

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.733 of 2015

Raju Tiwari, S/o Gopichand Tiwari, aged about 51 years, R/o Behind Bus Stand Dondi Lohara, Distt. Durg (C.G.)

---- Applicant

Versus

State of Chhattisgarh, Through P.S. Dondi Lohara, Distt. Durg (C.G.)

---- Non-applicant

For Applicant: Mr. Varun Sharma, Advocate.

For Non-applicant/State: Mr. Anant Bajpai, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

06/10/2015

1. The short question that arises for consideration would be whether learned Special Judge NDPS is justified in holding that fine imposed on the applicant must be realized notwithstanding the fact that the applicant has undergone the sentence awarded against him in default of payment of fine?
2. The applicant was convicted in Special Case No.4/2008 by the Special Judge NDPS Act, Durg, for offence under Section 20 (b) (ii) (B) of the Narcotic Drugs and Psychotropic Substances Act, 1985, and sentenced to undergo R.I. for five years and also sentenced to fine of Rs.50,000/-, and in default, to further undergo R.I. for one year by the judgment of conviction and order of sentence dated 25-3-2009.
3. The applicant was arrested on 12-1-2008 in that case and he

completed the substantive jail sentence so awarded of five years on 11-1-2013 and thereafter, he remained in jail against the default in payment of fine sentence from 10-12-2013 for a period of one year and he completed that sentence also on 10-12-2014, as such, he completed the jail sentence as well as the default jail sentence of one year for non-payment of fine. Aforesaid fact is duly verified by the Superintendent, Central Jail, Durg by its memo dated 3-10-2015 which has been placed on record.

4. Learned Special Judge by its order dated 26-6-2015 directed process to be issued for Rs.50,000/- holding that since the offence for which the applicant was convicted under the provisions of the NDPS Act is of serious nature and, therefore, by virtue of the provisions contained in Section 68 of the IPC read with proviso to Section 421 (1) of the CrPC, such an amount of fine is recoverable from the applicant.
5. Feeling dissatisfied with the order directing recovery of Rs.50,000/- from the applicant, this instant revision has been filed by the applicant stating inter alia that invocation of proviso to Section 421 (1) of the CrPC is illegal and bad in law and the order passed by the learned Special Judge is in teeth of the said proviso to sub-section (1) of Section 421 of the CrPC.
6. Mr. Varun Sharma, learned counsel appearing for the applicant, would submit that the order passed by the learned Special Judge NDPS is contrary to the facts and law available on record. He would further submit that the applicant has not only undergone and served the substantive jail sentence of five years awarded by

the Special Judge, but has also undergone the default sentence of one year for non-payment of fine, as he was unable to make payment of the fine amount. Elaborating his submission, he would also submit that proviso to sub-section (1) of Section 421 of the CrPC does not contemplate issuance of warrant, as the applicant has undergone and served default sentence, as such, no special reason has been recorded by the Special Judge for ordering recovery of fine after serving default sentence and no order for payment of expenses or compensation out of the fine has been passed under Section 357 of the CrPC by the learned Special Judge, therefore, the impugned order of the Special Judge NDPS deserves to be set aside.

7. On the other hand, Mr. Anant Bajpai, learned Panel Lawyer appearing for the State/non-applicant, would submit that such an order is in accordance with law and no interference is called for in exercise of revisional jurisdiction under Section 397 read with Section 401 of the CrPC.

8. In order to answer the question raised, it would be appropriate to notice Section 68 of the I.P.C. Section 68 of the I.P.C. provides as follows: -

“68. The imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law.”

9. It would also be pertinent to notice Section 421 of the CrPC which provides for issuance of warrant for levy of fine. Section 421 of the CrPC reads as follows: -

“421. Warrant for levy of fine.—(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 moveable 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:

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 so to do, or unless it has made an order for the payment of expenses or compensation out of the fine under section 357.

(2) The State Government may make rules regulating the manner in which warrants under clause (a) of sub- section (1) are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.

(3) Where the Court issues a warrant to the Collector under clause (b) of sub-section (1), the Collector shall realise the amount in accordance with the law relating to recovery of arrears of land

revenue, as if such warrant were a certificate issued under such law:

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender.”

10. Sub-section (1) of Section 421 of the CrPC provides that when an accused has been sentenced to pay a fine, the Court passing the sentence may take action for recovery of fine by issuing warrant. Proviso attached to sub-section (1) of Section 421 of the CrPC further provides that if the offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant.
11. A careful and meaningful reading of the proviso to sub-section (1) of Section 421 of the CrPC would show that once the accused/offender has undergone the whole period of sentence in default, such a warrant shall not be issued unless for special reasons to be recorded in writing, it considers it necessary so to do, and the Court sentencing the offender has made an order for payment of compensation out of the fine under Section 357 of the CrPC. In fact, the imprisonment which a person is ordered to undergo for non-payment of fine is only a contingent imprisonment. By paying fine before the substantive term of imprisonment, it comes to an end, as person can well avoid undergoing the sentence in default of payment of fine.
12. At this stage, it would be appropriate to notice the relevant decisions on the subject in issue:-

(i) In the matter of Digambar Kashinath v. Emperor¹, the

1 AIR 1935 Bom 160

Bombay High Court while considering the meaning of “special reasons” envisaged by Section 386 of the Cr.P.C. (old) has held that, neither the dangerous character of the offender nor the gravity of the offence or intended to be covered by expression “special reasons” employed in Section 386 of the Code.

