
(2017) 03 RAJ CK 0128
In the Rajasthan High Court
Case No : 42 of 2017

Om Prakash S/o Shri Mool Chand

APPELLANT

Vs

The State of Rajasthan & Ors

RESPONDENT

Date of Decision : 09-03-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 69](#), [Section 341](#) - Service of summons on witness by post - Appeal
[Indian Penal Code, 1860](#), [Section 362](#) - Ab

Citation : (2017) 03 RAJ CK 0128

Hon'ble Judges : Mohammad Rafiq, Dinesh Chandra Somani

Bench : DIVISION BENCH

Advocate : Anshuman Saxena, Vishram Prajapat, B.N. Sandu, R.S. Raghav

Judgement

1. Issue notice. Mr. B.N. Sandu, learned Additional Advocate General, accepts notices on behalf of the respondents.

2. This habeas corpus petition has been filed by petitioner Om Prakash, a convict serving sentence in the Central Jail, Bikaner. He was convicted for offence under Sections 302 and 341 of the Indian Penal Code vide judgment dated 18.05.2012 passed by learned Additional Sessions Judge (Fast Track) No.2, Sikar, Headquarters Shrimadhapur, in Sessions Case No.5/2010 - State Vs. Om Prakash and Others. For offence under Section 341 IPC he was sentenced to suffer one month's simple imprisonment, and for offence under Section 302 IPC he was sentenced to suffer life imprisonment with fine of Rs.5000/- and in default of payment of fine, he was to suffer additional three months' simple imprisonment. Petitioner challenged the aforesaid judgment by filing D.B. Criminal Appeal No.886/2012 - Om Prakash Vs. State of Rajasthan. This court, vide judgment dated 08.02.2017, allowed the appeal in part, and converted his conviction for offence under Section 302 IPC into one for offence under Section 304 Part-II of the IPC, and sentenced him to suffer seven years rigorous imprisonment with

fine of Rs.50,000/- and in default in payment thereof, the petitioner was ordered to further undergo two years" rigorous imprisonment. Amount of fine was ordered to be paid to the legal heirs of deceased as compensation.

3. Mr. Anshuman Saxena, learned counsel for petitioner has referred to the certificate dated 22.02.2017 issued by the Superintendent, Central Jail, Bikaner, according to which, the petitioner has already served out substantive sentence of seven years on 30.06.2015 and now he has been serving out sentence of default imprisonment due to non-deposit of the amount of fine of Rs.50,000/-.

4. Learned counsel for petitioner submitted that the petitioner preferred an application through his advocate on 25.02.2017 before the court of Additional Sessions Judge, Shrimadhopur, for depositing proportionate amount of fine towards the remaining period of deficit imprisonment, but the same has not been allowed to be done because of the directions of the division bench of this court contained in the judgment dated 08.02.2017. According to learned counsel for petitioner, the petitioner has served out the sentence of one year and eight months out of total period of two years towards default clause and therefore the petitioner in the application dated 25.02.2017 requested the trial court for permission to deposit the proportionate amount of fine for remainder part of imprisonment of default. The trial court has however not accepted his request and has not even decided the application either way. He also made similar request to the jail authorities, but they also not accepted his request either. Petitioner also served a legal notice for demand of justice on the Superintendent, Central Jail, Bikaner, but so far, they have not shown their preparedness to accept the proportionate amount of fine for remainder period of imprisonment of default clause.

5. Mr. Anshuman Saxena, learned counsel for petitioner, in support of his argument, has cited a judgment of the division bench of this court in D.B. Civil Writ (Habeas Corpus) Petition No.57/2015 - Jagdish Vs. The State of Rajasthan and Others, decided vide judgment dated 24.04.2015, wherein it has been held that when a person is convicted in appeal, it follows that the appellate court has exercised its power in the place of the original court and, conviction and sentence stands substituted for what was awarded by the trial court and shall have retroactive effect from the date of judgment of the trial court. Thus, conviction at the appellate stage relate back to the date of the trial courts" verdict, appellate judgment being a replacement of the original judgment. Contention of learned counsel is that the date on which the petitioner was originally taken in detention, shall be the point of commencement for commutation of period of sentence and in this manner the petitioner must be held to have served out the substantive sentence of seven years rigorous imprisonment and also the period of one year and eight months against the default imprisonment of two years. In view of his willingness to deposit the proportionate amount of fine, his further detention should be declared as illegal and he should therefore be ordered to be released on acceptance of the proportionate amount of fine. Learned counsel for

petitioner, in support of his contention, has referred to Section 69 of the Indian Penal Code, especially the illustration given below thereto.

