

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2015

CORAM

THE HONOURABLE DR. JUSTICE S.TAMILVANAN
and
THE HONOURABLE MR. JUSTICE C.T.SELVAM

H.C.P.No.1960 of 2015

S.Mangaleswari
W/o.R.V.K.Sekar @ Ceylon Sekar ... Petitioner/Wife
of the Detenu

Vs.

1. The Superintendent of Prison,
Central Prison I, Puzhal,
Chennai.
2. The Intelligence Officer,
Narcotic Control Bureau,
Chennai. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus to direct the first respondent herein to produce the body and person of the detenu by name R.V.K.Sekar @ Ceylon Sekar, S/o.Karmegam and the husband of the petitioner herein who has been illegally detained in the prison by the first respondent herein before this Court, set him at liberty.

For Petitioner : Mr.R.Rajan

For Respondents : Mr.A.N.Thambidurai
Additional Public Prosecutor

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O R D E R

[Order of the Court was made by C.T.SELVAM, J.]

Petitioner is the husband of the convict prisoner R.V.K.Sekar @ Ceylon Sekar, S/o.Karmegam. Petitioner has filed the present petition seeking a direction to first respondent to produce her husband, alleging his illegal detention in prison.

2. Heard learned counsel for petitioner and learned Additional Public Prosecutor.

3. The short point that arises for consideration is whether the petitioner's husband has served out his sentence and is entitled to be released pursuant to his having paid the fine imposed upon him in one of the two cases, the details whereof we shall discuss herein below. While learned counsel for petitioner would contend that petitioner's husband so is entitled, the first respondent has filed a counter contending otherwise.

4.1. The convict prisoner faced trial in C.C.No.247 of 2004 on the file of Additional District and Sessions Special Court for E.C. & NDPS Act cases, Pudukkottai, for offences u/s.8(c) r/w 21(c) r/w 29 NDPS Act. Under judgment dated 20.03.2006, trial Court convicted and sentenced him to 10 years R.I. and fine of Rs.1,00,000/- i/d. 2 years R.I. There against, an appeal in C.A.No.249 of 2006 has been preferred before the Madurai Bench of this Court. Under judgment dated 02.12.2010, while confirming the finding of conviction, this Court modified the sentence to one of period already undergone and imposed fine of Rs.15,000/- i/d. 2 years R.I. The convict prisoner has paid the fine before learned Special Judge (NDPS Cases), Pudukkottai, on 07.08.2015.

4.2. The convict prisoner faced trial in C.C.No.19 of 2005 on the file of EC & NDPS Court, Salem, for offences u/s.8(c) r/w 21(c), 8(c) r/w 28, 8(c) r/w 29, 8(c) r/w 27 and 8(c) r/w 23 NDPS Act. Under judgment dated 03.10.2011, trial Court convicted and sentenced him to 10 years R.I. and fine of Rs.1,00,000/- for each offence i/d 2½ years R.I. There against, an appeal in C.A.No.698 of 2011 has been preferred before this Court. Under judgment dated 04.04.2013, while confirming the finding of conviction and sentence, this Court modified the default sentence to one of 1 month R.I.

5. The factual position may be tabulated thus:

Details of sentence		
Description	C.C.No.247 of 2004	C.C.No.19 of 2005
Date of Remand	22.12.2004	12.08.2004
Date of Conviction	20.03.2006	03.10.2011
Total days in remand	453	2608
Date of judgment in appeal	10.12.2010	04.04.2013
Date of completion of substantive sentence as per judgment in appeal	10.12.2010	15.07.2014
Default sentence	2 years	5 months

6. Both sides placed reliance on Rule 242 of The Tamil Nadu Prison Rules, 1983, sub-rules 1 to 4 whereof are relevant for our purpose.

"242. Calculation of sentence of imprisonment in default of payment of fine.- Sentences awarded in default of payment of fine shall be calculated as follows:

(1) Sentences imposed in default of payment of fines cannot run concurrently;

(2) If a prisoner sentenced to imprisonment in default of payment of fine receives another sentence while undergoing such imprisonment, the second sentence shall begin from the date on which the first sentence expires or if the fine is paid, from the date of payment.

