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*Before Rajive Bhalla, J.*

MONICA CHRISTY CHIKWA,—*Petitioner*

*versus*

STATE OF PUNJAB AND ANOTHER,—*Respondents*

CRIMINAL WRIT PETITION NO. 605 OF 2005

14th February, 2006

*N.D.P.S. Act, 1985—Ss. 21 & 23—Indian Penal Code, 1860—S. 64—Petitioner convicted & sentenced for two offences under sections 21 & 23 of the Act to undergo two separate sentences of 10 years and fine of Rs. 1 lac—In default of payment of fine petitioner was directed to further undergo RI for a period of six months—Sentences were ordered to run concurrently—Whether two periods of six months of imprisonment to be undergone for default in payment of fine would run concurrent to one another—Held, no—Where two sentences of fine imposed & two defaults in respect thereof committed, the defaulting convict would have to undergo two separate terms of imprisonment—Petition dismissed.*

*Held*, that imprisonment, required to be undergone, in default of payment of fine is in the nature of a penalty. Though a part of the sentence, imprisonment in default of payment of fine, partakes the nature of a penalty, required to be undergone by the defaulting convict, upon his or her failure to pay the fine.

(Para 9)

*Further held*, imprisonment for failure to pay fine is the consequential penalty to be undergone, separate from the substantive sentence of imprisonment. Thus, where two sentences of fine have been imposed, and two defaults in respect thereof committed, the defaulting convict would obviously have to undergo two separate terms of imprisonments so as to discharge the penal consequences of his default and, thus, such terms of imprisonments would obviously be consecutive and not concurrent. It is, thus, apparent that in view of the provisions of Section 64 of the IPC, even though the sentences were imposed under the NDPS Act, the two terms of imprisonments to be undergone by the petitioner for default of payment of fine, would

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have to be consecutive and not concurrent. Any other interpretation would be contrary to the spirit of Section 64 of the IPC, as also to the very nature of an imprisonment to be undergone for default in payment of time.

(Paras 13 & 15)

D.S. Rajput, Advocate, *for the petitioner.*

B.S. Baath, AAG, Punjab, *for the respondent*

### JUDGMENT

#### RAJIVE BHALLA, J.

(1) Prayer in the present petition, filed under Article 226 of the Constitution of India is for the issuance of a writ in the nature of *Habeas Corpus* for the release of the petitioner from confinement in Women Jail, Ludhiana.

(2) The petitioner was arrested for offences, under the NDPS Act (for short hereinafter referred to as "the Act"). *Vide* judgment dated 19th February, 1996, the Additional Sessions Judge, Amritsar, convicted and sentenced the petitioner to undergo RI for ten years and to pay a fine of Rs. 1 lac, under Section 21 of the Act. In default of payment of fine, she was directed to undergo further RI for six months. She was also sentenced to undergo RI for ten years and to pay a fine of Rs. 1 lac, under Section 23 of the Act. In default of payment of fine, she was directed to undergo further RI for six months. The aforementioned sentences were ordered to run concurrently.

(3) The appeal, filed by the petitioner, was dismissed by this Court,—*vide* order dated 24th April, 2002.

(4) Counsel for the petitioner prays that the petitioner be released from detention, as she has undergone an additional period of six months for default of payment of fine, after undergoing her substantive sentence. Two periods of six months, that she was required to undergo for default of payment of two sentences of fine, were to run concurrent to one another and, therefore, the petitioner, having completed a period of six months of imprisonment, is now in illegal detention and should be released.

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(5) Counsel for the State of Punjab, on the other hand, contends that the imprisonment ordered for failure to pay fine is not a part of the sentence but a penalty imposed for failure to pay fine. It is contended that if an accused is sentenced for two offences and separate sentences imposed the substantive sentence of imprisonment may be concurrent but the imprisonment to be undergone for failure to pay fine, would be consecutive. In the present case, it was ordered that in default of payment of fine, the petitioner would undergo a further imprisonment of six months R.I. As the fine to be paid and imprisonment to be undergone, in default, are two separate convictions and sentences, the petitioner would have to undergo two periods of six months and these periods of six months which would run concurrently.

(6) I have heard learned counsel for the parties and perused the record.

