

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

Crl. Misc. No.M-35613 of 2013

Date of Decision: 20.02.2015

Phool Chand

....Petitioner

Versus

M/s Mohan Dai Oswal Cancer Treatment and
Research Foundation

....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the judgment ?**
- 2. To be referred to reporters or not ?**
- 3. Whether the judgment should be reported in the Digest ?**

Present:- Petitioner, in person.

Mr. Bhupinder Banga, Advocate
for the respondent.

DAYA CHAUDHARY, J.

The present petition has been filed under Section 482 Cr.P.C for quashing of Order dated 25.09.2013 passed by the District Judge, Ludhiana in Criminal Revision No.55 of 2013, titled as **Mohan Dai Oswal versus Phool Chand**.

Briefly, the facts of the case are that petitioner-Phool Chand filed an application before the Assistant Labour Commissioner, Circle -6, Ludhiana-cum-Authority under Payment of Wages Act, 1936 (here-in-after referred to as 'the Act, 1936') for recovery of unpaid wages of ₹ 13,377/- against the respondent.

Notice in the application was issued to the respondent.

Representative of the respondent appeared and filed objection regarding maintainability of the application. Thereafter, no one appeared for the respondent and the case was proceeded ex-parte against the respondent. A direction was issued to the respondent on 28.12.2012 by the authority to pay an amount of ₹ 13,377/- within a period of thirty days of passing of said direction but even after the expiry of that period, the respondent did not comply with the said directions. A show cause notice was issued to the respondent through Labour Inspector Grade-I to appear on 22.02.2013 to show cause as to why the order of the Authority was not complied with. But even after issuance of said show cause notice, no efforts were made by the respondent to comply with the order, proceedings under Section 15(5) (b) of the Minimum Wages Act were initiated through Labour Inspector Grade-I before the Court of Chief Judicial Magistrate, Ludhiana. Said application under Section 15(5)(b) of the Minimum Wages Act was treated as a complaint and following order was passed :-

“ Present : Labour Inspector in person.

Complaint prescribed before me. This is triable summarily. Therefore, this complaint is entrusted to the court of Sh. Amrinder Pal Singh, JMJC (Evening Court Judge), Ludhiana, for disposal according to law. Complainant shall appear before the said Court on 26.3.2013. File be sent immediately through the complainant.”

After issuance of notice to the respondent by the Court, the petitioner appeared and moved an application under Section 55 of CPC for arrest and detention of the Judgment Debtor in Civil Prison and under Section 20(6) of the Act, 1936 to impose penalty upon the respondent to the tune of ₹ 750/- for each day.

Thereafter, representative of the respondent appeared but he did not show cause any reason as to why the order passed by the Authority

was not complied with. He tendered ₹ 13,000/- on behalf of the respondent but the petitioner refused to receive the amount as it was less than the directed amount. After adjourning the case on number of dates on the request made by the respondent, the case was decided on 19.08.2013 and the following order was passed ;

“ Having empowered with Section 20(6) of the Act, a penalty of ₹ 750/- per day is imposed upon the respondent from the date of order i.e 28.12.2012 till date and respondent is directed to make payment of Rs.13,377/- along with penalty of ₹ 750/- for each day from the date of order till date, on or before 31.08.2013.”

The said order dated 19.08.2013 was challenged by the respondent by way of filing an appeal before the Additional Sessions Judge, Ludhiana, which was treated as a Criminal Revision under Section 397 of Cr.P.C on the ground that the lower Court was not required to treat the execution application as a complaint and trial of the appellant was not held as per procedure prescribed for complaint cases and penalty imposed directly. The order dated 19.08.2013 was set aside and the lower Court was directed to proceed with the case in accordance with the procedure prescribed for recovery of the amount as fine for which the execution application was filed, vide order dated 25.09.2013.

The said order dated 25.09.2013 passed by the Additional Sessions Judge, Ludhiana has been challenged by the petitioner- Phool Chand by raising various grounds.

Petitioner-Phool Chand appeared in person and submits that the respondent neglected the order passed by the 'Authority' and as such, the order of Judicial Magistrate Ist Class for punishment under sub clause 6 of Section 20 of the Act, 1936 was exactly as per law and no interference was required. The objection raised by the respondent was not valid as sub

clauses 5 and 6 of Section 20 of the Act, 1936 are free from litigation as they are not described under Section 21 of the Act. The penalty was imposed under sub-clause 6 of Section 20 of the said Act and as such, the impugned order is liable to be set aside on this ground.

