

Joginder Singh Vs. Dwarka Prasad and Anr

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Court : Delhi

Decided On : May-27-2015

Judge : Jayant Nath

Appellant : Joginder Singh

Respondent : Dwarka Prasad and Anr

Judgement :

\$~ *IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

27. 05. 2015 + CM(M) 594/2014 & CM No/10177/2014 JOGINDER SINGH
Petitioner Through Mr.K.S.Rana, Advocate versus DWARKA PRASAD & ANR
Respondent Through Mr.Saurabh Kanal and Mr.Abhishek, Advocates for R-1
CORAM: HON'BLE MR. JUSTICE JAYANT NATH JAYANT NATH, J.

1. The present petition is filed seeking to impugn the order dated 6.6.2014 and to withdraw the arrest warrants issued by the MACT vide order dated 2.6.2014.

2. The brief facts are that an Award was passed by the MACT on 8.4.2009 in favour of respondents No.1 and 2 for a sum of Rs.5,87,000/each i.e. a total compensation of Rs.11,74,000/-. The respondents No.1 and 2 (respondent No.1 before MACT being the petitioner before this Court) were held to be jointly and severally liable to pay the said amount. The background of the claim petition was that claimants were parents of the deceased Sat Narayan aged 24 years who died in a road accident with a Maruti Van which was driven by the petitioner herein and

owned by one Pankaj Budhiraja (respondent No.2 before MACT).

3. On 15.3.2010 the Tribunal noted that there is a default in payment of the Award amount. Regarding the petitioner the Tribunal noted the submission of the petitioner that he has no assets and everything is owned by his mother and he only has a sleeping cot. The Tribunal also noted that the petitioner is not even filing an affidavit with regard to his assets. The Tribunal concluded that the petitioner is trying to avoid execution on one pretext or the other and hence cannot be allowed to outsmart the process of law in this blatant manner. Accordingly, the Tribunal directed arrest of the petitioner and that he be sent to the civil prison.

4. From the present petition it appears that without any order whatsoever the petitioner was released on 13.4.2010. The Execution Petition it appears was compromised and was disposed of on 12.7.2010.

5. It appears that the other Judgment Debtor Shri Pankaj Budhiraja had paid his share of dues. A fresh execution was filed on 24.01.2012 which was only against the petitioner as the previous execution had been satisfied against the other judgment debtor. On 2.6.2014 a fresh warrant of arrest was issued against the petitioner. The petitioner moved an application under section 58(2) of CPC for modification of the order dated 2.6.2014 arguing that once a judgment debtor has been released from prison after being ordered to be detained, he cannot again be subsequently detained in civil prison. This application of the petitioner was dismissed vide impugned order dated 6.6.2014. Hence, the present petition seeking to impugn the said order.

6. Learned counsel appearing for the petitioner has relied upon section 58(2) of CPC to contend that as the petitioner has been arrested earlier he cannot be arrested again for the second time. Any such re-arrest would be contrary to section 58(2) of the CPC. Section 58(1) & 2 read as

58. Detention and release.- (1) Every person detained in the civil prison in execution of a decree shall be so detained,- (a) where the decree is for the payment of a sum of money exceeding [five thousand rupees].., for a period not exceeding three months, and, (b) where the decree is for the payment of a sum of

money exceeding two thousand rupees, but not exceeding five thousand rupees, for a period not exceeding six weeks: ... (2) A judgment debtor released from detention under this section shall not merely by reason of his release be discharged from his debt, but he shall not be liable to be re-arrested under the decree in execution of which he was detained in the civil prison.

7. Hence as per section 58(1) the maximum period of detention in civil prison cannot exceed three months. Section 58(2) provides that once a judgment debtor is released from detention under this section he shall not be liable to be re-arrested. There is a conflict of opinion of the different High Courts on the issue as to whether bar under section 58(2) CPC would be applicable also in situations where the initial period of detention was less than three months and the judgment debtor is sought to be re-arrested for a period not exceeding a total detention period of three months.

