

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

**CWP No.7346 of 2013
Date of decision : 19.10.2015**

Parkash Devi

....Petitioner

Versus

State of Haryana & ors.

....Respondents

CORAM: HON'BLE MR. JUSTICE MAHESH GROVER

Present: Mr. Vivek Khatri, Advocate
for the petitioner.

Mr. A.S.Chaudhary, Addl. AG, Haryana.

Mr. Ashwani Talwar, Advocate
for respondent No.6.

Mahesh Grover, J. (Oral)

The petitioner seeks compensation on account of her wrongful arrest under the orders of the Court.

The petitioner is a judgment debtor unable to satisfy a decree and during the course of execution, she was not even appearing before the adjudicating Court prompting it to pass an order on 18.12.2012 extracted herebelow:

"Where Parkash Devi wife of Ravinder Singh, R /o H.No.179A, Lajpat Nagar, Hisar, was required to attend this Court, concerning the above said case. But he did not come present before this Court despite his service and avoiding service intentionally. Therefore, you are hereby required to arrest aforesaid Parkash Devi wife of Ravinder Singh, R/o H.No.179A, Lajpat Nagar, Hisar and produce him before undersigned on 16th at February, 10.00 A.M.

Given under my hand and seal of this Court this 18th day of December, 2012."

An application was then moved on behalf of the petitioner

for setting aside the aforesaid order dated 18.12.2012 by setting up a plea of protection under Section 56 of Civil Procedure Code prohibiting the arrest or detention of a woman in satisfaction of a decree. For the purpose of reference, Section 56 of CPC is extracted herebelow:

"56. *Prohibition of arrest or detention of women in execution of decree for money:* - *Notwithstanding anything in this Part, the Court shall not order the arrest or detention in the civil prison of a woman in execution of a decree for the payment of money.*"

The Court then passed another order on 16.02.2013 recalling the conditional warrant on account of the fact that she was a lady. The said order is also extracted herebelow:

"Conditional warrant issued against the JDs received back. Counsel for JD No.1 has filed an application for recalling the conditional warrant on the ground that she is a lady. Accordingly, conditional warrant issued against the JD is hereby recalled. Counsel for the decree holder states that JD No.1 be examined in respect of her property, wherein she has alleged that she has no property. However, when she was questioned by the Court, she disclosed that a sum of Rs.50,000/- to Rs.60,000/- is lying in her bank account, maintained with Oriental Bank of Commerce near Government College, Rajgarh Road, Hisar. However, she does not know the account number. The decree holder is directed to furnish the particulars of the account. Fresh conditional warrants be issued against JD No.2 for 25.03.2013."

Before this Court, the petitioner prayed that her arrest and detention in police custody is totally illegal and thus, prayed for grant of compensation by invoking the principle of 'Actus curiae neminem gravabit' implying that the petitioner be restored to the position she would have occupied but for the mistake.

On going through the matter and the orders passed by the Executing Court, I am of the view that the Court never exercised its power under Section 56 of CPC rather it was acting pursuant to powers under Order 21 Rule 38 of the CPC, which is also extracted herebelow:

*"Rule 38. **Warrant for arrest to direct judgment-debtor to be brought up**- Every warrant for the arrest of a judgment-debtor shall direct the officer entrusted with its execution to bring him before the Court with all convenient speed, unless the amount, which he has been ordered to pay, together with the interest thereon and the costs (if any) to which he is liable, be sooner paid."*

It was only to procure the presence of the petitioner that warrant of arrest of the petitioner was issued and not to detain her in execution of a decree.

In view of the above, I am of the view that since the Court was rightly proceeding by exercising its power under Order 21 Rule 38 of the CPC to secure the presence of the petitioner, the impression created by the petitioner that her arrest was warranted under Section 56 of CPC was misconceived.

Consequently, the present petition stands dismissed.

19.10.2015
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(Mahesh Grover)
Judge