

Before Kamaljit Singh Ahluwalia, J.

SWARAN SINGH,—Petitioner

versus

STATE OF HARYANA AND ANOTHER,—Respondents

CrI.M. No. M-44878 of 2005

20th April, 2010

Code of Criminal Procedure, 1973 - Ss. 421, 482 - Narcotic Drugs and Psychotropic Substances Act, 1985 - S.15 - Petitioner was convicted to undergo rigorous imprisonment for ten years and fine of rupees one lakh under Section 15 of the Act - In default of fine, the petitioner further directed to undergo rigorous imprisonment for three years by the trial court - Petitioner filed an appeal which was dismissed - Subsequent to the dismissal of appeal the Special Court, Karnal passed an order whereby warrants of recovery of fine were issued so as to recover the amount of fine imposed on the petitioner, pursuant to which tehsildar issued notice of Sale Proclamation to auction the agricultural land of the petitioner - Petitioner prays for quashing the order on the ground that his land may not be sold as he is willing to undergo the sentence imposed in default of payment of fine - Held that warrants of recovery cannot be issued when the petitioner is undergoing his sentence.

Held, that warrants of recovery cannot be issued when the petitioner is undergoing his sentence. In case the petitioner was willing to undergo the sentence imposed on him in default of payment of fine, then warrants of recovery cannot be issued for the recovery of fine.

(Para 7)

Further Held, That after the petitioner undergoes his entire sentence, he will be at liberty to either pay the fine or undergo further imprisonment in default of payment of fine. In case the petitioner opts not to undergo the imprisonment in default of payment of fine, the trial court would be at liberty to initiate the process for recovery under Section 421 of the code of criminal procedure.

(Para 7)

Ranjit Saini, Advocate, *for the petitioner.*

Manish Deswal, Deputy Advocate General, Haryana, *for the respondents.*

KANWALJIT SINGH AHLUWALIA, J.

(1) The present petition has been filed under Section 482 of the Code of Criminal Procedure praying for quashing of the order dated 15.4.2004 (Annexure P2) whereby warrants of recovery have been issued by the Special Court, Karnal.

(2) The brief facts necessary for the adjudication of the present case are that the petitioner was convicted to undergo rigorous imprisonment for ten years and fine to the tune of rupees one lakh under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as “1985 Act”). In default of payment of fine, the petitioner was further directed to undergo rigorous imprisonment for three years by the trial Court.

(3) Aggrieved against the order of the trial Court, the petitioner had filed an appeal before this Court which was dismissed on 29.10.2003. Subsequent, to the dismissal of the appeal the impugned order was passed by the Special Court, Karnal, whereby warrants of recovery have been issued so as to recover the amount of fine imposed on the present petitioner. In pursuance of the impugned order, respondent no.3 Tehsildar Mazaffar Nagar, U.P. has issued notice of Sale Proclamation to auction the agricultural land of the petitioner. The copy of the notice has been annexed with the present petition as Annexure P3. This has prompted the petitioner to invoke the inherent jurisdiction of this Court praying for the quashing of the impugned order on the ground that his land may not be sold as he is willing to undergo the sentence imposed in default of payment of fine. It has been averred by the petitioner that he is a poor man having four children, out of which three daughters are of marriageable age. It has been further stated that the agricultural land is the only source of income for the entire family and would cause immense hardship to the petitioner and his family, in case the same is auctioned for the recovery of the fine.

(4) I have heard the counsel for the parties and perused the record. The sole question which arises for the consideration of this Court is that whether warrants of recovery can be issued for the recovery of fine and coercive measures can be initiated in pursuance thereof, when the petitioner is ready and willing to undergo the sentence imposed on him, in default of payment of fine.

(5) Before proceeding any further, it would be pertinent to mention that this question stands conclusively answered by a Division Bench of this Court in the case of **Bhola Ram versus State of Punjab (1)**. In that case also, the petitioner had been convicted under Section 18 of the 1985 Act. The petitioner was sentenced to undergo rigorous imprisonment for ten years and also to pay a fine of rupees one lakh. In default of payment of fine, the petitioner was required to undergo imprisonment of two years. For recovering fine, the Court of Additional Sessions Judge, Barnala, asked the Collector, Barnala, to recover the amount of Rs.1,00,000/- of fine, as arrears of land revenue and in pursuance thereof the Collector had attached the entire land of the petitioner. Whether the same could be done, when the petitioner was undergoing his sentence reference was made by this Court to the provisions of Section 421 of the Code of Criminal Procedure which 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, authorizing him to realize the amount as arrears of land revenue from the movable or immovable property, or both of the defaulters :

(1) 2009 (5) R.C.R. (Criminal) 485

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 supplied).

(6) In view of the proviso to section 421 of the Code of Criminal Procedure, it was held as under:

“A perusal of proviso to Section 421(1) Cr.P.C. 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 realize 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.*” (Emphasis supplied)

(7) The decision by this Court in **Bhola Ram's case** (*supra*) conclusively answers the question in favour of the petitioner. It has been held that warrants of recovery cannot be issued when the petitioner is undergoing his sentence. In case the petitioner was willing to undergo the sentence imposed on him in default of payment of fine, then warrants of recovery cannot be issued for the recovery of fine. To the similar effect are the decisions rendered by this Court in the case of **Radhey Shyam versus State of Haryana (2)** and Kerala High Court in **Bhargavan Pillai versus State of Kerala, (Kerala) (3)**. In view of the well- settled position of law, the case of petitioner is bound to succeed. Therefore present petition is allowed and the impugned order dated 15.4.2004 (Annexure P2) passed by the Special Court, Karnal, is quashed, subject to the following observations:

- (i) As per the custody certificate placed on record, the petitioner had undergone a total sentence of five years, five months and seventeen days as on 21.4.2009. After the petitioner undergoes his entire sentence of ten years, he will be at liberty to either pay the fine or undergo further rigorous imprisonment for three years in default of payment of fine. In case the petitioner opts not to undergo the imprisonment in default of payment of fine, the trial Court would be at a liberty to initiate the process for recovery under Section 421 of the code of criminal procedure.
- (ii) In case the petitioner is willing to make a part payment of the fine, the benefit of provision of Section 69 of the Indian Penal Code would be available to him. Section 69 provides for the termination of imprisonment on payment of proportional part of fine.

S. Sandhu

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- (2) 2007(4) R.C.R.(Criminal) 230
 - (3) 2000(2) R.C.R.(Criminal) 59