

(2019) 08 JH CK 0158

In the Jharkhand High Court

Case No : Writ Petition (C) No. 531 Of 2017 & Writ Petition (C) No. 533 Of 2017

Abdul Mannan Khan @ Abdul Manan Khan @ Abdul Mannan APPELLANT
Vs

State Of Jharkhand And Ors RESPONDENT

Date of Decision : 13-08-2019

Acts Referred:

Bihar & Orissa Public Demand Recovery Act, 1914 — Section 3, 7, 9, 10, 16
Constitution Of India, 1950 — Article 226

Citation : (2019) 08 JH CK 0158

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Shailesh, Krishna Shankar, Nitish Krishna

Final Decision : Disposed Of

Judgement

This writ petition is under Article 226 of the Constitution of India, whereby and whereunder the order dated 16.07.2016 passed by the court of Shri Ravi Raj Sharma, Certificate Officer, Dhanbad in Certificate Case No.17-MVT-15/16 whereby a bailable warrant of arrest has been issued.

It is the case of the petitioner that he has purchased a vehicle being Registration No.JH-10M-4033 on hire purchase. Subsequent thereto, the financier has attached the vehicle for alleged violation of terms and conditions of the hire purchase agreement and thereafter the petitioner is said to have not paid the road tax which resulted into initiation of the certificate proceeding against which this writ petition has been filed.

Learned counsel for the petitioner has submitted that the certificate proceeding although has been initiated but the petitioner has received no notice which resulted into issuance of bailable warrant of arrest against him which prompted him to file writ petition, invoking under Article 226 of the Constitution of India.

He further submits that even today he is ready to appear before the certificate officer, raising an objection by making an application under Section 9 of the Bihar

& Orissa Public Demand Recovery Act, 1914. He further submits by orally refuting the stand taken by the State respondent in the counter affidavit that although there is reference of notice but the notice actually has not been served and therefore, he has only sought for a direction to grant him liberty to approach before the Certificate Officer to raise his objection since he is denying the claim. He further submits that although ground not pleaded in the writ petition to that effect that the requisition has been issued by the authority who is the officer also acting as the Certificate Officer.

Mr. Nitish Krishna, A.C to S.C (L & C) has submitted by taking aid to the counter affidavit that the petitioner cannot take now the plea that notice has not been served which has been specifically admitted in the order sheet and as such, order sheet is to be given weightage. He further submits that so far as ground agitated by the learned counsel for the petitioner that the Requisition Officer as also the Certificate Officer are the same and since he has not pleaded in the writ petition, therefore the same may not be taken cognizance. He further submits that the petitioner may approach before the appellate authority raising all these points as provided under Section 16 of the Bihar & Orissa Public Demand Recovery Act, 1914.

Learned counsel for the petitioner submitted that although the pleading with respect to the fact that the Requisition Officer and the Certificate Officer are the same person, is the question of jurisdiction which is purely a legal issues, which can be agitated for its perusal by court of law orally also.

So far as issue of appeal, he submits that the appeal can only be filed against a finding recorded by the authority but as would appear from the impugned order that petitioner since has failed to appear before the Certificate Officer, the bailable warrant of arrest for securing his arrest which does suggest that petitioner status is not of certificate debtor as yet warranting him to file an appeal under Section 16 of the Act, 1914.

Having heard learned counsel for the parties and on appreciation of the rival submission, this Court deem it fit and proper before entering into the case to refer wherefrom object of the Bihar & Orissa Public Demand Recovery Act, 1914 it has been enacted to secure the public money which has been declared to be public demand within the meaning of Section 3 of the Act, 1914.

The procedure provided therein that if there is any public demand of amount has been declared to be public demand within Section 3, a requisition would be made before the Certificate Officer for its recovery and its onward deposit in the State exchequer.

The Certificate Officer immediately after receipt of the requisition while issued notice under Section 7 of the Act 1914 by providing an opportunity of hearing to the alleged certificate debtor so that he may get an opportunity to rebut and put his defence said to have been created as a liability casted upon him.

Such person is required to make an objection as stipulated under Section 9 of the Act, 1914.

If there is an objection as per provision of 9 of the Act, 1914, the adjudication would be made as per the provision stipulated under Section 10 of the Act, 1914, in which also the said proposed certificate debtor will have to provide an opportunity of hearing and it is only thereafter a declaration would be issued with a direction to deposit the said amount holding the requisition to be genuine and giving a declaration to such person as of the "certificate debtor."

The legislation also provides alternative remedy of appeal and revision as provided under Section 16 of the Act 1914.

It is not in disputed that the appeal or revision would lie against an order passed by an authority against whom appeal or revision is to be filed, meaning thereby a finding is to be recorded by the original court.

So far as fact of the case in hand, admittedly requisition for certificate has been made under Form No.2 as would appear from page 10 to the brief as under Annexure-1 issued by the District Transport Officer, Dhanbad, upon which, a certificate proceeding has been initiated being Certificate Case No.17-MVT-15/16 by the Certificate Officer, Dhanbad.

It appears from the order sheet as annexed from Annexure-1/1 that a notice under Section 7 to the Act, 1914 has been issued and it further appears that the notice has been served upon the petitioner but has failed to appear before the Certificate Officer, as such no objection under Section 9 of the Act, 1914 has been filed and in consequence a bailable warrant of arrest has been issued vide order dated 16.07.2016 and the matter was posted on 16.08.2016.

The petitioner immediately thereafter rushed this Court by filing writ petition, while this Court vide order dated 27.02.2017 has passed an order not to take any coercive steps in the matter.

The petitioner even after passing of order, interim in nature, has not appeared before the Certificate Officer by filing an objection.

The contention of the learned State counsel that an appeal is required to be filed by the petitioner and, as such, the writ petition may not be entertained, this argument is not acceptable to this Court, it is for the reason that as would appear from the order dated 16.07.2016 that the petitioner since has failed to appear before the Certificate Officer and also failed to file any objection and depositing the amount, therefore, it has been presumed by the certificate officer that the petitioner does not intend to deposit the said amount, therefore, bailable warrant of arrest has been issued meaning thereby as yet there is no certificate issued in this regard.

Admittedly as yet no certificate has been issued and since the petitioner intends to appear before the Certificate Officer, therefore, this Court deem it fit and

proper since no finding has been recorded, warranting the petitioner to approach before the appellate authority, therefore, it is in the ends of justice to direct the petitioner to appear before the certificate officer to file an objection as required to be filed under Section 9 of the Act, 1914 within two weeks from the date of receipt of copy of the order, raising all the points.

If such objection would be filed, the Certificate Officer shall decide the same within three weeks from the date of copy of such objection.

It is made clear that if the petitioner will not submit objection, the Certificate Officer, Dhanbad, is directed to proceed in the matter as per the law so that public money can be secured.

Since this Court has passed an interim order to the effect that no coercive effect shall be taken against the petitioner during pendency of the writ petition, it would be just and proper to extend the said interim order till passing of the order within the stipulated time as directed hereinabove.

Accordingly, the writ petition stands disposed of.