

Jor Singh Vs. the State

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Court : Rajasthan

Decided On : Apr-18-1970

Reported in : 1970WLN222

Judge : L.S. Mehta and; B.P. Beri, JJ.

Appeal No. : D.B. Criminal Misc. Habeas Corpus Petition No. 166 of 1967

Appellant : Jor Singh

Respondent : The State

Judgement :

B.P. Beri, J.

1. This is a petition under Section 491 of the code of Criminal Procedure made by Jor Singh challenging his detention in the Central Jail Jodhpur.

2. The facts which it is necessary to recall for the disposal of this petition briefly stated are these; On 16.7.1969 by virtue of detention order No. 1567 the Additional Munsiff Magistrate No I, Jodhpur, directed that Jor Singh be kept in civil prison for a period of three months under each of the orders. Both the orders were made because the petitioner's two bonds for appearance were forfeited and the penalties thereunder were not paid and could be recovered. He was, therefore, sent to civil jail under Section 514(4) of the Code of Criminal Procedure, While he

was undergoing this imprisonment on 20th September, 1969 the petitioner was bound down by the Municipal Magistrate, Jodhpur under Section 109 Cr. P.C. and was required to furnish a security in the sum of Rs. 500/--and so also a personal bond in the like amount for a period of 6 months and failing which he was to undergo 6 months' simple imprisonment. By this time the petitioner had already served 2 months and 4 days' in civil jail awarded to him under Section 514(4) Cr.P.C The Superintendent of Jail purporting to act under paragraph 15 of the Rajasthan Jail Manual, 1952 and in view of the order of the Municipal Magistrate, Jodhpur being one under Section 123 Cr. P.C. kept in abeyance the sentence which the petitioner was undergoing under Section 514(4) Cr. P.C. The petitioner submitted a bond which was required of him by the Municipal Magistrate, Jodhpur under Section 109 Cr. P.C. on 30th January, 1970 and expected to be released: The Jail authorities instead of setting him free revived the earlier sentence of civil imprisonment under Section 514(4) Cr. P. C. under paragraph 15 of the Jail Manual. The petitioner made an application to the District Magistrate but relying on the Jail Manual and the Code of Criminal Procedure he rejected it. The petitioner now makes this petition and challenges his detention in Jail

3. We have heard the learned counsel for the petitioner and Mr. B.C. Chatterjee, learned Additional Advocate General, Mr. Chatterjee concedes that the petitioner can no longer be detained because the detention awarded to him under Section 514(4) Cr. P.C. could not be suspended on account of the petitioner's failure to furnish a bond under Section 123 of the Code of Criminal Procedure.

4. The Jail Superintendent has purported to act under paragraph 15 of the Jail Manual in continuing the detention of the petitioner. It read;

15 Imprisonment in default of payment of fine:--If a prisoner sentenced to a term of imprisonment in default of payment of fine is also either at the same time or subsequently sentenced to another term or to other terms of imprisonment, imprisonment in default of payment of fine shall be kept in abeyance till the expiration of all the absolute sentences of imprisonment, and shall be annulled wholly or partially by the payment of the fine in whole or in part, before that period or so long as imprisonment continues.

Illustrations--A prisoner is sentenced on the 9th June, 1895 to two years rigorous imprisonment and a fine of Rs. 5/-or in default six months' rigorous imprisonment, on the 17th July of the same year he is sentenced on another account to on additional imprisonment for 18 months; and on the 6th October, 1896, he is sentenced on another charge to an additional imprisonment for two years, The sentence of six months; imprisonment in default of payment of fine of Rs. 5/- should begin from the 9th December, 1900 (the date of expiration of all the absolute sentences of imprisonment being the 8th December) and shall, be annulled wholly or partially by the payment of the fine in whole or in part, before that period, or so long as the imprisonment continues.

5. The word 'absolute qualifying 'sentence' indicates an imprisonment which is not contingent. An imprisonment in Civil Jail under Section 514(4) of the Code of Criminal Procedure can be plainly avoided by depositing the penalty. Likewise, a sentence imposed on making a default in payment of fine could be escaped by paying the fine as illustration to the rule itself indicates. A sentence under Section 514(4) Cr. P.C. is not an 'absolute sentence' in the terms of paragraph 15 of the Jail Manual and the interpretation put upon this para of the Jail Manual is erroneous. It is, howevsr, only a case of mdsinterpretarion.

6. We agree with the learned Additional Advocate General that the petitioner has already served 6 months Civil Jail under Section 514(4) Cr. P.C. and having furnished the bond under Section 109 Cr. P.C. he cannot be detained any longer. He shall be forthwith released if not required in any other case.

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