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SooperKanoon Citation : sooperkanoon.com/761839

Court : Rajasthan

Decided On : Jul-29-1986

Reported in : 1986(2)WLN408

Judge : Vinod Shanker Dave, J.

Appeal No. : S.B. Criminal Misc. Petition No. 469 of 1986

Appellant : Banna Ram

Respondent : State of Rajasthan

Judgement :

Vinod Shanker Dave, J.

1. This petition under Section 482 Cr.PC is directed against the order of learned Additional Chief Judicial Magistrate, Neem-ka-Thana, dated July 24, 1986.

2. The petitioner was convicted by the Additional Chief Judicial Magistrate vide his order, dated February 2, 1984, for offence under Section 54 of the Rajasthan Excise Act and sentenced to six months' simple imprisonment and a fine of Rs. 200/- and in default of payment of fine he was directed to further undergo one month's simple imprisonment. This judgment was challenged in appeal before the Sessions Judge, Sikar who partly allowed the appeal vide his judgment, dated May, 12, 1986, maintained the conviction and altered the sentence. He reduced

the substantive sentence of imprisonment to one already undergone and enhanced the fine to a sum of Rs. 1,000/-. He gave one month's time for depositing the amount else he was to undergo sentence passed by the trial court. The petitioner went to deposit the fine on July 9, 1986, obviously after one month and the Addl. Chief Judicial Magistrate refused to deposit the same, as according to him the time granted had expired and the accused was liable to undergo sentence passed by learned Sessions Judge, Sikar. He ordered for issuance of warrants of arrest against the accused and further directed that warrants be sent for execution to Ram Prakash, Station House Officer, by name. Thereafter the petitioner approached the learned Additional Sessions Judge, Neem-ka-Thana, who, vide his order, dated July 15, 1986, directed that the petitioner may not be detained in jail provided he deposits the fine within a period of one week. On July 19, 1986, the petitioner moved an application before Addl. Chief Judicial Magistrate, Neem-ka-Thana expressing his desire to deposit the fine on that very day but the application was deferred for July 24, 1986 without assigning any reason except mentioning that accused is not present in person. On July 24, 1986 the Additional Chief Judicial Magistrate passed the impugned order; where in he mentioned that the accused has been produced before the court duly arrested who was given six months' simple imprisonment and a fine of Rs. 200/- on February 2, 1984 by that court and thereafter according to him as per orders of the learned Sessions Judge, Sikar, dated May 2, 1986 he was to prepare a warrant for custody of accused in jail mentioning that the benefit of Section 428 Cr.PC may be given to the accused. He accordingly forwarded the accused to jail for serving out six months' simple imprisonment. He further observed that accused has also not deposited a fine of Rs. 200/- hence endorsement be put that he should serve out the sentence in lieu of fine also.

3. This is rarest of the rare case which has come to the notice of the court where not only the callousness on the part of the subordinate judicial officer is exhibited but the order also discloses a flagrant abuse of the power and an utter disregard for the orders of the superior court. The learned Additional Chief Judicial Magistrate has not only not looked into the provisions of law but has clearly flouted the clear orders of his superior officer for reasons best known to him. When the application dated July 19, 1986, was filed before him it was categorically

mentioned there in that one week's time has been extended and the petitioner was ready and willing to deposit the fine on that very day. Fine was not got deposited and the application was deferred for July 24, 1986. The deferring of the application was not only unwarranted but an act of the Magistrate which shows his utter ignorance of the provisions of law. The learned Additional Sessions Judge, Neemka-Thana when extended the period was quite mindful of the provisions of law and had categorically mentioned there in that the accused has a right to deposit the fine prior to completion of his substantive sentence.

4. Section 68, IPC reads as under:

Section 68 - The imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law.

5. Section 69, IPC reads as under:

Section 69 - If, before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than proportion to the part of the fine still unpaid, the imprisonment shall terminate.

