HARIRAM DHOLANDAS Vs COLLECTOR OF KURNOOL AND OTHERS.

Write Petition No. 662 of 1959, decided on August 10, 1959.

Court: Andhra Pradesh High Court

Date of Decision: Aug. 10, 1959

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Section 51

Citation: (1959) 37 ITR 375

Hon'ble Judges: Jaganmohan Reddy, J

Bench: Division Bench

Judgement

JAGANMOHAN REDDY, J. - Sait Pamandas Sugnaram was arrested on July 9, 1959, at 5-30 p.m., under orders of the Collector, Kurnool,

for non-payment of Income Tax amounts due for the assessment years 1947-48 to 1953-54 amounting to Rs. 89,163.88 nP. on the strength of

certificates issued u/s 46(2) of the Indian Income Tax Act. He was detained in the Central Jail, Rajahmundry, on July 11, 1959. This habeas

corpus petition is filed by the brothers son of the said Sait Pamandas Sugnaram, challenging the legality, validity and propriety of the order of

detention in a civil prison made by the Collector, Kurnool. A rule nisi was issued and on the debtor being produced, we have directed him to be

enlarged on bail by our order date July 20, 1959, in order to enable him, at his own request, to furnish the necessary particulars of the several

creditors from whom monies are due to him, the judgment debtors against whom he was decrees and also other details of properties which could

be attached and sold for the realisation of the tax due from him.

The petitioners contention is that the order made by the Collector, Kurnool, is illegal and wholly without jurisdiction as he had no power to

proceed to arrest and detain any person under Order XXI, rule 38, of the Code Civil Procedure read with the proviso to section 46(2) of the

Indian Income Tax Act. The learned advocate for the petitioner contends : (1) All that sub-section (2) directs the Collector to do is to proceed to

recover the certified amount as if it were an arrears of land revenue, that is to say, he is to adopt the procedure prescribed by the appropriate law

of the State for the recovery of land revenue and that in proceedings he is, under the proviso, to have all the powers which a civil court had under

the Code. The Collector is not competent to take any independent proceedings under the Code Civil Procedure. (2) Even if under the proviso to

sub-section (2) of section 46 of the Indian Income Tax Act, another mode of recovery by arrest is provided, apart from the mode prescribed u/s

48 of Act 11 of 1864 whereunder he can act as a civil court, applying the provisions of the CPC governing arrest and detention in a civil prison for

non-payment of amount due under a decree, arrest cannot be ordered u/s 51 of the Code of Civil Procedure, unless an opportunity is given to the

judgment-debtor and the court is satisfied that one or other of the conditions prescribed in the proviso to section 51 of the CPC are fulfilled.

Further, after arrest, he must be produced before the court which has not been done in this case. (3) Order XXI, rule 38 makes it obligatory on

the court, in an application for execution of the decree by arrest and detention, to issue a notice calling upon the judgment-debtor to show cause

why he should not be committed; but such a notice has not been given. (4) There is also a provision u/s 59 for release of the judgment-debtor who

has been arrested and detained, or grounds of ill-health and though the debtor was suffering from blood-pressure and indifferent health, that fact

was not taken into consideration and he was detained in a prison; and (5) when the debtor has property the Collector must proceed against it and

not straightway arrest him.

The allegations in the petition were denied both by the Collector, the first respondent, and the Income Tax Officer, the second respondent. The

first respondents, the Collector, stated that the Special Deputy Tahsildar had taken all possible steps to collect the arrears to the tune of more than

Rs. 89,000 and was unable to do so. The report made by him on May 5, 1959, was that the debtor has massed lot of wealth by his business and

is in a position to pay the monies if he so intends; but he was evading it and taking steps for escaping the liability, and, thinking that his house would

be raided and movables attached, he has shifted his family to Secunderabad. There is no property of the debtors for the realisation of the arrears

due from him, and the course left open is to arrest and send him to civil prison. According to the Collector, the Income Tax Officer informed him

on June 5, 1959, that the defaulter is carrying on money-lending business in the names of several dummies including his wife, brother-in-law and

another relative, and has in support thereof furnished a statement recorded on June 4, 1959, from the Shri A. Gopalacharlu, advocate for the

defaulter, who conducts the assessees money-lending suits in the civil courts, both on behalf of the defaulter as well as his dummies. The Income

Tax Officer has also filed an affidavit on June 19, 1959, stating that all the conditions laid down, which are to be fulfilled before the arrest can be

ordered, have been complied with and that if a notice was issued to the defaulter to show cause why he should not be arrested, there is a

likelihood of the defaulter absconding of leaving the local limits of the jurisdiction of the court and therefore the show cause notice may be

dispensed with. The Collector stated that after satisfying himself from the previous history of the defaulter, namely, the fraudulent transfer of

property to evade the payment of Income Tax and keeping in view the fact that he is stated to have some ready cash available, which he is likely to

dispose of in case a notice is issued to him, he decided on July 2, 1959, that no show cause notice was necessary and that a warrant be issued

immediately for his arrest. He further contended that he had power u/s 46(2) of the Indian Income Tax Act as also u/s 48 of the Revenue

