

Before S. C. Mital, J.

JAGTAR SINGH,—Petitioner.

versus

STATE OF PUNJAB,—Respondent.

Criminal Revision No. 1187 of 1980.

November 17, 1980.

Code of Criminal Procedure (2 of 1974)—Sections 421 and 446—Surety bond executed by a person for securing the release on bail of an accused person—Released person subsequently jumping bail—Surety bond forfeited and surety directed to pay amount of the bond—Surety unable to pay such amount—Surety—Whether liable to suffer imprisonment for the non-payment of the penalty.

Held, that a reading of section 446 of the Code of Criminal Procedure 1973 would show that no provision has been made for the imprisonment of the person liable to pay the penalty. Moreover, sub-section (2) of section 446 lays down that if sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same as if such a penalty were a fine imposed under the Code. In this background, the provisions of section 421 are relevant. A reading of the said section would show that the only mode for recovery of penalty is by invoking the said section which nowhere provides for imprisonment. To the contrary proviso to sub-section (3) of section 421 rather bans the arrest or detention in prison of the offender in execution of the warrant issued to the Collector. In this view of the matter the surety who is unable to pay the amount stipulated in the bond executed by him is not liable to suffer imprisonment. (Paras 3 and 4).

Petition for revision under section 397/401 of Cr.P.C. of the order of Shri M. L. Merchea, Sessions Judge, Patiala, dated 9th September, 1980, affirming the judgment, dated 28th August, 1980 passed by Shri H. R. Kaushik, J.M.I.C., Patiala convicting and sentencing the petitioner.

Ujagar Singh, Advocate, for the Petitioner.

C. H. Sharma, Advocate for A.G. (Pb.), for the Respondent.

JUDGMENT

S. C. Mital, J.

(1) The question of law involved in this petition is, whether a surety, whose bond has been forfeited and who is unable to pay the penalty, can be sentenced to imprisonment ?

Jagtar Singh v. State of Punjab (S. C. Mital, J.)

(2) The brief facts are that Gambhir Singh was arrested for being in possession of five kilograms of illicit opium. He was allowed to be released on bail in the sum of Rs. 10,000 with two like sureties, one of them being Jagtar Singh. Gambhir Singh jumped bail. The surety bond executed by Jagtar Singh was also forfeited and he was directed to pay the full penalty of Rs. 10,000, but Jagtar Singh stated that he did not own any moveable or immoveable property to discharge the liability. In consequence, the Magistrate ordered that the ends of justice would be met if Jagtar Singh was sentenced to imprisonment for three months' R.I. under section 421 read with sections 424 and 446 of the Code of Criminal Procedure. The appeal filed by Jagtar Singh was dismissed by the learned Sessions Judge, Patiala. Hence, he has preferred the present revision petition.

(3) In order to show that the impugned order is not sustainable, learned counsel for Jagtar Singh pointed out that formerly, sub-section (4) of section 514 of the Code of Criminal Procedure (old) provided that if the penalty was not paid and could not be recovered by attachment and sale of the property of the person liable, the Court could order imprisonment of the said person in civil jail for a term which could extend to six months. Reference was then made to the following observation of the Law Commission in its Forty-first report :—

“We feel that imprisonment in civil jail in these circumstances is out of accord with modern thinking and propose to omit sub-section (4)”.

Accordingly in the corresponding section 446 of the Code of Criminal Procedure (new) no provision was made for the imprisonment of the person liable to pay the penalty.

(4) The other aspect of the matter now deserving consideration is that sub-section (2) of section 446 of the Code (new) lays down that if sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same as if such penalty were a fine imposed by it under this Code. Learned counsel for Jagtar Singh rightly urged that this provision relates to the mode of recovery of penalty and that in section 446 the omission to imprison the person concerned in default of payment of fine is significantly

conspicuous. It had to be so because while accepting the above-said report of Law Commission, the Legislature deleted the former provision relating to imprisonment of the person who failed to pay the penalty. It is against the background that the provisions of section 421 and 424 of the Code (new) dealing with the recovery of fine have to be construed. Relevant part of section 421 reads :—

- (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 moveable property belonging to the offender ;
 - (b) issue a warrant to the Collector of the district, authorising him to realise the amount as arrears of land revenue from the moveable and immoveable property, or both, of the defaulters ;

Provided that * * * * *

- (2) The State Government may make rules regulating the manner in which warrants under clause (a) of sub-section (1) are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.
- (3) Where the Court issues a warrant to the Collector under clause (b) of sub-section (1), the Collector shall realise the amount in accordance with the law relating to recovery of arrears of land revenue, as if such warrant were a certificate issued under such law :

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender.