Learned counsel for the respondent submits that the Additional Sessions Judge, Ludhiana has rightly set aside the order dated 19.08.2013 passed by the Judicial Magistrate Ist Class, Ludhiana as the lower Court was having no jurisdiction to impose any penalty being the Executing Court. Learned counsel for the respondent also submits that no complaint was filed before the lower Court and no sanction was sought for prosecution as provided under the Act, 1936. The penalty was imposed directly. The respondent appeared and tendered ₹ 13,000/- as penalty but the petitioner refused to accept the same.

Heard the arguments of learned counsel for the parties and have also gone through the orders passed by the Courts below.

As per provisions under Section 15(5)(b) of the Act, 1936, in case, the employer is not complying with the order, it can be treated as a complaint under Section 20 of the Act and the competent authority, through his Labour Inspector, is to implement the order.

As per Clause 6 of Section 20 of the Act, in case, any person fails or willfully neglects to pay the wages of any employed person by the date fixed by the authority, shall, without any prejudice to any other action that may be taken against him, which is punishable with an additional fine, which may extend to ₹ 750/- for each day.

In the present case also, the penalty has been imposed @ ₹ 750/- per day upon the respondent from the date of order i.e. 28.12.2012 and the respondent was directed to make payment of ₹ 13,377/- along with penalty of ₹ 750/- for each day from the date of order

till the payment is made. The State, in the present case, has appointed Sub Divisional Magistrates-cum-Sub Divisional Officers (Civil) as 'authority' as per sub-section (a) of sub-section (5) of Section 15 of the Act, which is reproduced as under :-

“(5) Any amount directed to be paid under this Section may be recovered -

(a) if the authority is a Magistrate, by the authority as if it were a fine imposed by him as Magistrate, and

(b) if the authority is not a Magistrate, by any Magistrate to whom the authority makes application in this behalf, as if it were a fine imposed by such Magistrate.”

It is apparent from bare perusal of sub-section (a) of sub-section (5) of Section 15 of the Act that in case, the authority is a Magistrate then the amount directed to be paid is to be recovered as if it was fine imposed by him as a Magistrate. It is also clear from the language of sub-section (b) of sub-section (5) of Section 15 of the Act that in case, the authority is not a Magistrate, the orders are required to be passed by any Magistrate to whom the authority makes an application in this regard as if the fine has been imposed by such Magistrate. On combined reading of sub-sections (a) and (b) of sub-section (5) of Section 15 of the Act, it is clear that if the order is passed by a person competent as per provisions of sub-section (e) of sub-section (1) of Section 15 i.e. a Judicial Magistrate, then the application for recovery would lie before the Magistrate himself. However, in case, the authority is not a Magistrate, appointed under sub-section (e) of sub-section (1) of Section 15 of the Act, then the matter is to be referred by the authority to the Judicial Magistrate by way of an application.

Admittedly, an application for recovery of amount of

₹ 13,377/- was filed by the petitioner before the Assistant Labour Commissioner, Circle-6, Ludhiana-cum-Authority under the Act, 1936 and notice was issued, to which, the objections were also filed. A notice was issued by the Judicial Magistrate Ist Class for 30.04.2013 on the application filed by the petitioner under Section 55 of the CPC for arrest and detention of the judgment debtor in Civil Prison and under Section 20 (6) of the Act, 1936. On issuance of show cause notice, the respondent appeared and tendered ₹ 13,000/- but the petitioner refused to receive the said amount and on refusal of the petitioner, the Judicial Magistrate Ist Class treated the said execution application as a complaint under Section 20 of the Act, 1936 and imposed penalty upon the respondent vide order dated 19.08.2013.

On perusal of the order passed by the Judicial Magistrate Ist Class, whereby, the penalty has been imposed under Clause 6 of the Section 20 of the Act, it appears that the same has been passed as per law as the order of payment of salary was not complied with within the stipulated period and less amount was tendered later on.

The submission made by learned counsel for the respondent that Section 21 of the Act should have been considered, does not carry any weight as the penalty has not been imposed as per sub section (1) of Section 20 of the Act to which he has objected, rather it has been imposed under sub clause (6) of Section 20 of the Act.

Similar issue was raised before Himachal Pradesh High Court in case ***Leela Thakur vs State of Himachal Pradesh and others 2009(4) SCT 514***, wherein, it was held that if the authority passing orders under Section 15(1) is a Judicial Magistrate, then application for recovery would lie before the Magistrate himself and in case, the authority is not a Magistrate then the matter is to be referred by authority to Judicial

Magistrate by way of an application.

In view of the facts as mentioned above and law position as discussed, there is merit in the contention raised by the petitioner. The petition is allowed and the impugned order dated 25.09.2013 passed by the Additional Sessions Judge, Ludhiana is set aside and the Order dated 19.08.2013 passed by the Judicial Magistrate Ist Class, Ludhiana is upheld.

20.02.2015
gurpreet

(DAYA CHAUDHARY)
JUDGE