
(1987) 10 RAJ CK 0020
In the Rajasthan High Court

Bagdaram

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 29-10-1987

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 389, 421, 428
Penal Code, 1860 (IPC) — Section 323

Citation : (1989) CriLJ 414 : (1988) 1 RLW 32 : (1987) 2 WLN 817

Hon'ble Judges : Navin Chandra Sharma, J

Bench : Single Bench

Judgement

Navin Chandra Sharma, J.—I have heard Mr. P. R. Chaudhary counsel for the appellant and Mr. S. K. Mathur Public Prosecutor in this appeal.

2. Appellant Bagda Ram has been convicted u/s 323, I.P.C. and has been sentenced to one year's rigorous imprisonment and with a fine of Rs. 500/-. It has been provided that in default of payment of fine, the appellant would further undergo rigorous imprisonment for three months. An order was also passed u/s 428, Cr. P.C. that the period during which the appellant has been under detention during investigation, inquiry or trial before the date of conviction shall be set off against the term of imprisonment imposed on him on his conviction.

3. It was contended by Mr. P. R. Chaudhary that the appellant has already suffered 18 months imprisonment during the trial and thus he should be ordered to be released. As against this, it was contended by the Public Prosecutor that the appellant has not deposited the fine of Rs. 500/- imposed upon him and, therefore, he has to undergo imprisonment of three months in default of payment of fine and this period of three months of rigorous imprisonment awarded in default of payment of fine cannot be set off u/s 428, Cr. P.C.

4. The learned Counsel for the appellant Bagdaram referred to the decision of this Court in Budha Ram Vs. The State of Rajasthan, That decision was in connection with suspension of sentence u/s 389 of the Cr. P.C. The language of proviso to Section 421(1) and 428, Cr. P.C. is very clear. Section 428 of the Code

excludes the imprisonment in default of payment of fine from being subjected to a set-off of the period of detention undergone by a convict during the investigation, inquiry or trial in the case. Proviso to Section 421(1), Cr. P.C. forbids the issue of a warrant for the levy of the amount of fine by attachment or for realising the amount as arrears only for the offenders who have already undergone the whole of the imprisonment imposed in default of payment of fine. Since the appellant has admittedly not deposited the amount of fine of Rs. 500/-, he is liable to undergo rigorous imprisonment for three months imposed upon him in default of the payment of fine and this period of imprisonment awarded to him in default of payment of fine cannot be subjected to a set-off by the period the appellant had been under detention during the investigation, inquiry or trial of the case.

5. No other point was argued in this appeal.

6. The appeal has, therefore, no force in it and it is hereby dismissed.