



CNR: KAHC010730672024

NC: 2026:KHC:47480
WP No. 34302 of 2024



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 34302 OF 2024 (GM-CON)

BETWEEN

1. SRI DOMMARAJU SUBRAMANYAM,
AGED ABOUT 54 YEARS,
SON OF D.CHENGALRAJU
RESIDING AT. No.1, 12TH CROSS,
OPP. ST ANNS SCHOO1L, AKSHAYA NAGAR,
BANGALORE -68
2. SRI. KORAPATI VENKATA DURGAPRASAD,
SON OF RATNAKAR,
AGED ABOUT 36 YEARS,
NO. 9, 4TH FLOOR, BLE ARI DRIVE
BELARY ROAD, GANGANAGAR,
BENGALURU-560032 ...PETITIONERS

(BY SRI. ASHWIN VAISH., ADVOCATE FOR
SMT. YASHASWI DASARI., ADVOCATE)

...PETITIONERS

Digitally signed
by SHWETHA
RAGHAVENDRA
Location: HIGH
COURT OF
KARNATAKA

AND

1. STATE OF KARNATAKA
COMMISSIONER OF POLICE, 2,
ALI ASKER RD, VASANTH NAGAR,
BENGALURU, KARNATAKA 560001
REPRESENTED BY HCGP
2. MRS. BINDU SINGH,
WIFE OF NARENDRA BAHADUR SINGH,
AGED 48 YEARS,
RESIDING AT NO.2/2B, 3RD CROSS,
NGR LAYOUT, BOMMANAHALLI,
BANGALORE-560 068



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3. ASSISTANT REGISTRAR-CUM-ASSISTANT,
ADMINISTRATIVE OFFICER DISTRICT CONSUMER,
DISPUTES REDRESSAL COMMISSION,
BENGALURU, URBAN DISTRICT,
BENGALURU-5600026 ...RESPONDENTS

(BY SRI. MOHAMMED JAFAR SHAH., AGA FOR R1;
SRI. V. RANGARAMU., ADVOCATE FOR R2;
R3-SERVED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE AN APPROPRIATE WRIT DECLARING AS ILLEGAL ORDER DATED 08.02.2024 AND CONSEQUENTIALLY SET ASIDE ORDER DATED 08.02.2024 AND PROCEEDINGS ENUMERATING THEREFROM PASSED BY THE II ADDITIONAL DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION BENGALURU URBAN in E.A NO. 10/2024 ARISING OUT OF C.C NO. 494/2016 PRODUCED AS ANNEXURE-A AND ETC.,

THIS WRIT PETITION COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 24.07.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

CAV ORDER

1. The Petitioners are before this Court seeking for the following reliefs:

i. Issue an appropriate writ declaring as illegal order dated 08.02.2024 and consequently set aside order dated 08.02.2024 and proceedings enumerating therefrom passed by the II Additional District Consumer Disputes Redressal Commission Bengaluru Urban in E.A.No.10/2024 arising out of C.C.No.494/2016 produced as Annexure-A; and/or



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ii. Issue such other writ or writs or pass any such order or orders as this Hon'ble Court may deem fit under the facts and circumstances of the case, in the interest of justice.

2. Respondent No.2 had instituted Consumer Complaint No.494/2016 before the District Consumer Commission, which came to be allowed by order dated 15.03.2017. Pursuant thereto, respondent No.2 initiated Execution Application No.10/2024 on 03.02.2024 under Order XXI Rule 11 of the Code of Civil Procedure, 1908 (hereinafter, "**CPC**"), read with Sections 71 and 72 of the Consumer Protection Act, 2019 (hereinafter, "**CP Act**"), seeking enforcement of the order passed in the consumer complaint.
3. The execution petition sought recovery of the decretal compensation of Rs.7,83,298/-, together with interest thereon amounting to Rs.8,85,715/-, costs awarded to the complainant, execution costs and advocate's fee, aggregating to Rs.16,95,013/-. The decree-holder also sought attachment and sale of the movable properties of the judgment-debtor (hereinafter, "**JDR**") and arrest and detention of the JDR in civil prison. The petitioners herein are the Directors of the JDR, namely, M/s. Sanchaya Land and Estate Pvt. Ltd.



4. When the execution petition was taken up on 08.02.2024, the Execution Court took note of the complaint filed under Section 200 of the Code of Criminal Procedure, 1973 (hereinafter, "**CrPC**"), alleging non-compliance by the JDR with the order dated 15.03.2017 passed in Consumer Complaint No.494/2016. The sworn statement of the complainant was recorded. Upon consideration of the material placed before it, the Execution Court formed an opinion that a prima facie case existed against the JDR for an offence punishable under Section 72 of the CP Act and accordingly took cognisance of the said offence and directed issuance of summons.
5. The summons issued to the JDR came to be returned with the endorsement "left"; however, consequently, by order dated 06.04.2024, a Non-Bailable Warrant (hereinafter, "**NBW**") was issued against the JDR through the Station House Officer, R.T. Nagar Police Station. The matter was thereafter adjourned from time to time awaiting the execution report. On 29.05.2024, the NBW was re-issued. Again, on 18.07.2024, the NBW was re-issued through the Commissioner of Police, Bengaluru City. As the warrant remained unexecuted, it was once again re-



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issued on 21.09.2024 through the Commissioner of Police, Bengaluru.

6. On 27.11.2024, the NBW was returned unexecuted with a report that the JDR had vacated the premises. It is in the aforesaid circumstances that the petitioners have called in question the order dated 08.02.2024 passed by the Execution Court, whereby cognisance was taken of the alleged offence punishable under Section 72 of the CP Act.
7. The submission of Sri. Ashwin Vaish., learned counsel for the petitioners is that;
 - 7.1. The order dated 08.02.2024 taking cognisance of the alleged offence under Section 72 of the CP Act is illegal and unsustainable in law. It is contended that the Execution Court has adopted a procedure unknown to law by converting the execution proceedings into criminal proceedings and, on that basis, proceeded to take cognisance and issue summons to the JDR.
 - 7.2. Learned counsel further submits that the power available to the Execution Court in execution proceedings could not have been invoked for



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issuance of NBW against the JDR in the manner in which it has been done. According to him, the Execution Court, while exercising jurisdiction in an execution proceeding, was required to strictly adhere to the procedure prescribed by law and could not have resorted to coercive criminal process without following the procedure contemplated under the CP Act and the CrPC. On this ground also, it is contended that the impugned order and the consequential proceedings are liable to be set aside.

- 7.3. Learned counsel submits that Section 72 of the CP Act has to be read in conjunction with Sections 4 and 5 of the CrPC insofar as the procedure relating to initiation and prosecution of an offence thereunder is concerned. According to him, before fastening criminal liability upon the petitioners, who are Directors of the JDR-Company, the Consumer Commission was required to determine whether any statutory or legally sustainable basis existed for attributing vicarious criminal liability to the Directors for the alleged non-compliance by the Company.



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- 7.4. It is further contended that the order passed in the consumer complaint was against the Company and not against the individual Directors in their personal capacity. The liability arising under the said order, therefore, cannot automatically be extended to the Directors merely by virtue of them holding office as Directors. Learned counsel submits that the Company and its Directors are distinct legal entities and, in the absence of a specific adjudication or statutory basis fastening personal liability upon the Directors, the Directors cannot be treated as personally liable for satisfaction of the decretal amount payable by the Company.
- 7.5. Learned counsel further submits that an offence under Section 72 of the CP Act would arise only upon a proper determination that there has been deliberate or wilful non-compliance with the order of the Consumer Commission. Such determination, according to him, would necessarily require consideration of whether the JDR had the means and ability to comply with the order and whether the alleged non-compliance was deliberate. In the case of



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Directors, it would additionally require a determination as to whether the particular Director had any role in, or responsibility for, the alleged non-compliance.

7.6. It is submitted that a Director cannot be saddled with criminal liability merely because he occupies the position of a Director in the Company. Learned counsel contends that the petitioners cannot be proceeded against for the alleged default of the Company in the absence of a specific finding establishing their individual criminal liability. The mere fact that the petitioners are Directors of the JDR-Company, according to learned counsel, does not make them personally liable either for the decretal debt or for the alleged offence under Section 72 of the CP Act.

7.7. Learned counsel also submits that the issuance of the NBW was wholly premature and contrary to the prescribed procedure. It is contended that, although summons had initially been ordered to be issued, the Execution Court proceeded to issue an NBW without there being proper service of summons upon the concerned



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persons. According to him, at the mere instance of the Decree Holder, the Court could not have dispensed with the ordinary process of service and immediately resorted to the coercive process of an NBW.

7.8. It is further contended that the coercive process of arrest cannot be employed for the purpose of securing the presence of the Directors merely because the Company is the JDR. The Company and its Directors are distinct legal persons, and the Directors cannot be treated as synonymous with the Company for the purposes of execution or criminal prosecution. Consequently, the NBW could not have been issued against the petitioners without first establishing the legal basis for their personal liability and following the procedure prescribed by law.

7.9. On these grounds, learned counsel submits that the order dated 08.02.2024 taking cognisance under Section 72 of the CP Act, as well as the consequential issuance of summons and NBW against the petitioners, are without jurisdiction



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and contrary to the procedure established by law and are therefore liable to be quashed.

