

(1953) 11 PAT CK 0003
In the Patna High Court
Case No : Criminal Reference No. 49 of 1953

Chandrika Singh		APPELLANT
	Vs	
The State of Bihar		RESPONDENT

Date of Decision : 04-11-1953

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 386

Citation : AIR 1954 Patna 288

Hon'ble Judges : Misra, J

Bench : Single Bench

Advocate : A.N. Chatterji, for the Appellant; Murtaza Fazl Ali, for the Respondent

Judgement

Misra, J.—This is a reference by the learned Sessions Judge of Patna, recommending the setting aside of the order of a Magistrate at Barh who issued a distress warrant under the provisions of Section 386, Criminal P. C. for realisation of the amount of fine imposed upon the petitioner which he did not pay.

2. It is alleged that the petitioner served his period of one month's rigorous imprisonment which was in default of the payment of fine of Rs. 200/-

The property proceeded against under the order of the learned Magistrate belongs to the joint family as appears from the order passed by the learned Magistrate himself quoted in the reference letter, which was to the following effect:

"E/R of D.W. received with a report that the warrantee has no assets in his name. He lives with his father who says that the warrantee has no concern with his father. Send back the D. W. saying that the warrantee has got share in the properties of his father. The properties of the family should be attached without further delay. Put up on 12-5-53."

This was on 2-2-1953. On 12-5-1953, the learned Magistrate evidently directed

the execution of the warrant against the same properties. It may thus be taken that the property sought to be seized under the distress was the joint family property belonging to the petitioner and his father. The learned Magistrate seems to take the view that since petitioner had a share in the property it might be proceeded against in execution of distress warrant. The learned Sessions Judge recommends on the authority of the case of -- Rajendra Prasad Missir and Others Vs. Emperor, , that it is not open to the Magistrate while proceeding u/s 386, Criminal P. C. to order the execution of the distress warrant against the joint family property. The position being well settled, the order of the learned Magistrate is set aside. The reference is accepted.