

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(CrI.) 866/2007**

% Date of reserve: 27.07.2009
Date of decision: 03.08.2009

AMRIK SINGH LYALLPURI ...PETITIONER
Through: Abinash K. Mishra, adv.

Versus

STATE & ANR. ...RESPONDENT
Through: Mr. Rajat Katyal, APP for state.

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers Yes
may be allowed to see the judgment?
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be Yes
reported in the Digest?

MOOL CHAND GARG, J.

1. The petitioner instituted Suit No. 124/1990 dated 02.04.1990 before the Court of Learned Civil Judge for recovery of Rs. 7392/- against the respondents. The said suit was decreed ex-parte by Civil Judge vide judgment/ decree dated 17.09.1991. Since no appeal was filed the decree attained finality and therefore the petitioner filed an execution petition bearing No.281/2002 for execution of the decree.

2. For the purpose of executing the decree, the petitioner is stated to have gone to the house of the judgment debtor as per the report dated 15.2.2005 submitted by the baliff which shows that the decree could not be executed because the judgment debtor was not in his house and the house was locked. It is a matter of record that even

earlier orders were passed by the Civil Judge issuing warrants of attachment for the execution of the decree by breaking open the locks by Police aid but those orders were not complied with as the Police was not available. It was in these circumstances on the application of the petitioner fresh orders were passed for attachment on 28.01.2005 and the date of visit at the premises of the judgment debtor was fixed as 14.02.2005.

3. In respect of the execution of warrants for 14.02.2005, it was reported that the premises of the judgment debtor was locked and he was out of station and would be coming back after a week. It is thereafter the petitioner moved an application for Police help and breaking open the locks of the premises belonging to the judgment debtor on 10.03.2005. The said application for the sake of reference is reproduced hereunder:

Application by and behalf of decree holder for grant of police aid & broken of locks, doors, hinges etc. U/S 151 CPC.

Showth.

i. That in the above noted execution case, the decree holder as per the order of this Hon'ble Court along with bailiff of the court went to the J.D. site to execute the decree at property No. 1408 Jhajhar Wala Mandir 1st Floor Near Central Bank of India Chandani Chowk Delhi on 8.9.95 and the office of J.D. is found locked but fan and light is on inside the office and after waiting sometime the applicant/D.H. his witness Bailiff of the court return back without any attachment due to locked premises.

ii. That without the permission of this Hon'ble Court the locks Hinges could not be broken.

In view of the above said circumstances, it is prayed that police aid/both sex may kindly be granted to execute the warrant of attachment with the direction to break open the locks Hinges and doors etc. to execute the decree because at the time of break open the locks etc. there shall apprehension of breach of peace.

Prayed accordingly,

Decree Holder

4. The executing Court recorded the statement of Court bailiff on 03.06.2005 and it was stated by the bailiff that he had not gone to the spot for execution of the decree/ judgment dated 17.09.1991 on 15.02.2005. However, the petitioner is stated to have made a statement that he did visit the house of the judgment debtor.

5. On 03.06.2005 taking into consideration the contradictory statement made by the bailiff and the decree holder the Executing Court passed the following orders:

EX No. 281/02
03.06.2005

Pr: Sh. Amrik Singh DH in person.
Sh. Parmanand Bailiff.

Bailiff has given his statement today that DH had met him in Room No. 104, Tis Hazari Courts on 15.02.05 and had stated that premises of the JD is locked. On this representation of the DH bailiff did not visit the premises. He has exhibited his report as Ex.P1. In the application dated 10.03.05, DH had stated that he visited the premises of JD on 15.02.05 at 3 PM along with the court bailiff. He found the premises locked and waited for some time, but no one came to open the same. Since there was no order for breaking open the locks, therefore warrants of attachment could not be executed and DH along with bailiff had to return back with the unexecuted warrants. This application of the DH is accompanied with affidavit of DH, wherein he has affirmed on oath the correctness of the averments made in the application.

This application was moved by the DH, so as to get an order for breaking open the locks of the property of the JD. Now, when DH has heard the statement given by the bailiff, he states that due to typographical mistake, it was mentioned in the application that he accompanied the bailiff and due to hurry he could not read the application and signed it. However, if the DH informed the bailiff at 2 PM on 15.02.05 that premises of the JD is locked, then there was no occasion to make visit by DH at 3 PM on the same date.

Therefore, apparently this statement of DH is merely to cover his misdeed. DH has tried to mislead this Court, by filing false application, supported with false affidavit, so as to take this Court into confidence and to get an order for breaking open the locks of JD's property.

In these circumstances, I find DH to be liable to prosecute u/s 195 read with Section 340 Cr.P.C.

Put up for framing of complaint on 1.07.05. DH is directed to appear in person on the said date.

CJ/Delhi
3.6.05.