7.10. In this regard, he relies on the decision of the Hon'ble Supreme Court in **Jolly George Varghese v. Bank of Cochin** [(1980) 2 SCC 360] more particularly paragraphs 10, 11, 12 and 13 thereof, which are reproduced hereunder for easy reference;

10. *Equally meaningful is the import of Article 21 of the Constitution in the context of imprisonment for non-payment of debts. The high value of human dignity and the worth of the human person enshrined in Article 21, read with Articles 14 and 19, obligates the State not to incarcerate except under law which is fair, just and reasonable in its procedural essence. Maneka Gandhi case [(1978) 1 SCC 248] as developed further in Sunil Batra v. Delhi Administration [(1978) 4 SCC 494 : 1979 SCC (Cri) 155] , Sita Ram v. State of U.P. [(1979) 2 SCC 656 : 1979 SCC (Cri) 576 : (1979) 2 SCR 1085] and Sunil Batra v. Delhi Administration [WP No. 1009 of 1979, decided on December 20, 1979] lays down the proposition. It is too obvious to need elaboration that to cast a person in prison because of his poverty and consequent inability to meet his contractual liability is appalling. To be poor, in this land of daridra narayana, is no crime and to recover debts by the procedure of putting one in prison is too flagrantly violative of Article 21 unless there is proof of the minimal fairness of his wilful failure to pay in spite of his sufficient means and absence of more terribly pressing claims on his means such as medical bills to treat cancer or other grave illness. Unreasonableness and unfairness in such a procedure is inferrable from Article 11 of the Covenant. **But this is precisely the***



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interpretation we have put on the proviso to Section 51 CPC and the lethal blow of Article 21 cannot strike down the provision, as now interpreted.

11. The words which hurt are "or has had since the date of the decree, the means to pay the amount of the decree". This implies, superficially read, that if at any time after the passing of an old decree the judgment-debtor had come by some resources and had not discharged the decree, he could be detained in prison even though at that later point of time he was found to be penniless. This is not a sound position apart from being inhuman going by the standards of Article 11 (of the Covenant) and Article 21 (of the Constitution). The simple default to discharge is not enough. There must be some element of bad faith beyond mere indifference to pay, some deliberate or reculant disposition in the past or, alternatively, current means to pay the decree or a substantial part of it. The provision emphasises the need to establish not mere omission to pay but an attitude of refusal on demand verging on dishonest disowning of the obligation under the decree. Here considerations of the debtor's other pressing needs and straitened circumstances will play prominently. **We would have, by this construction, sauced law with justice, harmonised Section 51 with the Covenant and the Constitution.**

12. The question may squarely arise some day as to whether the proviso to Section 51 read with Order 21 Rule 37 is in excess of the Constitutional mandate in Article 21 and bad in part. In the present case since we are remitting the matter for reconsideration, the stage has not yet arisen for us to go into the vires, that is why we are desisting from that essay.

13. In the present case the debtors are in distress because of the blanket distraint of their properties. Whatever might have been their means once, that finding has become obsolete in view of later



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happenings. Sri Krishnamurthi Iyer for the respondent fairly agreed that the law being what we have stated, it is necessary to direct the executing court to re-adjudicate on the present means of the debtors vis-a-vis the present pressures of their indebtedness, or alternatively whether they have had the ability to pay but have improperly evaded or postponed doing so or otherwise dishonestly committed acts of bad faith respecting their assets. The court will take note of other honest and urgent pressures on their assets, since that is the exercise expected of the court under the proviso to Section 51. An earlier adjudication will bind if relevant circumstances have not materially changed.

7.11. By relying on **Jolly George Varghese**, his submission is that mere non-payment of the decretal amount or mere failure to satisfy the decree cannot, by itself, justify the arrest and detention of a judgment-debtor. Before ordering detention under Section 51 of the CPC, the Execution Court is under a mandatory obligation to record a finding, on the basis of cogent material, that the judgment-debtor has or has had the means to pay the decretal amount and has deliberately, wilfully or in bad faith refused or neglected to discharge the decree. The Court is also required to consider the present financial condition of the judgment-debtor, his bona fide liabilities and other pressing necessities, since poverty or genuine inability to pay cannot be equated with wilful default. It is therefore



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contended that, in the absence of a specific finding regarding the petitioner's present means and deliberate evasion of payment despite possessing sufficient resources, the order directing arrest and detention is contrary to the mandate of Section 51 CPC as interpreted by the Hon'ble Supreme Court and is also violative of the constitutional guarantee of fairness under Article 21 of the Constitution of India.

7.12. He relies on the decision of the Hon'ble Supreme Court in ***Kamlesh Aggarwal v. Narain Singh Dabbas*** [(2015) 11 SCC 661], more particularly para 16 and 18 thereof, which are reproduced hereunder for easy reference:

16. Having regard to the fact situation that the appellant, who is a consumer, has been litigating the matter before the District Forum, the State Commission and the National Commission for the last 17 years to get her legitimate right of getting the sale deed registered in respect of the allotted site made by Navchetna Sahkari Awas Samiti Ltd. in her favour who is its member since 1962, therefore, we deem it proper to exercise our power under Article 142 of the Constitution of India for the reason that the State Commission has erred in not remanding the case to the District Forum, after it has found fault with the order of the District Forum in convicting and sentencing the officers of Navchetna Sahkari Awas Samiti Ltd., who are the respondents herein, for not following the procedure as provided under the Criminal Procedure Code and for that reason we deem it just and proper to



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*remand the case to the District Forum with a direction to the District Forum to follow the procedure under Section 262 read with Chapter XX, Section 251 of the Code of Criminal Procedure **to initiate penal action against the respondents under Section 27 of the Act for non-compliance with the statutory provisions.***

*18. Further, it is needless to observe in this order that apart from initiating proceedings under Section 27 of the Act, **the alternative right is also available to the appellant to execute the order of the District Forum by invoking the provisions of the Code of Civil Procedure, 1908 under Order 21 read with Rule 32** for seeking direction to the respondents to get sale deed in respect of Plot No. 114, Village Khoda, Ghaziabad executed by Navchetna Sahkari Awas Samiti Ltd. and register the same before the Sub-Registrar and put her in possession of the same in accordance with the aforesaid provisions. The execution of the decree in the aforesaid terms is permissible in law in view of the provisions of Sections 13(4), (6) and (7) of the Act, as the provisions of Order 21 read with Rule 32 of the Code of Civil Procedure are applicable to the District Forum to follow the procedure for execution of the order passed by it.*

7.13. By relying on **Kamlesh Aggarwal**, his submission is that the power to arrest and detain a judgment-debtor is not the only mode available for enforcement of a decree. The Hon'ble Supreme Court has recognised that the decree-holder has alternative and efficacious remedies under the provisions of Order XXI of the Code of Civil Procedure, particularly Rule 32, for securing compliance with a decree directing



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performance of an act. Therefore, where the decree is capable of being enforced through other recognised modes of execution, the Execution Court ought to consider and exhaust such less coercive measures before resorting to the drastic remedy of arrest and detention. It is thus contended that, in the facts of the present case, the impugned order directing arrest of the petitioner, without examining the availability or efficacy of other modes of execution under Order XXI CPC, is contrary to the principles recognised by the Hon'ble Supreme Court and is therefore unsustainable in law.

7.14. He relies on the decision of the Division Bench of this Court in ***Parmjit Singh v. Union of India & Ors*** [dated 18.12.1998 in WP No.10363 of 1994 reported in MANU/KA/0084/1999], more particularly para 8 thereof, which is reproduced hereunder for easy reference;

*8. It follows, therefore, that where a trader or a person omits to comply with any order made by the District Forum, the State Commission or the National Commission, as the case may be, the complainant in that event can file a complaint before such Forum or Commission and if despite opportunity, the trader or a person fails or omits to comply with the order passed under the Act, **the appropriate Forum or the Commission can direct the filing of the***



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complaint in a Court of competent jurisdiction.

Upon filing of such complaint, the procedure prescribed under the Code of Criminal Procedure has to be followed and on proof of the allegations, the accused shall be convicted for the offence and sentenced to the penalties as contemplated under Section 27 of the Act. The provisions of Section 27 are not distinct from Section 25 of the Act. Section 27 in effect and in essence is a provision beneficial to the trader, who can avoid the conviction and sentence by complying the order of the Forum or the State and the National Commissions when complained of by the Consumer. It is only upon his failure and omission, that a trader shall be deemed to be guilty of the commission of an offence triable by a ordinary Magistrate in accordance with the procedure prescribed under the Code of Criminal Procedure.

- 7.15. By relying on **Parmjit Singh**, his submission is that proceedings under Section 27 of the Consumer Protection Act, 1986 are penal in nature and constitute an independent statutory remedy for securing compliance with the orders passed by the Consumer Forum. Such proceedings are required to be conducted in accordance with the procedure prescribed under the Code of Criminal Procedure, and punishment can be imposed only upon proof of wilful non-compliance. **Parmjit Singh**, further recognises that the object of Section 27 of the Consumer Protection Act, 1986 is primarily to secure compliance with the order of the Consumer



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Forum, and not merely to punish the opposite party. Therefore, it is contended that where the statute itself provides a specific penal mechanism for enforcing compliance, recourse to arrest and detention under the provisions of the Code of Civil Procedure ought not to be adopted mechanically or as the first resort. The Execution Court was therefore required to bear in mind the availability of the statutory remedy under Section 27 of the Consumer Protection Act, 1986 while considering the decree-holder's prayer for arrest and detention of the petitioner.

- 7.16. He relies on the decision of the Hon'ble Supreme Court in ***Inder Mohan Goswami v. State of Uttaranchal and Ors*** [(2007) 12 SCC 1], more particularly para 55 thereof, which is reproduced hereunder for easy reference;

*55. In complaint cases, at the first instance, the court should direct serving of the summons along with the copy of the complaint. **If the accused seem to be avoiding the summons, the court, in the second instance should issue bailable warrant. In the third instance, when the court is fully satisfied that the accused is avoiding the court's proceeding intentionally, the process of issuance of the non-bailable warrant should be resorted to.** Personal liberty is paramount, therefore, we caution courts at the first*



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and second instance to refrain from issuing non-bailable warrants.

