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23-WP-1787-2024

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

23 CRIMINAL WRIT PETITION NO. 1787 OF 2024

Vijay Arjun Patil

VERSUS

Prashant Ramkrushna Aher

...

Mr. A. R. Syed h/f Mr. Sushil Pushpendra Pandit, Advocate for the
Petitioner.

CORAM : KISHORE C. SANT, J.

DATE : 14th AUGUST 2025.

PC :-

1. In spite of service through paper publication, none appears for respondent.
2. The petitioner, a complainant in a private case filed under Section 138 of the Negotiable Instruments Act, has approached this court challenging an order dated 2nd July 2024 passed by the learned JMFC, Court No.3, Shahada on an Application below Exh.109 thereby rejecting application for attachment of the property of respondent accused.
3. By way of impugned order, the application of the petitioner under

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Section 83 of the Cr.P.C. came to be rejected. The respondent is the original accused in the said complaint i.e. Summary Criminal Case No. 963 of 2011.

4. It is the case of the petitioner that a complaint was filed for dishonour of cheque of Rs.10 lakhs against the present respondent. The respondent is deliberately not appearing before the Court and is avoiding the service of summons. Initially, he did appear in the trial Court. However, subsequently started avoiding to appear before the Court. Even non-bailable warrant was issued but the said could not be executed. The presence could not be secured and now he is absconding and no whereabouts are known.

5. The petitioner-complainant therefore, filed an application under Section 83 of the Cr.P.C. for attachment of the property by giving details of the property of the respondent. The learned Court, however, rejected the application stating that there is no provision to pass such orders and that the petitioner had to take recourse to some other provision. The petitioner is thus before this Court.

6. The learned Advocate for the petitioner submits that it is clearly established on record that the respondent is not appearing before the Court. He is avoiding the attendance, as is clear from the fact that initially he had appeared in the proceeding and, thereafter, started avoiding the Court. Section 83 empowers the Magistrate to pass an order of attachment of property where the accused person is not found or is absconding. There is sufficient material on record to satisfy the Court that the respondent is absconding. As per Section 82, the proclamation was even issued. The learned trial Court still has held that no case is made out to issue order under Section 83. The learned trial Court failed to apply its mind properly. The Court has wrongly observed that to secure presence of the accused, application is not tenable in the eyes of law being filed in the criminal proceeding and wrongly rejected the application.

7. This Court has heard the learned Advocate for the petitioner. The Respondent is served through paper publication. About service there is no dispute.

8. The impugned order is passed on 2nd July 2024. The learned Court has only observed that the application was filed to secure the presence of the accused and therefore, application is not tenable in criminal proceeding. The petitioner needs to take steps to secure the presence of the accused and only observing this, he has rejected the application.

9. Section 83 of the Cr.P.C., in fact, gives ample power to the Court to order the attachment of any property, movable or immovable, or both, belonging to the proclaimed person. The court has to satisfy by affidavit or otherwise, that the person in relation to whom the proclamation is to be issued; is about to dispute of the whole or any part of his property, or is about to remove the whole or any part of his property form the local jurisdiction of the Court.

10. In the present case alongwith application, the petitioner has stated on affidavit that the respondent is likely to dispose of the property and, therefore, it is necessary to attach the property by giving the details of the said property. The learned Court in the present case has stated in the application that only for securing attendance of the parties when in fact

it was specifically filed under Section 83 of the Cr.P.C. seeking attachment of the property. The learned Court thus has failed to exercise the jurisdiction vested in it. This Court is satisfied that a case is made out under Section 83 of the Cr.P.C. to allow the application of the petitioner.

11. Considering above, following order:

ORDER

- (i) Writ petition stands allowed.
- (ii) The impugned order dated 2nd July 2024 passed by the learned JMFC, Court No.3, Shahada on an Application below Exh.109 in Summary Criminal Case No.963/2011, is quashed and set aside.
- (iii) Application Exh. 109 in SCC No. 963 of 2011 is hereby allowed.
- (iv) The learned trial Court would follow further procedure.
- (v) With this, writ petition stands disposed off.

[KISHORE C. SANT, J.]