

(1973) 11 PAT CK 0003
In the Patna High Court
Case No : Criminal Rev. No. 1096 of 1970

Baleshwar Singh	Vs	APPELLANT
The State of Bihar		RESPONDENT

Date of Decision : 09-11-1973

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 69, 87, 88

Citation : (1974) PLJR 26

Hon'ble Judges : S. Anwar Ahmad, J

Bench : Single Bench

Advocate : Raghubans Singh, for the Appellant; Amin Ahmad, for the Respondent

Judgement

S. Anwar Ahmad, J.—This application is directed against the order of the Sub-divisional Magistrate refusing to release the properties seized under Sections 87 and 88, Code of Criminal Procedure. It cannot be doubted that the articles were seized from the possession of petitioner Baleshwar Singh who happens to be the father of Deoraj Singh against whom processes under Sections 87 and 88 were issued. The fact that Deoraj Singh is in military service under the Government of India is clearly recited in paragraphs 9 and 10 of the petition filed before this Court, and nothing has been done to controvert this fact. u/s 72, Code of Criminal Procedure, when a person summoned is in active service of the Government, the summons have to be sent to the head of the office in which such person is employed for causing service in the manner prescribed u/s 69, Code of Criminal Procedure. In the instant case, however, it seems that from the very beginning processes against Deoraj Singh were issued showing his residence with that of the petitioner. It is clear that no warrant of arrest can be issued without recording reasons for it and there cannot be any attachment under Sections 87 and 88 unless the Court has reason to believe that such warrant cannot be served upon the person concerned. In this case no summons or warrant of arrest was issued to Deoraj Singh in the manner laid down in Section 72, Code of Criminal Procedure. Thus, the order for seizure of the

property under Sections 87 and 88, which depended upon the non-service of warrant of arrest, was clearly without jurisdiction and must be set aside.

2. There is also another view of the matter. Admittedly, it was Deoraj Singh son of the petitioner who is alleged to have committed the offence u/s 457, Indian Penal Code. Therefore, for his fault or nonappearance the property of the father cannot be attached because there is no evidence in this case that the property attached belonged to Deoraj and not to his father, the petitioner. It cannot be assumed that the son is the owner of the property which belongs to the father, the head of the family. In this connection reference may be invited to (1) AIR 1924 617 (Lahore) The result, therefore, is that the application is allowed, the order of attachment is set aside and the Court is directed to re-deliver the properties seized from the custody of the petitioner. At the time of admission, there was a direction that the two cows and one calf which were attached may be delivered to the petitioner on furnishing security. I am told this has been done. The security bond executed by the petitioner is cancelled and he is entitled to retain possession of the cows and the calf.