

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRA-D-122-2021

Date of decision: 30.09.2022

Narender and another

.....Appellants

Versus

State of Haryana

.....Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MS. JUSTICE NIDHI GUPTA**

Present: Mr. B.S. Rana, Senior Advocate,
with Mr. Nayandeep Rana, Advocate,
for the appellant.

Mr. Ankur Mittal, Addl. A.G., Haryana
and Mr. Saurabh Mago, AAG, Haryana.

Ritu Bahri, J.

This appeal has been filed against the order dated 28.01.2021 passed by the Additional Sessions Judge, Fast Track Special Court, Jind, whereby application filed by the accused-appellants (Narender and Pawan) under Section 85 Cr.P.C. for restoration of the attached property, has been dismissed.

Brief facts of the case are that a case bearing FIR No.177 dated 30.09.2013, under Sections 376-D, 365, 216 IPC and Sections 6/17 of Protection of Children from Sexual Offences Act (POCSO), was registered against the present appellant, along with other accuses, at Police Station, Pillukhera. In that case, they were declared proclaimed offenders vide order dated 21.08.2014 (Annexure A-1) passed by the Judicial Magistrate Ist

Class, Safidon. As per appellant No.1, he was not aware about the criminal proceedings pending against him. His father, who is 80 years of age, is not able to hear and walk properly. Copy of Aadhar card of father of appellant No.1 is attached as Annexure A-2. He is also having a minor child namely Ruder Partap Singh, who is studying in Class VII, at Yadvindra Public School, S.A.S. Nagar, Mohali. Copy of certificate dated 26.02.2021 issued by the Director, Yadvindra Public School, S.A.S. Nagar, Mohali is attached as Annexure A-3. It is the case of appellant No.1 that he remained out of his native village and left the village in the year 2013 in order to settle the life of his minor son. He never received any summons/notice or information by the Chowkidar, Sarpanch or Panch of the village in that regard. Vide order dated 01.10.2015 (Annexure A-4), the trial Court had granted permission to attach the saving account No.002234001002094 and FDs bearing Nos.002236004000052 to 002236004000055, 002236004000057, 002236004000060 to 002236004000062 of appellant No.1. When the appellants came to know about the above said order, they made an application dated 27.03.2019 (Annexure A-5) to surrender before the Judicial Magistrate Ist Class, Safidon. As per appellants, they were not aware about the proceedings initiated under Section 82 Cr.P.C. and attachment of their property. When they came to know about the order of attachment of property, they immediately filed an application dated 18.12.2020 under Section 85 Cr.P.C. (Annexure A-6).

Learned counsel for the appellants has argued that after surrendering before the Court, the appellants are in custody for the last about 02 years and their family members are not having any source of income. The appellants are not able to maintain their family members. He

has referred to the judgment passed by Hon'ble the Supreme Court in **Vimalben Ajitbhai Patel vs. Vatsiabeen Ashokbhai Patel and others**, 2008 (4) SCC 649, whereby it has been held that once an absconded accused, who has been declared proclaimed offender, surrendered before the Court and obtained bail, he is no longer an absconder. In that eventuality, the attached property of the accused should be restored. Under the Criminal Procedure Code, there is no provision for sale of such property. The decision of Hon'ble the Supreme Court, was later on followed in **Raj Kumari Jain (Smt.) vs. State of Rajasthan**, 2012 (3) CCR 94, **Jeevan Lal vs. State of Rajasthan through Public Prosecutor**, 2017 (2) CrL. L.R. (Raj) 800 and **Anil Kumar vs. State of Kerala and others**, CrL. MC. No.6995 of 2017 (decided on 07.12.2017).

Upon notice, status report dated 19.08.2022 was filed by the Deputy Superintendent of Police, Jind, wherein details of the investigation carried out in FIR No.177 dated 30.09.2013, under Section 376-D, 365, 216 IPC and Sections 6 and 17 of the POCSO Act, 2012, registered at Police Station Pillukhera, has been given. It has been further stated that the present appellants were declared as proclaimed persons vide order dated 21.08.2014. Thereafter, vide order dated 06.10.2014 passed by the Judicial Magistrate Ist Class, Safidon, movable and immovable properties of the appellants were attached.

On 13.08.2016, accused Dalsher son of Fateh Singh, who was declared as proclaimed offender vide order dated 21.08.2014, was arrested in this case. During interrogation, on 14.08.2016, he confessed his guilt and suffered a disclosure statement. He also got recovered a car bearing No. HR-33-C-9900, which was used in the crime. He also got demarcated and

identified the place of occurrence. Report under Section 173 (8) Cr.P.C. was prepared and presented in the Court. On 30.03.2019 i.e. after 05 years and 06 months, appellants namely Narender and Pawan surrendered before the Court at Safidon and they joined the investigation. During interrogation, they suffered separate disclosure statements confessing their guilt. They also got demarcated and identified the place of occurrence. On 11.04.2019, sample parcels were sent to Forensic Science Laboratory, Madhuban for DNA examination. Due to non available of sample parcels of the victim, the DNA examination could not be conducted. Thereafter, on 21.05.2019, report under Section 173 (8) Cr.P.C. in respect of accused-appellants Narender and Pawan was prepared and presented in the Court. Charges against them were framed on 03.09.2019. In this case, out of 34 prosecution witnesses, 14 have been examined. Vide judgment and order dated 24.02.2020 and 25.02.2020 passed by the Additional Sessions Judge, Jind, accused Dalsher Singh has been convicted and sentenced to undergo rigorous imprisonment for a period of 20 years along with fine, for commission of offences under Sections 365, 376-D IPC and Section 6 of POCSO Act. In para no.11 of the status report, details of other criminal cases pending against the present appellants have been given. It is further stated that Rudra Partap son of appellant-Narender, is studying in Chandigarh and his wife has already taken divorce from him. His father namely Preet Singh is having about 35 acres of agricultural land, which is being harvested on lease and the lease amount is being distributed among all his sons, namely Narender, Devender and Virender.

