

In the High Court of Punjab and Haryana at Chandigarh.

(I)

LPA No. 1718 of 2014
Date of Decision:- 2.5.2018

Avtar SinghAppellant

Versus

State of Punjab and anotherRespondents

(II)

LPA No. 1719 of 2014

Sukhwinder SinghAppellant

Versus

State of Punjab and anotherRespondents

CORAM: HON'BLE MR. JUSTICE M.M.S.BEDI
HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present : Mr. R.S.Rai, Senior Advocate with
Ms. Rubina, Advocate for the appellant
in LPA No.1718 of 2014.

Mr. P.S.Alhuwalia, Advocate for appellant
in LPA No.1719 of 2014.

Mr. P.P.S.Thethi, Additional Advocate General, Punjab.

GURVINDER SINGH GILL, J.

1. The above mentioned two appeals, challenging the same order i.e. order dated 17.7.2014 passed by a Single Bench of this Court in CRWP No. 834 of 2013 titled as Balwant Singh vs. State of Punjab, shall stand disposed off vide this judgement. Vide impugned order, the learned Single Bench, apart from ordering registration of FIR against SHO Sukhwinder Singh and ASI Avtar Singh, also directed that the matter be placed before Hon'ble the Chief Justice for seeking appropriate orders for initiating contempt proceedings.

2. The facts leading to passing of the impugned order are that learned Rent Controller, Hoshiarpur in Ejectment Petition titled as Gurwinder Singh vs. Mohan Lal ordered ejectment of tenant Mohan Lal vide order dated 23.12.2006. The said order was upheld by the Appellate Court vide judgment dated 27.2.2013 and thereafter warrants of possession were issued by the learned Rent Controller in an execution application filed by the landlord.
3. On 9.4.2013, the Bailiff Dev Raj along with two officials visited the premises for execution of warrants of possession and for delivery of physical possession of the premises to landlord Gurwinder Singh. While the Bailiff was in process of getting the premises vacated, he was obstructed by police officials. The decree holder (through his father Balwant Singh) immediately made a written complaint to Rent Controller, Hoshiarpur, on 9.4.2013 itself, who inquired into the matter and vide report dated 2.9.2013 held that SHO Sukhwinder Singh and ASI Avtar Singh had caused hinderance in execution of Court orders. The said report was forwarded by learned District & Sessions Judge, Hoshiarpur to the Registrar (Vigilance), Punjab and Haryana High Court.
4. The decree holder, through his father Balwant Singh, apart from submitting aforesaid written complaint to Rent Controller on 9.4.2013 had also sent telegram addressed to the Hon'ble Chief Justice on 10.4.2013 intimating about the intervention of police officials in the process of execution proceedings. Pursuant to receipt of said telegram, the matter was treated as a Criminal Writ Petition and a Single Bench of this Court after examining the matter, apart from issuing directions for lodging FIR against SHO Sukhwinder Singh and ASI Avtar Singh also directed that the matter be put up before Hon'ble the Chief Justice for seeking appropriate orders for initiating contempt

proceedings against police officials. Accordingly, the matter was placed before Hon'ble the Chief Justice and vide order dated 4.9.2014, contempt proceedings were ordered to be initiated in the matter.

5. During the course of proceedings of the Criminal Writ Petition, the SSP Hoshiarpur filed his affidavit dated 1.5.2013 wherein the action of SHO, Police Station City Hoshiarpur was sought to be justified on the ground that the situation near the premises in question i.e. in Shashtri Market was getting tense as a large number of persons had gathered there when the articles were being thrown out from the shop and the traffic was blocked and that since both the parties were aggressive and the ladies present there were complaining of misbehavior and manhandling, therefore, the parties were brought to the police station, especially on account of complaint of the public that the Bailiffs had been misbehaving with the ladies under the influence of liquor and that they should be got medico-legally examined.
6. The learned Single Bench, in impugned order, while noticing the aforesaid affidavit and also report dated 2.9.2013 of learned ACJM, Hoshiarpur in respect of the inquiry conducted into the matter, observed as follows :-

“Assuming that the SHO of the Police Station City received the information that situation at the spot was getting tense, he had no business to seize the warrants of possession from the Bailiffs or take them to the police station and further subject them to medico legal examination. The version that the Bailiffs misbehaved with the ladies under influence of liquor gets falsified in view of the statement of Dr. R.P. Saroa, Medical Officer, Civil Hospital, Hoshiarpur recorded during inquiry wherein he deposed that movement of Bailiffs was co-ordinated and normal and no particular smell could be felt in

their breath. Furthermore, if the Bailiffs of the Court had committed any misconduct or they were required to be withdrawn from the spot, the SHO had no business to take them to the police station and then to the doctor for their medical examination instead of taking them to the Court and informing the District Judge and the Additional Chief Judicial Magistrate, Hoshiarpur, accordingly.”

