

(1951) 07 P&H CK 0016
In the Punjab And Haryana At Chandigarh
Case No : Civil Miscellaneous No. 29 of 1950

Ram Singh

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 09-07-1951

Acts Referred:

Patiala Police Act, 1985 — Section 14

Citation : (1951) 07 P&H CK 0016

Hon'ble Judges : Teja Singh, C.J.;Passey, J

Bench : Division Bench

Advocate : Daya Sarup Nehra, for the Appellant;

Final Decision : Dismissed

Judgement

Teja Singh, C.J.—The petitioner is a resident of village Dhaula, where an additional Police was posted u/s 14 of the Patiala Police Act, 1985, for a period of one year, vide Government Notification published in the Patiala & E.P. States Union Gazette, dated Chet 6, 2005 corresponding to 19th March, 1950. The petitioner's allegation is that since the notification was not issued under a proper authority, it was ultra vires and void, and the proceedings that the District Magistrate was taking for realisation of the cost of the additional Police from the petitioner and other residents of the village were without jurisdiction. Accordingly he prays that writs of mandamus and prohibition be issued to the State, the Inspector General of Police and the District Magistrate, Barnala, directing them to refrain from making the realisations of the cost of the punitive Police, by distress and sale of the property of the inhabitants of the villages affected by the notification.

The facts of the petition and the questions involved therein though not identical with, are similar to, those involved in "Kaka Singh v. State", C.M.A. No. 33 of 1950 (Pepsu) which was dismissed by another Bench of this Court on 18-6-1951. The difference in that petition and the present petition is that whereas the order for posting the additional Police in that case was made as far back as 1996, the

order in the present case, as mentioned above, was made on 19-3-1950. This, however, does not make any substantial difference, because as in that case in this case also the Government have been taking proceedings for the realisation of the amount due from the residents of the village for the cost of the additional Police and no objection had been raised to them. In the previous case, there was no evidence to show that any realisation had been made. In fact the allegations of the petitioner in that case were that the Government had not even taken any steps to make the realisation. In the present case, an affidavit has been filed on behalf of the Government from which it appears that out of the amount due from the village people, Rs. 949/11/- were realised upto 3-7-1950. This would go to show that though delay in making the petition in this case was not as much as in the other case, the fact remains that this petition was also not made very promptly.

2. One of the reasons why Kaka Singh's petition was dismissed was that in view of the Bench there was open to him another & effective remedy, and as regards this point it applies with equal force to the present petition. As was pointed out by me in Kaka Singh's petition recovery of the money payable by the petitioner and other persons liable for the cost of the additional Police can only be made under Sections 386 and 387 of the Code of Criminal Procedure, by virtue of Section 16 of the Police Act and if the petitioner's allegation be correct that the notification posting the additional Police was ultra vires and void, and the order making the petitioner and others liable for the cost of the additional Police were without jurisdiction, he could raise this objection before the authority who would make the recovery from him. The petitioner's counsel made an effort to show that the view taken by my colleague and me in the previous petition was not correct and after giving careful consideration to the arguments that he advanced in support of his contention, I hold that there is no force in it whatsoever. Let me re-state the position once again.

3. Section 16 of the Patiala Police Act lays down that all moneys payable under sections 12, 13, 14 and 15 shall be recoverable by the Magistrate of the District in the manner prescribed by Sections 386 and 387 of the Code of Criminal Procedure for the recovery of fines, or by suit in any competent Court. Both sides are agreed that the recovery of the cost of the additional Police comes u/s 14. Section 386 of the Criminal Procedure Code reads as follows:

S. 386 (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 moveable property belonging to the offender;

(b) issue a warrant to the Collector of the District authorising him to realise the amount by execution according to civil process against the moveable or immoveable property, or both, of the defaulter;