- 7.17. By relying on ***Inder Mohan Goswami***, his submission is that personal liberty is a cherished constitutional right and any order curtailing such liberty must be passed only as a measure of last resort. The Hon'ble Supreme Court has held that coercive processes involving deprivation of personal liberty should be invoked in a graduated manner and only after the Court is satisfied that the person concerned is deliberately evading the process of law. Drawing an analogy from the said principle, it is contended that the Execution Court ought not to have ordered the arrest and detention of the petitioner without first exhausting less intrusive measures available in law and without recording a clear finding that the petitioner was wilfully evading the execution proceedings. In the absence of such satisfaction, the impugned order directing arrest constitutes a disproportionate restriction on the petitioner's personal liberty and is liable to be set aside.
- 7.18. He relies on the decision of the Division Bench of this Court in ***Naganagouda Veeranagouda***



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Patil v. Malatesh H. Kulkarni [1998 CrL. L.J. 1707], more particularly para 5 thereof, which is reproduced hereunder for easy reference;

*5. We need to record here that the learned Advocates who represented the petitioners vehemently submitted that if the complainant's learned Advocate were to be permitted to carry out the examination-in-chief that it was not only a breach of the provisions of Section 200, Cr.P.C. but that it would completely nullify the provisions of that section and would in fact have the totally opposite effect of what was originally intended by the Legislature when this section was incorporated in the Cr.P.C. in 1973. They have demonstrated to us, and perhaps with considerable justification that a private complaint presented to the learned Magistrate is invariably drafted by an Advocate and that therefore, there could be a certain degree of padding, that there could be also a skillful orientation of facts, a clever slant in the projection and a skillful effort to bring the complaint within the ambit of the four corners of a penal section and that the sum total of this artful exercise very often results in process being issued in criminal cases against the opposite party even though there may not have been justification to do so. The learned Advocates have pointed out that this sets of a total chain re-action in so far as a lot of harassment is caused to the accused even during the service of process and thereafter, and that having regard to the load on the trial Courts and the appeal Courts that an accused is required to contend with the proceeding for a long period of time, to undergo harassment and expenditure, as it is an uphill task to demonstrate finally that there was no justification for the issue of process. We do see considerable force in this argument because **the whole purpose of enacting Section 200, Cr.P.C. was in order to weed out unjustified litigation** and the immediate fall out of such unjustified complaints is the heavy burden on the Courts until those*



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*proceedings are finally disposed of. Learned Advocates did also demonstrate to us the inevitable side effects of such litigations which could be used to coerce parties into settlements which is not the intention of the law and judicial process can never be abused with this end in view. The effort on the part of the learned Advocates was directed towards impressing on the Court the absolute need to tighten up the scrutiny procedure for purposes of ensuring that only valid and genuine complaints survive and that all the others are eliminated at the scrutiny stage. They have therefore submitted that the whole purpose of enacting Section 200, Cr.P.C. would be frustrated completely if the complainant's learned Advocate were to be permitted to carry out the examination-in-chief because in that event the complaint would be bodily reproduced in the examination-in-chief and there would be less scope for the Presiding Judge to be able to assess the genuineness of the grievance that has been projected. It was therefore submitted that it is absolutely imperative that the learned Advocate be precluded from taking any part in the scrutiny process so that **the Court has an unrestricted opportunity of independently examining the complaint, ascertaining from the complainant and the witnesses as to what the true position is and deciding whether it should be entertained or not.***

- 7.19. By relying on **Naganagouda Veeranagouda Patil**, his submission is that where the law contemplates initiation of penal proceedings, the Court is under a duty to undertake an independent and careful scrutiny of the material before permitting such proceedings to continue. The object of such scrutiny is to ensure that criminal process is not invoked mechanically or



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used as a tool of harassment or coercion, and that only genuine cases proceed further. It is therefore contended that, in the present case, before adopting a coercive measure resulting in deprivation of the petitioner's personal liberty, the Execution Court ought to have independently satisfied itself that the statutory preconditions for such action were fully established. According to the learned counsel, the impugned order, having been passed without such rigorous scrutiny and without recording the necessary findings regarding wilful and deliberate non-compliance, suffers from non-application of mind and is liable to be interfered with.

7.20. He relies on the decision of the Hon'ble Kerala High Court in ***Mohammed Kutty v. Mohammed*** [2006 CrL. L.J. 3601], more particularly para 6 thereof, which is reproduced hereunder for easy reference;

6. *The role of the Magistrate at that stage is only to ascertain whether there are sufficient grounds to proceed. It is for the learned Magistrate to play the role assigned to him under the Code fully and ascertain whether there is sufficient ground to proceed. A reading of the relevant provisions in Chapter XV of the Code of Criminal Procedure would indicate that the counsel for the complainant has no specific role when the complainant and his witnesses*



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*are examined under Section 200 Cr.P.C. Such examination must be conducted by the Magistrate. **The mandate of Section 200 Cr.P.C is that the magistrate shall examine the complainant and the witnesses present.** At the trial stage, the counsel for the complainant will be there to examine the complainant and assist the Court But at the stage of Section 200 Cr.P.C, the law does not specifically enable the counsel for the complainant to adduce evidence. **It is the duty of the magistrate to examine the complainant.***

- 7.21. By relying on ***Mohammed Kutty's case***, his submission is that where the statute mandates the Court to undertake a preliminary scrutiny before initiating penal consequences, such exercise must be performed independently by the Court and cannot be reduced to a mere formality. The Hon'ble Kerala High Court has emphasised that it is the duty of the Magistrate to personally examine the complainant and satisfy himself that sufficient grounds exist to proceed, thereby underscoring the importance of judicial application of mind at the threshold stage. Drawing support from this principle, it is contended that, before directing the arrest and detention of the petitioner or permitting penal consequences to follow, the Execution Court was required to independently examine whether the statutory conditions precedent had been fulfilled



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and whether there existed material justifying such coercive action. In the absence of such independent satisfaction and recorded findings, the impugned order is vitiated by non-application of mind and is therefore unsustainable in law.

7.22. Though there are several other decisions which had been produced along with the memos filed, learned counsel for the petitioners has submitted that he would not be relying on those decisions.

7.23. He refers to Section 71 of the Consumer Protection Act, 2019 which is reproduced hereunder for easy reference;

71. Enforcement of orders of District Commission, State Commission and National Commission. Every order made by a District Commission, State Commission or the National Commission shall be enforced by it in the same manner as if it were a decree made by a Court in a suit before it and the provisions of Order XXI of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) shall, as far as may be, applicable, subject to the modification that every reference therein to the decree shall be construed as reference to the order made under this Act

7.24. By relying on Section 71 of the CP Act, his submission is that every order made by a District Commission, State Commission or the National



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Commission shall be enforced by it in the same manner as it were a decree by a Court in a suit before it and the provision of Order XXI of the First Schedule of the Code of Civil Procedure, 1908 would apply. On that basis, he submits that the application of Order XXI of the CPC would necessarily indicate that these execution proceedings are civil in nature and as such, no arrest warrant or a non-bailable warrant could have been issued by the Execution Court under Section 71.

7.25. He refers to Section 72 of the Consumer Protection Act, 2019 which is reproduced hereunder for easy reference;

72. Penalty for non-compliance of order. (1) *Whoever fails to comply with any order made by the District Commission or the State Commission or the National Commission, as the case may be, shall be punishable with imprisonment for a term which shall not be less than one month, but which may extend to three years, or with fine, which shall not be less than twenty-five thousand rupees, but which may extend to one lakh rupees, or with both.*

(2) *Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the District Commission, the State Commission or the National Commission, as the case may be, shall have the power of a Judicial Magistrate of first class for the trial of offences under sub-section (1), and on conferment of such powers, the District Commission or the State Commission or the National*



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Commission, as the case may be, shall be deemed to be a Judicial Magistrate of first class for the purposes of the Code of Criminal Procedure, 1973.

(3) Save as otherwise provided, the offences under sub-section (1) shall be tried summarily by the District Commission or the State Commission or the National Commission, as the case may be.

- 7.26. By referring to Section 72 of the CP Act, he submits that Section 72 provides a penalty for non-compliance which is distinct from enforcement of the orders under Section 71. His submission is that under Section 72, when the JDR fails to comply with any order, he shall be punishable with imprisonment for a term which shall not be less than one month, but which may extend to three years or with fine which shall not be less than Rs.25,000/- but which may extend to Rs.1,00,000/- or with both.
- 7.27. The penalty he submits is distinct from enforcement of an award passed by the District Commission, State Commission and National Commission.
- 7.28. He refers to Section 4 of the Code of Criminal Procedure, 1973 which is reproduced hereunder for easy reference.



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4. Trial of offences under the Indian Penal Code and other laws.—*(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.*

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner of place of investigating, inquiring into, trying or otherwise dealing with such offences.

7.29. By referring to Section 4 of CrPC his submission is that all offences shall be investigated, enquired into and tried as per the provisions of the CrPC. The Execution Court has not followed the procedure under the Code of Criminal Procedure.

7.30. He refers to Section 5 of the Code of Criminal Procedure, which is reproduced hereunder for easy reference;

5. Saving—*Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.*

7.31. By relying on Section 5 of CrPC, his submission is that nothing contained in the Code, in the absence of specific provisions to the contrary



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would affect any special or local law for the time being in force or any special jurisdiction or power conferred or any special form of procedure prescribed by any other law for the time being.

7.32. He submits that there is no particular specific provision made under the Consumer Protection Act, 2019. Section 72 requires the procedure under the CrPC to be followed by designating the District Commission, State Commission and National Commission to be a Judicial Magistrate of First Class for trial of offences under Sub-section (1), and on conferment of such powers, the District Commission, State Commission and the National Commission shall be deemed to be a Judicial Magistrate of the First Class for the purpose of CrPC.

7.33. His submission therefore is that even if the District Commission, State Commission and National Commission were to be held to be deemed to be a Judicial Magistrate of First Class, each of the above Commissions would have to follow the procedure under the CrPC. None of those provisions have been followed by the District Commission and as such the said order



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taking cognisance and the consequential orders issuing NBW are required to be set aside.

8. Sri.V.Rangaramu., learned counsel for respondent No.2 submits that;

8.1. Both Section 71 and Section 72 of the Consumer Protection Act, 2019 are required to be read together. On an award being passed by the District Commission, State Commission or the National Commission, the Decree Holder i.e., the complainant would be entitled to both enforce the award passed in terms of Section 71 and if such award were not to be complied by the JDR, penalty under Section 72 would be a natural consequence of such non-compliance of the Award.

