

Arrest and detention for violation of contractual obligation

"No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation"¹

Could a man against whom a decree was passed, founded on a contract, be sent to prison for recovery of debt ? Does the violation of terms of contract for payment of debt empowers the Court to send that person to Jail? Answering the question in negative, Supreme Court¹ held that a simple default to discharge liability is not sufficient to arrest and detain such person.

Based on the proposition of International Law, Humanism and compassion governed by interpretation of law, and social justice, held that. There must be some element of bad faith beyond mere indifference to pay and current means to pay the decree or a substantial part of it. The dishonest disowning of the obligation under the decree is to be established to order arrest of a person and detain him in civil prison. If the person once had the means but now has not or if he has money now on which there are other pressing claims, it is violative of the spirit Art.11 of the International Covenants, Universal Declaration of Human rights, to arrest and confine him in jail so as to coerce him into payment.

To be poor, in this land of Daridra Narayana, is no crime and to 'recover' debts by the procedure of putting one in prison is too flagrantly violative of Art. 21 unless there is proof of the minimal fairness of his willful failure to pay in spite of his sufficient means and absence of more terribly pressing claims on his means such as medical bills to treat cancer or other grave illness, Justice Krishna Iyer in his inimitable style expressed the land through the said judgment .

The remedy for breaches of International Law in general is not to be found in the law courts of the State because International Law per se or proprio vigore has not the force or authority of civil law, till under its inspirational impact actual legislation is undertaken. I agree that the Declaration of Human Rights merely sets a common standard of achievement for all peoples and all nations but cannot create a binding set of rules. Member States may seek, through appropriate agencies, to initiate action when these basic rights are violated; but individual citizens cannot complain about their breach in the municipal Courts even if the country concerned has adopted the covenants and ratified the Optional Protocol. The individual cannot come to Court but may complain to the Human Rights Committee, which, in turn, will set in motion other procedures. In short, the basic human rights, enshrined in the International Covenants above referred to, may at best inform judicial

¹ International Covenants on civil and political rights adopted by the General Assembly of the United Nations on 16th December, 1966. Article II

institutions and inspire legislative action within member-States; but apart from such deep reverence, remedial action at the instance of an aggrieved individual is beyond the area of judicial authority. Indeed the construction I have adopted of S.51 CPC. has the flavour of Art.II of the Human Rights Covenants.

Later on Courts have held that the principles laid down applies to cases under other enactments like Kerala Revenue Recovery Act,1968² the U.P.Sales Tax Act, 1948, . [Rama narayanan 1983 KHC 153.

A question was raised as to whether the telephone tapping is violative of the International Covenant on Civil and Political Rights, 1966. Art.17 of the said Covenant is as under:--

"Art.17. 1. No one shall be subject to arbitrary or unlawful interference with his privacy, family, human or correspondence, nor to lawful attacks on his honour and reputation.

2. Every one has the right to the protection of the law against such interference or attacks."

Supreme Court³ applying the principle partially held that an order for telephone-tapping in terms of S.5(2) of the Indian Telegraph Act, 1885 shall not be issued except by the Home Secretary, Government of India (Central Government) and Home Secretaries of the State Governments. In an urgent case the power may be delegated to an officer of the Home Department of the Government of India and the State Government not below the rank of Joint Secretary.

Later on Supreme Court of India⁴ has held that when an act of preventive detention involves a foreign national, though from the national point of view the municipal law alone counts in its application and interpretation, it is generally a recognised principle in national legal system that in the event of doubt the national rule is to be interpreted in accordance with the State's international obligations. Preventive justice requires an Action to be taken to prevent apprehended objectionable activities. In case of punitive detention the person concerned is detained by way of punishment after being found guilty of wrong doing where he has the fullest opportunity to defend himself, while preventive detention is not by way of punishment at all, but it is intended to prevent a person from indulging in any conduct injurious to the society. There may, therefore, be cases where while a citizen and resident of the country deserves preventive detention apart from criminal prosecution, in case of a foreign national not resident of the country he

² ILR 1993 (1) KERALA 81

³ AIR 1997 SC 568 : 1997 (1) SCC 301

⁴ AIR 1990 SC 605: 1990(1) SCC 568

may not be justifiably subjected to preventive detention in the event of which no international in case of legal assistance is possible unlike criminal prosecution and punishment.

But sending a person to jail for the offence of dishonor of the cheque is different and the principles laid down in the case of Jolly Varghese is not applicable, the Delhi High Court⁵ held. Insertion of the said provisions in the Negotiable Instruments Act,1882 is an apt illustration of balanced and pragmatic approach adopted by the Legislature for the economic development of the country. There are built - in safeguards to prevent harassment to the honest drawers and there valid.

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¹ Jolly George vs. Bank of Cochin. AIR 1980 SC 470 : 1980 (2) SCC 470: 1980 KLT 375.

⁵ 2000 Cri L J 625