

Jadabendranath Panja Vs. Emperor

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Court : Kolkata

Decided On : Jan-14-1936

Reported in : AIR1936Cal149

Appellant : Jadabendranath Panja

Respondent : Emperor

Judgement :

Lort-Williams, J.

1. In this case a Rule was issued to show cause why an order issuing a warrant under Section 386, Criminal P. C., to the Collector of Burdwan, authorising him to realise the unrealised part of a fine imposed on the petitioner in 1932 by a Special Magistrate under Section 17 (2), Criminal Law Amendment Act, should not be set aside.

2. The petitioner was convicted on 27th January 1932, under Section 17 (2), Criminal Law Amendment Act of 1908 for having promoted a meeting under the auspices of the Burdwan Congress Committee which had been declared unlawful. The case was tried by Mr. Section P. Ghose, special Magistrate, Burdwan, who sentenced the petitioner to undergo rigorous imprisonment for two years and six months and to pay a fine of Rs. 500, in default to suffer rigorous imprisonment for six months more. On 8th March 1932, an order was made for the execution of the fine and subsequently, while the petitioner was serving his sentence, a sum of Rs.

44-8-0 was realised by attachment and sale of his moveable properties. In May 1932 Ordinance No. 11 of 1931, under which Mr. Section P. Ghose had been appointed a Special Magistrate, expired. The petitioner alleges that although part of the fine was realised, no intimation of such realisation was given to the jail authorities, with the result that the petitioner had to serve out the whole term of imprisonment inflicted in default of payment of the fine, namely, 6 months in addition to the substantive sentence of imprisonment passed upon him. Further, he alleges that the fact of realisation of a part of the fine, if intimated to the jail authorities, would have earned for him a remission of sentence, but that he received no such remission on account of partial realization of the fine besides the usual remission for good conduct under the Jail Code. Subsequently, on 7th March 1935, a warrant was issued under Section 386, Criminal P. C., by Mr. B. Sinha, Sub-Divisional Magistrate of Burdwan, authorising the Collector of the district to realise the unrealised part of the fine, viz., Rs. 456, according to civil process by attachment and sale of the immoveable properties of the petitioner. The petitioner further alleges that although it appeared clear from the settlement papers, etc., that he had some landed properties, no proper steps were taken to realise the unrealised portion of the fine till after the lapse of three years from the date of his conviction.

3. The arguments raised on behalf of the petitioner are that the Court of Mr. B. Sinha, who issued the warrant, not being a Court of the Special Magistrate who passed the sentence or his successor-in-office, had no power to issue the warrant. Further, the warant was not signed by Mr. Sinha as a Special Magistrate but as Sub-divisional Magistrate of Burdwan. Further it has been argued that under Section 386, Criminal P. C., where the offender has suffered the whole of the imprisonment ordered to be undergone in default of payment of the fine, the Court shall not issue a warrant for the realisation of the fine, unless for special reasons to be recorded in writing it considers it necessary to do so. With regard to the first point, Ordinance 11 of 1931 provided in Chap. 1 for certain emergency powers, and in Chap. 2 for certain Special Criminal Courts, and Section 23 (included in that Chapter) provided that Courts of criminal jurisdiction may be constituted under that Ordinance of the following classes: namely, (i) Special tribunals and (ii) Special Magistrates. The note in the margin of that section is 'Special Court.' Section 386,

Criminal P. C., provides that:

Whenever an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine by issuing certain warrants; 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 such warrant unless for special reasons to be recorded in writing it considers it necessary to do so.

4. Section 389 provides that:

Every warrant for the execution of any sentence may be issued either by the Judge or Magistrate who passed the sentence, or by his successor-in-office.

5. It is contended on behalf of the Crown that Mr. Sinha is the successor-in-office of Mr. Section P. Ghose within the meaning of this section. In my opinion this contention is not sound. The sentence, passed by Mr. Section P. Ghose was passed by him as a Special Magistrate forming a Special Criminal Court within the meaning of Section 23, Ordinance 11 of 1931. That Court came to an end in May 1932. Mr. Sinha, who succeeded Mr. Ghose as Sub-divisional Magistrate, cannot possibly be held to be Mr. Ghose's successor as a Special Magistrate forming a Special Criminal Court within the meaning of that section. Similarly, although Mr. Sinha became a Special Magistrate on the very day he made the order in question, he did not make the order as a Special Magistrate, and it is doubtful whether he even knew that special powers had been conferred upon him. Moreover, he was appointed a Special Magistrate under the Bengal Suppression of Terrorist Outrages Act (12 of 1932). Consequently, it is not possible to argue that on account of this appointment, he became the successor-in-office of Mr. Ghose, the Special Magistrate under the previous Ordinance, who convicted the accused and inflicted the sentence upon him.

