

**Venugopal Vs. Sub-inspector of Police, Mathilakam and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/729517](http://sooperkanoon.com/729517)

**Court :** Kerala

**Decided On :** Feb-17-2000

**Reported in :** AIR2000Ker271

**Judge :** Arijit Pasayat, C.J. and; K.S. Radhakrishnan, J.

**Acts :** [Consumer Protection Act, 1986](#) - Sections 25 and 27; Code of Civil Procedure (CPC)

**Appeal No. :** O.P. Nos. 32834 of 1999 and 2284 of 2000

**Appellant :** Venugopal

**Respondent :** Sub-inspector of Police, Mathilakam and ors.

**Advocate for Def. :** C.T. Ravikumar, Govt. Pleader and; T.R. Aswas, Adv.

**Advocate for Pet/Ap. :** P.B. Sahasranaman and; K. Jagadish, Adv.

**Judgement :**

Pasayat, C.J.

1. Questioning correctness of the course adopted by the Consumer Disputes Redressal Forum, Thrissur (in short the 'Forum') in a proceeding under the [Consumer Protection Act, 1986](#) (in short the 'Act') these petitions have been filed.

2. Finding no response to the notice to K.P. Vijayan, petitioner in O.P. 2284 of 2000(hereinafter referred to as 'judgment debtor'), the Forum directed issuance of warrant to arrest him which in fact was executed and he was taken into custody. Pursuant to interim directions given by this Court in a petition filed by his relative Venugopal, petitioner in O.P. 32834 of 1999, he has been released on bail with certain conditions.

3. Genesis of the dispute is the order dated 22-10-1999. While the judgment debtor maintains that he was present and had moved for an adjournment through counsel before the Forum, N.A. Prabhakaran. (hereinafter referred to as 'decree holder') disputes this statement. This factual dispute is really not of much significance in the background of the legal question raised by the judgment debtor. According to him, the directions given by the Forum for issuance of warrant of arrest to secure for the custody of the judgment debtor is violative of the protection given under Section 27 of the Act. It is submitted that the provisions of the Code of Civil Procedure. 1908 (in short 'the Code') had to be followed and they have not been followed. Learned counsel appearing for decree holder submitted that the course adopted by the judgment debtor is nothing but a sheer abuse of the process of Court and the true intent of Section 27 gets diluted by resort to such dilatory methods.

4. The purpose for which the Act was enacted is to provide for better protection of the interests of consumers. As a part of the objective statutory bodies have been constituted at national level, state level and district level for expeditious disposal of consumer disputes and for matters connected therewith. At the national level National Commission, at State level State Commission and a district level District Forums are established under Section 9 of the Act. Section 27 deals with power of the Commission and Forums to punish a trader or a person against whom a complaint has been made, or the complainant and there is violation to comply with the order passed by the Forum or the Commission as the case may be. Section 25 deals with the manner in which the orders of the Forum or the Commission, as the case may be, have to be enforced.

5. Sections 25 and 27 read as follows :

Section 25. Enforcement of orders by the Forum, the State Commission or the National Commission.-- Every order made by the District Forum, the State Commission or the National Commission may be enforced by the District Forum, the State Commission or the National Commission, as the case may be, in the same manner as if it were a decree or order made by a Court in a suit pending therein and it shall be lawful for the District Forum, the State Commission or the National Commission to send, in the event of its inability to execute it, such order to the Court within the local limits of whose Jurisdiction.

(a) in the case of an order against a company, the registered office of the company is situated, or

(b) in the case of an order against any other person, the place where the person concerned voluntarily resides or carries on business or personally works for gain, is situated, and thereupon, the Court to which the order is so sent, shall execute the order as if it were a decree or order sent to it for execution.

Section 27. Penalties.-- 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 :

Provided that the District Forum, the State Commission or the National Commission, as the case may be, may, if it is satisfied that the circumstances of any case so require, impose a sentence of imprisonment or fine, or both, for a term lesser than the minimum term and the amount lesser than the minimum amount specified in this section.

