

APPELLATE CRIMINAL.

Before Sir John Beaumont, Chief Justice, and Mr. Justice N. J. Wadia.

DIGAMBAR KASHINATH BHAWARTHI (ORIGINAL ACCUSED),

PETITIONER *v.* EMPEROR.*

1934

November 20

Criminal Procedure Code (Act V of 1898), section 386—Sentence of imprisonment and fine—Imprisonment in default of fine—Warrant for recovery of fine—Sentence served—Withdrawal of warrant—Proviso to section applies to fresh warrant and not to warrant issued while serving sentence—But proviso enables issue of warrant for special reasons.

The proviso to section 386 of the Criminal Procedure Code applies in terms only to the issue of a fresh warrant and does not require the withdrawal of a warrant already issued before expiration of the sentence in default of payment of fine. In dealing with existing warrants, the Court should follow the policy which seems to have inspired the proviso to section 386 which appears to be that in general an offender ought not to be required both to pay the fine and to serve the sentence in default. But the proviso enables a warrant to be issued for recovery of the fine, even if the whole sentence of default has been served, if the Court considers that there are special reasons for issuing the warrant which should be reasons accounting for the fact that the fine has not been recovered before the sentence in default has been served.

CRIMINAL REVISIONAL APPLICATION from an order passed by H. K. Chainani, Sessions Judge, Sholapur.

Application for withdrawal of warrant.

The material facts appear from the judgment of the Court.

P. B. Gajendragadkār, for the applicant.

P. B. Shingne, Government Pleader, for the Crown.

BEAUMONT C. J. This is an application in revision in which the applicant asks us to review the order of the Sessions Judge of Sholapur refusing to order the withdrawal of a warrant issued under section 386 of the Criminal Procedure Code. The relevant facts are that in the year 1930 the present applicant was convicted of certain offences, and he was sentenced to substantive terms of imprisonment, and also to fines amounting to Rs. 1,500, with a sentence of imprisonment in default of payment of the fine. Whilst he was still in prison, i.e., in January 1932, a warrant was issued for the recovery of the fine under section 386 of the

* Criminal Application for Revision No. 395 of 1934.

Criminal Procedure Code, and was sent to the Collector for execution under sub-section (1), clause (b). As a result of the issue of that warrant a part of the fine amounting to some Rs. 600 has been recovered, and the warrant has been sent for execution under sub-section (3) of section 386 to the Subordinate Judge's Court at Akalkot, where it is sought in darkhast proceedings to sell the applicant's interest in certain joint family lands. On June 30, 1934, the applicant was released from jail, having served not only his substantive sentence, but also the sentence imposed upon him in default of payment of the fine, and he now asks that the warrant for the recovery of the fine issued against him should be withdrawn, and in support of his contention he relies on the proviso to section 386 (1). That proviso provides 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 a warrant under the section unless for special reasons to be recorded in writing it considers it necessary to do so. The proviso applies in terms only to the issue of a fresh warrant and does not require the withdrawal of a warrant already issued before expiration of the sentence in default of payment. But, I think that, in dealing with such existing warrants, the Court should follow the policy which seems to have inspired the proviso to section 386. That policy appears to be that in general an offender ought not to be required both to pay the fine and to serve the sentence in default. But the proviso enables a warrant to be issued for recovery of the fine, even if the whole sentence in default has been served, if the Court considers that there are special reasons for issuing the warrant. I apprehend that the special reasons should be reasons accounting for the fact that the fine has not been recovered before the sentence in default has been served, and any reasons which are directed to that point would be relevant. It may be that the authorities, through no negligence on their part, did not know of the existence

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of the property or the accused may have inherited property after he served his sentence in default; or there may not have been time to execute the warrant. Matters of that sort would all be special reasons for issuing a warrant after the sentence in default had been served; and I think, in the same way, they are reasons justifying the Court in refusing to withdraw a warrant already issued. In the present case, in my opinion, there are special reasons, though not quite those which were recorded by the Judge. I think that a special reason for not withdrawing the warrant is that before the sentence in default had been served the authorities had taken steps to enforce this warrant by levying execution upon the immoveable property of the applicant, and the delay which has taken place is not, in my opinion, shown to be due to any default on the part of the authorities. The learned Judge himself gave as his reasons for not withdrawing the warrant that the offence was a serious one, and the complainant had been allotted part of the fine. In my view, reasons of that sort are not relevant because they do not account for the fine not having been recovered before the service of the sentence in default. For these reasons, I think the application must be refused.

N. J. WADIA J. I agree.

Application refused.

Y. V. D.

APPELLATE CRIMINAL.

Before Sir John Beaumont, Chief Justice, and Mr. Justice N. J. Wadia.

EMPEROR v. MANCHERSHAW NASSERWANJI (ORIGINAL ACCUSED)*

1934
December 6

Criminal Procedure Code (Act V of 1898), section 562 (1A)—Offence punishable with fine only—Ac used released on “due admonition”—Applicability of the section—Indian Penal Code (Act XLV of 1860), section 290.

Section 562 (1A) of the Criminal Procedure Code, 1898, also covers offences punishable only with fine.

Emperor v. Kasturi,⁽¹⁾ referred to.

*Criminal Reference No. 189 of 1934.

⁽¹⁾ (1926) 28 Bom. L. R. 1031.