

(1981) 06 KL CK 0009
In the High Court Of Kerala

V.K. Karunakaran Nair

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 03-06-1981

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 405
Penal Code, 1860 (IPC) — Section 409, 467, 477A

Citation : (1981) CriLJ 1161

Hon'ble Judges : U.L. Bhat, J

Bench : Single Bench

Judgement

U.L. Bhat, J.—The petitioner was convicted by the Sub-Divisional Magistrate, Kanjirappally in C. C. No. 275 of 1976 under Sections 409, 477A and 467, I.P.C. and sentenced to pay a fine of Rs. 500 each in two counts and to undergo imprisonment till the rising of the court and to pay a fine of Rs. 1000 under another count. Conviction and sentence were confirmed in Crl. Appeal No. 134 of 1977 of the Sessions Court, Kottayam. The accused was acquitted by this Court of all the charges in Crl. Appeal No. 138 of 1979 on 1-12-1980. The judgment said that the conviction and sentence entered against him was set aside and he was acquitted of all charges. Meanwhile the petitioner appears to have paid the total amount of fine of Rs. 2J000. In the normal course he appears to have filed an application before the first court praying for refund of the amount which he has paid as fine. In the affidavit filed in support of present petition, it is stated that even though he had moved the application the learned Magistrate is not sanctioning the same early observing that there is no specific direction in the order of this Court for refund of the amount. Since the party has sworn to an affidavit regarding this aspect, I assumed this averment to be true. The question which arises for consideration is whether a specific direction by the reversing court for refund of fine already paid is necessary to persuade the first court to refund the fine. Apparently the learned Magistrate appears to have been carried away by a practice, which, it appears to me cannot be regarded as wholesome or correct, of refunding fine only where the reversing court specifically directs a

refund of fine paid, if any. Instead of relying on the so-called practice the learned Magistrate would have done well to peruse the relevant provisions of the Criminal Procedure Code. 1973. As to what happens when the High Court reverses a conviction and sentence in appeal is dealt with in Section 388 of the Code. There is a parallel provision in relation to reversals effected by the High Court or the Sessions Court in revision proceedings. That provision is Section 405 of the Code. This Section, in effect, states that where a court of revision revises a case, it shall in the manner provided by Section 388 of the Code certify its decision or order to the court by which the sentence revised was passed and thereupon, that court to which the order of the revisional court is certified, shall "make such orders as are conformable to the decision so certified; and, if necessary, the record shall be amended in accordance therewith".

2. A reading of Section 405 of the Criminal Procedure Code makes it clear beyond any doubt that where the decision of a court of revision is certified to the first court, it is the duty of the latter court to make such orders as are conformable to the decision which has been certified. This means that where, as per the order of the first court, a person has been sentenced to imprisonment it is the duty of the first court to pass an order to conformity with that of the reversing court by issuing an appropriate warrant. So also it means that where the order revised is an order of imposition of sentence of fine and where such sentence is revised, it is the duty of the first court, in conformity with the order of the revising court, to pass appropriate consequential orders with reference to the fine already paid. It was wholly inappropriate for the learned Magistrate to insist on an observation in the order of the revising court to the effect that the fine, if any paid will be refunded in order to pass an order of refund of fine. Such an observation in the order of the reversing or revising court is, in the context of Section 405 of the Code, wholly unnecessary. Section 405 imposes a duty on the Magistrate to pass appropriate orders which, in the present case, would include an order of refund of fine also. If the learned Magistrate had as sworn to by the petitioner, orally observed that he cannot refund the fine when an appropriate observation in the order of the revising court, fustic it was wholly erroneous and also inappropriate. I do not think it is necessary for me to pass any specific order directing him to refund the fine. In the light of the above observations, the petition is closed.

A carbon copy of this order will be furnished to the counsel for the petitioner on usual terms.