Illustration. - A prisoner is sentenced on the 31st January to a fine of Rs.30 or in default to two months rigorous imprisonment and on the 12th February of the same year he is sentenced on another account to an additional imprisonment for four months. The fine is paid in full on the 28th February. The sentence for four months should begin from the 28th February and not from the 31st January.

(3) If a prisoner sentenced to a term of imprisonment in default of payment of fine is also either at the same time or subsequently sentenced to another term or to other terms of

imprisonment, imprisonment in default of payment of fine shall be kept in abeyance till the expiration of all the absolute sentences of imprisonment and shall be annulled wholly or partially by the payment of the fine in whole or in part, before that period or so long as imprisonment continues.

Explanation.- This rule covers the case of a prisoner whose first sentence of imprisonment is only in default of payment of fine. The substantive sentence of imprisonment subsequently passed shall count from the date of the first sentence and the imprisonment in default of payment of fine shall take effect last, although a portion of it may have been already served when the substantive sentence were awarded, unless the imprisonment is of a different denomination to that of the substantive sentences, in which case the imprisonment in default of payment of fine shall be completed before the substantive sentences shall take effect.

- (4) 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."

7. The contention of petitioner, placing reliance on Rule 242 (3) of The Tamil Nadu Prison Rules, 1983, is that default sentence of two years pertaining to C.C.No.247 of 2004 stands completed at the expiry of two years from the date of completion of substantive sentence as per the judgment in appeal i.e., on 10.12.2012. The substantive sentence of imprisonment pertaining to C.C.No.19 of 2005 stands completed on 15.07.2014 and the default sentence imposed in the appeal viz., 5 months has also expired on 15.12.2014. Even so, the fine of Rs.15,000/- imposed by the appellate Court in relation to C.C.No.19 of 2005 has also been paid. As such, the petitioner is entitled to release forthwith.

8. The contention of respondents placing reliance on Rule 242(2) of the Tamil Nadu Prison Rules, 1983, is that the default sentence in relation to C.C.No.247 of 2004 had been undergone as on 10.12.2012 and it is only thereupon that the substantive sentence in C.C.No.19 of 2005 has commenced to run, since there

was no direction that both sentences run concurrently. Therefore, according to them, the conviction in C.C.No.19 of 2005 has commenced only on 11.12.2012 and after setting off the remand period of 2608 days the substantive sentence would stand completed therein only on 21.10.2015. It is the further contention that since the fine of Rs.5,00,000/- (Rs.1,00,000 x 5 counts) payable in C.C.No.19 of 2005 has not been paid, the default sentence (1 month for each count) of five months would stand completed on 21.03.2016, on which date the petitioner would be entitled to release.

9. The contentions of both sides are incorrect. For the application of Rule 242 (2) and (3) of the Tamil Nadu Prison Rules, 1983, the requirement is that the first sentence passed against a prisoner should be one in default in payment of fine as distinct from a substantive sentence of imprisonment and fine, the non-payment thereof attracting a further sentence. While sub-rule 2 is itself clear on terms, the understanding of sub-rule 3 requires reference to the explanation which starts with informing, 'this rule covers the case of a prisoner whose first sentence of imprisonment is only in default of payment of fine.' Presently, we are dealing with cases where there are substantive sentences of imprisonment and fine with the non-payment of fine attracting a further sentence. The applicable provision is Section 429 Cr.P.C. which reads thus:

"429. Saving.

- (1) Nothing in section 426 or section 427 shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction.
- (2) When an award of imprisonment in default of payment of a fine is annexed to a substantive sentence of imprisonment and the person undergoing the sentence is after its execution to undergo a further substantive sentence or further substantive sentences of imprisonment, effect shall not be given to the award of imprisonment in default of payment of the fine until the person has undergone the further sentence or sentences."

A plain reading of sub-clause of 2 of section 429 Cr.P.C. informs that the petitioner is entitled to release forthwith.

This Habeas Corpus Petition is allowed. The convict prisoner, R.V.K.Sekar @ Ceylon Sekar, S/o.Karmegam, is directed to be released forthwith unless he is required in connection with any other case.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Superintendent of Prison,
Central Prison I, Puzhal,
Chennai 66.
2. The Intelligence Officer,
Narcotic Control Bureau,
Chennai.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.R.Rajan, Advocate, S.R.No.44761

H.C.P.No.1960 of 2015

CTK(CO)
CA(01/12/2015)

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