

Before M.M. Kumar & T.P.S Mann, JJ

BHOLA RAM,—Petitioner

versus

STATE OF PUNJAB & OTHERS,—Respondents

C.W.P. No. 5647 of 2007

19th February, 2008

Code of Criminal Procedure, 1973—S. 421—Narcotic Drugs and Psychotropic Substances Act, 1985—S. 18—Sentence awarded to petitioner under section 18 of 1985 Act upheld upto Supreme Court—Addl. Sessions Judge ordering recovery of fine of Rs. 1 lac. as arrears of land revenue—Land of petitioner attached—Proviso to S.421(1) Cr.P.C. provides that if an offender has undergone whole of imprisonment imposed in lieu of fine on account of default, no Court could issue warrant for levy of amount by attachment and sale of any immovable or moveable property belonging to such an offender—Petitioner undergoing substantive sentence when order of recovery was passed—Initiation of proceedings against petitioner without issuing him any show cause notice and in complete ignorance of proviso to S. 421—Order to recover fine as arrears of land revenue & all subsequent proceedings relating to attachment declared illegal & set aside.

Held, that a perusal of proviso to Section 421 (1) Cr.P.C. makes it obvious that if an offender has undergone the whole of imprisonment imposed in lieu of the fine on account of default, no Court could issue warrant for the levy of the amount by attachment and sale of any immovable or movable property belonging to such an offender. It is only for special reason to be recorded in writing that such a warrant for the levy of amount could be issued. The intention of the legislature as reflected in the aforementioned proviso clearly is that the stage for issuing warrant for levy of the amount by attachment and sale or issuance of warrant to the Collector to realize the amount as arrears of land revenue would reach only when the offender has opted either to pay fine or to serve sentence. Such an option could be exercised

only when the offender has undergone the substantive sentence. He may end up paying fine at that stage or he may opt for serving sentence. Such an interpretation deserves to be preferred because it leans toward protecting the life and personal liberty of a person, which can be deprived of only according to procedure established by law as envisaged by Article 21 of the Constitution.

(Para 7)

Further held, that the petitioner has been undergoing the substantive sentence when the order of recovery on 2nd September, 2002 was passed by the learned Additional Sessions Judge, Barnala. On the basis of the aforementioned order further proceedings by the respondents were initiated, which resulted in attachment of his agricultural land. All these proceedings have been initiated against the petitioner without issuing him any show cause notice and in complete ignorance of proviso to Section 421 Cr.P.C. Therefore, order dated 2nd September, 2002 and all subsequent proceedings relating to attachment are declared illegal and are accordingly set aside.

(Para 8)

S. K. Laddi, Advocate, *for the petitioner.*

Ms. Charu Tuli, Senior Deputy Advocate General, Punjab, *for the respondents.*

M. M. KUMAR, J.

(1) The prayer made in the instant petition filed under Article 226 of the Constitution of India is for issuance of directions to the respondents to consider and decide his legal notice dated 5th November, 2006 (Annexure P-2).

(2) The undisputed facts are that the petitioner was convicted on 7th September, 1989 by learned Additional Sessions Judge, Barnala, under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985. He was sentenced to undergo rigorous imprisonment for ten years and also to pay a fine of Rs. One Lac. In default of payment of fine, he was required to undergo imprisonment of two years. It is

further undisputed that the conviction and sentence imposed by learned Additional Sessions Judge, Barnala, has been upheld up to Hon'ble the Supreme Court and the petitioner is serving the same. On the basis of order dated 2nd September, 2002, passed by learned Additional Sessions Judge, Barnala (Annexure R.1), asking the Collector, Barnala to recover the amount of Rs. One Lac of fine, as arrears of land revenue, the Collector has attached the entire land of the petitioner,—*vide* Rapat dated 10th October, 2002, to recover the fine of Rs. One Lac and no notice was issued to him in regard thereto. He came to know of the said fact only in the year 2002, when he obtained a copy of *jamabandi* of his land for taking loan. The market value of the land, as assessed by the Halqua Patwari, is Rs. Seven lacs per acre, whereas the petitioner has to pay only Rs. One lac as fine. The petitioner has also served a legal notice upon the respondents for vindicating his claim and releasing of the land from attachment. However, no steps were taken and the respondents proceeded further for auctioning the entire land of the petitioner on 17th April, 2007.

