

(1966) 05 P&H CK 0026
In the Punjab And Haryana At Chandigarh

Smt. Pritam Kaur and Another

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision : 13-05-1966

Acts Referred:

Penal Code, 1860 (IPC) — Section 307

Citation : (1967) CriLJ 1120

Hon'ble Judges : D.K. Mahajan, J

Bench : Single Bench

Judgement

D.K. Mahajan, J.—This second appeal is directed against the decision of the District Judge, Jullundur reversing, on appeal, the decision of the trial Court decreeing the plaintiffs' suit.

2. The plaintiffs are the widow and the daughter of Bakhtawar Singh. Against Bakhtawar Singh, a case was registered u/s 307 of the Indian Penal Code on the 1st August, 1952. On the 4th August, 1952, warrants of arrest were issued and on the 12th August, 1952, an order was passed under Sections 87 and 88 of the Code of Criminal Procedure for attachment of his property because the warrants of arrest could not be served. The only time, that was allowed to elapse between the first issuance of warrants of arrest and the orders under Sections 87 and 88 of the Code of Criminal Procedure, was 8 days. It appears that on the merits, the order under Sections 87 and 88 was not justified. However, it is not necessary in this case to pronounce upon that matter.

Suffice it to say that the order itself is defective because the order states that the absconder should appear within thirty days" whereas according to Section 87 clear thirty days have to be given for appearance. This matter came up for consideration in Pal Singh Santa Singh Vs. The State, wherein a similar order was held to be illegal. That is a Division Bench decision and is binding on me in Single Bench. Once it is held that order under Sections 87 and 88 of the Code of Criminal Procedure is illegal the consequences which flow from its disobedience cannot be visited on the absconder. In this view of the matter, the lower

appellate Court was in error in holding that the illegality was either curable u/s 537 of the Code of Criminal Procedure r, in fact, there was no such illegality.

3. For the reasons recorded above, I allow this appeal, set aside the order of the learned District Judge and restore that of the trial Court. There will be no order as to costs in this Court.