6. The validity of Section 27 of the Act was challenged but was repelled by this Court in several cases, two of the reported decisions being *Joseph v. Union of India*, 1997 (2) Ker LT 600 and *Jancy Joseph v. Union of India*, 1999 (1) Ker LT 422 : (AIR 1999 Kerala 234).

7. While Section 25 provides for execution of orders of the three redressal agencies, Section 27 provides for penalties in the event of failure or omission in complying with their orders. Though Sections 25 and 27 are independent provisions, the affected party may invoke either or both of them. Legislature being conscious of the delays that are caused by judgment debtor at the time of execution, has in its wisdom enacted Section 27; so that the decree holder if he so wishes, has the option of prosecuting the judgment debtor in case of failure to pay the decretal amount. The two provisions can be co-related and are in the nature of execution proceedings. While the former visualises enforcement of the order by a civil process as if they were decree or order made by a Court of law, after confers quasi-criminal sanction for their enforcement by way of punishment with imprisonment or Imposition of monetary penalties.

8. Section 27 gives power to the redressal agency to execute orders by itself. In case a party to a dispute refuses to comply with order of the agency, it can enforce the order by ordering imprisonment or fine or with both. This power is given for expeditious enforcement of the order. As indicated above, on account of the long delay in attaining finality of execution process with the hierarchy of appeals and revisions under the Code, the entire object of the Act will be frustrated. As the Act itself is enacted to provide for better protection of the interest of consumers, recourse to Section 25 and the Code would invariably involve time consuming processes and, therefore, Section 27 power is available to an aggrieved party. It is an effective remedy for enforcement of the orders passed by redressal agencies. Under the Code, if a person is unable to pay the amount in respect of money decreed against him, in execution he can be sent to prison. There is no such requirement under Section 27. But, this is a defence which redressal agency is required to consider, if raised, while moulding final order under Section 27. Before passing the order, parties are to be given opportunity to file objections. Learned single Judge in Jancy Joseph's case (AIR 1999 Kerala 234) (supra) observed that arrest can be ordered only if it is found that persons concerned had means to pay and they are neglecting to pay the amount. For this purpose, reliance was placed in Jancy Joseph's case (supra) and Registrar, University of Madras v. Union of India, 1996 CCJ 668. It is to be noted that in the Madras case, it was not held that provisions of Code are applicable even when Section 27 of the Act is invoked. On

the contrary it was observed as follows :

The provision is only similar to Section 51(c) of the Code of Civil Procedure and the dicta of the Supreme Court in *Jolly George Varghese v. Bank of Cochin*, AIR 1980 SC 470, relating to arrest and execution proceedings in cases arising under the Code of Civil Procedure will certainly be borne in mind by the District Forum or the Commission when its powers under Section 27 are exercised .....' (underlined for emphasis)

In other words, what the Madras High Court held cannot be understood to mean that provisions of the Code are made applicable when powers under Section 27 of the Act are exercised. In *Jolly George Varghese's* case (AIR 1980 SC 470) (supra), apex Court held that simple default to discharge the decree is not enough. There must be some element of bad faith beyond mere indifference to pay, some deliberate or recusant disposition in the past or alternatively current means to pay the decree or a substantial part of it. The provision emphasises the need to establish not mere omission to pay, but an attitude of refusal on demand verging on dishonest disowning of obligation under the decree.

9. As has been rightly submitted by learned counsel for Prabhakaran in the guise of getting this question adjudicated the judgment debtor cannot be permitted to prolong the proceedings which would be against the very purpose of enactment of the statute. But at the same time, when statute requires anything to be done in a particular manner it has to be so done. Therefore we direct K.P. Vijayan and Prabhakaran to appear before the concerned Forum without any further notice on 29th February, 2000 so that appropriate adjudication can be done by the Forum in the background of principles indicated above.

Both the original petitions are disposed of with the aforesaid directions. The direction given for appearance of K.P. Vijayan before the concerned Police Officer shall continue till disposal of the matter afresh by the Forum.