

Raghavan Vs. C.D.R.F.

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Court : Kerala

Decided On : Jul-28-2006

Reported in : 2006(3)KLT706

Judge : Kurian Joseph, J.

Acts : [Consumer Protection Act, 1986](#) - Sections 25, 25(1), 25(2), 25(3) and 27; Kerala Revenue Recovery Act - Sections 65; [Code of Criminal Procedure , 1973](#); Indian Penal Code; Code of Civil Procedure (CPC) - Sections 58; [Constitution of India](#) - Article 20(2); Code of Criminal Procedure (Amendment) Act, 2002

Appeal No. : O.P. No. 15858 of 2000

Appellant : Raghavan

Respondent : C.D.R.F.

Advocate for Def. : Government Pleader

Advocate for Pet/Ap. : Jose J. Mathaikal, Adv.

Disposition : Appeal allowed

Judgement :

Kurian Joseph, J.

1. Whether a person can be punished a second time with fine or imprisonment or with both for the same offence of non-compliance with the orders passed by the District Forum/Commissions under Section 27 of the [Consumer Protection Act, 1986](#) is the issue arising for consideration in this case.

2. Two modes of implementation of the orders under the Act are provided, under Section 25 by attachment of the property/revenue recovery and under Section 27 by way of punishment either with fine or with imprisonment or with both. Sections 25 and 27 read as follows:-

25. Enforcement of orders of the District Forum, the State Commission or the National Commission.:

(1) Where an interim order made under this Act, is not complied with the District Forum or the State Commission or the National Commission, as the case may be, may order the property of the person, not complying with such order to be attached.

(2) No attachment made under Sub-section(1) shall remain in force for more than three months at the end of which, if the non-compliance continues, the property attached may be sold and out of the proceeds thereof, the District Forum or the State Commission or the National Commission may award such damages as it thinks fit to the complainant and shall pay the balance, if any, to the party entitled thereto.

(3) Where any amount is due from any person under an order made by a District Forum, State Commission or the National Commission, as the case may be, the person entitled to the amount may make an application to the District Forum, the State Commission or the National Commission, as the case may be, and such District Forum or the State Commission or the National Commission may issue a certificate for the said amount to the Collector of the district by whatever name called and the Collector shall proceed to recover the amount in the same manner as arrears of land revenue.

27. Penalties.:

(1) Where a trader or a person against whom a complaint is made or the complainant fails or omits to comply with any order made by the District Forum, the State Commission or the National Commission, as the case may be, such trader or person or complainant shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years, or with fine which shall not be less than two thousand rupees but which may extend to ten thousand rupees, or with both:

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973(2 of 1974), the District Forum or the State Commission or the National Commission, as the case may be, shall have the power of a Judicial Magistrate of the first class for the trial of offences under this Act, and on such conferment of powers, the District Forum or the State Commission or the National Commission, as the case may be, on whom the powers are so conferred, shall be deemed to be a Judicial Magistrate of the first class for the purpose of the Code of Criminal Procedure, 1973.

(3) All offences under this Act may be tried summarily by the District Forum or the State Commission or the National Commission, as the case may be.

S.25 provides for attachment of the property of the person who does not comply with an interim order made under the Act either by the District Forum or by the State or National Commission. Such attachment shall remain in force only for a period of three months and in case non-compliance still continues, the property attached shall be sold. The Forum/Commission may award damages as they think fit to the complainant and shall pay the balance to the party entitled thereto. Though the literal meaning of the provision indicates that the property that is to be sold is of the opposite party in a complaint/respondent in an appeal or revision, it is fairly clear that the provision is intended to be invoked in the event of non-compliance of the order passed by the District Forum/Commissions, be it against the complainant opposite party, appellant or respondent. That it is a *casus omissus* is clear from the expression used in the matter of distribution of the balance of the sale proceeds to 'the party entitled thereto'. That it is so is also discernible from the express inclusion of the complainant also while providing for

action to be taken for violation of the orders under Section 27 of the Act, though in the context of penalty. The penal provision is only a statutory offence intended for the expeditious execution of the orders under the Act. Thus it is made clear that proceedings under Section 25(1) and (2) can be initiated against any party including the complainant against whom an interim/final order as the case may be, is made and who refuses to comply with the same. Revenue recovery proceedings are to be taken recourse to for realisation of any amounts due from any person under an order of the District Forum or the Commissions. The aggrieved person is to approach the Forum/Commission for the revenue recovery steps, in which case a certificate for the amount due under the orders shall be issued to the Collector of the district who will recover the same treating it as arrears of land revenue¹. The obvious intention behind the amendment introduced in 2003 is to augment the process of recovery of the amounts due by replacing the execution through the civil court, which apparently is a time-taking procedure.