A bare perusal of the aforesaid two Sections makes it clear that the intention of the Legislature was not to make the imprisonment awarded in default separate than fine because when ever fine is either paid or recovered through the process of law, the imprisonment which the accused is suffering in default of payment of fine comes to an end. Not only that Section 69, IPC makes it further clear that even if the accused pays portion of the fine he is entitled to remission of his proportionate imprisonment. Even prior to the Criminal Procedure Amendment Act (26 of 1955) when there used to be transportation for life as a form of punishment even then the Madras High Court interpreted Section 69, IPC in favour of the accused and held that when a fine is imposed in addition to transportation and the whole or part of the fine is levied it is the duty of the sentencing Judge to inform the authorities at PORT BLAIR of the fact. The aforesaid case is reported in (2) Madras High Court Reports (Appeals) page 44. This is further clear from the illustration given under Section 69, IPC. Thus the learned Additional Chief Judicial Magistrate had

no power express or implied to have sent the accused to imprisonment when he was ready and willing to deposit the fine within the stipulated period i.e. 7 days extended period. Even otherwise when the earlier application was refused it was obligatory on the learned Additional Chief Judicial Magistrate to have at least accepted that part of the fine which was imposed besides the substantive sentence. Looking from the either angle. the order of the Additional Chief Judicial Magistrate cannot be held to be a valid order. Neither Section 68 nor Section 69, IPC contemplates that the accused should be present in the court for depositing the fine. Even if he is represented by a lawyer and the later moves an application for depositing the fine or deposits the fine it is the bounden duty of the court to accept the same.

6. In the instant case about the illegalities committed lesser said the better. The learned appellate court who passed the order on May 12, 1986 mentioned in its order that in case the money is not deposited by the appellant within one month he will undergo the sentence passed by the trial court. He ought to have made it clear as to which sentence he has to undergo, whether it is the one which was substantive or the one passed in lieu of failure to deposit the fine. Thereafter on July 9, 1984 the learned Additional Chief Judicial Magistrate when issued the warrants of arrest despite the fact that an application was moved before him expressing desire to deposit the fine, as mentioned above, he was atleast obliged to deposit Rs. 200/- which was the initial fine imposed by the trial court and should have mentioned in the warrant that he will not suffer imprisonment in default of fine, but that too was not done. Thereafter when the order, dated July 15, 1986 was passed by the Additional Sessions Judge he rightly interpreted the section but read it as issuing the warrant by Additional Chief Judicial Magistrate for a period of one month in default of payment of fine, he, therefore, read the earlier orders in between lines but keeping in consonance with the spirit of law, but this order, as mentioned above, was not carried out in letter and spirit by the Additional Chief Judicial Magistrate when he rejected the application, dated July 21, 1986. The certified copy of this application shows different dates at different places. But since the copy was applied on July 22, 1984 by all means the application has been filed within stipulated period. I am, therefore, of the opinion that the order of the Additional Chief Judicial Magistrate passed on the application, dated July 19, 1986

as well as his order, dated July 24, 1986 is an abuse of the process of the court and for securing the ends of justice this application under Section 482 Cr.PC deserves to be accepted.

7. I may mention here that because of the orders passed on the application, dated July 19, 1986, and July 24, 1984, the detention of the accused in jail cannot be justified in law and is clearly unlawful. The accused has suffered imprisonment in jail as the learned Additional Chief Judicial Magistrate has failed to discharge his duties properly, but the harm caused to the accused can only accidentally be cured by this Court and it is otherwise not possible for this Court to compensate him for the wrongful detention except that the sentence of fine imposed on him can be remitted.

8. I would accordingly remit the sentence of fine passed against the accused-petitioner, for the accused has suffered an illegal detention because of an order illegally passed by subordinate judicial officer, I consider it to be my moral obligation to compensate the accused-petitioner within powers possessed by me. I accordingly direct the Magistrate to issue the order of release of the accused-petitioner, Bannaram, forth with.