

The State
v.
 Amrik Singh
 ———
 Gurdev Singh, J.

challaning the respondent. We see no reason for rejecting the testimony of Inspector Siri Ram, P.W. 1, and in view of his evidence, we hold that the respondent was going at 41 miles per hour, exceeding the maximum speed fixed by the Act for motor buses by eleven miles.

In the result, the appeal succeeds. Setting aside the order of the trial Court, we hold respondent Amrik Singh guilty of contravening the provisions of section 71(1) of the Motor Vehicles Act, and convict him under that section read with section 115 of the same Act. He is sentenced to pay a fine of Rs. 25.

K.S.K.

CRIMINAL MISCELLANEOUS

Before H. R. Khanna, J.

DILBAGH SINGH,—*Petitioner.*

versus

THE TEHSILDAR, DASUYA AND OTHERS.—*Respondents.*

Criminal Miscellaneous No. 67 of 1963.

1963
 ———
 Feb., 7th.

*Land Improvement Loans Act (XIX of 1883)— S. 7—
 Borrower dying without repaying the loan—Heir of the
 borrower—Whether can be arrested for non-payment of
 the loan.*

Held, that according to section 7 of the Land Improvement Act, 1883, in case default is made in payment of the loan the Collector can proceed against the borrower or his surety as if the loan constituted arrears of land revenue. In other cases, the loan is to be realised out of the land for the benefit of which the loan was granted as if it were arrears of land revenue in respect of that land or out of the property comprised in the collateral security, if any.

Held, that section 69 of the Punjab Land Revenue Act authorises a Revenue Officer and a Collector to order detention of a defaulter from whom arrears of land revenue are due. The defaulter for the purposes of section 7 of the Land Improvement Loans Act, 1883 is the actual borrower or his surety and not his son after his death. The son of the deceased borrower can not, therefore, be detained for the non-payment of the loan which his father borrowed.

Petition under Section 491 Criminal Procedure Code praying that a writ of Habeas Corpus be issued to the respondents directing them to produce the petitioner-detenu before this Court and for setting him at liberty.

A. L. BAHARI, ADVOCATE, for the Petitioner.

K. L. JAGGA, ASST., ADVOCATE-GENERAL, for the Respondents.

ORDER

KHANNA, J.—This is a petition under section 491 of the Criminal Procedure Code for the issuance of a writ of habeas corpus filed by Dilbagh Singh of village Rora, district Hoshiarpur, and is directed against the Tehsildar Dasuya, Collector of Hoshiarpur, Superintendent, District Jail, Hoshiarpur, and the State of Punjab. According to the allegations of the petitioner, his father Ganga Singh took a loan of Rs. 4,500 from the Government in the year 1954 for the installation of a tubewell on his land. One Dayal Singh stood surety for the repayment. The tubewell was installed in 1954 and the land came under river bed in 1955. Ganga Singh thereafter died in 1959. The petitioner was arrested on 24th June, 1960 for the non-payment of the aforesaid loan, but he was later on released. On 7th January, 1963, the petitioner was again called by the Tahsildar, Dasuya for making payment of the aforesaid loan and as the aforesaid loan was not paid the petitioner was

Khanna, J

Dilbagh Singh
v.
The Tehsildar
Dasuya and
others

Khanna, J.

put under arrest and was lodged in the Central Jail, Hoshiarpur, under orders of the Tahsildar, Dasuya and Collector of Hoshiarpur. According to the petitioner, he could not be arrested because of default for the repayment of the aforesaid loan. The petitioner accordingly prayed that he be set at liberty.

Written statement on behalf of the respondents has been filed by the Collector of Hoshiarpur. According to the stand of the respondents, Ganga Singh, father of the petitioner, was advanced a loan of Rs. 4,500 on 24th March, 1955, for the installation of a tubewell under the Land Improvement Loans Act (19 of 1883). The Collector was not informed of the installation of the tubewell and it was only in the year 1960 that a plea was taken that the tubewell had been installed by Ganga Singh deceased. The evidence adduced about the installation of the tubewell was found to be not convincing. The petitioner, it is stated, was arrested on 24th June, 1960 by the Tahsildar, Dasuya and was produced before the Collector of Hoshiarpur on 3rd July 1960, who extended the detention for a further period of 30 days. The petitioner was released on 9th July, 1960 on his furnishing surety. The petitioner was thereafter called by the Tahsildar on 7th January, 1963 and was arrested in default of payment of the loan advanced to his father. There was also reference in the written statement of loan to the petitioner but no particulars of that loan are given and a fair reading of the written statement goes to show that the petitioner is being detained for the loan advanced to his father.

I have heard Mr. Bahri on behalf of the petitioner and Mr. Jagga on behalf of the respondents and am of the view that the order for the detention of the petitioner is not warranted by law.

The loan which was advanced to the father of the petitioner was admittedly under Act 19 of 1883. Section 7 of that Act makes provision for the recovery of loans in case it is not paid and the relevant part of that section reads as under:—

Dilbagh Singh
 The Tehsildar
 Dasuya and
 others
 Khanna, J.

- “7. (1) Subject to such rules as may be made under section 10, all loans granted under this Act, all interest (if any) chargeable (thereon) and costs (if any) incurred in making the same, shall, when they become due, be recoverable by the Collector in all or any of the following modes, namely—
- (a) from the borrower—as if they were arrears of land-revenue due by him;
 - (b) from his surety (if any)—as if they were arrears of land-revenue due by him;
 - (c) out of the land for the benefit of which the loan has been granted—as if they were arrears of land-revenue in respect of that land;
 - (d) out of the property comprised in the collateral security (if any)—according to the procedure for the realisation of land-revenue by the sale of the immovable property other than the land on which that revenue is due.

Dilbagh Singh
v.
The Tehsildar
Dasuya and
others

Khanna, J.

Perusal of the above provision of law goes to show that in case default is made in payment of the loan the Collector can proceed against the borrower or his surety as if the loan constituted arrears of land revenue. In other cases, the loan is to be realised out of the land for the benefit of which the loan was granted as if it were arrears of land revenue in respect of that land or out of the property comprised in the collateral security if any. The petitioner was admittedly not the borrower, nor did he stand surety at the time the loan was advanced. Ganga Singh, father of the petitioner, who took loan admittedly died in 1959. In the circumstances, the petitioner cannot be proceeded against personally and be detained in jail because of default in payment of loan which was not taken by the petitioner but by his father. The Collector can no doubt proceed against the land for the benefit of which the loan was granted, but it does not also authorise the Collector to proceed against the petitioner personally and order his detention because of the non-payment of the loan taken by the father of the petitioner. Section 69 of the Punjab Land Revenue Act authorises a Revenue Officer, and a Collector to order detention of a defaulter from whom arrears of land revenue are due. The defaulter for the purposes of section 7 of Act 19 of 1883 is the actual borrower or his surety and not the son of the borrower. As such the Collector could not, in my view, proceed personally against the petitioner and direct his detention.

I accordingly hold that the detention of the petitioner is not warranted by law and direct that he be set at liberty forthwith.

R.S.