The release of property of the appellants from attachment is being denied on the ground that benefit of Section 85 Cr.P.C. cannot be granted as

the appellants have surrendered on 30.03.2019 i.e. after a gap of 05 years and 06 months.

Heard, learned counsel for the parties. For reference, Section 85 Cr.P.C. is reproduced as under:-

“85. Release, sale and restoration of attached property.

(1) If the proclaimed person appears within the time specified in the proclamation, the Court shall make an order releasing the property from the attachment.

(2) If the proclaimed person does not appear within the time specified in the proclamation, the property under the attachment shall be at the disposal of the State Government; but it shall not be sold until the expiration of six months from the date of the attachment and until any claim preferred or objection made under section 84 has been disposed under that section, unless it is subject to speedy and natural decay, or the Court considers that the sale would be for the benefit of the owner; in either of which cases the Court may cause it to be sold whenever it thinks fit.

(3) If, within two years from the date of the attachment, any person whose property is or has been at the disposal of the State Government, under sub-section (2), appears voluntarily or is apprehended and brought before the Court by whose order the property was attached, or the Court to which such Court is subordinate, and proves to the satisfaction of such Court that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant, and that he had not such notice of the proclamation as to enable him to attend within the time specified therein, such property, or, if the same has been sold, the net proceeds of the sale, or, if part only thereof has been sold, the net proceeds of the sale and the residue of the property, shall, after satisfying therefrom all costs incurred in consequence of the attachment, be delivered to him.”

The appellants, after being declared as proclaimed offenders, voluntarily surrendered before the Court on 30.03.2019. Their movable and immovable properties were attached vide orders dated 06.10.2014 and 01.10.2015 passed by the JMIC, Safidon and Additional Sessions Judge, Jind respectively. As per Section 85 (3) Cr.P.C., if within two years of attachment of property, a person surrenders voluntarily and the Court is

satisfied that he did not abscond or concealed himself for the purpose of avoiding execution of the warrant, and that he had not such notice of the proclamation as to enable him to attend within the time specified therein, then appropriate orders can be passed for release of such property. In the present case, it is not the case of the respondent that when the appellants had surrendered before the Court on 30.03.2019, their property had been sold by the Government. Their application has been rejected on the ground that the case, in which they were declared proclaimed offenders, is still pending and the property could only be released within two years from the date of passing of attachment order.

At this stage, reference can be made to the judgment passed in **Vimalben Ajitbhai Patel's** case (supra), wherein, Hon'ble the Supreme Court while examining the provisions of Sections 82 and 85 of the Cr.P.C., has observed as under:-

“32. The provisions contained in Section 82 of the Code of Criminal Procedure were put on the statute book for certain purpose. It was enacted to secure the presence of the accused. Once the said purpose is achieved, the attachment shall be withdrawn. Even the property, which was attached, should be restored. The provisions of the Code of Criminal Procedure do not warrant sale of the property despite the fact that the absconding accused had surrendered and obtained bail. Once he surrenders before the Court and the Standing Warrants cancelled, he is no longer an absconder. The purpose of attaching the property comes to an end. It is to be released subject to the provisions of the Code. Securing the attendance of an absconding accused, is a matter between the State and the accused. Complainant should not ordinarily derive any benefit therefrom. If the property is to be sold, it vests with the State subject to any order passed under Section 85 of the Code. It cannot be a subject matter of execution of a decree, far less for executing the decree of a third party, who had no right, title or interest thereon.”

In the present case, even if, under the provisions of Section 85 (3)

Cr.P.C., if a person, who is declared proclaimed offender, surrenders within

two years from the date when his property is attached, then he can get the property released. The object of Section 83 Cr.P.C., as held by Hon'ble the Supreme Court, is to secure the presence of absconding accused and once, he surrenders, he is no longer an absconder and the purpose of attachment of property comes to an end. In this case, even though the accused-appellants had surrendered before the Court on 30.03.2019, they are in custody for the last more than two years. Meaning thereby, their presence has been secured and the purpose of attaching the property has come to an end keeping in view the observations made by Hon'ble the Supreme Court in **Vimalben Ajitbhai Patel's** case (supra).

In view of the above discussion, orders dated 06.10.2014, 01.10.2015, whereby immovable and movable properties of the appellants were attached and the impugned dated 28.01.2021 passed by the Additional Sessions Judge, Fast Track Special Court, Jind, are set aside.

Appeal stands allowed accordingly.

(RITU BAHRI)
JUDGE

(NIDHI GUPTA)
JUDGE

30.09.2022
ajp

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No