

**SUPREME COURT OF INDIA**

Mahtab Singh

Vs.

State of U.P.

Crl.A.No.276 of 1978

(V. R. Krishna Iyer, D. A. Desai and O. Chinnappa Reddy, JJ.)

09.08.1978

**ORDER**

1. The question of law raised in the special leave petition being one which is likely to arise in more than one case, we have granted leave and heard arguments and proceed to judgment right away.

2. The short point is whether a fine imposed by a criminal court upon a convict can be realised more than six years after the date of the sentence if the appellate court or the revisional court has stayed or suspended the collection of the fine.

3. The appellant had been sentenced to two years' rigorous imprisonment and a fine of Rs. 20,000 as early as 1964. More than six years thereafter the State tried to levy the fine and so the aggrieved appellant moved the High Court under S. 482, Cr. P. C. to quash the order of the Sessions Judge directing levy of the fine. The High Court, however, declined to demolish the levy proceedings because the appellant had got the levy of the fine suspended all through when he had gone up in appeal against the conviction and the sentence including the sentence of fine.

4. Section 70 of the Indian Penal Code reads:

"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."

5. It is obvious as has been pointed out by this Court in AIR 1962 SC 1145 that the period of limitation commences from the date of the sentence imposed by the trial court. That decision, however, does not contemplate stay or suspension of the sentence by any higher court. The proposition is impeccable that in the ordinary course, absence, stay or suspension of the sentence by any higher court, the expiry of the period of six years will bar the levy of the fine. In the present case, however, the appellate court on the motion of the appellant had suspended the sentence of fine. If the period of such suspension of the sentence were to be excluded, the State was well within time under S. 70. The question is whether the period during which the levy of fine was suspended could be excluded or not.

6. A bare reading of S. 389 makes it clear that the appellate court has power to suspend the execution of the sentence or order appealed against. If sentence or fine is so suspended, it ceases to be in force pro tempore. The consequence is that during the period of suspension of the sentence of fine, there is no sentence of fine to be levied.

7. Even otherwise, on first principle, it is obvious that when a party has secured a stay of collection of fine and such period of stay extends over a long stretch and conceivably may even extend beyond six years, he cannot take up the stand that thanks to the stay he has obtained of the recovery of the fine, the fine itself has become irrecoverable. The judicial process cannot stultify the judicial orders. In the present case, the sentence of fine was suspended on the motion of the appellant himself. He enjoyed the benefit of the suspension or stay of the order and now takes up the contrary stand that the sentence must be deemed to have been in force and the fine leviable. When a party secures stay against the State and prevents it from levying the fine, it is violative of common sense and law to hold that the fine itself is thereafter irrecoverable because of limitation. In this view, we have no doubt that there is no merit in the contention of the appellant and the High Court was right. The appeal is dismissed with costs.

8. Section 70 says that the State shall levy fine within six years from the date of the sentence. To levy is to realise or to collect. It is clear that what is meant is that within six years the State must commence proceedings for realisation, not complete it. It is beyond the State's power to complete

the realisation proceedings, but it is within its power to initiate such proceedings. What is contemplated is that the State shall commence recovery proceedings. Once such steps are taken, the plea of limitation is out of bounds for the sentence, S. 70 has to be read in a common sense way and, therefore, when the provision speaks of levying fine it postulates that the fine is leviable otherwise. If, however, on account of an order of a higher court, the fine has ceased to be leviable, thanks to the suspension of the levy of the fine. The period of limitation does not start to run under Section 70, I. P. C.

Appeal dismissed.