8. The High Court of Karnataka in *MH. Aquill vs. Union Bank of India, Madikeri*, AIR1985 Kant 120:MANU/KA/0125/1985 (supra) held as follows:

This provision takes away the power of the Executing Court (which has to be exercised in accordance with the provisions in O. 21 Rr. 37 to 40 of the Code of Civil Procedure) to order re-arrest of a judgment-debtor after he has been released from detention, as per the order passed earlier by the Executing Court, that too after complying with the provisions in O. 21 R. 37 to R. 40 of the Code of Civil Procedure. Therefore, in the instant case, if the petitioner had been released from detention on 28-2-1982 and a request for further detention had been made by the respondent-decree-holder on 1-3-1984 or later, the Executing Court would not have have any power to order re-arrest in view of sub-sec. (2) of S. 58 of the Code of Civil Procedure. But the very provision makes it abundantly clear that the Executing Court does not lose jurisdiction to execute the decree. Only the mode of execution available to the decree-holder under S. 58 and O. 21 R. 37 to R. 40 of the Code of Civil Procedure, would not be available i.e., when once the judgment-debtor is released from detention. Hence, this would not be a case where the Executing Court would lose jurisdiction, but a case where though there is jurisdiction in the Executing Court, it is prevented from exercising a particular

power.

9. The Punjab and Haryana High Court has, however, held differently. In Shiv Auto Trading Company vs. Oriental Bank of Commerce, MANU/PH/0491/2002 the Punjab and Haryana High Court was dealing with a case where judgment debtor had been arrested from 21.5.1997 to 11.6.1997. The High Court held that immunity from the second arrest is also dependent upon the period for which he was detained. Para 6 of the judgment reads as follows:

6. A perusal of Section 58(1)(a) of the Code shows that the judgment-debtor-petitioner could be detained in civil prison for a period not exceeding 3 months, whereas he remained in civil prison from 13.5.1997 to 11.6.1997 i.e. for a period of less than one month. Sub-section (2) of Section 58 of the Code creates a bar to re-arrest the judgment-debtor-petitioner in cases where the judgment-debtor remained in jail for 3 months. Therefore, the immunity to the judgment-debtor-petitioner from the second arrest is not dependent merely on the fact of arrest but also the period for which he was detained in jail as the period of his arrest is less than one month. It is not a case of the kind which would be covered by the bar created by Sub-section (2) of Section 58 of the Code: Moreover, the matter had come up before this Court on an earlier occasion in Civil Revision No.2440 of 1997, decided on 21.10.1997, when this Court had directed that the judgment-debtor-petitioner be taken into custody to undergo civil imprisonment for a period of 3 months as earlier directed by the executing Court vide its order dated 21.12.1996. In its order dated 3.1.2002, the executing Court has dealt with this aspect.

10. In my opinion the facts of the present case are a bit different. The initial order of arrest dated 15.3.2010 does not specify the period of detention in civil prison. He was detained on 15.3.2010. How he was released on 13.4.2010 is not known. It was contended that diet money had been paid for only one month and hence that is why the petitioner was released from custody. If that was the ground for release, the release is clearly contrary to the order dated 15.3.2010. The order had clearly noted that diet money would be paid by the decree holder to the extent of Rs.300/- and that in case he fails to pay, it would be borne by the State. This

direction had been passed as the decree holders being aged parents had lost their young son in a car accident caused by the petitioner. In my opinion, the manner of release can throw no doubt that the law cannot be helpless in ensuring compliance of the earlier order dated 15.3.2010. There is accordingly no merit in the present submissions.

11. Even otherwise, in my opinion, an interpretation of section 58(2) has to be read alongwith section 58(1)(a). Section 15(1)(a) provides for a maximum period upto three months. This period cannot be scuttled or withered down based on a reading of section 58(2). Hence, section 58(2) does not bar subsequent imprisonment provided the maximum period of detention would not be more than three months.

12. There is no merit in the present petition. Same is dismissed. (JAYANT NATH)
JUDGE MAY27 2015

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