

THE HON'BLE SRI JUSTICE P.KESHA RAO

CRIMINAL REVISION CASE No.2587 OF 2014

ORDER:

Heard the learned counsel for the petitioner and learned Public Prosecutor appearing for first respondent-State. Though notice is served on the second respondent, none appeared.

2. This Criminal Revision Case is filed questioning the docket orders dated 17.12.2014 in C.C.No.351 of 2009 on the file of the Court of XIV Additional Judge-cum-XVIII Additional Chief Metropolitan Magistrate, Hyderabad, in sending the petitioner to imprisonment for realisation of fine amount of Rs.3,00,000/-.

3. The facts, in brief, are that the petitioner has been charged for the offence under Section 138 of Negotiable Instruments Act in C.C.No.351 of 2009. On trial, the petitioner was acquitted of the said offence by orders dated 08.11.2010. Aggrieved by the said orders, the second respondent herein filed an appeal in CrI.A.No.527 of 2011 on the file of the Additional Metropolitan Sessions Judge for trial of Communal Offence Cases-cum-VII Additional Metropolitan Sessions Judge at Hyderabad. After hearing, the lower appellate Court allowed the appeal, by judgment dated 26.09.2014 and convicted the petitioner for the offence under Section 138 of the Act and sentenced him to pay a fine of Rs.3,00,000/-, out of which, a sum of Rs.2,95,000/- shall be paid to the second respondent towards compensation under Section 357 of Cr.P.C. Since the petitioner-accused was absent, the lower appellate Court directed the trial Court to take steps for execution of the sentence as per the judgment passed by the lower appellate

Court. Pursuant to the said orders, it appears, Non-Bailable Warrants have been issued against the petitioner on 18.10.2014 by the trial Court. In execution of the said Warrants, the petitioner was apprehended and produced before the learned Magistrate on 17.12.2014. On such production, the petitioner was sent to imprisonment for realisation of fine amount of Rs.3,00,000/-, which was imposed by the lower appellate Court. Aggrieved by the said docket orders, the present Criminal Revision Case is filed.

4. The learned counsel appearing for the petitioner would contend that when an offender has been sentenced to pay fine amount, the Court may take action for recovery of fine amount by way of attachment of sale of any moveable property belonging to the offender or by issuing a warrant to the Collector of the District authorising him to realise the amount as arrears of land revenue from the moveable or immovable property, or both, of the defaulter. The learned counsel also submitted that the learned Magistrate erroneously issued Non-Bailable Warrants against the petitioner in violation of Section 421 of Cr.P.C. In fact, the learned Magistrate ought not to have issued the Non-Bailable Warrants for realisation of the fine amount in a routine manner.

5. The learned Public Prosecutor appearing for the first respondent-State fairly conceded that in cases of imposition of fine simplicitor, the Court has to follow the procedure as contemplated under Section 421 of Cr.P.C.

6. Having heard both the counsel and a perusal of the material on record, particularly the docket order dated 17.12.2014, it is revealed that the petitioner herein was apprehended in execution

of Non-Bailable Warrants and produced before the learned Magistrate on 17.12.2014. It is relevant here to mention that on the date of pronouncement of the judgment by the lower appellate Court, the petitioner was absent and therefore, the trial Court was directed to take steps for execution of the sentence as per the judgment passed by it. On this, the petitioner was arrested. However, in the second limb of the docket order dated 17.12.2014, it is mentioned that the accused-petitioner herein is sent to imprisonment for realisation of the fine amount of Rs.3,00,000/- which was imposed by the lower appellate Court. The said order is contrary to the procedure contemplated under Section 421 of Cr.P.C. For convenience sake, Section 421 of Cr.P.C. reads as under:

“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 movable 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.”

7. From the above, it is clear that in cases where a levy of fine simplicitor is imposed, for recovery of the said fine amount, the Court has to issue a warrant by way of attachment for sale of any movable property belonging to the offender; or by issuance of 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. In the case on hand, though the petitioner has been acquitted for the offence under Section 138 of the Act by the trial Court, on appeal, the lower appellate Court convicted and sentenced him to pay a fine of Rs.3,00,000/-. Admittedly, in default of payment of the said fine amount, there is no order of sentence. Therefore, this Court is of the opinion that in the absence of any default clause, in cases of recovery of the fine simplicitor, the mandatory procedure as contemplated under Section 421 of Cr.P.C. has to be followed. Therefore, the docket order, dated 17.12.2014 to the extent of sending the petitioner to imprisonment for realisation of fine amount of Rs.3,00,000/- is liable to be set aside.

8. Accordingly, the impugned order is set aside to the extent indicated above. However, for recovery of the fine amount imposed by the lower appellate Court, it is open for the trial Court to follow the procedure as contemplated under the provisions of Section 421 of Cr.P.C. read with Form No.43 and 44 mentioned in Schedule-II of Cr.P.C.

9. The Criminal Revision Case is disposed of accordingly.

Pending miscellaneous petitions, if any, shall also stand closed.

P.KESHAVA RAO,J

12th SEPTEMBER 2018.

Tsr