7. The learned Single Judge, thus, held that the conduct was a direct attack on the functioning of the Courts and was required to be dealt with sternly and thus, ordered for registration of FIR against them and also proposed initiating of contempt proceedings against them after obtaining appropriate orders from Hon'ble the Chief Justice.
8. It may here be mentioned that wife of Judgement Debtor(tenant) had also moved telegrams complaining about misbehavior of the Bailiffs. An inquiry was ordered to be conducted but subsequently during the course of inquiry proceedings before the Additional Civil Judge(Sr.Div.), Hoshiarpur, the complainant-tenant withdrew her complaint, as the matter had been compromised between the landlord and tenant and possession of shop had been delivered to landlord.
9. The learned counsel for the appellants, while assailing the impugned order, submitted that the learned Single Judge has mainly relied upon report dated 2.9.2013 of the Additional Civil Judge (Senior Division) Hoshiarpur and that a perusal of the same indicates that the report of Chemical Examiner indicating consumption of liquor by Bailiff was not before the Inquiry Officer. The learned counsel has, thus, submitted that the material fact, which goes to the root of the case and which substantiates the assertions of the appellants that

the bailiffs had created a scene under influence of liquor were not before the Inquiry Officer and that in these circumstances, no reliance can be placed upon the said report dated 2.9.2013.

10. As against the aforesaid contention, the learned counsel for respondent No.2 – Balwant Singh has submitted that the police had intentionally interfered into the execution of the Court orders requiring delivery of possession of demised premises to the landlord and that since the tenant was an influential person, being Municipal Councillor of the area, therefore, he was able to muster support from other shopkeepers of the area as well as the police in order to thwart execution proceedings.
11. We have considered rival submissions addressed before this Court and have perused record of the case.
12. It is not in dispute that landlord had successfully got an ejectment order against his tenant and warrants of possession had been issued in his favour by the Court and Bailiffs namely Dev Raj and Jasvir Singh had been deputed to get the warrants executed and to handover physical possession of the premises in question to the landlord. Needless to mention, the warrants of possession are issued pursuant to an order of the Court only when the tenant himself does not obey the order and the landlord has to seek help of the Court for execution of its orders. In such matters, the landlord is also entitled to seek police help, if need be, for seeking possession. In such like matters, there could be resistance and there would be some chaos especially when the demised premises happened to be a shop in a busy area and the tenant also happens to be a Municipal Councillor. A Municipal Councillor, on account of his profile, would surely be able to muster support from other shopkeepers. Further, in

the present case, most material fact is that the Bailiff Jasvir Singh was under the influence of liquor, as would be evident from the report dated 5.3.2014 of the Chemical Examiner, wherein the Ethyl Alcohol contents were found in the blood sample to the extent of 40.25 mg per 100 ml. It needs to be borne in mind that though the occurrence had taken place at about 11:30 AM, the medical examination of two Bailiffs was conducted at about 2:40 P.M., when they were taken to Civil Hospital, Hoshiarpur, where their blood samples were drawn. During this intervening period of about three hours, the percentage of alcohol in the blood would have come down considerably. In Modi's Medical Jurisprudence and Toxicology (23rd Edn.), it is mentioned that alcohol in blood diminishes at the rate of 12-15 mg per hour on account of elimination. In other words, at about 11.30 AM, when the incident happened, i.e. three hours prior to drawing of blood sample, the alcohol content would have been around 85 mg per 100ml.

13. Presence of such high percentage of alcohol in blood of a person could certainly lead to an erratic conduct on part of such person. To gather an idea about the objectional content of alcohol in blood an analogy can be drawn from the provisions of Section 185 of the Motor Vehicles Act 1988, wherein the offence of "Drunken Driving" would be established, if the blood alcohol exceeding 30 mg per 100 ml of blood is detected warranting penal consequences.
14. The aforesaid medical report was not before the learned Additional Civil Judge (Senior Division) Hoshiarpur, as on 2.9.2013 when the report was submitted as would be noticed from her report, the relevant extract of which is reproduced below :-

“The SHO has failed to produce chemical report of the blood relating to the Bailiffs for the estimation of any intoxicant/alcohol. The only evidence with this Court is the affidavit submitted by Dr.R.P. Saroa, Medical Officer, Civil Hospital, Hoshiarpur, wherein it has been reported that the movement of Bailiffs, was co-ordinated and normal and no particular smell could be felt in their breath.”

