

State Of U. P.

Vs

Kamal Kishore and Another

Criminal Appeal No. 340 of 1980

(Kuldip Singh, Yogeshwar Dayal JJ)

05.12.1991

JUDGMENT

YOGESHWAR DAYAL, J. –

1. This criminal appeal has been filed by the state of U.P. against the order of the Allahabad High Court dated January 9, 1980 where by the high court set aside the order dated February 2, 1979 passed by II Additional Sessions Judge, Mainpuri and quashed the proceedings pending against the respondents in the Courts of II additional Sessions, Judge, Mainpuri for realisation of the fine of Rs. 20.000 as part of sentence passed against Mehtab Singh, father of the respondents.

2. The facts giving rise to this appeal may be noticed in Brief :

Respondents' father, Mehtab Singh was Prosecuted for forgery in three separate cases. He was convicted by Shri B. C. Jauhari, the then Presiding Officer of the Linked Court of Farrukhabad-Mainpuri on June 18, 1964. Mehtab Singh was, inter alia, also sentenced to paying a fine of Rs. 2000 for each count of forgery. A total sum of Rs. 20,000 became recoverable from him. In one of the cases Mehtab Singh preferred an appeal before the Allahabad High Court and the High Court on June 22, 1964, Inter alia, stayed the recovery of fine during the pendency of the appeal The appeal was however, dismissed on January 9, 1968. Mehtab Singh filed an application under Section 134(1)(c) of the Constitution of India for a certificate of fitness for leave to appeal to the Supreme Court which was rejected by the High Court on April 8, 1970.

3. It appears that Mehtab Singh was granted special leave to appeal on November 30, 1970. Mehtab Singh Moved an application under Section 426(2-B) of the Code of Criminal Procedure in the High Court on December 7, 1970 Praying that during the pendency of the appeal in the Supreme Court he will be released on bail and realisation of the fine may also be stayed. The Allahabad High Court on the said application passed an order dated December 8, 1970 to the following effect :

"Let the applicant be released on bail subject to his furnishing two sureties to the satisfaction of ADM (J), Mainpuri. Stay realisation of fine meanwhile."

4. On December 9, 1970 the High Court passed the undermentioned order suspending the order dated December 8, 1970 as follows :

"Subsequently it was brought to my notice that the order of the Supreme Court was not very clear as to whether special leave has been granted in all the three appeals. Under the circumstances the order passed yesterday is suspended."

5. An application was thereafter moved by Mehtab Singh on December 16, 1970 praying that the order dated December 9, 1970 passed by the high court be modified and the order dated December 8, 1970 Passed by this Court be restored and the following order was passed on the application on the same date (December 16, 1970) :

"The copy of the order of the Supreme Court now filed shows that the special leave was granted by the Supreme Court in all the three appeals. In one the realisation of the fine had already been stayed by this Court. In other two appeals the sentenced were of imprisonment. In these appeals, the applicant shall be released on bail subject to his furnishing two sureties to the satisfaction of the ADM (J), Mainpuri."

6. The appeals filed by Mehtab Singh in the Supreme Court were also dismissed on January 10, 1975.

7. In recovery proceedings certain objections were filed by Mehtab Singh before the judicial Magistrate but these objections were dismissed on May 2, 1977. Against this order dated May 2, 1977 Mehtab Singh Filed Criminal Revision No. 43 of 1977 before the Sessions Judge, Mainpuri. This revision petition was decide on July 18, 1977. The learned Sessions Judge in view of the various stay orders passed during the hearing of the appeal before the High Court and during the pendency of the appeal before the Supreme Court took the view that limitation of the period of six years could not run from June 22, 1964 but could run only from January 10, 1975 and held that the proceedings for recovery were not barred by time.