6. Mr. B.N. Sandu, learned Additional Advocate General for respondents, submitted that the contention of the petitioner to pay the proportionate amount of fine for remainder period of imprisonment of default clause, cannot be accepted in view of the specific direction of this court in the judgment passed in his appeal, which required the petitioner to deposit the amount of Rs.50,000/- and on its deposit, the same was ordered to be paid to the legal heirs of the deceased as compensation. Acceptance of prayer of the petitioner would tantamount to modification of the said judgment, which is barred by Section 362 of the Code of Criminal Procedure. If at all, the petitioner is dissatisfied therewith, he should apply for clarification of the aforesaid judgment.

7. Having considered rival submissions and perused the material on record, we find that the petitioner has indeed completed substantive sentence of seven years and also thereafter served out further sentence of one year and eight months, which is borne out from the certificate of the Superintendent, Central Jail, Bikaner, dated 22.02.2017. As per the said certificate, the period of sentence for failure of the petitioner to deposit the amount of fine under default clause commenced from 01.07.2015. Section 69 of the IPC in this behalf is quite categorical in providing that if, before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate. In order to explain the manner in which the aforesaid provision has to be implemented, the legislature has given an illustration below Section 69 of the IPC, which reads thus, "A is sentenced to a fine of one hundred rupees and to four months" imprisonment in default of payment. Here, if seventy-five rupees of the fine be paid or levied before the expiration of one month of the imprisonment, A will be discharged as soon as the first month has expired. If seventy-five rupees be paid or levied at the time of the expiration of the first month, or at any later time while A continues in imprisonment, A will be immediately discharged. If fifty rupees of the fine be paid or levied before the expiration of two months of the imprisonment, A will be discharged as soon as the two months are completed. If fifty rupees be paid or levied at the time of the expiration of those two months, or at any later time while A continues in imprisonment, A will be immediately discharged."

8. Aforementioned Section 69 of the IPC and aforequoted illustration make it evidently clear that the petitioner is certainly entitled to be set free soon upon deposit of the proportionate amount of fine. Merely because the judgment delivered in appeal filed by the petitioner provided that the amount of fine so deposited by the petitioner, shall be paid as compensation to the legal heirs of the deceased, would not afford justification for his continued detention in jail, if he is prepared to pay the proportionate amount of fine as against remainder of

the default imprisonment. Even otherwise, if eventually the petitioner serves out the complete imprisonment of two years against default clause, nothing at all would be required to be deposited by him towards fine. Therefore to say that non-deposit of the amount of fine would result in non-payment of compensation to legal heirs of the deceased, can not be a reason not to release the petitioner even when he has completed two years imprisonment against default clause. On the same analogy, therefore, the contention that since the amount of fine required to be deposited by the petitioner has to be paid to the victim and till he deposits that amount, he cannot be released, would be too specious a plea to be accepted. In any case, he shall have to be released either when he completes the imprisonment of two years or deposits the amount in proportion of the remaining period of default imprisonment.

9. The judgment of division bench of this court in criminal appeal does not call for any clarification as the same is quite lucid and clear. But then, the said judgment, when it comes to the question of implementation of sentence part, is always subject to the Section 69 of the IPC. The Parliament purposely provided in the aforesaid Section that if, before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate. The action of the respondents in not accepting the proportionate amount of fine towards default clause, is wholly illegal and therefore further and continued detention of the petitioner in jail despite his preparedness to deposit the proportionate amount of fine is liable to be declared illegal and unconstitutional.

10. In the light of the view that we have taken of the matter, we are persuaded to allow this habeas corpus petition and it is accordingly allowed. The respondents are directed to immediately and forthwith release the petitioner on his depositing the proportionate amount of fine for the remainder of the imprisonment owing to the default clause.