

1951

Present: de Silva J.

THE ATTORNEY-GENERAL, Appellant, and VALLIPURAM,
Respondent

S. C. 672—Application for revision in M. C. Mallakam, 8,450

Sentence—Fine and imprisonment—Execution—Order of sequence—Criminal Procedure Code. ss. 312 (f) and (g), 321.

When a person is sentenced (i) to pay a fine and, in default of payment of the fine, to undergo imprisonment, and (ii) to undergo imprisonment for a certain term, the substantive term of imprisonment should commence first and, thereafter, if he has not by that time paid the fine, the default term of imprisonment should begin.

APPPLICATION to revise an order of the Magistrate's Court, Mallakam.

A. Mahendrarajah, Crown Counsel, for the Attorney-General.

Accused-respondent in person.

February 15, 1951. DE SILVA J.—

This matter comes up on application made by the Attorney-General. In the petition filed the Attorney-General has set out the facts.

The facts in short, are these: The accused-respondent was convicted in M. C. Mallakam 8,449 on 30th August, 1949, and sentenced to pay a fine of Rs. 750 and in default of payment of the fine to undergo six weeks' rigorous imprisonment. The accused not having paid the fine underwent the term of six weeks' rigorous imprisonment, which was completed on the 5th October, 1949. On the 20th September, 1949, before the expiry of the sentence in M. C. Mallakam 8,449 accused was sentenced in M. C. Mallakam 8,450 to pay a fine of Rs. 15, in default of payment of the fine to undergo two weeks' rigorous imprisonment, and, to two years' rigorous imprisonment and two years' police supervision. So that whatever term of imprisonment was ordered in M. C. Mallakam 8,450 would have had to commence after the expiry of the term of imprisonment imposed in M. C. Mallakam 8,449—*vide* Section 321 of the Criminal Procedure Code. On the 9th October, 1950, the accused applied to the Superintendent of the Mahara Prison for the withdrawal of a sum of Rs. 15.20 out of money belonging to the accused which was with the Jailor and the Superintendent approved the application. Money Order No. 004365 for the sum of Rs. 15 was forwarded together with letter dated 10th October, 1950, to the Magistrate, Mallakam, by M. M. Akbar, Jailor, in payment of the fine imposed upon the accused in M. C. Mallakam 8,450. The Magistrate by his letter dated 19th October, 1950, informed the Superintendent, Mahara Prison, that the default sentence in respect of the fine in M. C. Mallakam 8,450 had already been served and returned the Money Order to the Superintendent. The Magistrate's contention appears to be that by the time the Money Order was received by him the default sentence of two

weeks' had already been served by the accused and as such there was no point in accepting the Rs. 15 in default of payment of which the man had already served the term of two weeks' rigorous imprisonment. The Superintendent of Mahara Prison appears to have directed the letter dated 24th October, 1950, to the Magistrate submitting his view of the matter. To that the Magistrate replied by letter dated 20th November, 1950, in which he has *inter alia* stated as follows: "In the order of sequence he would have to serve (1) the six weeks' imposed in Case No. 8,449, (2) the two weeks' imposed in default in Case No. 8,450 and finally (3) the two years' addition imposed under the Prevention of Crimes Ordinance."

Now the point that arises for consideration is in what order the punishments imposed by the Magistrate in Case No. 8,450 should be inflicted on the accused. If the fine which formed part of the punishment in Case No. 8,450 in default of which the term of imprisonment of two weeks' was to be served was also part of the punishment that had to be served by the accused, then the learned Magistrate's contention certainly would be correct. But it is argued by the learned Crown Counsel that of the two punishments imposed on the accused the term of imprisonment in Case No. 8,450, namely two years', should begin first. In support of that argument he has cited to me Section 321 of the Criminal Procedure Code where it says that "when a person actually undergoing imprisonment is sentenced to imprisonment such imprisonment shall commence at the expiration of the imprisonment to which he has been previously sentenced". It is argued that the imprisonment referred to in that section is substantive imprisonment imposed in Case No. 8,450. He also has referred me to Section 312 (f) and (g) of the Criminal Procedure Code where the policy of the law is to give the accused on whom a fine has been imposed an opportunity of paying the fine at any stage, that is to say, even after he had started to serve a term of imprisonment in default of the payment of the fine, and of course there is the other aspect where the policy of the law is also to give an accused person who has been ordered to pay a fine time to pay the fine.

What is now sought is that the two weeks' that the man has already served be considered part of the substantive term of imprisonment of two years. In other words, the substantive term of imprisonment of two years should commence first and, thereafter, if the man has not by that time paid the fine, the alternative term of imprisonment should begin.

I agree with the contention of the learned Crown Counsel. Section 321 certainly lends colour to the argument that the term of imprisonment imposed in the second case should begin first. I, therefore, acting in revision, make the following order: that the term of two years' rigorous imprisonment imposed in M. C. Mallakam 8,450 should begin to run first and if by or before the expiry of that period of two years the accused fails to pay the fine of Rs. 15 then the default period of two weeks shall begin. I find that the Money Order has been returned by the Magistrate. Send the Money Order back to the Magistrate requesting him to accept it in payment of the fine of Rs. 15. The two weeks served in default of the fine will be set off against the two years' rigorous imprisonment.

Application allowed.