8.2. He submits that the application filed by respondent No.2 is under Order XXI of the Code of Civil Procedure for enforcement of the decree passed under Section 71 of the CP Act and for imposition of penalty under Section 72 of the CP Act. Summons have been issued, having returned with the endorsement "left". The Execution Court has issued NBW. Since the Execution Court is deemed to be Judicial



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Magistrate of the First Class in terms of Sub-section (2) of Section 72.

8.3. On that ground, he submits that non-compliance of the award required the Execution Court to take action under the CrPC, which it has so done. The complaint had been filed under Sections 71 and 72 of the CP Act, the sworn statement of the complainant was recorded for the purpose of Section 72 of the CP Act. The Commission acting as a Judicial Magistrate of the First Class, being of the considered opinion that *prima facie* case has been made out, had taken cognisance of the non-compliance with the award passed under Section 72 of the CP Act. The action taken by the District Commission is in compliance with Section 72 of the CP Act.

8.4. There is no infirmity in the said order requiring this Court to intercede, and on that ground, he submits that the writ petition is required to be dismissed.

9. Heard Sri.Ashwin Vaish., learned counsel appearing for the petitioners, Sri.Mohammed Jafar Shah., learned AGA appearing for respondent No.1 and



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Sri.V.Rangaramu., learned counsel appearing for respondent No.2. Perused papers.

10. The points that would arise for consideration are;

- (i) **Whether the District Consumer Disputes Redressal Commission, while exercising powers under Section 72 of the Consumer Protection Act, 2019, could take cognisance of the alleged offence of non-compliance on the basis of an execution application filed under Section 71 of the Act read with Order XXI of the Code of Civil Procedure, 1908 or whether a separate complaint and the procedure prescribed under the Code of Criminal Procedure were required to be followed?**
- (ii) **Whether, in the facts and circumstances of the present case, the District Commission has complied with the mandatory procedural requirements contemplated under Section 72 of the Consumer Protection Act, 2019 and the Code of Criminal Procedure, 1973 before taking cognisance and issuing process against the petitioners?**
- (iii) **Whether the issuance of Non-Bailable Warrants against the petitioners pursuant to the order dated 08.02.2024 is sustainable in law, particularly when summons had not been duly served, and the statutory prerequisites for resorting to coercive process are alleged to be absent?**



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- (iv) **Whether the petitioners, being Directors of the judgment-debtor company, could be proceeded against under Section 72 of the Consumer Protection Act, 2019 and subjected to penal consequences in the absence of any allegation or finding regarding their personal responsibility, wilful disobedience or vicarious liability?**
- (v) **Whether the impugned order dated 08.02.2024 taking cognisance and all consequential proceedings, including the issuance of Non-Bailable Warrants, call for interference by this Court in exercise of its supervisory jurisdiction under Articles 226 and 227 of the Constitution of India?**
- (vi) **What Order?**

11. This Court answers the above points as follows:

12. **Answer to Point No.(i): Whether the District Consumer Disputes Redressal Commission, while exercising powers under Section 72 of the Consumer Protection Act, 2019, could take cognisance of the alleged offence of non-compliance on the basis of an execution application filed under Section 71 of the Act read with Order XXI of the Code of Civil Procedure, 1908 or whether a separate complaint and the procedure prescribed under the Code of Criminal Procedure were required to be followed?**



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- 12.1. Sri. Ashwin Vaish, learned counsel for the petitioners, contended that the order taking cognisance is without jurisdiction. According to him, the execution application filed under Section 71 of the CP Act was a proceeding for enforcement of the order as a decree. The Commission, however, treated the same proceedings as a criminal complaint under Section 72 of the CP Act and proceeded to take cognisance. It was argued that such a procedure is not contemplated by law.
- 12.2. Learned counsel submitted that Sections 71 and 72 operate in different fields. Section 71 deals with enforcement of the order, whereas Section 72 deals with the penal consequence of non-compliance. His submission was that the proceedings under Section 72 had to be initiated in the manner prescribed by the CrPC and that the Commission could not proceed under Section 72 merely on the basis of an execution application.
- 12.3. Learned counsel placed reliance on **Kamlesh Aggarwal v. Narain Singh Dabbas** [(2015) 11 SCC 661] (paragraph 16) and **Parmjit**



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Singh v. Union of India & Ors. [WP No. 10363 of 1994 reported in MANU/KA/0084/1999] (paragraph 8), to contend that penal action for non-compliance with an order of the Consumer Commission was required to be pursued before a criminal court in accordance with the Code of Criminal Procedure. It was therefore argued that the Commission could not convert an execution proceeding into a criminal proceeding.

12.4. Sri. V. Rangaramu, learned counsel for respondent No.2, opposed the said contention. He submitted that Sections 71 and 72 of the CP Act have to be read together. According to him, a person in whose favour an order has been passed is entitled to enforce the order under Section 71 and, where there is non-compliance, also to invoke Section 72. The two remedies are not inconsistent.

12.5. Learned counsel further pointed out that, in the present case, a complaint was in fact filed and the sworn statement of the complainant was recorded before cognisance was taken. The Commission, having been conferred with the



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powers of a Judicial Magistrate of the First Class under Section 72(2) of the CP Act, was competent to consider the complaint and, on being satisfied that there was a *prima facie* case, to take cognisance of the offence.

12.6. Before considering the rival submissions, it is necessary to determine which procedural law applies to the present proceedings. The order taking cognisance was passed on 08.02.2024. The Code of Criminal Procedure, 1973 was in force on that date. The Bharatiya Nagarik Suraksha Sanhita, 2023 came into force only on 01.07.2024.

12.7. Section 531 of the Bharatiya Nagarik Suraksha Sanhita, 2023 repeals the Code of Criminal Procedure, 1973 but saves proceedings which were pending immediately before the new Sanhita came into force. Section 531(2)(a) provides that such proceedings are to continue under the Code of Criminal Procedure, 1973 as if the Sanhita had not come into force.

12.8. The present proceedings were pending before 01.07.2024. Cognisance had already been taken on 08.02.2024 and the warrants were



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issued thereafter. Consequently, the present proceedings are governed by the Code of Criminal Procedure, 1973. The validity of the order taking cognisance and the proceedings that followed will therefore have to be examined with reference to CrPC.

12.9. Coming to the principal question, Section 71 of the CP Act provides for enforcement of an order of the Consumer Commission in the same manner as if it were a decree of a civil court. Order XXI of the CPC is therefore applicable to such enforcement.

12.10. Section 72, on the other hand, deals with failure to comply with an order of the Commission and makes such failure punishable. Section 72(2) specifically confers on the Commission the powers of a Judicial Magistrate of the First Class for the trial of offences under Section 72(1). Section 72(3) further provides that the offence shall be tried summarily.

12.11. The language of Section 72 is significant. The legislature has not required the Commission to send the matter to a separate criminal court. On the contrary, it has expressly conferred



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upon the Commission the powers of a Judicial Magistrate of the First Class for the purpose of trying the offence under Section 72.

12.12. Sections 71 and 72 therefore provide two different remedies arising from the same non-compliance. Section 71 enables the successful consumer to obtain enforcement of the order. Section 72 provides for penal consequences where the order is not complied with. The fact that the two provisions operate differently does not mean that they cannot be invoked in respect of the same default.

12.13. There is nothing in the CP Act which requires a person to choose between the two remedies. The Act also does not prohibit the Commission from dealing with enforcement under Section 71 and the penal proceedings under Section 72.

12.14. It is true that enforcement under Section 71 and prosecution under Section 72 are different in nature. The former is intended to secure enforcement of the order, while the latter is penal in character. However, this distinction does not make the two remedies mutually exclusive.



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12.15. In the present case, the mere fact that the application contained prayers relating to execution and also referred to non-compliance with the order would not, by itself, invalidate the proceedings under Section 72. What is relevant is whether the requirements for taking cognisance of the offence were otherwise satisfied.

12.16. The record shows that a complaint under Section 200 of the CrPC was filed and that the sworn statement of the complainant was recorded. The Commission thereafter considered the material and formed a *prima facie* opinion regarding the alleged offence before taking cognisance.

12.17. The contention that the Commission had no jurisdiction to take cognisance and that the complainant was required to approach a separate criminal court cannot therefore be accepted.

12.18. The scheme under the Consumer Protection Act, 2019 is materially different from the scheme under the Consumer Protection Act, 1986. Under the 2019 Act, Section 72(2)



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expressly confers on the Commission the powers of a Judicial Magistrate of the First Class for trial of the offence under Section 72(1). The offence is also required to be tried summarily.

12.19. The decision in ***Parmjit Singh*** (paragraphs 2 and 3), relied upon by the petitioners, was rendered under the 1986 Act. The said decision proceeded on the statutory scheme then in force, under which the Consumer Forum did not itself try the offence but could direct the complainant to approach a competent criminal court. The 2019 Act has subsequently introduced a different scheme by conferring the requisite magisterial powers on the Commission itself. The said decision, therefore, does not govern the present proceedings.

12.20. The same distinction applies to the decision of the Hon'ble Supreme Court in ***Kamlesh Aggarwal*** (paragraph 1). that case also arose under the Consumer Protection Act, 1986 and dealt with Section 27 of that Act. The observations in that case have to be understood in the context of the statutory



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scheme then applicable. The 2019 Act has materially altered that scheme by empowering the Commission itself to try the offence under Section 72 summarily.

12.21. At the same time, the observation in ***Kamlesh Aggarwal*** (paragraph 18), that the successful party has an alternative remedy of enforcing the order under Order XXI Rule 32 remains relevant for understanding the relationship between the civil and penal remedies. It supports the conclusion that enforcement of the order and penal action for its non-compliance are separate remedies which may coexist.

