

THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Writ Jurisdiction)

DATED: 26th October, 2016

S.B. : HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

WP(Crl.) No.04 of 2016

Petitioner : Kashi Kant Jha,
S/o Late Kedar Jha,
R/o Daragoan,
Tadong,
Gangtok,
East Sikkim.

Versus

Respondent: State of Sikkim

Petition under Article 227 of the Constitution of India.

Appearance

Mr. B.K. Gupta, Advocate for the Petitioner.

Mrs. Meena Jha, Petitioner's wife in person.

Mr. Karma Thinlay Namgyal, Additional Public Prosecutor with
Ms. Pollin Rai, Assistant Public Prosecutor for the State-
Respondent.

O R D E R (Oral)

Meenakshi Madan Rai, J.

(1) Heard learned Counsel for the Parties.

(2) The Case of the Petitioner is that the learned Judicial
Magistrate, East Sikkim at Gangtok, in Vigilance Case No. 04 of

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2009, convicted the Petitioner for offences under Sections 467, 468 and 474 of the Indian Penal Code, 1860 (in short 'IPC'). The Petitioner was sentenced to undergo Simple Imprisonment for one year and to pay a fine of Rs.5,000/- (Rupees five thousand) only, under Section 467 of the IPC with a default stipulation of further Simple Imprisonment for three months. Under Section 468 IPC, he was sentenced to undergo Simple Imprisonment for six months and to pay a fine of Rs.2,000/- (Rupees two thousand) only, in default to undergo further Simple Imprisonment for one month. Under Section 474 IPC, he was sentenced to undergo Simple Imprisonment for one year and to pay a fine of Rs.5,000/- (Rupees five thousand) only, also with a default stipulation. All the Sentences were ordered to run concurrently.

(3) On being aggrieved by the Judgment of the Learned Judicial Magistrate, East Sikkim at Gangtok, Crl. Appeal No. 6/2014 was preferred by the Petitioner in the Court of learned Sessions Judge, Special Division-II, East Sikkim at Gangtok. The learned Special Judge set aside the conviction under Sections 467, 468 and 474 of IPC. However, he reached a finding that it was a case of forgery simpliciter, and accordingly convicted the Petitioner under Section 465 of the IPC, and sentenced him to undergo Simple Imprisonment for a period of six months and to pay a fine of Rs.1,00,000/- (Rupees one lakh) only.

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(4) This Judgment and Sentence was assailed before this Court in Crl. Rev. P. No. 1 of 2015, wherein this Court opined that the impugned Judgment rendered by the Appellate Court is just, proper and lawful. However, while discussing the question of imposition of fine to the tune of Rs.1,00,000/- (Rupees one lakh) only, Section 29 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') was deliberated on and accordingly the fine was reduced to Rs.10,000/- (Rupees ten thousand) only, bearing in mind that the Section prescribes that the Judicial Magistrate may pass a sentence of fine not exceeding Rs.10,000/- (Rupees ten thousand) only, and imprisonment not exceeding three years, with a default stipulation of three months Simple Imprisonment. The substantive sentence of six months was maintained. The Convict/Petitioner was directed to deposit the fine to the State exchequer within thirty days from 20.6.2016, i.e., on 20.7.2016.

(5) Instead of depositing the fine as directed, the Petitioner proceeded to file an Appeal before the Hon'ble Apex Court on 6.7.2016, on the understanding and on being duly advised, that should he deposit the fine of Rs.10,000/- (Rupees ten thousand) only, it would tantamount to admitting his guilt. Hence, the fine was not paid by him during the time stipulated by the Order of this Court.

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(6) On account of the default in payment of fine, on 3.8.2016, the learned Judicial Magistrate, East Sikkim at Gangtok, issued NBWA against the Convict/Petitioner, although a little belatedly. That, in fact the Convict/Petitioner had already filed an Appeal before the Hon'ble Apex Court on 6.7.2016. The matter was listed before the Hon'ble Apex Court on 12.8.2016. Admittedly, no stay of the Orders of this Court was granted, and the matter was directed to be listed after two weeks. It is submitted by learned Counsel for the Petitioner that the matter is now ordered to be listed in the first week of December.

(7) The records of the learned Trial Court reveal that NBWA dated 3.8.2016 was returned unexecuted and therefore, fresh NBWA was issued on 16.8.2016. On 16.8.2016 itself before the NBWA was issued, the Petitioner deposited the fine indicating that he was aware of the issuance of NBWA on 3.8.2016. This being apparent from the records of the learned Trial Court which reveals that although Order for the second NBWA was issued on 16.8.2016, it was issued only on 17.8.2016.