Recovery Act 11 of 1864 to order the arrest of the defaulter. It was also stated that the assessee who was a defaulter was produced before him

on July 11, 1959, when the first respondent had given him an opportunity to show cause why he should not be detained in a civil prison for non-

payment of the arrears of tax and further afforded him an opportunity either to pay the amount or furnish security. The first respondent further

states that when he was produced before him he was in a good state of health and that he was satisfied that if this mode of recovery by detention in

civil prison is resorted to, either the defaulter or his dummies or his relations with whom his secret assets are available, will pay the arrears or

revenue due to the State. It is not correct to say that the defaulter was not given an opportunity.

The second respondent, the Income Tax Officer, stated that according to the records, the assessee purchased two houses benami in the name of

his wife Smt. Hira Devi, one on June 28, 1952, for Rs. 13,500 from Anantha Subrahmanyam Cehtty and another on July 28, 1952, for Rs.

25,000 from Uppini Nagappa Reddi, who is a debtor of the assessee, that the movable including cash and jewellery have been removed by the

assessee from his house and they have been secreted reportedly at Secunderabad; that the assessee is still continuing, even after raising the

demands against him for the arrears of tax, his money-lending business in the names of dummies who include his wife Smt. Hira Devi, his brother-

in-law, Ramachandra Baloo Singh, and a relative, Tikamdas Ochiram. It was further submitted that the explanation offered by the assessee that his

mother-in-law has brought cash from Pakistan in the year 1946-47 and has given it to the wife of the assessee and with that money Smt. Hira Devi

purchased the houses in 1952, was rejected by the Income Tax Officer and also appeal as it was not proved by the assessee. In so far as the

properties available for realisation of the tax amount is concerned, it was stated that there was only one house which the assessee obtained in

satisfaction of a loan from a cobbler and whose value is about Rs. 200 and the title of which was reported to be in dispute.

It is now necessary to examine the relevant provisions of law under which the Collector is empowered to make the arrest. The relevant provision

of section 46 under which the Collector could take action is sub-section (2) thereof which is as follows :

(2) The Income Tax Officer may forward to the Collector a certificate under his signature specifying the amount of arrears due from an assessee,

and the Collector, on receipt of such certificate, shall proceed to recover from such assessee the amount specified therein as if it were an arrear of

land revenue :

Provided that without prejudice to any other powers of the Collector in this behalf, he shall for the purpose of recovering the said amount have the

powers which under the Code of Civil Procedure, 1908 (V of 1908), a civil court has for the purpose of the recovery of an amount due under a

decree.

The powers which a Collector can use for the recovery of an amount of arrears are contained in section 48 of the Revenue Recovery Act 11 of

1984 which is as follows :

48. When arrears of revenue, with interest and other charges as aforesaid cannot be liquidated by the sale of the property of the defaulter, or of

his surety, is wilfully withholding payment of the arrears, or has been guilty of fraudulent conduct in order to evade payment, it shall be lawful for

him to cause the arrest and imprisonment of the defaulter, or his surety, not being female, as hereinafter mentioned, but no person shall be

imprisoned on account of an arrear of revenue for a longer period than two years, or for a longer period than six months, if the arrear does not

exceed Rs. 500; or for a longer period than three months if the arrear does not exceed Rs. 50; provided that such imprisonment shall not extinguish

the debt due to the State Government by the defaulter, or his surety.

A combined reading of sub-section (2) of section 46 of the Indian Income Tax Act and section 48 of the Revenue Recovery Act, would show that

the Collector has power to order an arrest and detain a defaulter in accordance with the provisions of the Code of a Civil Procedure in much the

same way as a civil court would have done under the Code for recovering an amount due under a decree. The provisions of the CPC for arrest

and detention are to be found in Order XXI, rule 37 to 40. We are here concerned with rules 37 and 38 and under the former the court has

discretion to issue a notice in lieu of a warrant of arrest calling upon the defaulter to appear before the court on a day to be specified in the notice

and show cause why he should not be committed to the civil prison. Under the proviso if the court is satisfied by an affidavit or otherwise that the

giving of a notice is likely to delay the execution of the decree or that the debtor is likely to abscond or leave the local limits of the jurisdiction of the

court, he can dispense with that notice. Rule 38 provides that every warrant for the arrest of a judgment-debtor shall director the officer entrusted

with its execution to bring him before the court with all convenient speed, unless the amount together with the interest thereon and the costs if any

to which he is liable, be sooner paid or unless satisfaction of the decree by endorsed by the decree-holder on the warrant in the manner provided

in rule 25(2).