(ii) In the matter of **Siddappa v. State of Mysore**², it has been held that “special reasons” contemplated in proviso to Section 386(1) must relate to the fact of non recovery of the fine before the default sentence has been served.

(iii) In the matter of **Hari Singh v. The State**³, the Rajasthan High Court has held that proviso to Section 386(1) which is pari materia proviso to Section 421(1) of the Cr.P.C. (new) are penal in nature and have to be construed strictly and held as under:-

“9. The provisions are penal and have to be strictly construed. A warrant for the levy of amount for attachment after an offender has already undergone the sentence in default for payment of fine shall not be issued by a Court except for “special reasons” to be recorded in writing. What is the true meaning of the expression “special Reasons” in the context of this section?

12. The special reasons are those which have some relation to the failure on the part of the State to recover fine before the offender finished his term of imprisonment in default of fine. No such reasons exist in this case.....”

2 AIR 1957 Mysore 52

3 AIR 1963 Raj. 80

(iv) Thereafter, in the matter of **K. Vaman Shenoy v. Collector of South Kanara, Mangalore**⁴, the High Court emphasised the need for recording special reasons before issuing warrant for recovery of the fine by holding as under in paragraph 20:-

“20.....Therefore, in my opinion, on principle, and in view of the decisions referred to above and the express intention of the Legislature, it must be held that the offender ought not to be made to pay the fine when the imprisonment in default of payment of fine has been undergone by the offender in the absence of special reasons to be recorded in writing. In this case, there is no evidence whatever as to why the Government did not start the execution even though the warrant was issued it, months before its levy and I, during this period, the offender has undergone the imprisonment in default of payment of fine, the warrant ought not to be permitted to be executed in the absence of special reasons given by the State.”

(v) Similarly, in the matter of **Mayanna v. State of Mysore**⁵, it has clearly been held that, when the accused has chosen to undergo imprisonment in default awarded with object of saving his joint family property, it would be improper and unfair after he has undergone the default sentence to take proceedings to recover the fine amount and held as under in paragraph 8:-

4 AIR 1964 Mysore 64

5 AIR 1967 Mysore 40

“8. As the learned Magistrate has not given any special reasons as required by the proviso to Section 386 Cr. P. C., there is want of diligence and a delay of over two years in taking steps for the recovery of the fine amount, I am of opinion that this is not a fit and proper case wherein a warrant should be issued against the petitioner. When the petitioner has chosen to undergo imprisonment in default awarded, with the object of saving his joint family properties by which he and his family live, it would be improper and unfair, after he has undergone the default sentence, to take proceedings to deprive him of his livelihood.”

(vi) Recently, in the matter of **Raveendran v. State of Kerala**⁶, the Kerala High Court has considered the identical issue and held as under in paragraph 23:-

“23. The proviso to sub-section (1) of Section 421 of Code of Criminal Procedure applies in a case where Court has to issue a warrant for recovery of fine. The proviso is to the effect that if the sentence directs that in default of payment of fine, the offender shall be imprisoned and if such offender has undergone the default sentence, in such a case, warrant can be issued only as provided in the proviso. Therefore to apply the proviso, first of all there should be a sentence. The sentence should include payment of fine with a default sentence for the non payment of fine. The offender who is so sentenced has to undergo the default sentence for the non

6 MANU/KE/1677/2012

payment of fine. If these conditions are satisfied unless Court has made an order for the payment of expenses or compensation under Section 357(1) or 359, no warrant can be issued, unless court considers it necessary for special reasons to be recorded in writing.”

13. Thus, from the scheme of provision contained in proviso to sub-section (1) of Section 421 of the Cr.P.C. read with the above-stated pronouncement by various High Courts, it is quite vivid that if a convicted person has fully served the sentence of imprisonment in default of payment of fine, ordinarily no warrant should be issued for realization of fine unless there are special reasons for doing so and such special reasons must have some relation to the failure on the part of the State to recover the fine amount before the convicted person completes his term of imprisonment in default of fine, and the reason relating to gravity of the offence or the character of the offender cannot be styled as “special reasons” as provided in the aforesaid provision. It is held accordingly.

14. The determination of aforesaid question leads me to the next question as to whether the learned Special Judge is justified in issuing warrant for recovering the fine amount holding the offences committed by the applicant under the provisions of NDPS Act are grave and serious in nature. It has already been determined in foregoing paragraphs that the gravity of the offences committed cannot be a special reason within the meaning of proviso to sub-section (1) of Section 421 of the Code. The learned Special Judge has assigned no other special

reason(s) except the gravity of the offence which cannot be sustained in light of the conclusion reached hereinabove.

15. As a fallout and consequence of aforesaid discussion, the impugned order directing issuance of warrant for recovery of fine amount in absence of special reasons is set aside. Warrant if issued, be recalled.

15. Revision is allowed to the extent indicated hereinabove.

Sd/-
(Sanjay K. Agrawal)
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.733 of 2015

Raju Tiwari, S/o Gopichand Tiwari, aged about 51 years, R/o
Behind Bus Stand Dondi Lohara, Distt. Durg (C.G.)

---- Applicant

Versus

State of Chhattisgarh, Through P.S. Dondi Lohara, Distt. Durg
(C.G.)

---- Non-applicant

Head Note

Fine amount cannot be recovered from accused after he has served
default jail sentence.

अभियुक्त द्वारा अर्थदंड की अदायगी में व्यतिक्रम पर भुगती गई कैद की सजा के पश्चात उससे
अर्थदंड की राशी वसूल नहीं की जा सकती।