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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ Crl. Appl.No.81/2009.

Mohd. Salauddin Appellant/Convict.
Through : Mr. Mukesh Jain with Mr. Jitender
Khanna, Advocates.

Versus

The State(N.C.T.of Delhi) Respondents
Through : Mr.Lovkesh Sawhney, Advocate for
the State.

O R D E R
17.02.2009

CORAM:
HON'BLE MR. JUSTICE G.S. SISTANI

1. Whether reporters of local papers may be allowed to see the Judgment ? **Yes.**
2. To be referred to the Reporter or not? **Yes.**
3. Whether the Judgment should be reported in the Digest? **Yes.**

G.S. SISTANI, J. (ORAL):

1. This is an appeal under Section 374(2) of the Code of Criminal Procedure, 1973 read with Section 482 of the Cr.P.C. for waving of the fine of Rs.8,000/- imposed by learned Trial Court vide judgment and order on sentence dated 03.01.2007 and 06.01.2007, respectively passed in Case No.226/06, FIR No.4662/02, under Sections 498-A/306/509/34, IPC, P.S. Uttam Nagar, Delhi.
2. The appellant was convicted by the learned Trial Court to undergo Rigorous Imprisonment (hereinafter referred to as "RI") for a period of six years with fine of Rs.5,000/- for the offence punishable under Section 306 IPC and in default of the payment of

fine, to undergo a further simple imprisonment (hereinafter referred to as "SI") for one month. For the offence punishable under Section 498A IPC, the appellant was sentenced to RI for a period of one year with a fine of Rs.2,000/- and in default of payment of fine, SI for 15 days. The appellant was also sentenced to undergo RI for a period of six months for the offence punishable under Section 509 IPC and liable to pay a fine of Rs.1,000/- and in default of the payment of fine, to undergo SI for a period of 15 days. All these sentences were to run concurrently.

3. Learned counsel for the appellant submits that he does not wish to assail the judgment on merits, but only seeks wavering of the fine of Rs.8,000/- on the ground that the appellant belongs to a very poor family and was the only bread winner of his family consisting of his mother, wife and six minor children who are at the verge of starvation. Learned counsel submits that the appellant has already served more than the substantial period of his sentence and has undergone a period of five years and six months (approximately) in jail. Learned counsel submits that the appellant has shown satisfactory conduct during his incarceration, he has no criminal history and no other case is pending against him.
4. I have heard learned counsel for the parties as well as gone through the material on record. Before analyzing the facts of this case, it would be worthwhile to note the observations of the Apex

Court in the case of ***Shantilal Vs. State of M.P.***, reported at **(2007) 11 SCC 243**. Relevant portion of the same reads as under:

“32. A general principle of law reflected in Sections 63 to 70 IPC is that an amount of fine should not be harsh or excessive. The makers of IPC were conscious of this problem. The authors of the Code, therefore, observed:

“Death, imprisonment, transportation, banishment, solitude, compelled labour, are not, indeed, equally disagreeable to all men. But they are so disagreeable to all men that the legislature, in assigning these punishments to offences, may safely neglect the differences produced by temper and situation. With fine, the case is different. In imposing a fine, it is always necessary to have as much regard to the pecuniary circumstances of the offender as to the character and magnitude of the offence. The mulct which is ruinous to a labourer is easily borne by a tradesman, and is absolutely unfelt by a rich zamindar. It is impossible to fix any limit to the amount of a fine which will not either be so high as to be ruinous to the poor, or so low as to be no object of terror to the rich. There are many millions in India who would be utterly unable to pay a fine of fifty rupees; there are hundreds of thousands from whom such a fine might be levied, but whom it would reduce to extreme distress; there are thousands to whom it would give very little uneasiness; there are hundreds to whom it would be a matter of perfect indifference, and who would not cross a room to avoid it. The number of the poor in every country exceeds in a very great ratio the number of the rich. The number of poor criminals exceeds the number of rich criminals in a still greater ratio. And to the poor criminal it is a matter of absolute indifference whether the fine to which he is liable to be limited or not, unless it be so limited as to render it quite inefficient as a mode of punishing the rich. To a man who has no capital, who had laid by nothing, whose monthly wages are just sufficient to provide himself and his family with their monthly rice, it matters not whether the fine for assault be left to be settled by the discretion of the courts, or whether a hundred rupees be fixed as the maximum. There are no degrees in impossibility. He is no more able to pay a hundred rupees than to pay a lakh. A just and wise Judge, even if entrusted with a boundless discretion, will not, under ordinary circumstances, ... would leave it quite in the power of an unjust or inconsiderate Judge to inflict on such

an offender all the evil which can be inflicted on him by means of fine....