A plain reading of section 421 shows that it relates to a case where an offender has been sentenced to pay fine, but no imprisonment

Jagtar Singh v. State of Punjab (S. C. Mital, J.)

in default of payment thereof has been ordered. Accordingly, urged the learned counsel for Jagtar Singh that in the present case the only mode of recovery is by invoking section 421 which nowhere provides for imprisonment. To the contrary proviso to sub-section (3) of section 421 rather bans the arrest or detention in prison of the offender in execution of the warrant issued by the Collector. In this view of the matter, learned counsel for the State conceded that the impugned order imposing imprisonment on Jagtar Singh cannot be saved by section 421.

(5) Now, what is required to be seen is, whether the impugned order sentencing Jagtar Singh to imprisonment could be passed under section 424 of the Code (new). Sub-section (1) thereof provides that when an offender has been sentenced to fine only and to imprisonment in default of payment of fine, and the fine is not paid forthwith, the Court may "suspend the execution of the sentence of imprisonment in order to enable the offender to pay the amount of fine either in full or in instalments. Obviously, the present case does not fall within the ambit of sub-section (1) of section 424. All the same, learned counsel for the State placed reliance on sub-section (2) thereof which lays down :—

"The provisions of sub-section (1) shall be applicable also in any case in which an order for the payment of money has been made on non-recovery of which imprisonment may be awarded and the money is not paid forthwith; and, if the person against whom the order has been made, on being required to enter into a bond such as is referred to in that sub-section, fails to do so, the Court may at once pass sentence of imprisonment."

This provision refers to an order made by a Criminal Court for the payment of money but which is not a punishment inflicted on an offender for a criminal offence. For example, formerly sub-section (4) of section 514 of the Code (old) provided that if such penalty is not paid and the same cannot be recovered by attachment and sale of the property, the person so bound shall be liable to imprisonment in civil jail for a term which may extend to six months. Another such illustration is to be found in sub-section (3) of section 125 of the Code (new) providing for imposition of sentence of imprisonment in default of the compliance of the order for payment of

maintenance to the wife. As said above, in section 446 of the Code (new) the provision for the imprisonment of the person who defaulted in paying the penalty was not repeated. In the absence thereof, the provision of sub-section (2) of section 424 of the Code (new) cannot be invoked. Support to this view is to be found in *Ram Dayal Tiwari v. Corporation of Calcutta*, (1). The corresponding provision was then in section 388 (2) of the Code (old). In paragraph 8 of the report at page 77, the learned Judges observed:—

“It must, however, be held that in so far as the learned Magistrate thought that section 388 Criminal P.C. had any application, he was clearly in error. Section 388 applies only to a case where the sentence is not only a fine but also imprisonment in default of the payment of the fine. Section 488, Calcutta Municipal Act, provides only for a fine up to Rs. 250 in cases of a breach of section 386 (1), but does not provide for any imprisonment in default. Nor are the general provisions contained in the Indian Penal Code applicable since those provisions apply to sentences imposed in accordance with the Code. The present case, therefore, is one where only a sentence of fine but no sentence of imprisonment in default could be imposed and that being so, section 388 (1), Criminal P.C. was clearly inapplicable. The direction of the Magistrate that the petitioner is to suffer 40 days’ simple imprisonment in default of payment of the fine imposed must, therefore, be set aside”.

(6) For the foregoing reasons, the impugned order is quashed. Learned counsel for Jagtar Singh then contended that in compliance with the bail order of this Court, Jagtar Singh was unable to furnish the requisite bonds. If that be so, it is directed that Jagtar Singh be set at liberty forthwith.

(1) A.I.R. 1958 Calcutta 76.