6. Ordinance 9 of 1932 in Section 4 thereof provides that where before the expiration of the Bengal Emergency Powers Ordinance, 1931, an order has been made thereunder for the trial of any person by a Special Magistrate, but the trial has not begun, or the trial has proceeded but has not been completed, the offence

may be tried or the trial completed by such Special Magistrate and such Special Magistrate shall continue to have all the powers with which he was vested under the said Ordinance. If a further provision had been made under that section for the execution by warrant of fines inflicted as part of the sentence as in the present case, no difficulty would have arisen. It is conceivable that 'the difficulty might be met by applying the provisions of Section 559, Criminal P. C. That section provides that:

The powers and duties of a Judge or Magistrate may be exercised or performed by his successor-in-office. And when there is any doubt as to who is his successor-in-office, then any such Magistrate or the District Magistrate shall determine, by an order in writing, the Magistrate who shall, for the purposes of the Code or of any proceedings or order thereunder, be deemed to be the successor-in-office of such Magistrate.

7. It is not necessary to give any decision on this point, because that matter is not in issue at the present moment and will have to be decided when if at all, such an order is made in this or any other similar case. The other point raised on behalf of the petitioner is that Mr. Sinha who issued the warrant, did not record any special reason in writing within the meaning of the proviso to Section 386. The reason he recorded was that the petitioner was a man of dangerous character. In my opinion this was not such a reason as is contemplated by the section. In *Digambar Kashinath v. Emperor* 1935 Bom 160, Sir John Beaumont, C.J. said that the Court should follow the policy which seems to have inspired the proviso to Section 386, which appears to be that in general an offender ought not to be required both to pay the fine and to serve the sentence in default. But the proviso enables a warrant to be issued for recovery of the fine even if the whole sentence of default has been served, if the Court considers that there are special reasons for issuing the warrant and in his opinion, those should be reasons accounting for the fact that the fine has not been recovered before the sentence in default has been served. I am in agreement with the remarks of the learned Chief Justice. Except in special cases it seems to me both undesirable and unfair to seek to realise a fine when the sentence ordered to be served in default of payment of the fine has already been served in full; and in my opinion the proviso is intended to deal with cases

where for some sufficient reason the authorities have not been able to realise the fine before the default sentence has been served. It is true that there seems to be some evidence to show that the authorities did try to realise the fine but were not aware that the petitioner possessed landed properties.

8. On the other hand, he alleges that they had the settlement papers which they could have had examined and which would show clearly that he was the owner of the properties, and that their inability to realise the fine was due to their own laches. Whether that be true or not, that is not the reason recorded by the learned Magistrate for issuing a warrant within the meaning of the proviso to Section 386, Criminal P. C. For all these reasons, I am of opinion that the order of Mr. Sinha must be set aside and the warrant quashed.

Jack, J.

9. I agree that the order should be set aside as it appears to be a case which is not contemplated by the Criminal Procedure Code, namely, where there is no successor-in-office to the Special Magistrate. Section 559 applies where there is any doubt as to who is the successor-in-office and possibly it might be held that under that section, the District Magistrate would be empowered to appoint a successor-in-office for the purpose of these proceedings. But in this case no such appointment has been made. As regards the other point, it may be noted that although in the Bombay case, *Digambar Kashinath v. Emperor* 1935 Bom 160, the learned Chief Justice held that the reason given by the Magistrate was not such a reason as is referred to in Section 386, he still refused to interfere with the order for the execution of the warrant on the ground that although the reason given by the Magistrate was not such a reason, still there was a special reason in that case why the warrant should be executed, namely a reason similar to that which the prosecution alleged in the present case i.e. that the authorities had endeavoured to realise the fine but had not been able to do so in due time owing to not knowing where the properties were situated.