(8) After payment of fine, the Petitioner on 30.8.2016 again approached this Court under Section 482 of the Cr.P.C., duly invoking the provisions of Section 68 of the IPC, which prescribes that on payment of fine the imprisonment in lieu thereof shall stand

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terminated. This Court observed in its Order dated 30.8.2016 as follows:-

"

Be that as it may, indisputably the amount was deposited beyond the time. However, since the amount of fine has been deposited, the Trial Court is competent to consider the afore-stated facts and pass appropriate order.

Accordingly, the Crl. M.C. Case No. 13 of 2016 stands disposed of."

(9) In pursuance of this Order, the Petitioner appeared through his Counsel before the Court of the learned Judicial Magistrate, East Sikkim, on 1.9.2016, duly filing a petition U/s 70(2) of the Cr.P.C. read with Section 68 of the IPC, praying for recall of the NBWA issued against him and termination of Sentence, submitting therein that the fine amount was deposited on 16.8.2016 and that the Convict was presently in Delhi and had preferred a Special Leave to Appeal (Criminal) on 6.7.2016 before the Hon'ble Apex Court, where the matter is pending. The Petition was filed before the learned Judicial Magistrate, East Sikkim on 1.9.2016 and registered as Crl. Misc. Case No. 31/16. It was heard on 3.9.2016 and Orders were passed on 5.9.2016. The learned Magistrate after considering the submissions, ordered that the Petition does not deserve to be allowed.

(10) It is against this Order that the Convict has now approached this Court under Article 227 of the Constitution of India praying for setting aside the Order of the learned Judicial Magistrate, East Sikkim. It is contended that now since the fine has been paid, nothing remains against the Convict and, therefore, the NBWA issued by the Judicial Magistrate be withdrawn.

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(11) *Per contra*, objecting to the stand taken by the Petitioner, it is contended by learned Additional Public Prosecutor that the Petitioner has wilfully defaulted in paying the fine imposed which was modified by this Court and, therefore, his prayers deserves no consideration, in view of the legal provisions. Reliance was placed on ***Usman vs. Uttar Pradesh & Others : 2007 CRI. L. J. 3868*** and on ***Ram Lakhan & Ors. vs. State : 1986 CRI. L. J. 617***, of the Allahabad High Court.

(12) I have given due consideration to the submissions which need no reiteration, having been detailed hereinabove.

(13) In a similar matter in ***Usman vs. Uttar Pradesh & Others*** (supra) relied on by learned Senior Government Advocate, the Allahabad High Court has held as follows;-

"4. The Petitioner failed to deposit the fine within the stipulated time. He deposited the fine **after expiry of the said period. The petitioner has filed a certificate dated 1.6.2007 issued by Judicial Magistrate, Garh (Annexure-2 to the writ petition) of compliance of the order of High Court by the petitioner. On account of his default in payment of fine within stipulated time he was arrested and sent to jail.**

5. The counsel for the Petitioner submits that after depositing the fine the detention of the petitioner is illegal.

6. We agree with the submission of the learned counsel for the petitioner that after the expiry of the period of depositing fine, if fine is deposited the imprisonment is to be terminated.

7. Section 68 of Indian Penal Code provides as under:

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“68. An imprisonment, which is imposed in default of payment of fine, shall terminate whenever the fine is either paid or levied by process of law.”

8. A Division Bench of this Court in the case of Ram Lakhan & others v. State reported in 1986 Cri LJ 617 in paragraph 12 held as under:

“12. The cumulative examination of these provisions of law leaves no manner of doubt that in the first instance the person sentenced to pay a fine must deposit the fine forthwith, but may be permitted to deposit it after some time in the discretion of the court. Even in the event he must deposit the amount before the period specifically fixed by the court and if he does not do so, he immediately incurs the liability of being sent to prison. It would be the duty of the court to arrest him and confine him into the prison. Only when such confinement in the prison has commenced that the accused can have a legal right to deposit the amount whereupon S. 68, I.P.C. would come into operation and his imprisonment would terminate.

(Emphasis supplied)”

The ratio in the above case would aptly apply to the facts and circumstances in the instant case.

(14) From the chain of events that have been listed hereinabove, it is apparent that the Petitioner is making a wilful effort to circumvent the provisions of law and to avoid the due process. In view of the reasons in the Order of the learned Judicial Magistrate, and considering the conduct of the Petitioner, I am of the considered opinion, that his petition deserves no consideration and is accordingly dismissed.

(15) In view of the submissions of learned Counsel for the Petitioner and on the instructions of the Petitioner’s wife, who is present in the Court Room, that the Petitioner is in Delhi, sufficient

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time is being afforded to him to surrender before the Court of the learned Judicial Magistrate, East Sikkim. He shall surrender before the said Court on 4.11.2016.

(16) Copy of this Order be transmitted to the learned Trial Court, for information.

(17) WP(Crl.) No.04 of 2016 stands disposed of.

Sd/-
(Justice Meenakshi Madan Rai)
Judge
26.10.2016

Index : Yes / ~~No~~
Internet : Yes / ~~No~~
ds/bp