be made for special reasons.

The reasons as I have said in my judgment -- Hari Singh v State, 1962 Raj. LW 299 = (AIR 1963 Raj 80) should be related to the failure to pay the fine. Therefore the case reported in 16 Cri LJ 603 = (AIR 1914 Lah 539 (1)) is distinguishable on account of amendment in the provisions of Section 386 and therefore it would be in exceptionalcases that fine would be recovered from a victim who has already undergone the terms of imprisonment in default of the payment of fine. Ordinarily, therefore, the view taken in 30 Mad 103 Full Bench case seems to be a fairly good guide in matters such as these. Tested on this touchstone in the case before me the original sentence of six months' rigorous imprisonment has been reduced to one month's rigorous imprisonment and the only additional punishment is of fine of Rs. 200 and in default of payment a further two months' rigorous imprisonment. The totality of the sentence before me thus is 3 months' rigorous imprisonment in the event of the accused not paying fine whereas the trial Court had awarded six months' rigorous imprisonment. I am, therefore, not prepared to hold that this is a case of enhancement of punishment hit by the restriction contained in Section 423 of the Code of Criminal Procedure.

5. The result is that this revision application fails and is dismissed.

6. The learned counsel prays for leave to the Supreme Court. I am afraid this is not a case which I would certify as a fit one for leave to appeal to the Supreme Court Leave is refused.