
(1982) 09 J&K CK 0001
In the Jammu And Kashmir High Court
Case No : Criminal Revision No. of 1980

Ghulam Mohd.Haji

APPELLANT

Vs

Ghulam Rasool Haji

RESPONDENT

Date of Decision : 16-09-1982

Acts Referred:

Jammu and Kashmir Criminal Procedure Code, 1989 — Section 386
Payment of Wages Act, 1936 — Section 15(5)

Citation : (1982) SriLJ 529

Hon'ble Judges : Mufti Baha-ud-Din Farooqi, C.J

Bench : Single Bench

Advocate : Z.A.Shah, M.L.Bhat, Advocates appearing for the Parties

Judgement

1. By means of this petition, the petitioner has challenged the validity of an order passed on 5th of November. 1980, by the Judicial Magistrate 1st class Anantnag, declining to execute an award passed by the payment of wages Act authority. The petitioner has styled this petition as a revision petition and in the alternative, a writ petition under Section 103 of the Constitution of Jammu and Kashmir. The events leading up to this petition are these : On 5,12,1974, the petitioner moved an application before the Assistant Labour Commissioner against the present respondent for the recovery of arrears of wages of 300 masons amounting to Rs 5100/ The Assistant Labour Commissioner allowed the application on 2.4.1975 and passed an award in respect of the amount sued for and additional sum of Rs 300/ by way of compensation. Subsequently, the award was sent for execution to the Judl. Magistrate, first Class Anantnag. By means of the impugned order he has declined to execute the award on the ground that it is invalid. As I am of the opinion that he had no jurisdiction to go into the

validity of the award, it will not be necessary to mention the grounds on which he has found the award to be invalid. Section 15 (5) of the Payment of Wages Act. provides as under :

Any amount directed to be paid under this Section may be recovered :

(1) If the authority is a magistrate, by the authority as if it were a fine imposed by him as magistrate, and. (b) If the authority is not a magistrate, by

any magistrate to whom the authority makes the application in this behalf, as if it were a fine imposed by such magistrate.

2. On the terms of this Section, it is clear that the amount of the award is recoverable as fine imposed by a court. The provisions governing the recovery of fine are contained in Section 386 Cr. P. C. Section 385 Cr. P. C. reads thus :

warrant for levy of fine.

1) Whenever an offender has been sentenced to pay a fine, the court passing the sentence may take action for the recovery of the fine in either or

both of the following ways, that is to say, it may,

(a) Issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender :

(b) issue a warrant to the Collector of the District authorising him to realize the amount by execution according to civil process against the movable

or immovable property, or both, of the defaulter :

provided that if the sentence directs that in default of payment of fine, the offender shall be imprisoned and if such offender has undergone the whole

of such imprisonment, in default, no court shall issue such warrant unless for special reasons to be recorded in writing it considers it necessary to

do so.

2. The Government may make rules regulating the manner in which warrants under subsection (1) clause (a) are to be executed, and for the

summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.

(3) Where the court issues a warrant to the Collector under SubSection (1), cl (b) such Wcmrs shall be deemed to be a decree and the Collector

to be the decree holder, within the meaning of the Code of Civil Procedure, 1977, and the nearest civil court, by which any decree for a like

amount could be executed shell, for the purpose of this Code, be deemed to be the court which passed the decree and all the provisions of that

Code as to execution of decree shall apply accordingly :

Provided, that no such warrant shall be executed by .the arrest or detention in prison of the offender.

3. In accordance with this Section, the court imposing the fine may either itself recover the amount or direct the recovery by the Collector. When

the second mode, is adopted the warrant of recovery shall be treated as a decree of a civil court. On this premises, it was contended on behalf of

the respondent that the magistrate had jurisdiction to go behind the award and decline to execute the same on the ground that it was a nullity in the

eye of law. For this he relied upon decisions reported in A. I. R. 1952 Pepsu, 136, and A I. P. 1933 P. C. 61. These authorities lay down that the

executing court can go behind the terms of the decree and refuse to execute the same where the decree is a nullity. On this principle the Pepsu

authority has further laid down that the recovery of punitive fine imposed under Section 14 of the Police Act could be challenged before the

Collector effecting the recovery under cl. (b) of Section 386 Cr. P. C. on the ground that the notification imposing the punitive fine was ultravires.

4. In the present case the magistrate has proceeded to effect the recovery himself. He has not directed such recovery to be made by the Collector

and issued necessary warrants to him. Consequently these authorities are distinguishable. That makes it unnecessary for me to go into the question.

whether the validity of the award could be questioned if the magistrate had directed the recovery to be made by the Collector. I leave that question

open. There is, however, nothing in these authorities to show that while dealing with the matter himself the magistrate had jurisdiction to go into the

validity of the award and decline to execute the same, on the ground that it was invalid. Accordingly the action of the magistrate is going into the

validity of the award and declining to execute it on the ground that it was invalid, is not sustainable in law and must be set aside.

5. The result, therefore, is that the revision petition succeeds and is allowed. The impugned order is set aside and the magistrate is directed to

proceed with the recovery in accordance with law. The parties are directed to appear before the Judl. Magistrate, Anantnag on 6th of October,

1982.