

HIGH COURT OF CHHATTISGARH, BILASPUR
WP227 No. 403 of 2021

- Rajnikant, S/o Rohidas Kumar Agrawal, Aged About 40 Years R/o Village Gumga, Police Station Prem Nagar, District Sarguja Chhattisgarh Present Address Amit Radio Center Sangam Chowk Ambikapur Sarguja Chhattisgarh

---- Petitioner

Versus

1. Manoj Kumar, S/o Late Shri Lal Sai, Aged About 42 Years, R/o Village Bhatgaon, Tehsil Bhatgaon District Sarguja Chhattisgarh
2. Vinod Kumar, S/o Late Shri Lal Sai, Aged About 38 Years, R/o Village Bhatgaon Tehsil Bhatgaon District Sarguja Chhattisgarh
3. Naresh Kumar, S/o Late Shri Lal Sai, Aged About 36 Years, R/o Village Bhatgaon, Tehsil Bhatgaon District Sarguja Chhattisgarh
4. Sheela, D/o Late Shri Lal Sai, Aged About 36 Years, R/o Village Bhatgaon, Tehsil Bhatgaon, District-Sarguja, Chhattisgarh
5. Flominaar, Wd/o Late Shri Lal Sai Aged About 55 Years, R/o Village Bhatgaon, Tehsil Bhatgaon, District-Sarguja Chhattisgarh
6. Oriental Insurance Company Limited Through Branch Manager, Oriental Insurance Company Limited, Branch Ambikapur District Sarguja Chhattisgarh
7. Satyendra Prasad Goswami, S/o Vasudev Goswami Aged About 45 Years, R/o Village Khadgaon, Police Station-Lakhanpur, Tehsil Sarguja District-Sarguja, Chhattisgarh

---- Respondents

For Petitioner : Mr. Ashish Surana, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

23/08/2021

1. This petition under Article 227 of the Constitution of India has been brought being aggrieved by the order dated 2.8.2021 passed in the

execution of award dated 22.10.2002 in Claim Case No.86/2002.

2. The execution case mentioned hereinabove is pending since more than 10 years. The learned MACT has mentioned in the impugned order that earlier the proceeding was initiated for sending the petitioner to civil jail and after his arrest, he was granted bail on terms and conditions as imposed. It is ordered that the petitioner has not complied with the conditions of grant of bail, therefore, order has been passed for issuing notice to the surety to show cause why the amount of surety should not be recovered from him.
3. It is submitted by the counsel for petitioner, that the petitioner was driver of the vehicle which met with an accident and resulted in death of the deceased, whose legal representatives are respondent No.1 to respondent No.5, who were claimants in the claim case. It is submitted that in the award dated 22.10.2002, the learned AMACT has held the petitioner and the vehicle owner jointly and severally liable for the payment of compensation. It is submitted that the petitioner alone is being proceeded against for the recovery of the compensation amount. Whereas the learned MACT can also proceed against the vehicle owner, which is not being done.

Reliance has been placed on the judgment of Supreme Court in the case of Jolly George Varghese and another v. The Bank of Cochin, reported in (1980)2 SCC 360. It is submitted that under Section 51 of the CPC the Execution Court should give opportunity to the judgment debtor to show cause why he should not be committed to prison before passing order for his detention in civil jail. It was held in the Jolly George(supra) that the Court should consider the ground of poverty if raised by the judgment debtor before proceeding to pass orders.

Reliance has been placed in the judgment of C.G. High Court in Prem Sagar Gabhel v. Amrita Bai and another, reported in (2017) 2 CGLJ 268 in which the judgment in Jolly George(supra) has been discussed and it has been held that holding of inquiry is sine qua non before sending the judgment debtor to prison in accordance with the provision under Section 51, order 21 Rule 37 & 40 of CPC. Therefore, the impugned order is not sustainable, hence, it is prayed that petition be admitted for grant of relief to the petitioner.

4. I have heard the party and perused the documents on record.
5. Considered on the submissions. Perused the certified copy of the order-sheet of the execution case. Initially the orders were passed for issuance of warrant for attachment of the property of the judgment debtors in the claim case. Subsequent to that an application was filed by the claimants for issuance of warrant of arrest against the petitioner and another. By order dated 28.2.2018, the learned MACT ordered for issuance of show cause notice which could not be served, then on 8.5.2018, the learned AMACT ordered for issuance of non-bailable warrant against the judgment debtors by order dated 30.8.2018. After passing orders for issuance of warrant on number of occasions the petitioner was arrested and produced before the Court on 12.4.2021 after which he was released on bail on terms and conditions as ordered.
6. On perusal of the complete copy of the order-sheet filed, it is found that no opportunity was given to the petitioner/judgment debtor to explain why the recovery of the compensation amount should not be made from him. As it is held in the case of Jolly George(supra) and Prem Sagar Gabhel(supra), that granting such opportunity for

explanation is mandatory, therefore the petition is disposed off at motion stage. The impugned order is set aside. The learned MACT is directed to grant opportunity to the petitioner/judgment debtor to submit show cause as to why the compensation amount should not be recovered from him and then proceed with the execution of the award in the claim case. It is also ordered, that in case the petitioner fails to submit any explanation within a period of one month from the date the learned MACT passes orders for the same, in that case the learned MACT shall be at liberty to proceed with the execution case in accordance with law without any restraint by the order passed.

7. Accordingly, the petition is dismissed as disposed off.

Sd/-

(Rajendra Chandra Singh Samant)

Judge

Nisha