

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.25210 of 2019

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Brahmachari Umashankar sonof Rameshware Prasad Yadav, Resident of Kachahari Road, Jakharaj Asthan, Ward No. 30, P.S.- Lakhisarai, District- Lakhisarai, Proprietor of M/S Akash Mini Rice Mill, lakhisarai.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Department of Food and Consumer Protection, Govt. of Bihar, Patna.
2. The Managing Director, Bihar State Food and Civil Supply Corporation, Patna.
3. The District Magistrate, lakhisarai.
4. The Superintendent of Police, Lakhisarai.
5. The District Manager, Bihar State Food and Civil Supplies Corporation, District- Lakhisarai.
6. The District Certificate Officer, Lakhisarai.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Shashi Bhushan Kumar, Adv.
For the Respondent/s : Mr.S. Raza Ahmad (AAG-5)

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

3 14-01-2020 The petitioner is in civil prison for not having complied with the directions of the Certificate Officer.

Be noted that a certificate proceeding was initiated against the petitioner vide Certificate Case No.15/2014-15. Though the present petition has been filed for quashing of the entire proceedings on the ground that the amount due against the State had to be



quantified first before initiating any proceeding under the Bihar and Orissa Public Demand Recovery Act,1914, but the learned counsel for the petitioner limits its prayer to the release of the petitioner from the civil prison.

The reason for making such a prayer is that notices were never served upon the petitioner and in quick succession, orders were recorded by the certificate officer and body warrant was issued and executed as well. The petitioner did not get any opportunity of objecting to the initiation of proceeding.

The aforesaid ground has been contested vehemently by the counsel for the State by showing to this Court that at the time of the registration of the certificate case, the petitioner was marked present through the agency of his advocate. Thus, the petitioner cannot feign ignorance about the initiation of the proceeding against him under the Bihar and Orissa Public Demand Recovery Act,1914.

However, what cannot be denied is that



objection petition has not been preferred by the petitioner up till now.

The learned counsel for the petitioner in support of the grounds raised for seeking his release from the civil prison, has submitted that if such provision is not adhered to, the law would be termed as draconian. He has also referred to a decision of this Court reported in 2005(3) PLJR wherein a Single Judge of this Court has held that with the introduction of Article 21 in the Constitution of India, any order which is not reasoned or which does not take into account the issues which have been raised by a person, cannot be sustained. The provision with respect to taking a person in civil prison under the scheme is provided in Sections 38 to 42.

Section 38 provides the power to the certificate officer to have a person arrested and sent to civil prison but such power has to be exercised subject to the provisions contained in Section 56 of the Act.

Section 56 deals with the manner of executing



warrant of arrest issued under the Act or any process directing or authorizing the attachment of movable property. This provision contains the time for entering the dwelling house of the certificate debtor for executing body warrant or for attachment of the property for liquidation of the debt amount.

Section 39 of the Act deals with the provision relating to release from arrest and re-arrest.

A certificate debtor could be released by the Collector but only on being satisfied that the certificate debtor has disclosed the details of whole of his property and has placed it at the disposal of the certificate officer and that he has not committed any act in bad faith. If the certificate officer has grounds of believing that disclosure made by the certificate debtor under subsection (1) to is untrue, he may order the rearrest of the certificate debtor in execution of the certificate, but the period of his detention in civil prison shall not, in the aggregate exceed to what has been authorized by



Section 40(1) of the Act. The maximum detention of the petitioner in the present case would be for six months in accordance with Section 40(1)(a) of the Act. It is also required to be noted that mere release of a certificate debtor from civil prison would not lead to a conclusion that he has been discharged from his debt and is liable to be rearrested under certificate in execution of which he was detained in civil prison.

Section 41 limits the ground for release of a person from civil prison to serious illness. If the certificate officer is of the opinion that the certificate debtor is not in a fit state of health to be detained in civil prison, such debtor shall be released on the ground of existence of any infection or contagious disease or of his suffering from in serious illness. Here also maximum aggregate of the detention will not be exceeded. Section 42 deals with prohibition on detention of women and special class of persons.

Considering the case of the petitioner in its



entirety, this Court provides that if the petitioner files an application for release along with an assurance that an affidavit shall be filed with respect to his entire assets within a period of two weeks, he shall be released from the civil prison immediately and a date shall be fixed when such affidavit shall be filed. In case, the certificate officer finds the disclosure in the aforesaid affidavit to be incorrect, it would be open for him to direct for re-arrest of the petitioner with the sanction of the Collector in terms of Section 39 of the Act.

(Ashutosh Kumar, J)

Prakash Narayan /-

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