

Hari Singh Vs. the State

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Court : Rajasthan

Decided On : Nov-30-1961

Reported in : AIR1963Raj80; 1963CriLJ480

Judge : B.P. Beri, J.

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

Appeal No. : Criminal Revn. No. 358 of 1960

Appellant : Hari Singh

Respondent : The State

Advocate for Def. : R.A. Gupta, Dy. Govt. Adv.

Advocate for Pet/Ap. : Guman Mal Lodha, Adv.

Disposition : Application allowed

Judgement :

ORDER

B.P. Beri, J.

1. This criminal revision is directed against an order of the Sessions Judge, Sikar, by which he has held that fine imposed on the applicant must be realized notwithstanding the fact that he, the applicant, has undergone the sentence

awarded against him in default of payment of fine.

2. Applicant Hari Singh was employed in Court of Wards. He was accused of having criminally misappropriated a sum of Rs. 1,995/-/9 entrusted to him in his capacity as such public servant and was convicted under Section 409 of the I. P. C. by the Sessions Judge, Sikar, on 28th February, 1955 to undergo six months simple imprisonment and to pay a fine of Rs. 1,000/- and in default thereof to further undergo a term of six months' simple imprisonment. Hari Singh appealed against this conviction to this Court but his appeal was rejected on 12-9-1955.

3. The applicant served his substantive sentence and did not pay the fine imposed on him. He was, therefore, made to suffer another six months' simple imprisonment on account of the default in payment of fine.

4. Efforts were made to recover fine from the applicant. The applicant raised objections against this recovery on the ground that he had already undergone the sentence of imprisonment imposed against him in default of payment of fine. The additional Sessions Judge, Sikar, by his order dated 29-9-1958 held that the fine must be realized irrespective of the fact that the appellant had served the sentence in default because this was a case of embezzlement. A warrant was issued against the property of Hari Singh and he again filed objection on the same ground that he had already suffered the punishment of sentence in default of the payment of fine. The Additional Sessions Judge, Sikar, declined to entertain the objection on the ground that he cannot review the orders of his predecessors. The applicant, has now come up in revision to this Court.

5. On behalf of the applicant it is urged that his house was auctioned for the realization of the dues of the Government amounting to Rs. 2,100/4/9 at the instance of the Collector. By the order of the Naib Tehsildar, Jaipur, dated 17-6-1960, this sum of money was directed to be remitted to the Collector, Sikar. A certified copy of the proceedings before the Naib Tehsildar has been produced. This, urges the learned counsel represents the embezzled sum of money and thus the very basis which persuaded the Additional Sessions Judge, Sikar, to order the realization of the fine has disappeared. The next argument advanced by the counsel is that in view of the language of Section 386 of the Code of Criminal

Procedure the steps for the realization of the fine should have been taken before the convict began to undergo the sentence in default. No warrant should have been issued after the applicant had fully undergone the sentence in default.

6. On, behalf of the State the Deputy Government Advocate has produced a telegram purporting to be from the Public Prosecutor, Sikar, to the effect that the amount embezzled by the applicant has not been deposited in the Court. On this basis it is submitted that the contention of the applicant is factually incorrect. The applicant has also not taken the trouble of submitting any affidavit to support the fact that his house was auctioned for the realization of the Government dues; that the Government dues were no other than those for the misappropriation of which he was prosecuted and punished; and that the sale proceeds of his house have reached the Court of Wards.

7. However, what remains to be considered is the true meaning to be given to the provisions of Section 388 of the Code of Criminal Procedure vis-a-vis the facts of the case uninfluenced by the consideration that the embezzled money has been repaid.

8. A Warrant dated 6-10-1958 was issued by the Magistrate for the attachment of the applicant's compensation bond of the value of Rs. 3,000/- for the first time. By 1-6-1957 the applicant had already undergone both his substantive as well as his default sentence of six months each. The question is whether the Additional Sessions Judge, Sikar, was correct in taking the view he took of the provisions of Section 386 of the Code of Criminal Procedure, The relevant portion of the section reads:

'Warrant for levy of fine (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 moveable 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 moveable 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 warrant unless for special reasons to be recorded in writing it considers it necessary to do so.'

9. The provisions are penal and have to be strictly construed. A warrant for the levy of amount for attachment after an offender has already undergone the sentence in default for payment of fine shall not be issued by a Court except for 'special reasons' to be recorded in writing. What is the true meaning of the expression 'special reasons' in the context of this section?

10. I have examined some decided cases on the question. In *Digambar Kashinath v. Emperor*, AIR 1935 Bom 160, the view taken is that merely because the injured party has to be compensated out of the fine imposed on an offender is not a special reason envisaged by Section 386 of the Code of Criminal Procedure, warranting realization of fine from an offender who has undergone the sentence in default of payment of fine. Neither the dangerous character of the offender nor the gravity of the offence are intended to be covered by the expression 'special reasons' employed in Section 386 of the Code of Criminal Procedure. In *Ajit Singh v. The State*, AIR 1951 Punj 331, it has been held that unless there is abundant proof that the convicted person had ample means to pay the fine but the offender contumaciously refused to pay the same or the realization of fine was equitably necessary to compensate the injured party or the sentence of imprisonment imposed in default was manifestly inadequate no order for the realization of fine should be made after an offender has undergone the sentence of imprisonment in default of payment of fine. In *Siddappa v. State of Mysore*, AIR 1957 Mys 52, it has been held that the 'special reasons' contemplated in the proviso to Section 386(1) must relate to the fact of non-recovery of the fine before the default sentence has been served.

11. A plain reading of the proviso to Section 386 (1) 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.

12. 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. No such reasons exist in this case. The learned Deputy Government Advocate was unable to give any reasons for the lack of efforts to realize the fine earlier than the applicant had already undergone full sentence of six months imprisonment awarded to him in default of payment of fine. The reasons which turn upon the nature or gravity of an offence cannot be characterised as special reasons envisaged by the proviso of Section 386(1), of the Code of Criminal Procedure. In my opinion, therefore, the order of the learned Additional Sessions Judge, dated 29-9-1958 must be set aside being an improper exercise of his powers under Section 386 of the Code of Criminal Procedure. The warrants issued for the attachment of the applicant's compensation-bonds are hereby quashed and this revision application is allowed.

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