12.22. The reliance placed on Sections 4 and 5 of the CrPC also does not alter the position. Section 4(2) itself recognises that offences under laws other than the Penal Code are to be dealt with under the Code, subject to any special enactment regulating the manner of investigation, inquiry or trial. Section 5 similarly preserves any special procedure prescribed by another law.

12.23. Section 72 of the CP Act contains such a special procedure. It confers magisterial powers upon



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the Consumer Commission and provides for summary trial. Therefore, the special procedure prescribed by Section 72 has to be given effect to along with the relevant provisions of the Code of Criminal Procedure.

12.24. There is also no substance in the contention that the execution application was simply converted into a criminal complaint. The record specifically shows that a complaint under Section 200 of the CrPC was filed and that the sworn statement of the complainant was recorded before cognisance was taken. The Commission thereafter considered whether a *prima facie* case existed.

12.25. Therefore, the proceedings cannot be said to have been initiated merely by converting the execution application into a criminal case. The fact that the complaint arose out of the same order which was also the subject matter of execution does not take away the Commission's power to consider the alleged offence under Section 72.

12.26. This Court answers point No.(i) by holding that the District Consumer Disputes Redressal



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Commission was competent to take cognisance of an offence under Section 72 of the Consumer Protection Act, 2019. Sections 71 and 72 provide separate but complementary remedies. The Commission, having been expressly conferred with the powers of a Judicial Magistrate of the First Class under Section 72(2), was not required to send the complainant to a separate criminal court.

13. **Answer to Point No.(ii): Whether, in the facts and circumstances of the present case, the District Commission has complied with the mandatory procedural requirements contemplated under Section 72 of the Consumer Protection Act, 2019 and the Code of Criminal Procedure, 1973 before taking cognisance and issuing process against the petitioners?**

13.1. Sri. Ashwin Vaish, learned counsel for the petitioners, submitted that even assuming that the Commission had jurisdiction to proceed under Section 72 of the Consumer Protection Act, 2019, the procedure prescribed by law was not followed. His submission is that the Commission did not apply its mind independently before taking cognisance and that the order taking cognisance was passed as a matter of formality.



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- 13.2. He placed reliance on ***Naganagouda Veeranagouda Patil v. Malatesh H. Kulkarni*** [1998 CrI. L.J. 1707] (paragraph 5), to contend that the Court is required to independently examine the complaint before taking cognisance. He also relied upon ***Mohammed Kutty v. Mohammed*** [2006 CrI. L.J. 3601] (paragraph 6), in support of the submission that the Magistrate is required to personally examine the complainant under Section 200 of the CrPC.
- 13.3. According to learned counsel, these requirements were not complied with in the present case. He therefore submitted that the order taking cognisance suffers from non-application of mind.
- 13.4. Sri. V. Rangaramu, learned counsel appearing for respondent No.2, submitted that the procedure prescribed by law was duly followed. He pointed out that a complaint under Sections 71 and 72 of the CP Act was filed and that the sworn statement of the complainant was recorded. Thereafter, the Commission, exercising the powers of a deemed Judicial



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Magistrate of the First Class, considered the material and formed the opinion that a *prima facie* case was made out.

- 13.5. He submitted that these were the steps required at the stage of taking cognisance in a summary proceeding under Section 72 of the CP Act and that no further enquiry was necessary at that stage.
- 13.6. The procedure to be followed has to be considered having regard to the nature of the proceeding. A proceeding under Section 72 is a summary proceeding. Section 72(3) expressly provides that the offence shall be tried summarily.
- 13.7. The Commission was therefore required to follow the procedure applicable to a Magistrate taking cognisance of an offence on a complaint, subject to the provisions relating to summary trial. It was not necessary for the Commission to follow the procedure applicable to a regular criminal trial before taking cognisance and issuing process.



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13.8. The requirement at this stage has to be understood in that context. The question is whether the Commission followed the procedure required for taking cognisance and whether it had sufficient material to form a *prima facie* opinion.

13.9. It is useful, at this stage, to notice what is meant by a summary trial. Section 72(3) of the CP Act provides that the offence shall be "*tried summarily*". The expression has a specific meaning under the CrPC.

13.10. Chapter XXI of the CrPC, comprising Sections 260 to 265, deals with summary trials. Section 260 specifies the Magistrates who may try cases summarily and the offences which may be so tried. Section 262 provides that, in a summary trial, the procedure prescribed for the trial of summons cases is to be followed, subject to the modifications contained in the said Chapter. Section 263 provides for a brief record of the proceedings. Section 264 requires the Court, where the accused does not plead guilty, to record the substance of the evidence and a brief statement of the reasons for the



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finding. Section 265 deals with the language of such record and judgment.

13.11. The object of Chapter XXI is to provide a simpler and quicker procedure than the procedure followed in an ordinary criminal trial.

13.12. Section 262 reads as under:

*"262. **Procedure for summary trials.**—(1) In trials under this Chapter, the procedure specified in this Code for the trial of summons-case shall be followed except as hereinafter mentioned.*

(2) No sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this Chapter."

13.13. Section 72 of the CP Act contains two features which are relevant for the present purpose. First, Section 72(3) does not merely permit a summary trial. It mandates that the offence "*shall be tried summarily*". Second, Section 72(2) begins with the words "*Notwithstanding anything contained in the Code of Criminal Procedure, 1973*" and thereafter confers on the Commission the powers of a Judicial Magistrate of the First Class for the trial of the offence under Section 72(1).



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13.14. The use of the non-obstante clause is significant. Section 72(1) provides for punishment which may extend to three years. The legislature, therefore, specifically provided that the offence under Section 72 could be tried summarily by the Commission notwithstanding anything contained in the Code of Criminal Procedure.

13.15. Sections 4(2) and 5 of the CrPC also recognise the operation of a special procedure prescribed by another enactment. The position is therefore clear. The procedure relating to summary trials under the Code applies to proceedings under Section 72, subject to the special provisions contained in Section 72 of the CP Act.

13.16. This Court is conscious that Section 262(2) of the CrPC ordinarily restricts the sentence that may be imposed in a summary trial, whereas Section 72(1) of the CP Act provides for a higher punishment. The apparent inconsistency does not arise for consideration at the present stage. Section 72 contains a specific provision governing the offence and also begins with a non-obstante clause. The punishment



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prescribed by Section 72(1) is therefore the punishment specifically provided by the special enactment.

13.17. This Court is not required, in the present proceedings, to decide the extent of punishment that may ultimately be imposed in a summary trial under Section 72 of the CP Act. That question does not arise while considering whether cognisance was properly taken and process was issued. The reference to Section 262 of CrPC is only for explaining the nature of the procedure contemplated by Section 72 of the CP Act.

13.18. Once the nature of the proceeding is kept in view, the principal objection raised by the petitioners cannot be accepted. The Commission was not required to conduct a regular criminal trial before taking cognisance and issuing process. At that stage, it was required to receive the complaint, examine the complainant in accordance with Section 200 of the CrPC and consider whether the material disclosed a *prima facie* case.



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13.19. The record shows that these steps were followed. The complaint was filed under Section 200 of the CrPC, the sworn statement of the complainant was recorded and the Commission thereafter formed a *prima facie* opinion regarding the alleged non-compliance.

13.20. The reference made by the petitioners to ***Kamlesh Aggarwal*** is also relevant in this context. Though the said decision has been distinguished while considering Point No.(i) on the question of forum, the reference therein to "*the procedure under Section 262... of the Code of Criminal Procedure*" in paragraph 16 remains relevant for understanding the nature of the proceedings. It supports the conclusion that proceedings for non-compliance are to follow the summary procedure contemplated by the CrPC.

13.21. The record, therefore, shows compliance with the procedure required at the stage of taking cognisance. A complaint under Section 200 of the CrPC was filed and the sworn statement of the complainant was recorded. The Commission was of the opinion that there is a *prima facie*



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case before taking cognisance and issuing summons. These are the relevant steps at the threshold. The Commission was not required to conduct a detailed examination of the entire case or record a finding on every aspect of the alleged offence before issuing process.

13.22. The decisions relied upon by learned counsel for the petitioners do not assist the petitioners on the facts of the present case.

13.23. In ***Mohammed Kutty*** the Court considered the requirement under Section 200 of the CrPC. In paragraph 6, it was observed: "*The mandate of Section 200 Cr.P.C is that the magistrate shall examine the complainant and the witnesses present*" and further "*It is the duty of the magistrate to examine the complainant*". There is no dispute with the said proposition. The question is whether that requirement was complied with in the present case. The answer is in the affirmative. The record specifically shows that the sworn statement of the complainant was recorded. Thus, the requirement considered in Mohammed Kutty was complied with in the present case.



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13.24. The decision in ***Naganagouda Veeranagouda Patil***, is also of no assistance to the petitioners. In paragraph 5, the Court emphasised the need for independent consideration of the complaint and observed that "*the Court has an unrestricted opportunity of independently examining the complaint*". The complainant's sworn statement was recorded and the Commission thereafter formed its own view that a *prima facie* case existed.

13.25. The actual issue considered in ***Naganagouda*** (paragraph 2) was whether the complainant's advocate could conduct the examination-in-chief of the complainant. That question does not arise in the present case. The principle laid down in the said decision is therefore not violated.

13.26. Learned counsel for the petitioners further submitted that the Commission ought to have made a deeper enquiry into whether the alleged non-compliance was wilful before taking cognisance. This submission cannot be accepted at the stage at which cognisance was taken. At that stage, the Commission was



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required to consider whether the complaint and the material placed before it disclosed a *prima facie* case of non-compliance. A detailed enquiry into the defence of the accused was not necessary before issuing process.

13.27. The petitioners may contend during the course of the proceedings that the non-compliance was not wilful, that they had no role in the alleged default, or that there were other circumstances which prevented compliance with the order. Those are matters which can be considered in the proceedings in accordance with law.

13.28. They cannot, however, be treated as grounds for holding that cognisance itself was bad when the Commission had before it a complaint alleging non-compliance and had recorded the complainant's sworn statement. The allegation of non-application of mind also cannot be accepted on the material placed before this Court.