It may be observed that a similar question as that raised before us came in for consideration of their Lordships of the Supreme Court in Collector

of Malabar v. Erimmal Ebrahim Hajee, where it was held that the authority given to the Collector is not merely to recover arrears of Income Tax,

but to recover it as if it were an arrear of land revenue and section 48, read with section 5 of the Madras Revenue Recovery Act, makes it clear

that the arrest of the defaulter is one of the modes by which arrears of revenue can be recovered and that when an arrest is made u/s 48, after

complying with its provisions, the arrest is not for any offence committed or a punishment for defaulting in payment; and it is no more than a mode

for recovery of the amount due. Further, three is nothing in section 48 which requires the Collector to give the defaulter an opportunity to be heard

before arresting him. The Collector must have reason to believe that the defaulter is wilfully withholding payment or has been guilty of fraudulent

conduct in order to evade payment and he must have some material upon which he bases his belief, which must be a rational belief. The court may

look into that material in order to find out whether the conditions laid down in that section have been fulfilled or not. The matter being thus

concluded by an authoritative judgment of the Supreme Court, it is not necessary to further examine this aspect of the matter.

It may be stated that under the provisions of Order XXI, rule 40(1), when a judgment-debtor appears before the court in obedience to a notice

issued under rule 37, or is brought before the court after being arrested in execution of a decree for the payment of money, the court shall proceed

to hear the decree-holder and take all such evidence as may be produced by him in support of his application for execution, and shall then give the

judgment-debtor an opportunity of showing cause why he should not be committed to the civil prison. Under sub-rule (3) of rule 40, upon the

conclusion of the inquiry under sub-rule 40, upon the conclusion of the inquiry under sub-rule (1), the court may, subject to the provision of section

51 and to the other provisions of the Code, make order for the detention of the judgment-debtor in the civil prison and shall in that event cause him

to be arrested if he is not already under arrest.

Apart from the allegations made in the counters of the first and second respondents, we have examined the record and the statement of Shri A.

Gopalacharulu, advocate of the defaulter and his nominees, which were furnished to us, and it is clear from these records that the statement of the

assessees that he has ceased to carry on money-lending business from 1952-53 is not substantiated. At any rate, we are not concerned with the

merits of the case and do not intend to express any views on matters which may be sub judice either before the Tribunal or the High Court u/s

66(2) of the Indian Income Tax Act. All that we are concerned about is, whether the arrest has been validly made in exercise of the authority

vested in the Collector. It may also be stated that the averments of the petitioner that the defaulter was not produced before the Collector, nor was

he given an opportunity to show cause why he should not be committed, is clearly unjustified because the defaulter was arrested on July 9, 1959,

and was produced before the Collector. An inquiry was held in his presence when the statements of the defaulter as well as that of the Income Tax

Officer were recorded and the defaulter was asked by the Collector whether he would pay the amount, to which he pleaded inability and ill-health.

But the Collector noted that the defaulter was in good health. There is nothing more that the Collector could have done and being satisfied that the

defaulter was evading payment of tax, committed him to the civil prison. We have ourselves seen the defaulter who was produced before us, and

have not the slightest doubt, that the Collector is right, when he says that the defaulter was in good health. Even before us he appeared to be well,

though feigning illness in the initial stages of the hearing.

We are satisfied that the facts and circumstances of this case do not justify our holding that the provisions of law as to arrest and detention have

been contravened. On behalf of the defaulter a pleas was raised that as he had decrees and debts due to him which could have been attached and

amounts realised therefrom, his arrest is not valid. The defaulter in his statement before the Collector when he was arrested and brought before

him, stated that his wife has separate property and he has nothing to do with it. It is with respect to this that his lawyer had given a statement saying

that the funds which are said to be supplied by his wife Smt. Hira Devi in fact be longer to the defaulter. It appears that no proper information was

furnished by the defaulter which could have enabled the Income Tax Officer to attach and realise the amount. The defaulter has asked for an

opportunity to furnish a list to the Income Tax authorities; as such we had directed him to do so. If the Income Tax authorities are satisfied that the

monies could be realised, certainly they should first realise the amount. The case has, therefore, been adjourned to this day for orders.

The learned advocate for the petitioner now states that he was unable to furnish the security as directed at the request of the petitioner and that he

could not furnish detail as the defaulter was in jail. The learned advocate for the Income Tax Department alleges that in spite of the notice given to

the writ petitioner, he did not make himself available, nor have they in spite of their best efforts been able to get any co-operation from the

petitioners side. The report on the scrappy information given about the debts which they have now submitted is that either the decree debts have

been time-barred or most of them have been settled out of court. In the circumstances, we have reached the conclusion that it is not possible for

the Income Tax Department to realise the arrears of tax due from the decrees obtained by the defaulter.

In this view, this petition is dismissed with costs. Advocates fee is fixed at Rs. 100. The defaulter will be sent back to the Central Jail,

Rajahmundry.

Petition dismissed.