

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.656 of 2017

Arising Out of PS.Case No. -null Year- null Thana -null District- SIWAN

=====

1. Munshi Singh, Son of Tapeswar Singh,
2. Ashok Singh @ Ashok Kumar Singh, son of Munshi Singh, Both are resident of
Village- Ghorgahiyan, P.S.- Pachrukhi, District- Siwan.

.... Petitioners

Versus

The State of Bihar.

.... Respondent

=====

Appearance :

For the Petitioners : Mr. Prashant Kumar, Advocate
Mr. Animesh Kumar, Advocate
For the Respondent : Smt. Pushpa, Advocate
For the State : Mr. Ajay Kumar No.1, A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 22-08-2017

This revision application is filed by the petitioners who are facing trial in Sessions Trial No.462 of 1997 arising out of Pachrukhi P.S. case No.136 of 1996 registered under Sections 341, 323, 324, 307/34 of the Indian Penal Code. They are aggrieved with the impugned order dated 16.5.2015 whereby the trial court declaring them absconder has issued permanent warrant of arrest.

2. Learned counsel for the petitioners submits that the record of the trial court got burnt in accidental fire caught in the record room of Siwan Judgeship, thereafter, it was reconstructed on 16.3.2017. The petitioners were on bail and after commitment of the case they appeared before the Sessions Court and granted bail by order dated



9.4.2010 and 26.4.2010. Thereafter, one of the accused Ramnath Singh died in the year 1999, the information in this regard was given to the Court thereafter a report was called for. While it was pending for the said report the case got transferred from one Sessions Court to another, so bail bond of the petitioners were cancelled on 3.4.2012 consequently non-bailable warrant was issued. However, the petitioners had no knowledge of the case being transferred to another Court and the warrant was also not executed by the police. They had no knowledge for issuance of the warrant and the trial court by order dated 6.1.2015 issued processes under Sections 82 and 83 of Cr.P.C. declaring him proclaimed offender and simultaneously passed the order for attachment of property of proclaimed offender. It is further submitted that there is no execution report of the non-bailable warrant issued against the petitioners so he had neither absconded nor concealed himself and also issuing of the processes under Sections 82 and 83 of the Cr.P.C. simultaneously is bad in law.

3. Learned counsel for the State submits that the petitioners were not appearing before the trial court for a long period and, therefore, all the processes were issued by the Court to secure their appearance.

4. Having considered rival submissions and on perusal of the impugned order sheet filed by the petitioners, it appears that both



the accused were on bail and appeared before the Sessions Court after commitment of the case. It also shows that the records were transferred from one Court to another invariably. There is also no service report of the execution of non-bailable warrant of arrest or any report that the petitioners are evading so they could not be arrested. The trial court by order dated 6.1.2015 issued processes under Sections 82 and 83 of the Cr.P.C. simultaneously for proclaiming both accused as absconder as well as attachment of their properties and that too has not been affected by the police and finally by the impugned order accused persons were declared absconder and permanent warrant of arrest has been issued against them.

5. Section 83 of the Cr.P.C. reads as such :

“83. Attachment of property of person absconding.”-(1) The Court issuing a proclamation under section 82 may, for reasons to be recorded in writing, at any time after the issue of the proclamation, order the attachment of any property, movable, or immovable, or both, belonging to the proclaimed person :

Provided that where at the time of the issue of the proclamation the Court is satisfied, by affidavit or otherwise, that the person in relation to whom the proclamation is to be issued,-

(a) is about to dispose of the whole or any part of his property, or



(b) is about to remove the whole or any part of his property from the local jurisdiction of the Court,

it may order the attachment simultaneously with the issue of the proclamation.

(2) Such order shall authorise the attachment of any property belonging to such person within the district in which it is made; and it shall authorise the attachment of any property belonging to such person without such district when endorsed by the District Magistrate within whose district such property is situate.

(3) If the property ordered to be attached is a debt or other movable property, the attachment under this section shall be made-

(a) by seizure; or

(b) by the appointment of a receiver; or

(c) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf; or

(d) by all or any two of such methods, as the Court thinks fit.

(4) if the property ordered to be attached is immovable, the attachment under this section shall, in the case of land paying revenue to the State Government, be made through the Collector of the district in which the land is situate, and in all other cases-

(a) by taking possession; or

(b) by the appointment of a receiver; or

(c) by an order in writing prohibiting the payment



of rent on delivery of property to the proclaimed person or to any one on his behalf; or

(d) by all or any two of such methods, as the Court thinks fit.

(5) if the property ordered to be attached consists of live-stock or is of a perishable nature, the Court may, if it thinks it expedient, order immediate sale thereof, and in such case the proceeds of the sale shall abide the order of the Court.

(6) The powers, duties and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under the Code of Civil Procedure, 1908 (5 of 1908).”

6. There is only one condition which is mentioned under the proviso of the Section in such situation both processes under Sections 82 and 83 of the Cr.P.C. may be issued simultaneously. The condition is that if the material is brought on record to the satisfaction of the Court by filing affidavit or otherwise that the person against whom the proclamation is to be issued is about to dispose of the whole or any part of his property or is about to remove the whole or any part of his property from the local jurisdiction of the Court; otherwise in absence of such satisfaction the Magistrate could not issue both the processes together. In the instant case, there is no any affidavit or report filed by the police or by the prosecution that the accused persons were about to dispose of the whole or any part of their properties or removing



their movable properties from the local jurisdiction of the Court besides this there was no any execution report subsequent to the issuance of the N.B.W. whether the petitioners were evading arrest so could not be apprehended, so for the said reason, issuance of both processes by the Court declaring him proclaimed offender and issuing process under Section 83 of Cr.P.C. for attachment of his property is contrary to the provision of law, so the impugned order dated 16.5.2015 is set aside. However, it is observed that the petitioners must surrender within a fortnight from the date of receipt of this order before the trial court. Thereafter bail petition filed by the petitioners will be considered on merit further the trial court is also directed to expedite the trial and conclude preferably within a year.

7. With this observation, this application stands allowed.

(Arun Kumar, J)

N.H./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	09-09-2017
Transmission Date	09-09-2017