13.29. The petitioners have not pointed to any material in the record to show that the Commission failed to independently consider the complaint or that it merely acted on the



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submissions of the complainant or his counsel. What the record shows is that the complaint was received, the sworn statement of the complainant was recorded and the Commission thereafter formed a *prima facie* opinion. The mere assertion that there was non-application of mind is not sufficient to interfere with the order. The material on record must disclose such failure. No such material has been shown in the present case.

13.30. This Court must also keep in view the limited scope of interference under Articles 226 and 227 of the Constitution. At this stage, this Court is not required to re-appreciate the material in the manner of an appellate court. The question is whether the Commission followed the procedure prescribed by law and whether there was material before it to take cognisance. On the record available, the required procedure was followed. The complainant was examined and the Commission recorded its satisfaction that a *prima facie* case existed.



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13.31. This Court answers point No.(ii) by holding that the District Commission complied with the procedural requirements applicable to a proceeding under Section 72 of the CP Act. A complaint under Section 200 of the CrPC was received, the sworn statement of the complainant was recorded and the Commission formed a *prima facie* opinion before taking cognisance and issuing process. At the stage of taking cognisance, the Commission was not required to conduct a detailed enquiry into the defence of the petitioners or determine all questions relating to wilful non-compliance. Such matters could be considered in the proceedings in accordance with law. Accordingly, the challenge to the order of taking cognisance on the ground of non-compliance with the procedure prescribed under Section 72 of the CP Act and the CrPC fails.

14. **Answer to Point No. (iii): Whether the issuance of Non-Bailable Warrants against the petitioners pursuant to the order dated 08.02.2024 is sustainable in law, particularly when summons had not been duly served, and the statutory prerequisites for resorting to coercive process are alleged to be absent?**



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- 14.1. Sri. Ashwin Vaish, learned counsel for the petitioners, submitted that a Non-Bailable Warrant could not have been issued in the present proceedings, particularly when summons had not been duly served upon the petitioners.
- 14.2. He submitted that Section 71 of the CP Act deals with enforcement of an order as a decree and that the proceedings under the said provision are civil in nature. According to him, therefore, an arrest warrant could not have been issued in the execution proceedings.
- 14.3. Learned counsel further submitted that even if the proceedings under Section 72 of the CP Act are treated as penal proceedings, the Commission could not have straightaway issued a Non-Bailable Warrant at the instance of the decree-holder. According to him, the Commission was required to follow the normal and graduated procedure for securing the presence of the accused.
- 14.4. He relied upon ***Inder Mohan Goswami v. State of Uttaranchal*** [(2007) 12 SCC 1] (paragraph 55) in support of the submission



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that a Non-Bailable Warrant should be issued only when the Court is satisfied that the accused is avoiding the proceedings. He also relied upon ***Jolly George Varghese v. Bank of Cochin*** [(1980) 2 SCC 360] (paragraph 10) to contend that personal liberty cannot be interfered with merely because an amount is due and that there must be a finding of wilful default.

14.5. Sri.V.Rangaramu, learned counsel appearing for respondent No.2, submitted that summons had been issued to the petitioners and that the same was returned with the endorsement "left". He submitted that the Commission, having been conferred with the powers of a Judicial Magistrate of the First Class under Section 72(2) of the CP Act, was competent to issue a Non-Bailable Warrant for securing the presence of the petitioners when they failed to appear.

14.6. According to learned counsel, the subsequent steps taken by the Commission were therefore in accordance with law.



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- 14.7. The challenge to the Non-Bailable Warrants has to be examined with reference to the circumstances in which they came to be issued. The fact that the proceedings arise out of an execution application does not, by itself, determine whether a warrant could be issued. It is necessary to see whether the warrant was issued in the execution proceedings under Section 71 of the CP Act or in the proceedings under Section 72 of the CP Act and, in the latter case, whether the requirements for issuing such process were satisfied.
- 14.8. The sequence of events has been set out hereinabove. After cognisance was taken, summons was issued. The first Non-Bailable Warrant was issued on 06.04.2024. It was thereafter re-issued on 29.05.2024, 18.07.2024 and 21.09.2024. On each occasion, the warrant could not be executed. On 27.11.2024, the warrant was returned with the report that the judgment-debtor had "vacated the premises".
- 14.9. Thus, the record shows that the ordinary process had not secured the presence of the



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persons against whom process had been issued. The first Non-Bailable Warrant was not issued immediately after cognisance was taken. It was issued after summons had been issued which was returned with the endorsement "left". The subsequent repeated attempts to execute the warrant also did not result in securing their presence. Even assuming that the summons had not been served because the petitioners had left the premises, the fact remains that the ordinary process had failed to secure their presence. If, on the other hand, the summons was duly served and the petitioners did not appear, that would also be a relevant circumstance while considering the further process to be issued.

14.10. The question, therefore, is whether the subsequent issue of the Non-Bailable Warrant was justified in the circumstances.

14.11. Learned counsel for the petitioners relied upon ***Inder Mohan Goswami***. The said decision lays down that the power to issue a Non-Bailable Warrant has to be exercised carefully and that the Court should ordinarily adopt a



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graduated approach. In paragraph 55, the Hon'ble Supreme Court observed "*...In the third instance, when the court is fully satisfied that the accused is avoiding the court's proceeding intentionally, the process of issuance of the non-bailable warrant should be resorted to...*".

14.12. The principle laid down in the said decision is that a Non-Bailable Warrant should not ordinarily be issued as a matter of course or at the first instance. The Court must consider whether the ordinary process has failed and whether the circumstances justify the use of a more coercive process.

14.13. In the present case, the first Non-Bailable Warrant was issued only after summons. Thereafter, repeated attempts were made to execute the warrant. Those attempts were unsuccessful and the last report stated that the judgment-debtor had "vacated the premises".

14.14. The facts therefore show that the ordinary process had not been effective in securing the presence of the petitioners. The circumstances were sufficient for the Commission to consider the use of further process.



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14.15. It was next contended that the Non-Bailable Warrant had been issued merely at the instance of the decree-holder. The sequence of dates does not support this submission. Cognisance was taken and summons was issued on 08.02.2024. The first Non-Bailable Warrant was issued only on 06.04.2024. Thus, the warrant was not issued immediately upon taking cognisance. It followed the failure of the summons process to secure the appearance of the petitioners.

14.16. It was also submitted that the Commission had not expressly recorded that the petitioners were avoiding the proceedings. There is no requirement that the Court must use any particular words or formula while issuing a warrant. What has to be seen is whether the circumstances before the Court justified the decision. In the present case, summons had been issued, the petitioners had not appeared, and repeated attempts thereafter to execute the warrants had failed. The last report stated that the premises had been vacated. These circumstances were available to the Commission when it continued the process.



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Therefore, it cannot be said that the Non-Bailable Warrant was issued mechanically or without any material before the Commission.

14.17. Learned counsel for the petitioners also relied upon **Jolly George Varghese** (paragraph 1). That decision concerned detention of a judgment-debtor in execution proceedings under the proviso to Section 51 of the Code of Civil Procedure. The Hon'ble Supreme Court considered the circumstances in which a judgment-debtor could be detained in civil prison for non-payment of a decree. In paragraph 10, the Hon'ble Supreme Court observed: *"this is precisely the interpretation we have put on the proviso to Section 51 CPC"*. In paragraph 11, the Court further observed that it had "harmonised Section 51 with the Covenant and the Constitution".

14.18. The facts and the legal setting of that case are different from the present case. The warrant under consideration here was not issued as a mode of enforcing payment of the decretal amount under Section 71 of the CP Act. It was issued in proceedings under Section 72 of the



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CP Act after cognisance of an alleged offence had been taken.

14.19. The purpose of the warrant was to secure the presence of the persons against whom criminal process had been issued. It was not a direction to detain a judgment-debtor merely because the decretal amount had not been paid.

14.20. The principles considered in **Jolly George Varghese** (paragraph 10) regarding detention in civil execution therefore cannot be applied in the same manner to the present proceedings under Section 72 of the CP Act.

14.21. The submission based on Section 71 of the CP Act also requires consideration. It is correct that Section 71 provides for enforcement of the order of the Consumer Commission as if it were a decree of a civil court. A Non-Bailable Warrant cannot be issued merely as a means of enforcing payment of the decretal amount under that provision. That, however, is not the basis on which the warrants in the present case were issued. The warrants were issued after cognisance had been taken under Section 72 of the CP Act. The Commission was exercising the



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powers conferred upon it under Section 72(2). The purpose of the warrant was to secure the presence of the persons against whom the proceedings under Section 72 were pending.

14.22. There is therefore no inconsistency between the civil nature of enforcement under Section 71 of the CP Act and the use of criminal process under Section 72 of the CP Act.

14.23. The submission of the learned counsel for respondent No.2 that the Commission, having been vested with the powers of a Judicial Magistrate of the First Class under Section 72(2) of the CP Act, was competent to issue process for securing the presence of an accused is well founded. The existence of the power, however, does not mean that it can be exercised without judicial consideration. The Court must consider the circumstances of the case and whether the ordinary process has failed.

14.24. In the present case, summons had been issued. Thereafter, the warrants were repeatedly issued but could not be executed. The last



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report stated that the judgment-debtor had "vacated the premises".

14.25. There was, therefore, material before the Commission to show that the ordinary process had not secured the presence of the petitioners. There is also nothing on record to suggest that the warrants were issued for any purpose other than securing their presence in the proceedings.

14.26. The petitioners have also raised questions regarding their substantive liability, including the contention that the underlying order was against the Company and not against them personally and that the alleged default was not wilful.

14.27. Those questions are separate from the question of whether process could be issued to secure their presence. The merits of such defences will have to be considered in the proceedings under Section 72 of the CP Act in accordance with law.

14.28. At this stage, the Court is only concerned with the validity of the process adopted for securing



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the presence of the petitioners. The fact that the petitioners may have a defence on the merits does not, by itself, render the warrant illegal.

