(2008) 11 PAT CK 0118

In the Patna High Court

Case No : CWJC No. 6043 of 2005

Ranjan Kumar Yadav APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 11-11-2008

Acts Referred:

Citation : (2009) 1 PLJR 394

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Advocate : Mahesh Narayan Parbat, Sanjeev Kumar Mishra, for the Appellant; Lalit Kishore and Anshuman Singh for the state, for the Respondent

Judgement

Navaniti Pd. Singh, J.—This case depicts a sorry state of affairs. Functionaries of the statutory powers blatantly abused to the detriment to the rights of the citizen. The attitude seems to be that the authority can abuse power with no answerability and the only redressal available to citizen would be to get the order set aside. This Court and the Apex Court have repeatedly held that for mere failure to pay civil debt, a person cannot be arrested and such exercise of power would be ultra vires the Constitution. Reference may be made to the case of Jolly George Varghese and Another Vs. The Bank of Cochin, , Dasharath Sharma Vs. The State of Bihar and Others, and Md. Abu Hasnain Vs. State of Bihar and Others, but the authority still abuses the said power. A certificate proceedings being Certificate Case No. 1/1995-96 was initiated against the petitioner for dues which he had incurred as a consequence of loan taken from the Katihar District Central Cooperative Bank Limited. It appears that for securing the said loan, petitioner had mortgaged substantial landed property to the Bank aforesaid. There being default, the certificate proceedings were initiated in which while objections of the petitioner were pending, on 31.5.2000, the Certificate Officer issued warrant of arrest against the petitioner. Subsequently, his various objections were rejected and the Bank was directed to verify the calculation of interest. The matter was pending and ultimately by order dated 14.10.2004, petitioner was granted two weeks time to deposit the certificate dues. The order is Annexure-21 to the writ petition. Thus, the matter was ordered to be listed on 28.10.2004 and the petitioner had time upto that date to deposit the amount. It may be noted that though warrant for arrest of petitioner was issued as far back as in the year 2002, no effective steps were taken to execute the same even though petitioner was appearing in the proceedings. It may also be mentioned here that at no point of time steps were taken to execute the certificate by attachment and/or sale of mortgaged land property. Suddenly, on 19.10.2004 i.e. five days after the order dated 14.10.2004, giving petitioner two weeks time to deposit the dues, petitioner was arrested. What is shocking is that on his arrest, when he was produced before the certificate officer, who had just five days earlier granted two weeks time to the petitioner to deposit the dues, the petitioner was remanded to civil prison. The petitioner was then enforced to pay the entire amount without demur, as condition of his release, which obviously left the petitioner with no choice even without verifying the account. On behalf of the petitioner to secure his release from civil prison, the entire amount was paid, which is now being submitted to be a voluntary payment by the respondent. To my mind, these facts, clearly show that the payment was anything but voluntarily made. If a pistol is put on the head of a person and he made a sign to a paper, can by any stretch of imagination, it be stated that the person has signed it voluntarily out of his free will. There cannot be a more flagrant case of threat and coercion and that too by an official which scandalize this Court. Power to arrest and detain a person is a serious inroads on the fundamental right of a citizen and jeopardise his life and liberty, which includes his reputation. India, we professed, is a civilized democratic country where such uncivilized officials behaviour cannot be tolerated, more so, when it is so uncivilized. It is only on payment of the entire amount that the petitioner was ordered to be released on 2.11.2004 having remained in civil prison for almost two weeks by this illegal order.

2. On behalf of the respondents, it is submitted that the actions of the respondents were bona fide and legitimate. To this Court, it appears just otherwise because the warrants were not executed for over four years even though petitioner was participating, petitioner was given two weeks'' time to pay the due but as appears even half of the time elapsed he was arrested and remanded to civil prison. This by no stretch of imagination, can be said to be either legitimate or bona fide action either in fact or in law. Thus, the petitioner wants two reliefs, firstly, a compensation for his illegal and unlawful detention and secondly, an opportunity to challenge the correctness of the calculation, as made by the respondent-Bank.

3. Petitioner submits that his life and liberty had been seriously jeopardised by unlawful act and action of the State.

4. In the facts, noted above, to this Court, there does not appear to be any problem in holding that the detention was illegal and unlawful. It is well

established that no one can be deprived of his life and liberty and in furtherance of lawful authority in the present case, all that is missing. May be the intention of the officer was benevolent, but its execution was obviously unlawful and illegal. Lawful object can only be achieved lawfully. Even it be assumed that the petitioner was a cheat that does not give liberty to the State to throw away law and legal procedure. Even a criminal has to be dealt in accordance with law otherwise the distinction between spirit justice and court justice in civilized society would be obliterated. Thus, I find that the petitioner is entitled to compensation, which in the facts, is quantified at Rs. 10,000/- to be paid by the State forthwith to the petitioner, to be realized by the State from the officer(s) they consider responsible for such action.

5. Secondly, coming to the second relief of right to object to the calculation on dues, as made. Learned counsel for the respondents submits that the payments were voluntarily made. As noted above, the argument is noticed only to be rejected. Such payment cannot be held to be voluntarily made, for it is a contradiction to the term of voluntarily. Had the petitioner chosen to challenge the correctness of the amount being sought to be recovered, his illegal and unlawful detention in civil prison have only continued and therefore he would be forced to suffer the detention and then defend himself. This cannot be termed as voluntary payment. This, in my view, the petitioner''s right to object to the calculation either as made by the Bank or made by the Certificate Officer is open and the Certificate Officer would be obliged to consider the representation of the petitioner filed on 9.3.2005 (Annexure-24) within a period of two months from today.

6. It may be noted that it was Assistant Registrar Co-operative who was the Managing Director of the Bank and was also the certificate officer, all that roll into one and it is this omnibus power that has led to be abused of authority. With these observations and directions, this writ petition stands disposed of.