(7) As is apparent from the narrative of facts, the petitioner was convicted and sentenced, under Sections 21 and 23 of the Act, to undergo two separate sentences of ten years, fine of Rs. 1 lac, and in default of payment of fine, RI for a period of six months. The question that merits adjudication in the present case is whether the two sentences of imprisonment to be undergone, in default of payment of fine, would be concurrent or consecutive.

(8) Before I proceed to examine the primary issue, it would be appropriate to briefly discuss the nature of the consequences that visit a convict, on his failure to pay fine.

(9) Imprisonment, required to be undergone, in default of payment of fine, in my considered opinion, is in the nature of a penalty. Though a part of the sentence, imprisonment in default of payment of fine, partakes the nature of a penalty, required to be undergone by the defaulting convict, upon his or her failure to pay the fine.

(10) The aforementioned view is fortified by a judgment of the Madras High Court reported as **P. Balaraman versus The State (1)**, wherein, while considering the nature of a term of imprisonment of fine, it was held as follows :—

“35. It cannot be overlooked, that the term of imprisonment in default of payment of fine, cannot be deemed to be a

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sentence, but a penalty, which is incurred on account of non-payment of fine. A sentence is something which must be undergone unless it is remitted in part or in whole, on appeal or otherwise. When however, a term of imprisonment is imposed in default of payment of fine, the accused may always avoid it, by paying the fine. In such a case, of sentence of fine, the imprisonment in default is merely a penalty for non-payment of fine.”

(11) I am in respectful agreement with the view, expressed in the aforementioned judgment.

(12) Furthermore, and as statutorily enacted in Section 64 of the I.P.C., this term of incarceration shall be in addition to and not concurrent to the substantive sentence of imprisonment, for otherwise it would negate the penal consequences of the default. However, the question, as noticed hereinbefore, is whether two period of imprisonments to be undergone for default in payment of fine would run concurrent to one another or would be consecutive.

(13) As noticed hereinabove, imprisonment for failure to pay fine is the consequential penalty to be undergone separate from the substantive sentence of imprisonment. Thus, where two sentence of fine have been imposed, and two defaults in respect thereof committed, the defaulting convict would obviously have to undergo two separate terms of imprisonments so as to discharge the penal consequences of his default and, thus, such terms of imprisonments would obviously be consecutive and not concurrent.

(14) The above conclusion is fortified by a judgment of the Patna High Court reported as **Mrityunjoy Bose versus State of Bihar and another (2)**, While considering the aforementioned controversy, it was observed as follows :—

“It is undisputed, rather conceded, and if I may say so, rightly, on behalf of the petitioner, that the sentence of imprisonment imposed upon the petitioner in default of payment of one fine cannot be made concurrent with the substantive sentence of imprisonment imposed otherwise.

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This had to be conceded in view of the provision of section 64 of the Penal Code as also in view of a Bench decision of this Court in *Bhedu Tatma versus Hari Jha*, AIR 1958 Pat 35. But the argument on behalf of the petitioner is that in case there are two sentences of fine followed by two sentences of imprisonment in default of payment of fine the said sentences of imprisonment should also run concurrently, especially when this was the direction given by the trial Court. We have no hesitation in rejecting this argument. The bar imposed by section 64 of the Penal Code in making the sentences of imprisonment in default of payment of fine concurrent is attracted even though there are more than one sentences of fine imposed, followed by sentences of imprisonment in default of payment of fine. That being so, the first part of the argument must be rejected as incorrect. The second part of the argument is also not warranted by the words of the direction given in the judgment of the trial Court and quoted in para 1 of the petition, portions of which we have quoted earlier in our judgment. The view which we have expressed above is supported by a Bench decision of the Bombay High Court in *Emperor versus Subrao Sesharao*, AIR 1926 Bom 62."

(15) It is, thus, apparent that in view of the provisions of Section 64 of the I.P.C., even though the sentences were imposed under the NDPS Act, the two terms of imprisonment to be undergone by the petitioner for default of payment of fine, would have to be consecutive and not concurrent. Any other interpretation would be contrary to the spirit of Section 64 of the I.P.C., as also to the very nature of an imprisonment to be undergone for default in payment of fine.

(16) In view of what has been stated above, as there is no merit in the present petition, the same is dismissed.

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**R.N.R.**