14.29. This Court answers point No.(iii) by holding that the Non-Bailable Warrants cannot be held to be illegal merely because the proceedings originated in an execution application under Section 71 of the CP Act. The warrants were issued in the proceedings under Section 72 of the CP Act after cognisance had been taken and were intended to secure the presence of the petitioners.

15. **Answer to Point No. (iv): Whether the petitioners, being Directors of the judgment-debtor company, could be proceeded against under Section 72 of the Consumer Protection Act, 2019 and subjected to penal consequences in the absence of any allegation or finding regarding their personal responsibility, wilful disobedience or vicarious liability?**

15.1. Sri.Ashwin Vaish, learned counsel for the petitioners, submitted that the order passed in the consumer complaint was against M/s. Sanchaya Land and Estate Pvt. Ltd. and not against the petitioners in their individual



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capacity. He submitted that a company is a legal person distinct from its Directors and that the liability of the Company cannot automatically be imposed upon its Directors.

15.2. According to learned counsel, before a Director can be subjected to penal consequences for non-compliance with an order passed against the Company, there must be an allegation and material showing that the particular Director was personally responsible for the non-compliance. If vicarious liability is sought to be imposed, there must also be a statutory provision which permits such liability.

15.3. He further submitted that Section 72 of the CP Act, read with Sections 4 and 5 of the CrPC, required the Commission to consider the individual role of each Director before proceeding against him. According to him, the Commission was required to determine whether the petitioners had the authority and ability to comply with the order and whether the alleged non-compliance was deliberate or wilful.

15.4. Learned counsel relied upon **Jolly George** (paragraph 11) in support of the submission



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that a person cannot be subjected to coercive consequences merely because an order for payment has not been complied with and that deliberate default is relevant before a person can be deprived of his liberty.

- 15.5. Sri.V.Rangaramu, learned counsel appearing for respondent No.2, submitted that the consequence under Section 72 of the CP Act follows from non-compliance with an order of the Consumer Commission. He submitted that the petitioners are Directors of the judgment-debtor Company and are responsible for the management and affairs of the Company.
- 15.6. According to learned counsel, the Company could act and comply with the order only through the persons managing its affairs. The petitioners, being its Directors, could not avoid responsibility for the Company's non-compliance by merely relying upon the separate legal personality of the Company.
- 15.7. He further submitted that the Commission was acting as a deemed Judicial Magistrate under Section 72(2) of the CP Act and was therefore



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justified in taking cognisance against the petitioners.

15.8. The submission of the petitioners proceeds on the basis that since the consumer order was passed against the Company, the Directors cannot be proceeded against under Section 72 of the CP Act. This submission, in the opinion of this Court, cannot be accepted in the manner in which it has been put forward.

15.9. It is true that a company is a juristic person separate from its Directors. The Company has its own legal identity and its liabilities cannot ordinarily be treated as the personal liabilities of its Directors. But that is not the real question in the present proceedings. The question is whether the persons who were responsible for the affairs of the Company and for ensuring compliance with the order can be proceeded against when the Company has failed to comply with the order.

15.10. A company is an artificial legal person. It has no physical existence and cannot, by itself, take any step. Every act of the Company is necessarily performed through the persons who



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are in charge of its affairs. Compliance with an order passed against the Company is no exception.

15.11. The legal personality of the Company therefore cannot be used as a shield by the persons who were responsible for managing its affairs and ensuring compliance with the order.

15.12. Section 72(1) of the CP Act provides for punishment where a person "fails to comply with any order" of the Commission. The provision has to be understood in the context of the nature of the obligation imposed by the order. Where the order is directed against a Company, the Company is required to comply with it. But the Company can comply only through its Directors or other persons who are entrusted with the management of its affairs. If the persons responsible for the management of the Company were permitted to avoid the consequences of non-compliance merely by stating that the order was against the Company and not against them personally, the penal provision could easily be defeated in every case involving a corporate judgment-debtor. That



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cannot be the object of Section 72 of the CP Act.

15.13. The separate legal personality of a company protects its Directors from being treated as personally liable for every corporate debt. It does not protect a Director from liability for his own acts or omissions in relation to the Company's failure to comply with a binding order. This distinction between decretal liability and responsibility for compliance is important.

15.14. The petitioners are not being proceeded against under Section 72 of the CP Act merely for the purpose of recovering the amount awarded against the Company from their personal assets. The civil liability to satisfy the consumer order and the penal consequence arising from failure to comply with that order are distinct.

15.15. Section 71 of the CP Act provides the mechanism for enforcement of the order. Section 72 of the CP Act deals with the consequence of non-compliance. Therefore, the fact that the petitioners may not be personally liable for the Company's debt does not answer the question whether they can be proceeded



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against for the Company's failure to comply with the order when they themselves were responsible for the affairs of the Company.

15.16.A Director cannot say that because the Company is a separate legal entity, he has no responsibility whatsoever for acts which he was himself required to undertake on behalf of the Company. The material placed before this Court shows that the petitioners are the Directors of the judgment-debtor Company. The Company was required to comply with the order passed by the Consumer Commission. The petitioners, being Directors responsible for the affairs of the Company, were the persons through whom the Company was required to act. It would be unrealistic to accept the submission that the Company had an independent physical existence through which it could comply with the order without any action on the part of its Directors or persons managing its affairs.

15.17. The responsibility of the Directors is not based merely upon the fact that they have been given the designation of Director. It arises from their position in the management of the Company



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and their responsibility to ensure that the Company complies with orders binding upon it.

15.18. In the circumstances of the present case, the petitioners cannot, at the threshold, disown responsibility for compliance merely by relying upon the separate legal personality of the Company. The contention that there must first be a final finding regarding the individual role of each Director also cannot be accepted.

15.19. At the stage of taking cognisance, the Commission was not required to conduct a detailed trial regarding the internal functioning of the Company. It was required to examine whether the complaint and the material placed before it disclosed a *prima facie* case of non-compliance and whether the persons proceeded against were connected with the Company and its affairs.

15.20. The petitioners admittedly occupy the position of Directors. The Company was the judgment-debtor and was required to comply with the order. The complaint alleged non-compliance.



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15.21. These circumstances were sufficient for the Commission to take cognisance and issue process. The question whether one Director had a greater role than another, whether any particular Director was in charge of the relevant affairs, and whether any Director had a specific reason for not being able to comply are matters which can be examined in the proceedings. A final finding of guilt is not required before process can be issued.

15.22. This does not mean that every person who happens to be described as a Director is automatically guilty under Section 72 of the CP Act. The criminal liability has ultimately to rest upon responsibility for the conduct which constitutes the offence. A Director who had no connection with the affairs relevant to compliance, or who had ceased to be a Director before the relevant period, or who had no authority or responsibility in relation to the subject matter of the order, may place those circumstances before the Commission. But that is a matter of defence.



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15.23.A Director who was in charge of and responsible for the affairs of the Company cannot avoid the proceedings merely by saying that the order was addressed to the Company. The distinction, therefore, is between automatic liability by reason of designation, which cannot be accepted, and liability arising from responsibility for the affairs and compliance of the Company, which can be examined and established in the proceedings.

15.24. The petitioners have also contended that there is no finding that the alleged disobedience was wilful. The submission requires consideration in the context of the stage of the proceedings. The Commission, while taking cognisance, was not required to record a final finding that the petitioners had deliberately disobeyed the order. Such a finding would require consideration of the evidence and the defence of the accused.

15.25. At the stage of cognisance, the Commission had to determine whether there was sufficient ground to proceed. The subsequent conduct of the petitioners is also relevant in this context.



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As noticed while considering Point No.(iii), summons was issued, and thereafter Non-Bailable Warrants were repeatedly issued but could not be executed. The last report stated that the judgment-debtor had "vacated the premises". These circumstances do not by themselves establish guilt. They do, however, provide the surrounding circumstances in which the Commission was required to deal with the alleged non-compliance. The question of wilfulness can therefore be examined during the proceedings and need not have been conclusively decided at the stage of taking cognisance.

15.26. The argument that there is no express provision in Section 72 of the CP Act creating vicarious liability also does not, in the circumstances of this case, warrant quashing of the proceedings at the threshold. The petitioners have proceeded on the basis that they are being made liable merely because they are Directors. That is not the correct manner in which the proceedings are to be understood. The case against the petitioners is that they were Directors responsible for the affairs of the



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judgment-debtor Company and that the Company failed to comply with the order of the Consumer Commission. The liability alleged against them is therefore connected with their responsibility for the Company's compliance and not merely with the fact that their names appear in the records of the Company. Where the material before the Commission shows that the persons proceeded against were the persons responsible for the affairs of the Company, the absence of an automatic deeming provision does not prevent the Commission from examining their individual responsibility in the proceedings.

15.27. It is also necessary to bear in mind that Section 72(2) of the CP Act expressly confers upon the Consumer Commission the powers of a Judicial Magistrate of the First Class for trying offences under Section 72 of the CP Act. The Commission was therefore exercising a penal jurisdiction distinct from its jurisdiction to enforce the order as a decree under Section 71 of the CP Act.



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15.28. Once cognisance was taken of the alleged offence of non-compliance, the Commission was entitled to proceed against the persons whom the complaint and material disclosed as being responsible for the Company's affairs and compliance. The petitioners cannot, therefore, succeed merely by showing that the original consumer order was addressed to the Company.

15.29. The petitioners have urged that they are merely Directors and that the Company is a separate legal entity. The expression "merely Directors" cannot, however, be considered in isolation. A Director may occupy different positions depending upon the nature of the Company, the manner in which its affairs are conducted and the responsibilities entrusted to him. A person who is actively managing the Company and is responsible for its affairs stands on a different footing from a person who has no role in the management. In the present case, the petitioners have been shown as Directors of the judgment-debtor Company. The Company was required to comply with the order. The petitioners, being persons



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responsible for its affairs, cannot at the threshold contend that they had no responsibility whatsoever for ensuring compliance.

