

C.M. Eisaw Vs. State of Karnataka

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Court : Karnataka

Decided On : Jan-28-1988

Judge : P.A. Kulkarni, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 421 and 446(2)

Appeal No. : Criminal Appeal No. 432 of 1985

Appellant : C.M. Eisaw

Respondent : State of Karnataka

Advocate for Def. : C.H. Jadhav, Govt. Pleader

Advocate for Pet/Ap. : A.K. Venkatesh, Adv. for Tomy Sebastian

Judgement :

1. This is an appeal by the surety against the Order dated 18-11-1985 passed by the XIV Additional City Civil and Sessions Judge, Bangalore City, in Sessions Case No. 32 of 1982 sentencing the surety to undergo detention in Civil Prison for four months.

2. The present appellant had stood surety for A-2 for his appearance in the Court below. As A-2 did not appear before the Court, the bond was forfeited and after hearing the surety the Court below remitted a portion of the amount and ordered recovery of Rs. 5,000/- only from the surety. A distress warrant was issued and it

was returned unexecuted saying that the surety had no moveables at all. Thereafter, the surety did not pay the amount. So the Court below ordered his detention in Civil Prison for four months. Hence, this appeal.

3. Section 446(2) Cr.P.C. reads as follows :

'446(2). If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same as if such penalty were a fine imposed by it under this Code : Provided that where such penalty is not paid and cannot be recovered in the manner aforesaid, the person so bound as surety shall be liable, by order of the Court ordering the recovery of the penalty, to imprisonment in civil jail for a term which may extend to six months.'

4. The mode of recovery of fine has been prescribed by Section 421 Cr.P.C. It reads thus :

'421. (1) When 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 movable property belonging to the offender;

(b) issue a warrant to the Collector of the District authorising him to realise the amount as arrears of land revenue from the movable or immovable property, or both, of the defaulter.

.....'

5. In Sohoni's Code of Criminal Procedure, 18th Edition, Vol. 5, on page 4703 it has been stated that order for imprisonment cannot be made before attachment and sale of property. He has further stated that unless a report from the Collector of the District is received as to the recovery of the penalty of fine amount by attachment and sale of movable or immovable property, the Court cannot proceed to order detention of the surety in Civil Prison. Therefore, in view of this and in view of the fact that the Court below has not proceeded to recover the amount by

issuing warrant to the Collector of the District authorising him to realise the amount as arrears of land revenue by the sale of the movable or immovable property of the surety, the present order of detention cannot be sustained.

6. Therefore, under these circumstances, the Order of the lower Court ordering the detention of the surety in Civil Prison is set aside. The appeal is allowed and the matter is sent back to the Court below with a direction that it should issue warrant to the Collector of the District authorising him to realise the amount as arrears of land revenue by the sale of the movable or immovable property, or both, of the defaulter-surety. If the Collector reports that the full of amount cannot be recovered at all on the ground that the surety has no movable or immovable property, then the Court below is at liberty to order the detention of the surety in Civil Prison for such period as it deems fit. The Counsel for the surety is directed to keep his client or his local Advocate, present in the Court below on 22-2-1988.

7. Appeal allowed.

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