6. Accordingly, complaint was filed against the petitioner under Section 340 Cr.P.C. before the concerned Court by the Learned Civil Judge. The complaint was registered as Complaint Case No. 1677/1/2006 and is presently pending in the Court of Ld. MM, Tis Hazari, Delhi.

7. By the present writ petition the petitioner seeks quashing of the said complaint.

8. It is also the case of the petitioner that the application moved before the Learned Civil Judge praying order for breaking open the lock had certain mistakes and he wanted to amend the same for which he moved an application dt. 27.06.2005 but the said application was dismissed. A petition filed in this Court, namely, C.M.(Main) No. 1033/2006 dated 20.05.2006 was also dismissed by this Court on 14.07.2006 against which LPA No.129 of 2007 was filed which was subsequently withdrawn by the petitioner and as such the orders passed by the Learned Civil Judge on the basis of the application moved by the petitioner on 27.06.2005 became final.

9. I have heard the petitioner and I have also gone through the written submissions filed by him on record. At the outset, I may observe that in case the petitioner was aggrieved of the order initiating proceedings against him under Section 340 Cr.P.C. he had a remedy to file an appeal under Section 341 Cr.P.C. The provisions of Section 340 and Section 341 Cr.P.C. are reproduced hereunder:

340. Procedure in cases mentioned in section 195.

(1) When upon an application made to it in this behalf or otherwise any court is of opinion that it is expedient in the interest of justice that an inquiry should be made

into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that court, such court may, after such preliminary inquiry, if any, as it thinks necessary,-

(a) Record a finding to that effect;

(b) Make a complaint thereof in writing;

(c) Send it to a Magistrate of the first class having jurisdiction;

(d) Take sufficient security for the appearance for the accused before such Magistrate, or if the alleged offence is non-bailable and the court thinks it necessary so to do send the accused in custody to such Magistrate; and

(e) Bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a court by sub-section (1) in respect of an offence may, in any case where that court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the court to which such former court is subordinate within the meaning of sub-section (4) of section 195.

(3) A complaint made under this section shall be signed, -

(a) Where the court making the complaint is a High Court, by such officer of the court as the court may appoint;

(b) In any other case, by the presiding officer of the court.

(4) In this section, "court" has the same meaning as in section 195.

341. Appeal.

(1) Any person on whose application any court other than a High Court has refused to make a complaint under sub-section (1) or sub-section (2) of section 340, or against whom such a complaint has been made by such court, may appeal to the court to which such former court is subordinate within the meaning of sub-section (4) of section 95, and the superior court may thereupon, after notice to the parties concerned, direct the withdrawal of the complaint or, as the case may be, making of the complaint which such former court might have made under section 340, and if it makes such complaint, the provisions of that section shall apply accordingly.

(2) An order under this section and subject to any such order, an order under section 340, shall be final, and shall not be subject to revision.

10. This shows that if petitioner is aggrieved of the order passed

under Section 340 Cr.P.C., he is entitled to file an appeal against the said order to the next higher authority i.e. District and Sessions Judge, which has not been done by him. As such, the present petition which has been filed by the petitioner in the form of writ petition is mis-conceived and is not in accordance with law.

11. The learned counsel for the petitioner has filed his written submissions. However, in his written submissions he has not dealt with the provisions of Section 340 Cr.P.C. which provides for a remedy to the petitioner in case the order passed by the Civil Judge under Section 340 Cr.P.C. was untenable or was mis-conceived or was contrary to law. However, instead of doing so the petitioner has filed the present petition which is mis-conceived and is an abuse of the process of Court.

12. The petitioner has relied upon the following judgments in support of his petition.

- a. B.K. Gupta Vs. Damodar H. Bajaj & Ors. (2001) 9 SCC 742
- b. Dr.(Mrs.) N.D. Khanna Vs. Hindustan Industrial Corp. 20 (1981) DLT 236
- c. Chajoo Ram Vs. Radhey Shyam & Anr. AIR, 1971, SC, 1367
- d. Jagjit Kaur Vs. Lt. Col. Harjeet Singh & Anr. 2001 (1) JCC, Delhi, 28

13. None of these judgments comes to the rescue of the petitioner in so far as the proper remedy is concerned. Thus, I do not find any reason to interfere with the orders passed by the Civil Judge and consequently the filing of the complaint by the Civil Judge on the basis of which the petitioner has been summoned.

14. Accordingly, the present writ petition is dismissed as it is not maintainable with liberty to the petitioner to file an appeal in

accordance with the procedure prescribed i.e. under Section 341 Cr.P.C. before the competent authority.

Crl.M.A. 7403/2007 (stay)

In view of the orders passed above, the application stands dismissed. Interim order, if any, stands vacated.

MOOL CHAND GARG, J.

AUGUST 03, 2009
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