

In Re: Subba Goundan

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Court : Chennai

Decided On : Aug-09-1929

Reported in : 121Ind.Cas.125

Judge : Waller and ;Cornish, JJ.

Appellant : In Re: Subba Goundan

Judgement :

ORDER

1. The petitioner was convicted and sentenced to undergo 3 months' rigorous imprisonment. He appealed and his conviction was affirmed, but the sentence was altered into one month's rigorous imprisonment and a fine of Rs. 60 with a further 2 months' rigorous imprisonment in default of payment He asks in revision to say that the sentence passed on him by the Appellate Court is illegal as amounting to an enhancement He has the support of several decisions; for example, *Bhola Singh v. Emperor* : AIR1924 Pat563 which followed *King Emperor v. Sagwa* 23 A. 497 : (1901)A.W.N. 176 The ratio decidendi in these cases was this-that, in the event of the fine not being paid, the prisoner would serve a sentence equivalent to that passed by the trial Court and still be liable to have the fine collected from him. The same view was taken in *Emperor v. Mehar Chand* 24 Ind. Cas. 607 : 36 A. 485 : 12 A.L.J. 827 : 15 Cri. L.J. 519. With great respect it seems to us that the proviso to Section 386 (I) (b) of the Criminal Procedure Code takes much of the force out of this line of reasoning The Legislature recognised that no sane man, who had money or credit at his disposal, would go to Jail, if he could avoid it by

paying a fine. It, therefore provided that, if the whole of a sentence of imprisonment imposed in default of payment of a fine had been served no warrant should issue against the defaulters property 'unless for special reasons to be recorded in writing the Court considers it necessary to do so.' In practice, no Court would, we imagine, try or levy execution, unless there was property to attach and, as we have pointed out above, it is almost inconceivable that a man would go to Jail, if he had means to pay the fine. It is, consequently, in the highest degree improbable that the contingency which influenced the High Courts of Allahabad and Patna would ever arise. A. contrary view was taken in Queen Empress v. Chagam Jagannath 23 B.439 which followed an unreported decision of this Court.

2. It cannot be denied--indeed, Mr. Sainpath Ayyangar, admits--that in this case, the Appellate Court, in effect, reduced the sentence. The petitioner had only to pay his fine in order to escape from two months in Jail. We find it very difficult to say that a sentence which, if submitted to, has not been enhanced, but reduced, must be held to have been enhanced merely because the prisoner has refused to submit to it. He has an option in the matter. If he does not choose to exercise that option in his own favour, is he to be heard to say 'you must still farther reduce my already reduced sentence, because if I am contumacious, I shall not only have to serve a sentence equal to my unreduced sentence, but will also be liable to have my property attached to pay the fine I have refused to pay.'

3. It is, of course, impossible to decide the question academically or to lay down a principle applicable to all cases. In this particular instance, the petitioner does not appear to say that he is unable to pay the fine or would prefer to suffer the sentence passed on him by the trial Court. Judging by the energy with and the expense at which he has conducted the proceedings, we feel no doubt but that he could pay the fine without any difficulty. We are satisfied that, if he were before us and we offered him the option of paying Rs. 60 or going to Jail for two months, he would choose the former alternative without hesitation. There is, therefore, no reality in his argument that, academically speaking, his sentence has been enhanced. The same test was applied by Piggot, J., in Emperor v. Mehar Chand 24 Ind. Cas. 607 : 36 A. 485 : 12 A.L.J. 827 : 15 Cri. L.J. 519, above cited. We think that the proper test is whether the petitioner really considers a fine of Rs. 60

a heavier sentence than 2 months rigorous imprisonment. That he does consider it to be so, he has not attempted to allege. His contention is that his sentence would be perfectly legal, if we reduced the default term of imprisonment by one day--that is, if his already reduced sentence were still further reduced. We consider it absurd and dismiss his petition.

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