(3) The respondents have filed an affidavit of Sub Divisional Magistrate, Barnala, stating that the proceedings of attachment and auction have been initiated on the directions issued by learned Additional Sessions Judge, Barnala,—*vide* order dated 2nd September, 2002 (Annexure R.1).

(4) Mr. S.K. Laddi, learned counsel for the petitioner, has submitted that in cases where the sentence of rigorous imprisonment, in the alternative has been imposed, then the stage for recovery of fine would not arrive till the time the sentence for the main offence has been undergone served. In that regard, he has placed reliance on proviso to Section 421 Cr.P.C. and submitted that the action of the respondents is in flagrant violation of the aforementioned provisions and therefore, the attachment, as well as auction proceedings, are liable to be set aside.

(5) Ms. Charu Tuli, learned State counsel, on the other hand, has contended that all the aforesaid proceedings have been initiated in pursuance of the directions issued by learned Additional Sessions Judge, Barnala,—*vide* order dated 2nd September, 2002 (Annexure R.1).

(6) After hearing learned counsel for the parties, we are of the considered view that the proceedings initiated by respondent on the basis of the order passed by learned Additional Sessions Judge, Barnala, is not sustainable in view of proviso to Section 421 Cr.P.C. For facility of reference, Section 421 is reproduced here-in-below :—

"421. Warrant for levy of fine.

- (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, authorizing him to realize the amount as arrears of land revenue from the moveable or immovable property, or both of the defaulters ;

Provided that, if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless, for special reasons to be recorded in writing, it considers it necessary so to do, or unless it has made an order for the payment of expenses or compensation out of the fine under Section 357, (Emphasis added)

(7) A perusal of proviso to Section 421 (1) Cr.P.C. makes it obvious that if an offender has undergone the whole of imprisonment imposed in lieu of the fine on account of default, no Court could issue warrant for the levy of the amount by attachment and sale of any immovable or movable property belonging to such an offender. It is only for special reason to be recorded in writing that such a warrant for the levy of amount could be issued. The intention of legislature as reflected in the aforementioned proviso clearly is that the stage for

issuing warrant for levy of the amount by attachment and sale or issuance of warrant to the Collector to realise the amount as arrears of land revenue would reach only when the offender has opted either to pay fine or to serve sentence. Such an option could be exercised only when the offender has undergone the substantive sentence. He may end up paying fine at that stage or he may opt for serving sentence. Such an interpretation deserves to be preferred because it leans toward protecting the life and personal liberty of a person, which can be deprived of only according to procedure established by law as envisaged by Article 21 of the Constitution.

(8) When the facts of the present case are examined in the light of the mandate of legislature, it becomes clear that the petitioner has been undergoing the substantive sentence when the order of recovery on 2nd September, 2002 was passed by the learned Additional Sessions Judge, Barnala (R-1). On the basis of the aforementioned order further proceedings by the respondents were initiated which resulted in attachment of his agricultural land. All these proceedings have been initiated against the petitioner without issuing him any show cause notice and in complete ignorance of proviso to Section 421 Cr.P.C. Therefore, order dated 2nd September, 2002 and all subsequent proceedings relating to attachment as reflected in the jamabandi for the year 2004-2005 are declared illegal and are accordingly set aside. If the petitioner has already undergone two years in lieu of the fine then full effect to proviso shall be given as no warrant of attachment etc. could be issued. However, if the petitioner has completed his substantive sentence of 10 years alone then the learned Additional Sessions Judge, Barnala may proceed in accordance with law, if necessary.

(9) The writ petition stands disposed of in the above terms.

R.N.R.