

GAHC010016312020



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./66/2020

MRS. SUSHILA DEVI
W/O LATE PRADIP DAS, R/O VILL-BAMUNIGAON CAMP, P.S.-BOKO, DIST-
KAMRUP, ASSAM

VERSUS

RAFIQUL HASSAN
S/O LATE ABU BAKKAR SIDDIQUE, P/R/O VILL-BAGURIGURI, P.S.-BOKO,
DIST-KAMRUP, ASSAM, P/R/A HOUSE NO. 19, DHIRENPARA, RAGHU NATH
PATH (BYE LANE BANUR ALI PATH), P.S.-FATASIL AMBARI, GUWAHATI-25,
DIST-KAMRUP(M), ASSAM

Advocate for the Petitioner : MR. Y S MANNAN

Advocate for the Respondent : MR. A K AHMED

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY
O R D E R

31.08.2023

Heard Mr. YS Mannan, learned counsel for the petitioner and Mr. IA Hazarika, learned counsel for the respondent.

2. The present application is filed under Section 482 Cr.P.C. praying for

setting aside and quashing of proceeding being CR case No. 152^C/2015, which was initiated by the respondent herein under the provision of Section 421 Cr.P.C.

3. The background fact of the present case is that a complaint was filed by the sole respondent against the present petitioner under Section 138 of the Negotiable Instrument Act, 1881 before the learned Judicial Magistrate 1st Class, Kamrup (M) at Guwahati, which was registered as CR case No. 152^C/2015.
4. The present petitioner was convicted by the learned trial court by judgment dated 06.06.2016 and was sentenced to undergo simple imprisonment for three months and to pay an amount of Rs. 6,00,000/- (Rupees Six Lakhs) as compensation to the respondent to be recoverable as fine and in default of payment of such compensation, simple imprisonment of another two months was awarded.
5. It is an admitted position that the petitioner has undergone simple imprisonment of three months and also two months of imprisonment as she defaulted in paying the compensation as directed. Thereafter, the petition challenged in the present proceeding was filed by the complainant/ respondent for recovery of the compensation amount.
6. It is the case of Mr. Mannan that once the petitioner has undergone the sentence imposed as well as the sentence imposed in default of payment of compensation, no application under Section 421 Cr.P.C. is maintainable and the learned Magistrate shall have no jurisdiction to entertain such application. Accordingly, such application is liable to be dismissed.
7. According to Mr. Mannan the recourse to the provision of Section 421

Cr.P.C. can be taken when fine imposed is not paid, however, in the case in hand there was a direction for sentence of two months in default of payment of such compensation and as the petitioner has also undergone the aforesaid period of sentence of two months there shall not be any question of payment of such compensation. While advancing such argument, Mr. Mannan relies on proviso to Section 421 Cr.P.C. which according to Mr. Mnnan, learned counsel clearly stipulates that when an offender has undergone the imprisonment in lieu of payment of compensation the provision of Section 421 Sub-section 1(a) and (b) cannot be implemented. Mr. Mannan further contends that there is a bar under to proviso to Section 421 Cr.P.C. to issue warrant to arrest or detain in exercise of power under Section 421 Cr.P.C. unless for special reasons to be recorded in writing that it is necessary to do so. Mr. Mannan further contends that the petitioner, who defaulted in appearance though appeared before the learned trial court she was put behind bar and continued to remain behind for more than two months. He further submits that such course of action is absolutely illegal course of action. Accordingly, the entire proceeding should be set aside.

8. Per contra, Mr. IA Hazarika, learned counsel for the respondent submits that though the reliance placed on by Mr. Mannan on the proviso to Section 421 (1), the Hon'ble Apex Court by interpreting Section 421 Cr.P.C. and Section 357 Cr.P.C. held in the case of ***Kumaran vs State of Kerala & Anr*** reported in ***2017 [7 SCC 471]*** that even if the default period of non-payment of compensation is undergone a compensation can still be recovered by exercising power under Section 421 (1)(a) and 421 (1) (b) of the Cr.P.C.

