

Sanjeev Kumar Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Nov-10-2008

Judge : Samarendra Pratap Singh, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 82 and 83

Appeal No. : Cr. W.J.C. No. 889 of 2007

Appellant : Sanjeev Kumar

Respondent : The State of Bihar and ors.

Advocate for Def. : Bijay Kumar Sinha, J.C. to G.P. 6

Advocate for Pet/Ap. : Pramod Mishra, Adv.

Judgement :

Samarendra Pratap Singh, J.

1. Heard the learned Counsel for the parties.

In the instant writ application the petitioner has prayed for direction to the respondent authorities for making an enquiry as to how without following the procedure as envisaged under Sections 82 and 83 of Cr.P.C., the police officials attached his property.

2. The learned Counsel for the petitioner submits that after recording the statements of some witnesses cognizance of offence was taken on 15.12.2006 and warrant of arrest was issued on the same day. Thereafter vide order dated 26.6.2007 the process of attachment of property of the petitioner under Section 82 of Cr.P.C. was issued also. Pursuant to the order property of the petitioner was attached. He submits that the petitioner suffered both mental agony and financial loss as well as loss of prestige in society by aforesaid action of police without due authorization of law.

3. The learned Counsel for the petitioner submits that a Bench of this Court in a case of Usha Mishra v. The State of Bihar and Ors. reported in 2007 (3) PLJR 748 made an order for payment of compensation.

4. The learned Counsel for the State submits that there was adequate ground for issuing warrant of arrest against the petitioner and when he did not appear for quite sometime then only order for attachment of his property was passed on 26.6.2007 as contained in Annexure-A series.

5. Part A of Chapter-VI of Cr.P.C. deals with the process to compel appearance of an accused by issuance of summons and Part B deals with the issuance of warrant of arrest. Part C deals with the proclamation and attachment of property of person absconding. It deals with the procedure that the court may adopt, if it has reason to believe that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed.

6. In such circumstances court under Section 82 Cr.P.C. may publish a written proclamation requiring him to appear at a specified place and at a specified time to remain in publication for not less than thirty days mentioned therein, and if the accused does not appear by then, recourse to Section - 83 of Cr.P.C. can be resorted to. However, recourse to Section 83 of Cr.P.C. without waiting for aforesaid mandatory period under Section 82 of Cr.P.C. in a given situation may be permissible but the same is an exception to the general rule.

7. The court can pass such order of attachment under Section 83 Cr.P.C. even soon after passing of order under Section 82 Cr.P.C. in emergent situation only if

conditions mentioned in Clause (a) and (b) to the proviso to Section 83(1) stands satisfied. It could appear from conjoint reading of Sections 82 and 83 of Cr.P.C. that in no circumstances a Magistrate can issue an order of attachment under Section 83 Cr.P.C. without passing an order under Section 82 Cr.P.C.

8. Unfortunately, in the instant case the order impugned is not in consonance with the provisions mentioned in Sections 82 and 83 Cr.P.C. and as such the same is illegal and is set aside.

9. The court ought to be vigilant in passing such orders as the same may cause irreparable injury to even an accused as held in case of Usha Mishra v. State of Bihar reported in 2007 (3) PLJR 746.

10. With the aforesaid observations this writ application is disposed of.

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