

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No.745 of 2008**

1. Khageshwar S/o Samaru, Aged about 70 years, R/o Village Santemari, Police Station Basna, District Mahasamund (CG)
2. Ramlal S/o Khageshwar, Aged about 40 years, R/o Village Santemari, Police Station Basna, District Mahasamund (CG)

---- Petitioners**Versus**

1. State of Chhattisgarh Through Principal Secretary, Law & Legislative Affairs, DKS Bhawan, Raipur, District Raipur (CG)
2. District Judge, Mahasamund, District Mahasamund (CG)
3. High Court of Chhattisgarh, Bilaspur, through: the Registrar General, High Court of Chhattisgarh, Bilaspur (CG)
4. Shri V. B. Singh, First Additional Sessions Judge, Mahasamund, District Mahasamund (CG)

---- Respondents**Present:-**

Shri Vaibhav Goverdhan, Advocate for petitioners.

Shri Alok Bakshi, Additional Advocate General with Ms. S. Harshita, Panel Lawyer for respondent No.1-State.

Shri Ranbir Singh Marhas, Advocate for respondents No.2 & 3.

Shri Vivek Tripathi, Advocate for respondent No.4.

Single Bench : Hon'ble Shri Justice Manindra Mohan Shrivastava**JUDGMENT****20/11/2019**

Heard.

1. The petitioners in this writ petition have prayed for payment of compensation on the allegation of their illegal detention.
2. The contents of the writ petition and arguments advanced therewith revealed that the petitioners were accused of commission of offence under

Section 457, 323 & 294 of IPC and were tried for the said commission of offence in Criminal Case No.329 of 2003 in the Court of Chief Judicial Magistrate, Mahasamund. Vide judgment dated 22-03-2007, the trial Court, though, held the two writ petitioners herein and one Manbodh guilty of commission of offence under Section 457 and 323 of IPC, the trial Court imposed sentence till rising and fine of Rs.1,000/- for commission of offence under Section 457/34 of IPC and fine of Rs.500/- on two counts for commission of offence under Section 323/34 of IPC. In total, the petitioners herein and Manbodh were required to pay fine of Rs.2000/-, in default of payment of fine, they were to undergo 30 days R.I. for commission of offence under Section 457/34 of IPC and 15 days R.I. for commission of offence under Section 323/34 of IPC.

3. The petitioners, admittedly, underwent sentence till rising of the Court and thus, they were required to pay fine amount, in default of payment of fine, they were to undergo additional R.I. On the date of judgment passed by the trial Court, each of the petitioners paid Rs.100/- only towards fine and balance amount of fine of Rs.1,900/- was not paid by them. Later on, the two petitioners herein along with third convicted accused, preferred appeal before the appellate Court on 28-05-2007. It appears that MJC proceedings were also opened by the trial Court towards recovery of fine amount, Ramlal deposited balance amount of fine of Rs.1900/- on 28-05-2007 itself. Before the appellate Court, though, an application for suspension of sentence and grant of bail was moved by both the petitioners, the applications came to be rejected vide order dated 12-06-2007. As on this date, as far as Ramlal is concerned, he had already deposited the entire balance amount of fine of Rs.1900/- on 28-05-2007 itself, but it appears that this fact was not brought to the notice of the appellate Court, when the said Court passed the order on 12-06-2007. Though, the other appellant/petitioner-

Khageshwar was required to surrender, as his application under Section 389 of Cr.P.C. was rejected and he had not deposited the fine amount, rendering him liable to undergo default sentence, as far as Ramlal is concerned, he having deposited the entire balance amount of fine on 28-05-2007, was entitled to be released. As has been observed hereinabove, this fact was not brought to the notice of the appellate Court and therefore, the appellate Court did not have any occasion to pass any order on this aspect.

4. Order sheets placed before the Court shows that the learned lower appellate Court/First Additional Sessions Judge, Mahasamund, granted exemption from appearance on subsequent dates and the appeal itself was finally heard on 29-08-2007 and was directed to be listed for judgment on 10-09-2007. However, on that date, as the accused did not appear and sought exemption, case was again adjourned for 17-09-2007. On that day, the learned appellate Court having found that the accused had not appeared, directed issuance of arrest warrant. Order sheet dated 26-09-2007 shows that both the petitioners namely Ramlal and Khageshwar were produced before the Court, upon execution of arrest warrant.

On 27-09-2007, for the first time, it was brought to the notice of the learned lower appellate Court that Ramlal had deposited the entire amount of fine of Rs.1900/- on 28-05-2007 itself. Thereafter, on 08-10-2007, the appellate Court directed release of Ramlal, though on bail, upon furnishing bail bonds. It is further revealed from the petition that Ramlal had furnished bail and he was released. Other accused-Khageshwar, as records speak, deposited the balance amount of fine of Rs.1900/- on 10-10-2007 and then moved an application on 06-11-2007 for release bringing it to the notice of the appellate Court that he has deposited the entire balance amount of fine. Thereafter, the learned trial

Court passed an order on 29-11-2007 for his release on certain condition that he would furnish personal bond of Rs.5,000/- and surety of the like amount to the satisfaction of the concerned Court. The record shows that Khageshwar could not secure release, because he could not manage to furnish security as directed by the Court. Finally, the appeal itself was decided vide judgment dated 12-12-2007, by which, Khageshwar was also directed to be released.

