

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**C.R.M-M No. 3544-2012
Date of Decision : 22.09.2015**

Surinder Singh and others

..... Petitioners

Versus

The State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. A.K.Khunger, Advocate
for the petitioners.

Mr. K.S.Nalwa, Addl. A.G. Punjab.

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

AJAY TEWARI, J. (Oral)

This petition has been filed under Section 482 Cr.P.C. for quashing of Warrant of attachment dated 13.09.2011 issued by the Chief Judicial Magistrate, Faridkot (Annexure P-3) directing the Tehsildar Dharamkot to recover the amount of Rs.1.00 lac from the moveable/immovable properties of deceased Charanjit Singh.

In this petition, the father of the petitioners No.1, 2, 4 and husband of petitioner No.3-Amarjit Kaur was convicted and sentenced to undergo rigorous imprisonment for 12 years alongwith fine of Rs.2.00 lac.

Aggrieved against the Judgment of conviction the deceased-Charanjit Singh

filed Criminal Appeal No.242-DB-2006 in this Hon'ble Court but the Division Bench vide Judgment dated 22.07.2008 (Annexure P-1) reduced the sentence from 12 years to 10 years. This Court further directed that in case of default of payment of fine, the deceased-Charanjit Singh will further undergo rigorous imprisonment for one year. During his substantive sentence, the deceased-Charanjit Singh died on 09.02.2010. After his death order/warrant of attachment was issued under Section 421 Cr.P.C. for recovery of fine by attachment and sale of moveable and immoveable property of deceased-Charanjit Singh and that warrant has been challenged by the present petition.

Learned counsel for the petitioners has relied upon the judgment passed by a Division Bench of this Court in CWP No.5647 of 2007 titled as "Bhola Ram Vs. State of Punjab and others" decided on 19.02.2008, wherein it has been held as follows :-

"6. After hearing learned counsel for the parties, we are of the considered view that the proceedings initiated by respondent on the basis of the order passed by learned Additional Sessions Judge, Barnala, is not sustainable in view of proviso to Section 421 Cr.P.C. For facility of reference Section 421 is reproduced here-in-below :-

"421. Warrant for levy of fine :-

(1) When an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may -

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

(b) Issue a warrant to the Collector of the district,

authorising him to realise the amount as arrears of land revenue from the movable or immovable property, or both of the defaulters :

Provided that, if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless, for special reasons to be recorded in writing, it considers it necessary so to do, or unless it has made an order for the payment of expenses or compensation out of the fine under Section 357”

A perusal of proviso to Section 421 (1) Cr.P.C. makes it obvious that if an offender has undergone the whole of imprisonment imposed in lieu of the fine on account of default, no Court could issue warrant for the levy of the amount by attachment and sale of any immovable or movable property belonging to such an offender. It is only for special reason to be recorded in writing that such a warrant for the levy of amount could be issued. The intention of the legislature as reflected in the aforementioned proviso clearly is that the stage for issuing warrant for levy of the amount by attachment and sale or issuance of warrant to the Collector to realise the amount as arrears of land revenue would reach only when the offender has opted either to pay fine or to serve sentence. Such an option could be exercised only when the offender has undergone the substantive sentence. He may end up paying fine at that stage or he may opt for serving sentence. Such an interpretation deserves to be preferred because it leans toward protecting the life and personal liberty of a person, which can be deprived of only according to procedure established by law as envisaged by Article 21 of the Constitution.”

On the basis of the aforesaid finding, the learned counsel for the petitioners has further argued that since deceased-Charanjit Singh has

died before his substantive sentence was completed the warrant of attachment cannot be issued to recover the amount from the moveable/immovable properties of the deceased.

Learned counsel for the respondent is not in a position to cite any contrary judgment.

Consequently, the petition is allowed and the impugned order dated 13.09.2011 is set aside.

Since the main case has been decided, the pending Criminal Misc. Application, if any, also stands disposed of.

22.09.2015

Pooja sharma-I

**(AJAY TEWARI)
JUDGE**