It appears to us that the punishment of fine is a peculiarly appropriate punishment for all offences to which men are prompted by cupidity; for it is a punishment which operates directly on the very feeling which impels men to such offences. A man who has been guilty of great offences arising from cupidity, of forging a bill of exchange, for example, of keeping a receptacle for stolen goods, or of extensive embezzlement, ought, we conceive, to be so fined as to reduce him to poverty. That such a man should, when his imprisonment is over, return to the enjoyment of three-fourths of his property, a property which may be very large and which may have been accumulated by his offences, appears to us highly objectionable. Those persons who are most likely to commit such offences would often be less deterred by knowing that the offender had passed several years in imprisonment, than encouraged by seeing him, after his liberation, enjoying the far larger part of his wealth." [See *Ratanlal & Dhirajlal's Law of Crimes*, 26th Edn., (2007), pp. 221-22.]

The authors further stated: (*Ratanlal & Dhirajlal* at pp. 226-27)

"The next question which it became our duty to consider was this: When a fine has been imposed, what measures shall be adopted in default of payment? And here two modes of proceeding, with both of which we were familiar, naturally occurred to us. The offender may be imprisoned till the fine is paid, or he may be imprisoned for a certain term, such imprisonment being considered as standing in place of the fine. In the former case, the imprisonment is used in order to compel him to part with his money; in the latter case, the imprisonment is a punishment substituted for another punishment. Both modes of proceeding appear to us to be open to strong objections. To keep an offender in imprisonment till his fine is paid is, if the fine be beyond his means, to keep him in imprisonment all his life; and it is impossible for the best Judge to be certain that he may not sometimes impose a fine which shall be beyond the means of an offender. Nothing could make such a system tolerable except the constant interference of some authority empowered to remit sentences; and such constant interference we should consider as in itself an evil. On the other hand, to sentence an offender to fine and to a certain fixed term of imprisonment in default of payment, and then to leave it to himself to determine whether he will part with his money or lie in gaol, appears to us to be a very objectionable course. The high authority of Mr Livingstone is here against us. He allows the criminal, if sentenced to a fine exceeding one-fourth of his property, to compel the Judge to commute the

excess for imprisonment at the rate of one day of imprisonment for every two dollars of fine, and he adds, that such imprisonment must in no case exceed ninety days. We regret that we cannot agree with him; the object of the penal law is to deter from offences, and this can only be done by means of inflictions disagreeable to offenders. The law ought not to inflict punishments unnecessarily severe; but it ought not, on the other hand, to call the offender into council with his Judges, and to allow him an option between two punishments. In general, the circumstance that he prefers one punishment raises a strong presumption that he ought to suffer the other. The circumstance that the love of money is a stronger passion in his mind than the love of personal liberty is, as far as it goes, a reason for our availing ourselves rather of his love of money than of his love of personal liberty for the purpose of restraining him from crime. To look out systematically for the most sensitive part of a man's mind, in order that we may not direct our penal sanctions towards that part of his mind, seems an injudicious policy.

We are far from thinking that the course which we propose is unexceptionable; but it appears to us to be less open to exception than any other which has occurred to us. We propose that, at the time of imposing a fine, the Court shall also fix a certain term of imprisonment which the offender shall undergo in default of payment. In fixing this term, the Court will in no case be suffered to exceed a certain maximum, which will vary according to the nature of the offence. If the offence be one which is punishable with imprisonment as well as fine, the term of imprisonment in default of payment will not exceed one-fourth of the longest term of imprisonment fixed by the Code for the offence. If the offence be one which by the Code is punishable only with fine, the term of imprisonment for default of payment will in no case exceed seven days."

39. But considering the circumstances placed before us on behalf of the appellant-accused that he is very poor; he is merely a carrier; he has to maintain his family; it was his first offence; because of his poverty, he could not pay the heavy amount of fine (rupees one lakh) and if he is ordered to remain in jail even after the period of substantive sentence is over only because of his inability to pay fine, serious prejudice will be caused not only to him, but also to his family members who are innocent. We are, therefore, of the view that though an amount of payment of fine of rupees one lakh which is minimum as specified in Section 18 of the Act cannot be reduced in view of the legislative mandate, ends of justice would be met if we retain that part of the direction, but order that in default of payment of fine of rupees one lakh, the appellant shall undergo rigorous imprisonment for six months instead of three years as ordered by the trial court and confirmed by the High Court."

5. In the facts and circumstances of this case, wherein the appellant belongs to an extremely poor family, his mother is seriously sick and his wife and six minor children are at the verge of starvation. According to the nominal roll of the appellant, the unexpired portion of sentence of the appellant is five months and twenty one (IFP) days. The appellant being not in a position to pay the fine, it would result in his imprisonment for a further period of two months. Taking into consideration the antecedents of the appellant- the fact that the conduct of the appellant has been satisfactory throughout his jail term; that no other case is pending against him; and the acute financial hardship being faced by the appellant and his family, thus to meet the ends of justice, the order on sentence passed by the learned Trial Court in Case No.226/06, FIR No.4662/02, under Sections 498-A/306/509/34, IPC, P.S. Uttam Nagar, Delhi, in so far as it pertains to payment of fine is concerned is reduced and the appellant is directed to pay a consolidated fine of Rs.500/-.
6. The appeal is disposed of in the above terms.

February 17, 2009

G.S. SISTANI, J.

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