3. Section 27 provides for penalties in the case of failure on the part of the person to comply with any order passed by the Forum or the Commissions. The penalty is punishment of imprisonment for a term which shall not be less than one month, but which may extend to three years or with fine which shall not be less than Rs. 2,000/- but which may extend to Rs. 10,000/- or with both. As per the amendment by Act 62/2002 with effect from 15.3.2003, the Forum/Commissions are vested with the powers of Judicial Magistrate of the First Class and they are deemed to be so for the purpose of the Code of Criminal Procedure, 1973. The offence is to be tried summarily.

4. Be it enforcement of the order under Section 25 through attachment/revenue recovery or penalty under Section 27 the purpose is expeditious enforcement of the orders to provide for better protection of the interests of the parties before the Forum/Commission. But one thing that is to be noticed is that the penal provision under Section 27 is in addition to the other mode of recovery. It is in this context, the question posed is to be analysed as to whether the penal provision for fine/imprisonment/both can be invoked successfully till the recovery is completed. As per Ext.P1 order, the District Forum directed the petitioner/opposite party to pay an amount of Rs. 7,000/- with interest at the rate of 15% per annum from 21-

9-1995 and compensation and cost of Rs. 1,000/- to the second respondent/opposite party within a period of one month from the date of receipt of the order dated 18-6-1996. The second respondent filed a petition complaining of non-compliance. Proceedings under Section 27 were initiated and the District Forum punished the petitioner with imprisonment for six months. The petitioner underwent the sentence with effect from 3-8-1998. He was released on 2-12-1998 on granting remission for the remaining period. Since the amount was not still paid the opposite party/second respondent filed another petition on 15-1-1999 before the Forum for taking steps to get the order executed and on issuing a non-bailable warrant the petitioner was produced before the Forum. He was released on the sureties executing a bond. Since the violation still continued steps were taken against the sureties and they deposited an amount of Rs. 3,000/-. It was at that juncture the petitioner filed this Writ Petition contending mainly that steps under Section 27 being a punishment, the same is impermissible for a second time in respect of the same offence.

5. Nemo dabet bis vexari - no man shall be put to peril twice for the same offence, is the philosophy and principle, though originated under English law, behind Article 20(2) of the [Constitution of India](#), in order to avoid double jeopardy in the matter of conviction and punishment for the same offence. Under Article 20(2) 'No person shall be prosecuted and punished for the same offence more than once'. Petitioner has already been punished with imprisonment for a period of six months under Section 27 of the Act for non-compliance with Ext.P1 order passed by the District Forum. It makes no difference as to whether the punishment is in respect of a statutory offence or offence as defined under the provisions of the Indian Penal Code or other statutes. Whether conviction and punishment is in respect of the same offence is the acid test.

6. Petitioner served the term. True the petitioner has not complied with the order yet. In such circumstances the remedy open to the aggrieved party before the Consumer Forum/Commission, in the instant case the second respondent, is only to invoke the provision under Section 25, for enforcement of the order through revenue recovery. A person on whom punishment under Section 27 of the Act has been imposed either with imprisonment or with fine or with both shall not be

punished under that section for the same offence more than once. The aggrieved party is entitled only to take recourse to Section 25(3) of the Act for realising the amount through revenue recovery proceedings. It will also be profitable in this context to note that the coercive steps under Section 58 of the Code of Civil Procedure and Section 65 of the Kerala Revenue Recovery Act stipulate that there shall not be imprisonment for a second time for the same issue.

In the above circumstances this Writ Petition is allowed. The proceedings initiated against the petitioner under Section 27 of the Act for the second time are quashed.

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