15. No doubt execution of an ejectment order is an cumbersome procedure but the law takes care of the difficulties which could be faced during delivery of possession to the decree holder. The Bailiff is required to furnish a report regarding obstruction and force exercised by Judgment Debtor as per Order 21 Rule 35 CPC, which for the sake of ready reference is reproduced below:-

Order 21 Rule 35 CPC

“35. Decree for immovable property.-

- (1) Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.
- (2) Where a decree is for the joint possession of immovable property, such possession shall be delivered by affixing a copy of the warrant in some conspicuous place on the property and proclaiming by beat of drum, or other customary mode, at some convenient place, the substance of the decree.
- (3) Where possession of any building or enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree holder in possession.

- (4) Where delivery of possession of a house is to be given and it is found to be locked, orders of Court shall be taken for breaking open the lock for delivery of possession of the same to the decree-holder.

If it is found at the time of delivery that there are movables in the home to which the decree-holder has no claim and the judgment-debtors absent, or if present does not immediately remove the same, the officer entrusted with the warrant for delivery shall make an inventory of the articles so found with their probable value, in the presence of respectable persons on the spot, have the same attested by them and leave the movables in the custody of the decree-holder after taking a bond from him for keeping the articles in safe custody pending orders of Court for disposal of the same.

The Officer shall then make a report to the Court and forward therewith the attested inventory taken by him.

The Court shall, thereupon, issue a notice to the judgment-debtor requiring him to take delivery of the said movables within thirty days from the date of the notice and in default they will be sold in public auction at his risk and the proceeds applied for meeting all legitimate expenses of custody and sale and the balance, if any, will be refunded to the judgment-debtor:

Provided that if movable articles referred to above are perishable, the Officer shall sell them in public auction immediately, and bring the proceeds into Court. The notice to the judgment-debtor shall in such a case call upon him to receive the amount from Court within three months.”

16. If Bailiff is obstructed or the premises is locked, or there is breach of peace, the police help can be obtained through District Judge and SSP, but no one is above law. The relevant provisions in this regard are provided in Chapter 7, Part I the Volume 4 of High Court Rules & Orders, which read as follows:-

High Court Rules & Orders Volume 4 Chapter 7, Part I

“PART J—POLICE ASSISTANCE

The procedure to be followed for rendering police assistance to the Civil Courts in the execution of warrants of arrest and distress or of

warrants for the delivery of possession of immovable property shall be as under :-

The Civil Judge may seek the police assistance through the District Judge or Civil Judge (Senior Division), whosoever is available at the station, from the Commissioner of Police/Superintendent of Police in execution of the decree, on being satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit or execution proceedings.”

17. The law does not permit an employee of the Court to perform an act of law by consuming liquor and indulge in aggressive act of helping a decree holder and create nuisance. If a procedure is prescribed by law to do a particular act in a certain way, the said procedure has to be adopted and no criminal force could be exercised for execution of an order of ejectment.
18. A Bailiff acts under the authority of the Court. Any obstruction caused during execution of warrants of possession would warrant launching of proceedings for criminal contempt of Court, apart from other penal liabilities, against such person who obstructs execution. However, in case the Bailiff exceeds his jurisdiction in the said process or misconducts himself in such a manner leading to breach of peace, the police would be well within its jurisdiction to take necessary steps for maintaining law and order.
19. The facts in the present case, especially the report of Chemical Examiner, shows that the Bailiff had consumed liquor which would lend credence to the stand of the Judgement Debtor and the police that the Bailiff had himself created a scene while under the influence of liquor and that the police had merely taken steps necessary for maintaining law and order. In the present

case, since the tenant was an influential person and crowd had gathered at the spot, the police was expected to control the situation. Unless any bias or any motivated reason for their interference is shown, it can safely be said that the action done by the police was in good faith and was for the purpose of maintaining law and order, especially when the facts and circumstances *prima facie* suggest that there was apprehension of breach of peace on account of gathering of a crowd and that the Bailiff was under influence of liquor.

20. In view of the aforesaid position, while we agree with the findings that the police officials had interefered in the process of delivery of possession of demised premises to the landlord but the same was done under good faith for maintaining law and order, since there was apprehension of breach of peace at that moment. The police officials, of course, should have immediately informed the District Judge or atleast the executing Court when the Bailiffs were taken away for their medical examination but such omission, under the given circumstances, would not warrant criminal penal action though they ought to have been dealt with departmentally for such omission.
17. In view of our aforesaid discussion, the appeals merit acceptance and are hereby accepted. The impugned order dated 17.7.2014 is hereby set aside.

(M.M.S. Bedi)
Judge

(Gurvinder Singh Gill)
Judge

2.5.2018

kamal

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No