15.30. Whether they can establish otherwise is a matter for the proceedings before the Commission. The Court must also distinguish between the question of taking cognisance and the question of establishing guilt. At the stage of cognisance, the Commission is not required to determine the entire case finally. It has to consider whether there is sufficient material to proceed. At the stage of trial, the petitioners will have an opportunity to show that the alleged non-compliance was not attributable to them, that they had no control over the relevant affairs of the Company, that they had no authority to comply with the order, or that there were circumstances which prevented compliance. If such a defence is established, the consequences will follow in accordance with law. But the existence of a possible defence cannot, by itself, render the initial cognisance invalid.



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15.31. The present case is therefore not one where the petitioners are sought to be made personally liable for the Company's debt merely because they are Directors. The proceedings concern alleged non-compliance with an order of the Consumer Commission. The Company was required to comply with that order, and the petitioners, as Directors responsible for its affairs, were the persons through whom such compliance was required to be effected. The responsibility of the petitioners is therefore not founded merely on their designation. It is founded on their position as persons responsible for the affairs of the judgment-debtor Company and for ensuring compliance with the order binding upon it.

15.32. The separate legal personality of the Company cannot be permitted to defeat proceedings for an alleged failure which was within the responsibility and control of the persons managing the Company. At the same time, this Court makes it clear that the finding that the petitioners were responsible for the affairs of the Company at the relevant time does not amount to a finding of guilt under Section 72 of



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the CP Act. The prosecution or complainant must still establish the ingredients of the offence against the particular petitioners in accordance with law.

15.33. The Commission will have to consider the material placed before it, including any explanation or defence raised by the petitioners, and thereafter determine whether the alleged non-compliance is attributable to them.

15.34. Thus, while the petitioners cannot claim immunity merely because the order was passed against the Company, their ultimate penal liability has to be determined with reference to their individual responsibility.

15.35. This Court answers Point No. (iv) by holding that the consumer order was passed against *M/s. Sanchaya Land and Estate Pvt. Ltd.*, which is a separate legal entity. That, however, does not by itself prevent proceedings under Section 72 of the CP Act against its Directors who were responsible for the affairs of the Company and for ensuring compliance with the order. A company can act only through its Directors and



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persons managing its affairs. The petitioners, being Directors responsible for the affairs of the judgment-debtor Company, were responsible for taking the necessary steps to secure compliance with the order. They cannot avoid the operation of Section 72 of the CP Act merely by relying upon the separate legal personality of the Company. At the same time, this Court does not hold that every Director is automatically guilty of an offence under Section 72 of the CP Act merely by reason of holding the office of Director. What is relevant is the responsibility of the particular Director for the affairs of the Company and for compliance with the order.

15.36. In the present case, there was sufficient basis for the Commission to proceed against the petitioners at the stage of cognisance. The Commission was not required at that stage to conduct a full enquiry or record a final finding regarding their individual responsibility or wilfulness. The questions whether the petitioners were in charge of the affairs of the Company, whether they had the authority and ability to secure compliance, whether the non-



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compliance was attributable to them and whether their conduct was wilful can be considered in the proceedings under Section 72 of the CP Act.

16. **Answer to Point No. (v): Whether the impugned order dated 08.02.2024 taking cognisance and all consequential proceedings, including the issuance of Non-Bailable Warrants, call for interference by this Court in exercise of its supervisory jurisdiction under Articles 226 and 227 of the Constitution of India?**

16.1. Sri. Ashwin Vaish, learned counsel for the petitioners, submitted that the impugned order and the proceedings which followed are liable to be interfered with under Articles 226 and 227 of the Constitution.

16.2. His submission was that the Execution Court had adopted a procedure not known to law by treating the execution proceedings as a criminal complaint and thereafter taking cognisance



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under Section 72 of the CP Act. He further submitted that there was no finding regarding the individual responsibility of the petitioners, who are Directors of the judgment-debtor Company.

16.3. It was also contended that the Non-Bailable Warrants were issued without proper service of summons and without satisfying the requirements governing the issue of such coercive process.

16.4. According to learned counsel, these defects go to the root of the proceedings and, therefore, the order dated 08.02.2024 as well as all consequential proceedings are liable to be set aside.

16.5. Sri.V.Rangaramu, learned counsel appearing for respondent No.2, submitted that there is no illegality in the impugned order warranting interference by this Court. According to him, the Commission acted within the jurisdiction conferred upon it by Section 72 of the CP Act and followed the procedure applicable to the proceedings.



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- 16.6. He further submitted that the petitioners have an opportunity to appear before the Commission and place their defence and that there is no justification for invoking the extraordinary jurisdiction of this Court to stop the proceedings at this stage.
- 16.7. The present point is the culmination of the issues considered earlier. The objections raised by the petitioners have already been examined while answering the preceding points.
- 16.8. On Point No.(i), this Court has held that the Commission had jurisdiction to take cognisance of the alleged offence under Section 72 of the CP Act. The decisions rendered under the earlier enactments, relied upon by the petitioners, have also been considered and found not to govern the present proceedings in view of the scheme of the Consumer Protection Act, 2019.
- 16.9. On Point No.(ii), this Court has held that the procedure adopted by the Commission cannot be said to be a procedure unknown to law.



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16.10. On Point No.(iii), this Court has held that the issuance and subsequent re-issuance of the Non-Bailable Warrants cannot be said to be wholly unjustified in the facts of the case, particularly when the petitioners did not appear and the process issued by the Court could not be executed.

16.11. On Point No.(iv), this Court has held that the fact that the original consumer order was passed against the Company does not, by itself, prevent proceedings under Section 72 of the CP Act against the Directors who were responsible for the affairs of the Company and for ensuring compliance with the order.

16.12. In view of these findings, the principal grounds urged by the petitioners for interference do not survive.

16.13. The jurisdiction of this Court under Articles 226 and 227 of the Constitution is wide. However, Article 227 is not an appellate jurisdiction. Interference is warranted only where the order under challenge suffers from lack of jurisdiction, patent illegality, material procedural irregularity resulting in failure of



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justice, or any other exceptional circumstance requiring intervention.

16.14. In the present case, no such ground is made out.

16.15. This finding is confined to the question whether the proceedings can be maintained against the petitioners. It does not amount to a finding of guilt. The petitioners are entitled to establish before the Commission that the alleged non-compliance was not attributable to them or that the ingredients of the offence are otherwise not established.

16.16. These are matters which can properly be considered by the Commission in the proceedings under Section 72 of the CP Act. Section 72(2) treats the Commission as a Judicial Magistrate of the First Class "for the purposes of the Code of Criminal Procedure". The petitioners can therefore appear before the Commission and raise all objections and defences available to them in law.

16.17. The availability of another remedy does not, as an absolute rule, bar the jurisdiction of this



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Court under Articles 226 and 227. It is nevertheless a relevant consideration in deciding whether that discretionary jurisdiction should be exercised. In the present case, the Commission is already seized of the matter and is competent to consider the objections raised by the petitioners. The petitioners have not appeared before the Commission to place their defence. No exceptional circumstance has been shown which requires this Court to bypass the proceedings pending before the competent forum.

16.18. The object of the Consumer Protection Act, 2019 also requires the proceedings to be allowed to proceed without unnecessary interruption. Section 71 of the CP Act provides for enforcement of the orders of the Commission, while Section 72 of the CP Act deals with failure to comply with such orders. The statutory scheme would be defeated if proceedings for non-compliance could be stalled at the threshold without any jurisdictional defect being established.



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16.19. At the same time, the Court is conscious that the proceedings under Section 72 of the CP Act are penal in nature. The petitioners are entitled to all safeguards available in law, and their guilt cannot be presumed merely because cognisance has been taken or a Non-Bailable Warrant has been issued. Their defence has to be considered by the competent Court.

16.20. The conduct of the petitioners is relevant only to the question of exercise of discretionary jurisdiction. The record shows that summons was issued, followed by repeated attempts to secure their presence, and that the warrants could not be executed. This Court is not treating their absence as proof of guilt. However, in the absence of any jurisdictional defect or patent illegality, such circumstances do not justify terminating the proceedings at the instance of persons who have not appeared before the Court dealing with the matter.

16.21. The present case, therefore, does not call for exercise of the supervisory jurisdiction of this Court. The Commission has acted within the jurisdiction conferred upon it by Section 72 of



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the CP Act. The petitioners' objections concerning their individual responsibility can be examined in the proceedings before the Commission. No error has been shown which goes to the root of the proceedings or warrants their termination at this stage.

16.22. This Court answers point no.(v) by holding that the impugned order dated 08.02.2024 taking cognisance and the consequential proceedings, including the issuance of Non-Bailable Warrants, do not call for interference under Articles 226 and 227 of the Constitution. The Commission had jurisdiction under Section 72 of the CP Act. The petitioners, being Directors responsible for the affairs of the judgment-debtor Company, can be proceeded against under the said provision. Their ultimate liability and the defences available to them are matters to be considered by the Commission in accordance with law.

17. Answer to Point No. (vi): What Order?

17.1. For the reasons recorded, and in terms of the answers to the points, this Court passes the following:



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ORDER

- (i) The writ petition is **dismissed**.
- (ii) The petitioners shall appear before the II Additional District Consumer Disputes Redressal Commission, Bengaluru Urban, in E.A.No.10/2024, and may place before it whatever defence is open to them, including any contention regarding the personal responsibility of either petitioner for the default of the company. The Commission, exercising the powers of a Judicial Magistrate of the First Class under Section 72 of the Consumer Protection Act, 2019, shall consider such defence and shall proceed with the matter in accordance with law.
- (iii) The enforcement of the order in C.C.No.494/2016 under Section 71 of the Consumer Protection Act, 2019 read with Order XXI of the Code of Civil Procedure may proceed independently and in accordance with law.

This Court has been assisted by Mr. Sourav, Law Clerk, in reviewing this judgement.

Sd/-
(SURAJ GOVINDARAJ)
JUDGE

SR
List No.: 2 Sl No.: 2