

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8866 of 2018

=====

Kasim Raeen, Son of Md. Newazi Raeen, resident of Village - Sangrampur Tole
Mushharia, Police Station- Sonbarsa, District- Sitamarhi.

.... Petitioner

Versus

1. The State of Bihar, through the Chief Secretary, Government of Bihar at Patna.
2. The Principal Secretary, General Administration, Government of Bihar at Patna.
3. The Principal Secretary, Revenue Department, Government of Bihar at Patna.
4. The Commissioner, Division Muzaffarpur, District- Muzaffarpur.
5. The Collector, District - Sitamarhi.
6. The District Certificate Officer, District- Sitamarhi.
7. The Branch Manager, Syndicate Bank, Branch-Kamaldah, District- Sitamarhi.

.... Respondents

=====

Appearance :

For the Petitioner : Mr. Saghir Ahmad, Advocate

For the Respondents : Mr. Manish Kumar, GP4

=====

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 18-05-2018

Heard learned counsel for the petitioner as well as
learned counsel for the respondents.

2. The present writ petition has been filed for the following
reliefs.

*“(i) For issuance of an appropriate writ/order/
direction including the writ in the nature of mandamus
to commanding/directing the Respondent no. 6 to first
release the petitioner forthwith, who has been
apprehended by the Police on 06.03.2018 and put him
behind the bar for he failed to discharge his alleged
debts due to the bank in question although there is no
determination of certificate amount by the Respondent*



No. 6 for which he issued and signed the certificate upon the petitioner under section 7 of the Bihar and Orissa Public Demand Recovery Act, 1914 in connection with certificate Case no. 61 of 2015-16.

(ii) For issuance of an appropriate writ/order/direction including the writ in the nature of certiorari to quashing the impugned order dated 10.04.2017 passed by Respondent No. 6 as contained in Annexure - 1 passed in Certificate Case No. 61 of 2015-16 by which without giving opportunity of hearing and without proper service of notices under section 7 of the Act upon the petitioner issued body warrant against the petitioner and police apprehended the petitioner on 06.03.2018.

(iii) For issuance of an appropriate writ/order/direction including the writ in the nature of mandamus to commanding/directing the Respondent No. 6 to first determine the loan amount for which he alleged to issue the Certificate and signed, in connection with Certificate Case No. 61 of 2015-16 as contemplated under section 10 of the Bihar and Orissa Public Demand Recovery Act, 1914 (Now for the sake of brevity only "the Act") and then proceed for its execution thereafter in accordance with law as contemplated under the Act.

(iv) For grant of other reliefs for which the petitioner deemed entitled into the facts and circumstances of the case."

3. Learned counsel for the petitioner submits that coercive action taken against the petitioner for recovery of the dues by way of



putting him behind bars, without issuing any notice and without complying the due process of law as contemplated under Sections 9, 10 and 14 of the Bihar & Orissa Public Demand Recovery Act, 1914 (for short, "PDR Act"), is wholly arbitrary and illegal. A specific statement has been taken in paragraph 8 of the writ petition that body warrant has been issued against the petitioner for non-payment of the dues in the certificate proceeding upon which the petitioner was apprehended on 06.03.2018 and has been languishing in jail ever since.

4. It is by now well settled that mere default in payment of money due by a person, cannot invite the harsh punishment of jail custody. Reference in this behalf may be made to a decision in *Dashrath Sharma Vs. The State of Bihar & Ors. Reported in 2005(3) PLJR 686*.

5. In this view of the matter, let the petitioner be released from the civil prison forthwith.

6. Learned counsel for the respondents submits that the petitioner does not appear to have filed any petition under Section 9 of the Act denying his liability, and as such there is no illegality in the action of the Respondents.

7. With the consent of parties, the present writ petition is disposed of granting liberty to the petitioner to file his petition under Section 9 of the Act within a period of three weeks from today, which, if done, shall be disposed of by the District Certificate Officer, Sitamarhi (respondent no. 6) on its own merits within a further period of four



weeks thereafter in accordance with law and in terms of Section 10 of the said Act.

8. It is made clear that until disposal of such petition, if filed, the District Certificate Officer, Sitamarhi shall not resort to any coercive action for recovery of the dues against the petitioner in Certificate Case No. 61 of 2015-16.

(Vikash Jain, J)

B.T/Chandran

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	20.05.2018
Transmission Date	N.A.

