

**In Re: Nilkanth Ramchandra Kulkarni**

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**SooperKanoon Citation :** [sooperkanoon.com/346146](http://sooperkanoon.com/346146)

**Court :** Mumbai

**Decided On :** Dec-13-1912

**Reported in :** (1913)15BOMLR175; 19Ind.Cas.333

**Judge :** Batchelor and ;Rao, JJ.

**Appeal No. :** Criminal Application for Revision No. 341 of 1912

**Appellant :** In Re: Nilkanth Ramchandra Kulkarni

**Disposition :** Application dismissed

**Judgement :**

**Batchelor, J.**

1. A complaint was, on the 23rd February 1908, filed against the present petitioner under Section 409, Indian Penal Code. On the following day a warrant was issued for his arrest but was returned unserved. On the 6th June 1908 a proclamation was issued under Section 87 of the Criminal Procedure Code requiring the petitioner to appear within forty days. On the 6th July 1908 an order was passed by the Magistrate for the attachment of the petitioner's property. On the 24th September of the same year the attachment was actually effected. On the 10th March 1910 the petitioner was arrested. He was convicted in July 1910 and sentenced to one year's imprisonment. In June 1911 he came out of jail and made an application for the restoration of his property which had been attached. The

application has been refused on the ground that it was not made within two years of the date of attachment as required by Section 89 of the Code.

2. From the Magistrate's order refusing the restoration an appeal was presented to the learned Sessions Judge who, however, has held that, although certain irregularities have crept into the proceedings, he could not interfere in the petitioner's favour.

3. From this decision the present application is made to us in revision, and three points only have been taken by Mr. Desai on the petitioner's behalf. In the first place it was contended A that under Section 89 of the Criminal Procedure Code it was not necessary that the proof that the accused person had not absconded should be offered or given within two years from the date of the attachment, but all that was required to be done within that period was that the accused person should appear voluntarily or be apprehended or brought before the Court. To this contention, however, we think that the plain grammatical meaning of the section is fatal. We agree with the learned Judge below that the adverbial phrase 'within two years from the date of the attachment' must qualify not only the word 'appears' but also the word 'proves' which is connected with the word 'appears' by the conjunction 'and'.

4. Secondly, it was argued that it was not necessary for the purposes of the section that the absconding accused should himself personally apply for the restoration of his property, but that the section was satisfied if an application was made within time by anyone on his behalf. In this respect the petitioner relies upon an application made on the 20th February, 1910, by his wife and another, application of the 7th June, 1910, made by his uncle. It is, however, clear we think, that neither of these applications can be (sic) d as satisfying the conditions of Section 89. The wife's application was made before the accused's arrest, and in it she merely (sic) that the attachment may be removed because she is (sic) to discover the whereabouts of her husband. The uncle's application as we read it, was not an application made (sic) appear and prove the facts referred to. In the (sic) not only has he not proved them, but he has made no attempt or effort to prove them within the time allowed to him by law.

5. Lastly, Mr. Desai appealed to us to excuse the delay by which the petitioner's application had exceeded the legal period. We cannot, however, find any valid reason for so doing, since it is clear that the petitioner had ample opportunity after his arrest to urge and to prove his present claim if he had been minded to do so.

6. No other point being taken we must reject this-petition. The rule is discharged.

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