

Sham Singh (Convict) *v.* State of Punjab through Secretary, Home Department, Punjab (J. M. Tandon, J.)

(5) Another half-hearted objection raised in the appeal is that for an offence under section 5 of the Explosive Substances Act, it is necessary for the prosecution to prove that the explosive substance was found to be in possession of the accused under such circumstances as to give rise to a reasonable suspicion that he has not possessed the same for a lawful object. The contention is to be merely heard and repelled. Four hand-grenades recovered in the present case could not possibly be meant for a lawful object unless of course the appellant was fighting a battle with an enemy in war.

(6) No other argument has been addressed in regard to the merits of the case, nor can anything be said in this behalf. The testimony of numerous witnesses produced at the trial, clearly establishes the guilt of the appellant. The appeal is dismissed. His conviction and the sentence imposed upon him by the trial Court, are maintained. The appellant is on bail. He shall be taken into custody to undergo the unexpired portion of his sentence.

H.S.B.

Before J. M. Tandon, J.

SHAM SINGH (CONVICT),—*Petitioner.*

versus

STATE OF PUNJAB,—*Respondent.*

Criminal Writ Petition No. 48 of 1979.

July 31, 1979.

Indian Penal Code (XLV of 1860)—Sections 68 to 70—Limitation for recovery of fine imposed, expired—Convict—Whether still liable to suffer imprisonment in default of payment of fine—Sections 68 and 69—Whether independent of Section 70.

Held, that section 68 and 69 of the Indian Penal Code are independent of Section 70. The expiry of limitation for levy of fine imposed under section 70 would in no way affect the liability of the

convict to undergo imprisonment in default of payment of fine under Section 68. The liability of the convict to undergo the sentence of imprisonment in default of payment of fine will cease only after the fine imposed is levied or paid irrespective, of the expiry of the limitation for its recovery. (Para 6).

Petition under Articles 226/227 of the Constitution of India praying :

- (i) *that a writ in the nature of Habeas Corpus be issued directing the respondents to release the petitioner forthwith as the petitioner has already undergone more sentence than required under Section 70 of the Indian Penal Code.*
- (ii) *that any other writ, direction or order be issued which this Hon'ble High Court may deem fit and proper in the circumstances of the case.*
- (iii) *That filing of affidavit in support of the petition may please be dispensed with.*
- (iv) *That the sentence of the convict-petitioner be suspended during the pendency of the present writ petition.*
- (v) *that cost of the petition in this case may please also be awarded to the petitioner.*

V. K. Jindal, Advocate, for the Petitioner.

Bachittar Singh, Advocate, for the State.

JUDGMENT

J. M. Tandon, J.

(1) Sham Singh, son of Pritam Singh stands convicted under sections 408 and 468, Indian Penal Code, and sentenced to five year's rigorous imprisonment and a fine of Rs 20,000 in default of payment of which further rigorous imprisonment for two years under the first court, and to three years' rigorous imprisonment and fine of Rs. 5,000 in default of payment of which further rigorous imprisonment for six months under the second. In another case, he stands convicted under section 408 Indian Penal Code, and sentenced

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to one year rigorous imprisonment and a fine of Rs 500; in default of payment of which further rigorous imprisonment for four months. In the third case, he again stands convicted under sections 408 and 468 Indian Penal Code and sentenced to five year's rigorous imprisonment and a fine of Rs. 10,000/- in default of payment of which further rigorous imprisonment for 1½ years under the first count, and to three years rigorous imprisonment and a fine of Rs. 5,000/- in default of payment of which further rigorous imprisonment for six months under the second. All the substantive sentences were ordered to run concurrently.

(2) According to the petitioner, he was convicted by the Additional Sessions Judge, Bhatinda on March 24, 1973, and he has since completed six years rigorous substantive sentence on March 23, 1979 and presently is undergoing sentence in default of payment of fine. The petitioner has moved the present *habeas corpus* petition alleging that his detention for undergoing sentence in default of payment of fine is unauthorised and illegal inasmuch as the limitation prescribed under section 70 of the Indian Penal Code for the recovery of fine imposed has since expired. The petitioner has, therefore, ceased to remain liable to undergo imprisonment in default of payment of fine because it cannot now be recovered. He has prayed that the authorities be directed to release him forthwith.

(3) Sections 68 and 69, Indian Penal Code, which deal with the imprisonment in default of payment of fine read:—

68. Imprisonment to terminate on payment of fine,—

The imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law.

69. Termination of imprisonment on payment of proportional part of fine,—

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.

(4) These two sections are clear that the imprisonment in default of payment of fine is to terminate on payment of fine or its levy by process of law and not otherwise.

(5) Section 70, Indian Penal Code, prescribes limitation for the recovery of fine and it reads:—

70. Fine leviable within six years, or during imprisonment.
Death not to discharge property from liability:—

The fine, or any part thereof which remains unpaid, may be levied at any time within six years after the passing of the sentence, and, if, under the sentence, the offender be liable to imprisonment for a longer period than six years, then at any time previous to the expiration of that period; and the death of the offender does not discharge from the liability any property which would, after his death, be legally liable for his debts.

(6) Sections 68 and 69 are independent of section 70. The expiry of limitation for levy of fine imposed under section 70, Indian Penal Code, would in no way affect the liability of the convict to undergo imprisonment in default of payment of fine under section 68. The argument of the learned counsel for the petitioner that the petitioner ceases to remain liable to undergo imprisonment in default of payment of fine after the expiry of the limitation prescribed under section 70, Indian Penal Code, is outright fallacious. His liability to undergo the sentence of imprisonment in default of payment of the fine will cease only after the fine imposed is levied or paid irrespective of the expiry of limitation for its recovery. It is admitted that the fine imposed on the petitioner has neither been levied nor paid so far. The petitioner, under these circumstances, shall have to undergo the sentence of imprisonment awarded to him in default of payment of fine imposed.

(7) In the result, the detention of the petitioner being neither unauthorised nor illegal, the petition fails and is dismissed.

H.S.B.