

Why detention of subrata roy is illegal per se essay

Law



In fact there are authorities, and rightly so, to show that under s. 12 (3) before a Court passes the extreme sentence of imprisonment, it must give special reasons after a proper application of its mind that a sentence of imprisonment alone is called for in a particular situation. Thus, the sentence of imprisonment is an exception while sentence of fine is the rule [1979 2 SC 394]. Therefore, in this case, especially when the Court is invoking its powers under Article 129, it must record comprehensive reasons befitting the apex court for choosing this extreme option, to the exclusion of the lesser penalty (I.

. Payment of fine), and also give the definite time period for such imprisonment, maximum of which is six months. However, in the present order, the Court after pretty much holding that civil contempt has been committed, has instead called for an “ acceptable solution / reports” and ordered detention meanwhile. This direction given by the court has put it far beyond Article 129 powers and possibly into powers conferred under Article 142 (which also has incidentally been invoked in the order of 4th March 2014). Now the question is whether the Supreme Court is Justifiably empowered to invoke its extra-ordinary powers under Article 142 in the instant case, and if so, what it should have done. While, the extra-ordinary powers granted to our Supreme Court under Article 142 to pass such decree or make such order as is necessary for doing complete Justice, is the hallmark of our Constitution, the said powers are not unbridled. It just means that the Supreme Court, being the apex Judicial body with superintendence over every other Judicial / quasi-Judicial authority in the country, can pass an order as if it were sitting in the original Jurisdiction hearing the matter.

I. E. To say, even if the matter before it is in a second or third appellate stage, in order to do complete justice, it can pass orders / decrees akin to the original civil court. The same would apply to writs, criminal cases, and cases of every other Judicial / quasi-Judicial forum in the country.

However, in that Jurisdiction, it still has to pass orders that are within the confines of the law – unless there is a void in the existing legislation – which in itself would have been the vital question in *Its. For e. G. Visalia guidelines*. In the instant case, the court is trying to execute its decree (or one which is in the nature of a decree) – that Sahara have to pay back RSI. 24000 cores to their investors.

So while it may exercise powers of an execution court (by invoking Article 142), the law for such purpose will have to be what is laid down for “Execution of decrees and orders” in the Code of Civil Procedure. This is more so when under the SIB Act, 1992, both the Board [s. 11(3)] and SAT [s. U(2)] are vested with the powers of a civil court under CAP, 1908. The relevant provisions of CAP being: s. 51 – Powers of Court to enforce execution – on the application of decree holder, order execution of decree: (a) by delivering property specifically decreed, (b) by attachment or sale of any property, (c) by arrest and detention in prison as specified in s. 58, (d) by appointing receiver or (e) in such manner as nature of relief granted.

Provided that in a decree for payment of money, execution by detention in prison shall not be ordered without giving Judgment-debtor a chance to show cause unless (for reasons to be recorded in writing) that the Judgment-debtor is likely to abscond, or dishonestly remove / transfer property, or has means to pay but

is refusing to pay, or where the JDK had fiduciary responsibility over the decree money. S. 58 – Detention and Release – (1) – in execution of a decree, every person detained in civil prison shall be so detained (a) where sum is more than RSI. 000/- for a period not exceeding three months.

Provided that he shall be released from such detention before expiry of the said period of detention: (I) on the payment of the amount mentioned in the warrant being paid to the officer in charge of the civil prison, or (it) on the decree against him being fully satisfied, etc. (2) a JDK released from detention under this section shall not by reason of his release be discharged from his debt, but he shall not be liable to be re-arrested under the decree in execution for which he was detained in the civil prison. Dealing with Execution of Decrees and Orders, Order 21 has the following: Rule 1 – Modes of paying money under decree: money payable under decree shall be (a) into Court by paid by depositing therein, or sent by postal money order, or through a bank; (b) out of Court, by postal money order, or bank, or other evidence in writing; or (c) any other mode the Court may direct. Rule 10 & 11 – Application for Execution, meant to be made by decree holder (SIB in this case) and may be “ Oral” or “ Written”.

R. I IA – Application for arrest must state the grounds on which it is applied for. Dealing with Mode of Execution: R. 0 – Decree for payment of money – Every decree for payment of money, including a decree for the payment of money as the alternative to some other relief, maybe executed by the detention in the civil prison of the Judgment debtor, or by the attachment and sale of his property, or by both.

Dealing with Arrest and Detention in Civil Prison: R. 37 – Discretionary power to permit JDK to show cause against detention – akin to proviso of s. 1 (above); R. 38 – Warrant for arrest to direct JDK to be brought up – Every warrant for arrest of JDK shall direct officer entrusted with its execution and bringing JDK before the Court, to do so with convenient speed, unless money ordered to be paid with interest thereon is already paid; R. 39 – Subsistence Allowance – JDK shall not be arrested in execution of a decree unless the decree holder pays into Court such sum as the Court think fit as subsistence for JDK in civil prison. R. 40 – Proceedings on appearance of JDK in obedience to notice or after arrest – (1) – upon the JDK being produced before it after being arrested in execution, the Court shall proceed to hear the decree holder and take all such evidence as may be produced in support of the application for execution, and shall then give the JDK an opportunity to show cause as why he cannot be committed to civil prison. 2) – Pending conclusion of inquiry under sub-rule (1), the Court may order in its discretion, that JDK be detained in the custody of an officer of the Court or release him on his furnishing security to the satisfaction of the Court for his appearance when required.

(3) – Upon conclusion of inquiry under sub-rule (1) the Court may, subject to the provisions of s. 51 and other provisions of CAP make an order for the detention of the JDK in the civil prison and shall in that event cause him to be arrested if he is not already under arrest. Provided that in order to give the JDK an opportunity of satisfying the decree, the Court may, before making the order of detention, leave the JDK in the custody of an officer of the Court for a specified period not exceeding fifteen days or release him on his

furnishing security to the satisfaction of the Court for his appearance at the expiration of the specified period if the decree be not sooner satisfied. (4) – A JDK released under this rule may be re-arrested. 5) – When Court does not make an order of detention under sub-rule (3), it shall disallow the application and, if the JDK is under arrest, direct his release.

7) – No JDK shall be committed to the civil prison or brought before the Court from the custody to which he has been committed pending the consideration of any of the matters mentioned in sub-rule (1) unless and until the decree holder pays into court such sum as the Judge may think sufficient to meet the traveling and subsistence expenses of JDK and the escort. In the above legal framework, it is to be seen whether the present facts fit. There was no application for execution by SIB – neither oral nor written. The application before the Court is one of Contempt. While s. 1 empowers the Court in execution to arrest and hold the JDK in detention, s.

58 also states that the JDK shall be kept in detention for a period not exceeding three months, which the Court must stipulate in its discretion. This has not been done in the instant case. Under O. 21 – R. 40, the Court can order detention of JDK – which has been done by the Court here. However, none of the other rules, viz. R.

37, 39 or 40 have been heeded to. More particularly, Rule 40 should have been followed in its entirety. The absence of following this established procedure of law in execution, the Court has gone beyond powers conferred in Article 142, and given directions unknown in law. This is per se illegal and thus the order must be reviewed and modified.

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