

CRM-M No.42681 of 2022

2024:PHHC:016402

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CRM-M No.42681 of 2022

Date of Decision: 06.02.2024

KULDEEP SINGH

.....Petitioner(s)

Vs

STATE OF PUNJAB

....Respondent(s)

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Raman Mohinder Sharma, Advocate
for the petitioner.

Mr. Gurlal Singh Dhillon, Asstt. A.G., Punjab.

HARKESH MANUJA, J. (Oral)

[1]. By way of present petition filed under Section 482 Cr.P.C., prayer has been made for setting aside the order dated 18.02.2021 (Annexure P-3) passed by the Addl. Sessions Judge, Sangrur dismissing the prayer made by the petitioner for release of attached property of Gian Dass father of the present petitioner against recovery of fine of Rs.1 lakh as awarded in terms of order of sentence dated 11.05.1999 passed by the Judge Special Court, Sangrur.

[2]. Having been implicated as an accused in FIR No.55 dated 27.06.1996 registered under Sections 15 of NDPS Act, 1985 at Police Station Sherpur, the petitioner was convicted vide judgment dated 11.05.1999 passed by the Judge Special Court, Sangrur to the following effect:-

“Judgment continues:-

I have heard both sides on the question of sentence. Conviction is for offence under Section 15 of Narcotics Drugs and Psychotropic Substances act, 1985. In view of the bar contained in Section 33 of the Act, he cannot be released on probation. 25 Kilogram poppy husk was recovered in the

case. Considering the facts in totality and the minimum prescribed sentence, I sentence Kuldeep Singh accused/convict to Rigorous Imprisonment for 10 years and to pay a fine of Rs.1 lac in default of which to undergo further rigorous imprisonment for six months. In due course, case property be destroyed. Compliance be made and file be consigned to the record room.

Announced.

*Sd/-
JUDGE SPECIAL COURT
SANGRUR”*

MAY 11, 1999

[3]. For the purpose of recovery of fine of Rs.1 lakh, share of the petitioner out of his ancestral property was ordered to be attached by the Judge Special Court, Sangrur vide order dated 11.11.2002.

[4]. Having undergone the default sentence of 06 months, the petitioner moved an application seeking release of attached property which came to be declined vide order dated 18.02.2021 passed by the Addl. Sessions Judge, Sangrur.

[5]. Impugning the aforesaid order dated 18.02.2021, learned counsel for the petitioner while relying upon Division Bench judgment of this Court passed in **CWP No.5647 of 2007** titled ‘**Bhola Ram vs. State of Punjab and others**’ decided on 19.02.2008 submits that once the petitioner has already undergone the period of default sentence, there was no occasion for the respondents to have taken further steps towards recovery of fine.

[6]. On the other hand, while opposing the prayer made on behalf of the petitioner, learned State counsel submits that the property belonged to the father of petitioner whereas the application for release of attached property was filed on behalf of the petitioner and, therefore, the same was rightly declined.

[7]. I have heard learned counsel for the parties and gone through the paper book.

[8]. Perusal of order dated 10.03.2022 passed by the Judge Special Court, Sangrur clearly shows that the petitioner has already undergone the sentence in default of payment of fine and was thereafter released from jail on 18.07.2009. Once the petitioner has already undergone the sentence in default of payment of fine, in view of decision rendered by the Division Bench of this Court in the case of **Bhola Ram** (supra), the order of attachment of property passed by the Judge Special Court, Sangrur was liable to be withdrawn. Relevant para no.6 of the said judgment is reproduced for reference:-

“6. After hearing learned counsel for the parties, we are of the considered view that the proceedings initiated by respondent on the basis of the order passed by learned Additional Sessions Judge, Barnala, is not sustainable in view of proviso to Section 421 Criminal Procedure Code For facility of reference, Section 421 is reproduced here-in-below:-

"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 defaulters:

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" (Emphasis added)

A perusal of proviso to Section 421(1) Criminal Procedure Code makes it obvious that if an offender has undergone the whole of imprisonment imposed in lieu of the fine on account of default, no Court could issue warrant for the levy of the amount by attachment and sale of any immovable or movable property belonging to such an offender. It is only for special reason to be recorded in writing that such a warrant for the levy of amount could be issued. The intention of the legislature as reflected in the aforementioned proviso clearly is that the stage for issuing warrant for levy of the amount by attachment and sale or issuance of warrant to the Collector to realise the amount as arrears of land revenue would reach only when the offender has opted either to pay fine or to serve sentence. Such an option could be exercised only when the offender has undergone the substantive sentence. He may end up paying fine at that stage or he may opt for serving sentence. Such an interpretation deserves to be preferred because it leans toward protecting the life and personal liberty of a person, which can be deprived of only according to procedure established by law as envisaged by Article 21 of the Constitution."

[9]. Accordingly in view of the aforesaid discussion and in terms of law laid down in **Bhola Ram's** case (supra) the present petition is allowed and the order dated 18.02.2021 passed by the Addl. Sessions Judge, Sangrur is hereby set aside thereby allowing the application for release of the attached property in favour of petitioner.

February 06, 2024
Atik

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No