Provided that, if the sentence directs that in default of payment of the 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 Provincial Government may make rules regulating the manner in which warrants under sub-section (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 Courts issue a warrant to the Collector under sub-section (1) clause (b), such warrant shall be deemed to be a decree, and the Collector to be the decree-holder, within the meaning of the CPC (V of 1908) and the nearest Civil Court by which any decree for a like amount could be executed shall, for the purposes of the said Code, be deemed to be the Court which passed the decree, and all the provisions of that Code as to execution of decrees shall apply accordingly:

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

4. It will be seen that the Section lays down two methods for the recovery of a fine. The first is that the Court which imposes the fine may itself issue a warrant for the levy of the amount by attachment and sale of any moveable property belonging to the offender. The second is, that the Court may issue a warrant to the Collector of the District authorising him to realise the amount by execution according to civil process against the moveable or immoveable property, or both, of the defaulter. When the second method is adopted, the warrant shall be treated as a decree and it will be executed by the Court having jurisdiction for the execution of a decree of a Civil Court.

5. The petitioner's counsel argued that since sub-section (4) of Section 14 of the Police Act gives the power to determine the individual liability of the inhabitants of the area for which the additional Police is posted, to the District Magistrate, recovery could only be made according to the first method, that is to say, under clause (a) of sub-section (1) of Section 386 of the Criminal Procedure Code. I am inclined to think that the operation of the said clause is confined only to the recovery of a fine imposed by a Court, and it has no applicability to a case like the present where the amount to be recovered, is payable u/s 14 of the Police Act. Not only the amount recoverable is not fine, but the District Magistrate who determines the liability of various persons under sub-section (4) of Section 14 of the Police Act does not act as a Court. In my judgment, therefore, recovery can only be made under clause (b) of sub-section (1) of Section 386, i.e., through a Civil Court under sub-section (3) of the Section.

6. It was further argued by the petitioner's counsel, that when once the proceedings for the realisation of the amount start, the Court that executes the warrant will not entertain any objection regarding the legality of the warrant,

because the warrant is to be treated like a decree and according to the well-known principle no executing Court can go behind the decree. I have no quarrel with the principle, that an executing Court cannot go behind the decree, but I am afraid that the petitioner's counsel does not realise its true significance. Suppose a decree is sent to a court for execution. The judgment-debtor comes forward and takes the objection that the decree was wrongly passed, or that he was not liable under the decree, the executing Court will certainly refuse to go into these matters. Suppose, however, that the objection is, that the Court which passed the decree had no jurisdiction at all, or that the decree was a nullity for the reason that when it was passed the judgment-debtor was dead and no legal representatives of his, had been brought on record, since these questions go to the very root of the decree the executing Court is bound to go into them and if it comes to the conclusion that they are valid it will refuse to give effect to the decree by executing it. This will not be going behind the decree, but determining whether the decree was valid in law. The correctness of this view is not denied by the counsel, and is supported by a decision of their Lordships of the Privy Council in *Jnanendramohan v. Rabindranath*", 60 Cal 670 (PC).

It may be pointed out that in the present case the petitioner's position being that the notification posting additional Police was ultra vires and void, and the order of the District Magistrate apportioning liability of cost among the inhabitants was without jurisdiction, if these contentions were correct, they would affect the very validity of the warrant that would be issued to the Collector u/s 386 of the Cr.P.C. authorising him to realise the amount by execution and I cannot understand how the Court to which the warrant is sent for execution, can refuse to adjudicate upon it. I may also mention at this stage that even if proceedings for the recovery of the amount could be taken under clause (a) of sub-section (1) of Section 386 of the Code of Criminal Procedure, objection to the validity of the order whereby the petitioner and other residents of the village were held liable for the cost of the additional Police, could still be taken on the ground, inter alia, that the notification posting the additional Police had not been made by the proper authority and the order in question was made by an authority other than the District Magistrate who alone was competent to make such order under sub-section (4) of Section 14 of the Police Act.

7. The result is, that the petition fails, and is dismissed, but the parties are left to bear their own costs.

Passey, J.

8. I agree.