

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.2363 of 2018

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Umesh Sharma S/o Late Gopal Singh, R/o Vill.- Uchita, P.O. & P.S.-
Shakurabad, District- Jehanabad at Presently R/o Gopal Niwas, Gate No.
28, Rajapur, P.S.- Shri Krishnapuri, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar Through The Director General of Police, Bihar , Patna.
2. Senior Superintendent of Police, Patna.
3. Officer In Charge, Kadam Kuan P.S., Patna.
4. Additional Chief Judicial Magistrate, VII, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sandeep Kumar Shahi, Adv.

Mr. Madan Kumar, Adv.

For the Respondent/s : Mr. Nadim Seraj, GP-5

Mr. Iqbal Asif Niazi, AC to GP-5

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 27-09-2018 Petitioner, in the present case, is seeking a writ of certiorari for quashing the order of proclamation dated 28.08.2018 issued by respondent no.4 by learned ACJM-VII, Patna in Kadamkuan P.S. Case No.402/18 issued under Section 82 Cr.P.C. in the name of the son of petitioner. Further prayer has been made to issue a writ of mandamus directing the court below not to issue any order under Section 83 Cr.P.C. for attaching the properties belonging to the petitioner. A number of documents have been enclosed with the writ application to impress upon the Court that the residential house in which the petitioner is residing with his family which is a self-acquired property and in fact his son is an accused and is absconding or he is a proclaimed offender, for that



purpose the self-acquired property of the petitioner cannot be attached and proceeded against. Learned counsel has relied upon a judgment of the learned coordinate Bench of this Court in the case of **Kishori Devi Vs. State of Bihar and Anr.** reported in **1995(2) BLJR 1431**. Reliance has been placed on paragraph 9 of the said judgment.

Learned counsel for the State is present and has vehemently opposed the prayer of the petitioner submitting that at the first instance the petitioner was not required to make the Presiding Officer of the court below a party respondent and secondly that at this stage when there is no order under Section 83 Cr.P.C. attaching the properties of the petitioner, he cannot preempt the action of the court and maintain this writ application.

Having heard learned counsel for the parties, this Court is of the opinion that, at this stage, it is an admitted position that Section 82 Cr.P.C. process has been issued against the son of the petitioner and, therefore, this Court would not be considering the legality and validity of the said order by which process under Section 82 Cr.P.C. has been issued against the son of the petitioner. The prayer no.1(i) is refused. So far as prayer no.1(ii) is concerned, this Court finds that a mandamus has been sought from this Court on an apprehension that property of this petitioner shall



be attached in exercise of power under Section 83 Cr.P.C. by the court below. There is no such order before the Court and, therefore, this Court has nothing to adjudicate upon the order of the learned court below.

The Court has also been informed that the petitioner has already filed an application in which he has brought to the notice of the court below that there are self-acquired properties of the petitioner which cannot be attached in exercise of power under Section 83 Cr.P.C. In the opinion of this Court, no order shall be passed at this stage and hence suffice it to say that in case such application has been filed in the court below and the petitioner presses that application with judicial pronouncements on the subject, the court below shall definitely consider the same before passing the order under Section 83 Cr.P.C. in respect of the properties which this petitioner claims to be self-acquired properties. This Court is not expressing any opinion on the merit of the contention and this is left for the court below to consider the same and pass an appropriate order.

The application stands disposed off.

Arvind/-

(Rajeev Ranjan Prasad, J)

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