8. Another point was also urged before the learned Sessions Judge that the warrant of attachment for sale of property was not issued by competent authority and the Court held that the warrant for levy of fine should be issued in accordance with section 421(1)(a) or (b) of the code of criminal procedure. Mehtab Singh thereafter moved the High Court under section 482 of the code of criminal procedure to quash the order of the sessions judge directing levy of fine. The High Court, however declined to quash the levy proceedings because Mehtab Singh had got the levy of fine suspended all through when he had gone up in appeal against the conviction and sentence including the sentence of fine. Against the order of the High Court, declining to quash the levy proceedings, Mehtab Singh a criminal appeal in the Supreme Court which was registered as Criminal Appeal No. 276 of 1978. The Supreme Court dismissed this appeal by an order dated August 9, 1978. Mehtab Singh, however, died on August 18, 1978. This is noticed by the Supreme Court in the judgment reported as Mehtab Singh v. State of U. P. ((1979) 4 SCC 597 : 1980 SCC (Cri) 142) and these facts are stated in the special leave petition as well.

9. After the dismissal of the criminal appeal by the Supreme Court on the August 9, 1978, the Sessions Judge, Mainpuri issued warrants to the Collector of Mainpuri authorising him to realise the fine as the arrears of the land revenue. The house and agricultural plots of applicants were attached on August 22, 1978. Again objections, inter alia, that the recovery proceedings were barred by time were filed by the sons of Mehtab Singh. The learned II Additional Sessions judge vide order dated February 2, 1779 dismissed the objections of the respondents. The respondents preferred an application Under Section 482 of the code of Criminal procedure before the Allahabad High Court against the order of the learned II Additional Sessions Judge dated February 2, 1979 and prayed for quashing of the proceedings for the recovery of fine on the ground that they are barred by time.

10. The High Court in the impugned judgment dated January 9, 1980 held that the recovery proceedings were barred by time as the appeal in the High Court was dismissed on January 9, 1968

and there was no order staying recovery of fine by the High Court thereafter and, therefore, the initiation of recovery proceedings on June 4, 1975 are barred by time in view of the provisions of Section 70 of the Indian Penal Code.

11. It is against this order of the High Court that the State has come up by way of the present appeal.

12. It appears that the judgment of the Supreme Court passed in Criminal Appeal No. 276 of 1978 date August 9, 1978 wherein this Court had already taken the view that the recovery proceedings were not barred by time, was not brought to the notice of the High Court and the High Court misread its earlier order dated December 16, 1970 in assuming that the High Court had not granted stay of recovery of fine during the pendency of the appeal before the Supreme Court against conviction and sentence. The Supreme Court in the aforesaid judgment dated August 9, 1978 which is reported as Mehtab Singh v. State of U. P. ((1979) 4 SCC 597 : 1980 SCC (Cri) 142) observed in paragraphs 6, 7 and 8 as follows : (SCC pp. 598-99)

"6. A bare reading of Section 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 commence recovery proceedings. Once such steps are taken, the plea of limitation is out of bounds for the sentence. Section 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, IPC."

13. The sons of Mehtab Singh cannot be permitted to urge the same point once again. In any case, it is clear from the orders of the High Court dated December 8, 1970, December 9, 1970 and December 16, 1970 which we have already quoted above that the realisation of fine had been stayed in one of the appeals which was none other than the case which fine was imposed and it is clear from the order dated December 16, 1970 that there was stay of recovery of fine during the pendency of the appeal before the Supreme Court. Therefore, as observed by the Supreme Court in the earlier

appeal, limitation for recovery of fine could not begin till the passing of the order by the Supreme Court dated January 10, 1975 confirming conviction and sentence. The recovery proceedings had been initiated on June 4, 1975 and they were thus within time.

14. It is most unfortunate that the order of the Supreme Court passed earlier in the recovery proceedings against Mehtab Singh was not brought to the notice of the High Court.

15. Thus the impugned order of the High Court dated January 9, 1980 is set aside and the order dated February 2, 1979 passed by the II Additional Sessions Judge, Mainpuri is restored. Parties are, however, left to bear their own costs.

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