

(2015) 07 PAT CK 0113

In the Patna High Court

Case No : Criminal Miscellaneous No. 13672 of 2013

Jahan Ara Begum

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 29-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 82, 83
Penal Code, 1860 (IPC) — Section 120B, 302, 34

Citation : (2015) 4 PLJR 125

Hon'ble Judges : Vikash Jain, J

Bench : Single Bench

Advocate : Sunil Kumar Singh, for the Appellant; Jitendra Kumar Singh, APP,
Advocates for the Respondent

Final Decision : Dismissed

Judgement

Vikash Jain, J—The present petition has been filed with a prayer for quashing the impugned order of attachment dated 02.07.2012 issued under Sections 82 and 83 of the Code of Criminal Procedure by the learned Sub-Divisional Judicial Magistrate, Dehri-on-Sone in connection with Dehri P.S. case No. 312 of 2012.

2. On 28.06.2012, Dehri P.S. Case No. 312 of 2012 came to be registered against the petitioner's son, Jahid Parvez alias Kaku Khan, along with others for the offences under Sections 302/120B/34 of the Indian Penal Code in respect of murder of the informant's brother, Lalan Singh, in the wee hours at 1.00 A. M. on the said date.

3. It appears that for the purpose of securing arrest of the said Jahid Parwez, Officer Incharge, Dehri Police Station (Rohtas) (opposite party No. 2) obtained a non-bailable warrant from the court of the learned Sub-Divisional Judicial Magistrate, Dehri the very next day i.e. on 29.06.2012. A mere three days later, opposite party No. 2 submitted an application for obtaining an order of attachment on the ground that the accused persons were evading arrest, which was allowed and the order issued by the learned S.D.J.M. in terms of Sections 82

and 83 of the Code of Criminal Procedure (For short, "the Cr.P.C").

4. Learned counsel for the petitioner submits that the chronological sequence of events demonstrates the undue haste with which action has been taken by the police as well as by learned S.D.J.M. It transpires on perusal of the order sheet of the case that after having issued non-bailable warrant on 29.06.2012, the learned S.D.J.M. proceeded on the basis of an affidavit moved at the instance of opposite party No. 2 that the accused persons were evading arrest and accordingly, on 02.07.2012, he issued the order of attachment under Sections 82 and 83 of the Cr.P.C. Learned counsel submits that issuance of the order of attachment completely bypassing the requirement of Section 82 of the Cr.P.C. is ex-facie illegal and unsustainable. Section 82 of the Cr.P.C. contemplates a proclamation against an absconder and a time limit of not less than 30 days thereafter for the accused to appear and it is only in default thereof that the order of attachment under Section 83 of the Cr.P.C. can be issued.

5. Learned counsel for the petitioner further submits that even otherwise, an attachment order under Section 83 of the Cr.P.C. can be made only with respect to the property of an absconder and the property of his relatives cannot be attached. The petitioner, in the instant case is not an accused, rather she is merely the mother of the accused Jahid Parwez of Dehri P.S. Case No. 312 of 2012. The dwelling house which has been attached belongs to the petitioner who is not an accused. It is stated that a petition dated 02.07.2012 filed by the petitioner along with the latest municipal rent receipt dated 02.02.2012 was furnished before the learned S.D.J.M. in support of her claim of ownership of the dwelling house.

6. Reliance is placed on the decisions reported in *Nalini Kant Agrawal and Others Vs. The State of Bihar and Others*, *Usha Mishra Vs. The State of Bihar and Others*, (2007) 1 BLJR 496 : (2007) 3 PLJR 748 and *Krishna Murari Yadav Vs. State of Bihar*, (2005) 3 PLJR 746 and submits that the instant case is squarely covered thereby.

7. A counter affidavit has been filed on behalf of the opposite parties taking a stand that the process of proclamation was done to compel the appearance of the accused persons by the learned Court and that the provision of Section 82 of the Cr.P.C. has been followed prior to issuance of attachment order under Section 83 of the Cr.P.C.

8. It appears from the order sheet of the case that within three days of issuing the non-bailable warrant, the order of attachment under Section 83 Cr.P.C. has been issued. Evidently, the period of 30 days contemplated under Section 82 of the Cr.P.C. has not been awaited and such mandatory provision has not been complied with prior to issuance of attachment order which thus cannot be sustained.

9. In the above view of the matter, therefore, the processes under Sections 82 and 83 of the Cr.P.C. issued by order dated 02.07.2012 are held to be illegal and

are hereby quashed, with all legal consequences to follow. The application stands allowed.

10. Considering the fact that the order of attachment has been quashed as above, this Court need not enter into the further issue raised with regard to legality of the attachment of the property of a person other than the property belonging to an absconder.