

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-9555-2017

Decided on: May 04, 2017.

Suresh Gupta

.....Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. Rajesh Bansal, Advocate for the petitioner.

M.M.S. BEDI, J (ORAL)

The petitioner had moved an application before the Executive Magistrate, Panipat to the effect that warrant be issued under Section 93 Cr.P.C. to recover his articles which consist of 6 iron almirahs, 4 double beds, 1 dining table, 20 seater sofa set, 4 L.E.D. T.V., 2 large fridges, 4 geysers, kitchen items etc. mentioned in the application dated 21.12.2016 (Annexure P-4) claiming that the said articles had been kept in possession by respondent No. 8 and that no access was being provided to the petitioner to enter the house w.e.f. 14.10.2014. On the basis of said application, SDM, Panipat appears to have passed order requiring the SHO concerned for necessary action and report on 23.12.2016. The concerned police appears to have submitted an application for appointment of Duty Magistrate so that further proceedings may be carried out. Vide order dated 04.01.2017, the District Magistrate, Panipat appears to have, on the information of the SDM, Panipat ordered that police force was required for execution of warrant issued under Section 93 Cr.P.C. in the complaint filed by the petitioner.

The District Magistrate vide Annexure P-6, in the exercise of powers vested

in him under Section 22(i) and 23(iii) of the Cr.P.C. had appointed Tehsildar as Duty Magistrate for the said purpose. The petitioner, through instant writ petition, has sought a direction to the administrative authorities to implement the warrant under Section 93 Cr.P.C. and to get recovered the articles mentioned in the application.

I have considered the contention of learned counsel for the petitioner and I am of the opinion that a writ petition under Articles 226/227 of the Constitution of India is maintainable by a citizen of India whose fundamental rights have been infringed or if there is any violation of statutory obligations by a State authority. The present petition seeking direction for execution of a warrant by administrative authorities is apparently not maintainable, as in my opinion, the District Magistrate or the Executive Magistrate was not competent to issue any direction or warrant for recovery of any article from a particular premises from particular person without issuing notice to him and without hearing him. No writ can be issued for implementation of an order which apparently is contrary to the provisions of law and has got no sanction of law and has been passed without jurisdiction.

Petition is dismissed.

Nothing said in this order will prejudice the right of the petitioner to avail appropriate legal remedy before appropriate forum in accordance with law.

(M.M.S. BEDI)
JUDGE

May 04, 2017
Divyanshi

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No