9. This court has given anxious consideration to the arguments advanced by the learned counsel for the parties. In the case of ***Kumaran (supra)***, the Hon'ble Apex Court after extensively dealing with the provision of Section 367, 356, 386 and 421 Cr.P.C. and also the provision of Section 68 and 70 of IPC, at paragraph 23 concluded that the fines are recoverable even after default imprisonment was undergone provided there are special reasons for recovery of the same. The aforesaid paragraph No. 23 is quoted hereinbelow:

“23. A conspectus of the aforesaid judgments would show that compensation under the old Cr.P.C. was always recoverable as a part of fine, and that even after default imprisonment having been undergone, a fine could be collected in the manner provided by Section 386. The requirement of special reasons was introduced by the amending Act, 1923. The special reasons outlined in the Bombay High Court judgment of 1936 as well as in the Mysore High Court judgment of 1964 would show that it is enough that sufficient reasons or some good reason be given in order that fine be realized even after default imprisonment has been undergone. The court held that despite the fact that the reach of Section 386(1) proviso was only qua warrants that issued after default imprisonment was undergone, yet, the principle of the proviso to Section 386(1) would apply even to warrants issued before default imprisonment was undergone. The law, therefore, till the enactment of the 1973 Code, made it clear that Section 386, and Section 70 IPC read together would lead to the conclusion that fines were recoverable even after default imprisonment was undergone provided there were special reasons for recovery of the same. With the Code of 1973 came an interesting change. Sub-section (3) was added to Section 357, which was an entirely new provision making it clear that the Court may, when passing judgment, order the accused to pay by way of compensation such amount as may be specified in the order to the person who has suffered loss or

injury by reason of the act for which the accused person has been sentenced. This is provided that the Court imposes a sentence of which fine does not form a part. Another important change was made in Section 421(1). The proviso to the said Sub-section was altered because the 41st Law Commission Report, in recommending amendments to the old Section 386 stated, after noticing the Bombay High Court judgment in Digambara Case (supra) as follows:

28.10. Fine should be recoverable when compensation has been ordered. We notice that in the above judgment the fact that the complainant has been allotted part of the fine was not considered a relevant special reason for purposes of the proviso as it stands. A contumacious offender should not, in our opinion, be permitted to deprive the aggrieved party of the small compensation awarded to it by the device of undergoing the sentence of imprisonment in default of payment of the fine. When an order under Section 545 has been passed for payment of expenses or compensation out of fine, recovery of the fine should be pursued, and in such cases, the fact that the sentence if imprisonment in default has been fully undergone should not be a bar to the issue of a warrant for levy of the fine. We recommend that the proviso to Section 386(1) should make this clear."

10. The Hon'ble Apex Court further at paragraph No. 27 after dealing the aforesaid provision of law as discussed hereinabove held that Section 70 IPC and proviso to Section 421 (1) Cr.P.C. proviso would make it clear that by a legal fiction even though a default sentence has been suffered yet the compensation would be recoverable in the manner provided under Section 421(1) of the Cr.P.C. It was further held that such course of action would be without the necessity for recording any special reasons inasmuch as the proviso to Section 421 (1) contains the disjunctive 'or' following the recommendation of Law Commission that the proviso to old Section

386(1) should not be a bar to the issue of warrant for levy of fine, even when a sentence of imprisonment for default has been fully undergone. Thereafter, at paragraph 29, the Hon'ble Apex court concluded that the object of legal fiction created by Section 431 is to extend for the purpose of recovery of compensation until such recovery is completed and this would necessarily mean not only the Section 421 of the Cr.P.C. but also Section 70 of the Penal Code.

11. Now, coming to the prayer of the respondent complainant that the money be recovered from the pension of the petitioner, in the considered opinion of this court cannot be done in exercise of power by the Magistrate under Section 421(1) inasmuch as said provision provides for issuance of warrant for attachment and sale of movable property belonging to the offender and in the considered opinion of the court pension may be movable property, however, that cannot be put into sale.
12. In view of the forgoing discussion, reason and decision, this court finds no merit in the present case. Accordingly, same stands dismissed and the matter is remanded back to the learned trial court to decide the matter afresh taking note of the observation made in the present case.

JUDGE

Comparing Assistant