5. Grievance of the petitioners is that as the appellant/petitioner-Ramlal had deposited the balance amount of Rs.1,900/- on 28-05-2007 and Khageshwar on 10-10-2007, irrespective of appellate proceedings, they could not be detained and were entitled to unconditional release.

6. Ramlal was released under bail order dated 08-10-2007 and Khageshwar could not secure release, because of conditions, which were wholly unwarranted, he could be released only when the appeal was finally decided. In the submission of learned counsel for the petitioners, the detention of the two appellants/petitioners herein beyond the dates, on which, they deposited the entire balance amount of fine, becomes completely illegal, for which, they were entitled to appropriate compensation.

7. On behalf of learned counsel for respondents, common submissions have been made that as far as Ramlal is concerned, though, he had deposited the balance amount of fine of Rs.1,900/- on 28-05-2007, such deposit was made in the proceedings for recovery of fine drawn by the trial Court and Ramlal or his counsel did not bring it to the notice of the appellate Court that the balance amount of fine was deposited by them, until an application for release was made, in which, this fact was disclosed, whereafter order of release was passed and Ramlal was actually released.

As far as Khageshwar is concerned, it is submitted that Khageshwar had

deposited the balance amount of fine only on 10-10-2007 and this fact was brought to the notice of the Court by moving an application on 06-11-2007 and he was directed to be released on 29-11-2007, therefore, in these circumstances, detention cannot be said to be illegal. It is submitted that non release of Khageshwar, despite Court order, on account of his inability to comply with the conditions of release on bail, cannot be said to be illegal. Resultantly, detention of Khageshwar cannot be said to be illegal.

8. Admitted position emerging from the records of the case is that when Ramlal and Khageshwar along with third accused-Manbodh were convicted vide judgment of convicted and order of sentence dated 22-03-2007, on that day, Ramlal and Khageshwar, each of them had deposited fine amount of Rs.100/-. Vide judgment of conviction and order of sentence dated 22-03-2007, they were imposed sentence till rising of the Court and fine of Rs.1,000/- and Rs.500/- on two counts, total amount of fine of Rs.2,000/- was imposed for commission of offence under Section 457/34 & 323/34 of IPC. They were released on bail by virtue of bail order passed by the trial Court itself. It cannot be disputed that on 28-05-2007, Ramlal deposited the balance amount of fine of Rs.1900/-, but it appears from the order sheets that this fact was not brought to the notice of the appellate Court till 27-09-2007, and therefore, the proceedings were being drawn, as if, for want of deposit of balance amount of fine, Ramlal was also liable to undergo default sentence.

9. Be that as it may, finally, when he moved an application on 27-09-2007, it was brought to the notice of the Court that the balance amount of fine of Rs.1900/- has been deposited on 28-05-2007 and order was passed for his release on 08-10-2007 and he was released also. It is not a case that even though, this fact was brought to the notice of the appellate Court that the entire

balance amount of fine has been deposited, yet no proceedings were drawn. An application for release was filed on 27-09-2007 and order of release was passed by the learned appellate Court on 08-10-2007. Ramlal was thereafter, released also.

The other accused-Khageshwar, the petitioner herein deposited the balance amount of fine on 10-10-2007 and his application for release was filed on 06-11-2007, which was allowed on 29-11-2007 and by this order, he was directed to be released on bail on certain conditions.

10. Legally speaking, once the appellant/petitioner had deposited the entire fine amount, they were not required to undergo any jail sentence, after deposit of the amount and were entitled to unconditional release. It was not a case where the appellants/petitioners were imposed jail sentence, which they had not undergone. The sentences, which they were liable to undergo, was only default sentence. As long as fine amount was not paid, they were liable to undergo default sentence. As far as entire amount of fine was paid by them, they were entitled to unconditional release. This Court records that the concerned Additional District Judge fail to draw proper proceedings. Once, it was brought to the notice of this Court that the appellant had deposited the entire amount of fine, there was no occasion for the learned appellate Court to direct their release on certain terms and conditions, as if they have been granted bail. Perusal of order of release passed on 08-10-2007 and 29-11-2007 in respect of Ramlal and Khageshwar respectively shows that even after, it was brought to the notice of the learned appellate Court that the entire fine amount has been deposited, instead of directing unconditional release, it only suspended sentence and directed release on certain terms and conditions. Though, Ramlal was able to furnish security/surety for his release, Khageshwar could not do so

and therefore, he had to remain in jail till the appeal itself was finally decided.

11. The manner, in which, applications for release was dealt with by the learned Court below, appear to be completely illegal and bad in law.

12. This Court finds that when two orders were passed by the appellate Court, one on 08-10-2007 and other on 29-11-2007, the petitioners herein neither challenged the same nor availed any remedy against the part of order of conditions imposed on them for release. In these circumstances, though, this Court is not inclined to direct payment of any compensation to Ramlal, because, he was, in fact released vide order dated 08-10-2007, but Khageshwar is entitled to payment of compensation of Rs.50,000/-, because once he deposited the entire balance amount of fine of Rs.1900/- on 10-10-2007, no condition could be imposed for his release and he had to remain in jail until he was released after the appeal itself was decided.

13. In view of aforesaid observations/directions, this petition is partly allowed in favour of Khageshwar only.

SD/-
(**Manindra Mohan Shrivastava**)
JUDGE