



**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**

S.B. Criminal Writ Petition No.2219/2024

Gurdeep Singh S/o Gyan Singh, R/o 1A-33, Shiv Shakti Colony,  
Shahstri Nagar, Jaipur (Rajasthan).

-----Petitioner

Versus

State Of Rajashtan Through Public Prosecutor

-----Respondent



For Petitioner(s) : Mr. Pankaj Gupta  
Mr. Chinmay Sharma  
For Respondent(s) : Mr. Jitendra Singh Rathore, PP

**JUSTICE ANOOP KUMAR DHAND**

**Order**

**17/01/2025**

1. By way of filing this petition, a challenge has been lead to the impugned order dated 15.07.2024 passed by Additional Chief Judicial Magistrate No.2, Jaipur Metropolitan I by which an order has been passed for attachment of the properties of the petitioner under Sections 82 & 83 of Code of Criminal Procedure, 1973 (Cr.P.C.).
2. Learned counsel for the petitioner submits that an FIR bearing No.191/2000 was registered with Police Station Jalupura, Jaipur City for the offence under Section 406 IPC wherein charge-sheet under Section 299 Cr.P.C. was submitted. Learned counsel submits that without execution any summon/warrant upon the petitioner, straightaway the proceedings under Sections 82 & 83 Cr.P.C. were initiated against him vide order dated 27.07.2011. Learned counsel submits that neither the summons were issued



nor any proclamation was issued for a period of 9 years, even then the trial court came to a conclusion that inspite of service of notice, the petitioner has failed to appear before the trial court, hence under these circumstances, the impugned proceedings have been initiated. Learned counsel submits that perusal of the report of the Process Server on the notice issued by the trial court clearly indicates that the petitioner is not residing at the place where the notices were sent, hence there was no reason or occasion available with the trial court to record such finding with regard to the above satisfaction. Learned counsel submits that the moment, the petitioner came to know about the impugned proceedings, an application was submitted for recalling the order and warrants issued against him and for dropping the proceedings initiated against him under Sections 82 & 83 Cr.P.C. Learned counsel submits that instead of deciding the said application on its merits, the said application was annexed with the file of the proceedings under Sections 82 & 83 Cr.P.C. and passed the impugned order for attachment of the properties of the petitioner.

3. Learned counsel submits that once the petitioner has appeared before the trial court and he is ready to face the trial, the purpose of securing his presence stands satisfied, so under these circumstances, proceedings initiated against him under Sections 82 & 83 Cr.P.C. are liable to be recalled and quashed.

4. In support of his submissions, learned counsel for the petitioner has placed reliance upon the judgment passed by this Court at Principal Seat at Jodhpur in the case of **Subhash Jat Versus State of Rajasthan** reported in **2017(2) Cr.L.R. (Raj.) 947**.



5. *Per contra*, learned Public Prosecutor opposed the prayer and submitted that after registration of FIR against the petitioner, the petitioner remained abscond that is why warrant under Section 37 of the Police Act was issued and accordingly charge-sheet was submitted under Section 299 Cr.P.C. Learned counsel submits that when petitioner fails to appear before the trial court to face the trial, no option was available with the trial court except to initiate proceedings against him under Sections 82 & 83 Cr.P.C. for procuring the presence of the petitioner. Learned counsel submits that the trial court has not committed any error in proceeding against the petitioner under Sections 82 & 83 Cr.P.C., hence under these circumstances, the interference of this Court is not warranted.

6. Heard and considered the submissions made at Bar and perused the material available on the record.

7. The Hon'ble Apex Court in the case of **Vimlaben AjitbhaiPatel vs. Vatslaben Ashokbhai Patel & Ors.** reported in **(2008) 4 SCC 649** has held that the purpose of initiating proceedings against the accused under Section 82 Cr.P.C. is to procure and secure the presence of the accused. Once the said purpose is achieved, the proceedings shall be withdrawn. It has been held by the Hon'ble Apex Court in Para 32, as under:-

"32. The provisions contained in Section 82 of the Code of Criminal Procedure were put on the statute book for certain purpose. It was enacted to secure the presence of the accused. Once the said purpose is achieved, the attachment shall be withdrawn. Even the property which was attached, should be restored. The provisions of the Code of Criminal Procedure do not warrant sale of the property despite the fact that the absconding accused had



surrendered and obtained bail. Once he surrenders before the Court and the Standing Warrants cancelled, he is no longer an absconder. The purpose of attaching the property comes to an end. It is to be released subject to the provisions of the Code. Securing the attendance of an absconding accused, is a matter between the State and the accused. The complainant should not ordinarily derive any benefit therefrom. If the property is to be sold, it vests with the State subject to any order passed under Section 85 of the Code. It cannot be a subject matter of execution of a decree, far less for executing the decree of a third party, who had no right, title or interest thereon."



8. Subsequently, in the case of **Navia vs. State of Rajasthan & Anr.** reported in **2008 (1) R.Cr.D. 460 (Raj.)**, the co-ordinate Bench of this Court has also taken the similar view in Paras 4 to 6, which reads as under:-

"4. It appears that during the pendency of that case, the petitioner remained absconding and for that proceeding under Sec.82-83 CrPC was initiated against the petitioner and the land of the petitioner and his brother was attached and thereafter, it was mutated in favour of the State.

5. From the material on record, it appears that the petitioner was facing trial of criminal case for the offence under Sec.16/54 of Excise Act, which on conclusion of the trial culminated in conviction of the petitioner but he was released on probation. The land, which was attached in proceedings under Sec.82 and 83 CrPC was to be released from attachment on appearance of the petitioner and therefore, it was not proper for the Trial Court to have ordered to mutate his land in favour of the State.

6. In the circumstances, therefore, the order passed by the Court below cannot sustain and the petition deserves to be allowed to the extent that the entire land in question mutated in favour of the State be mutated in favour of petitioner and his brother as there was absolutely no proceedings against Tulchha and as per the Jamabandi placed on record, the land was jointly owned by the petitioner and his brother Tulchha."



9. In the instant case, arrest warrants were issued against the petitioner for securing his presence before the trial court but the report of the Process Server indicates that the standing warrants issued against him were never served or executed upon him because he was not residing at the place where these notices/warrants were sent. Hence, under these circumstances, it is clear that the petitioner was not aware about the above proceedings.

10. Since the petitioner has already put his appearance before the trial court and has submitted an application for recalling the proceedings initiated against him and he is ready and willing to face the trial, the purpose of Section 82 Cr.P.C. has been achieved and there is no point for issuing orders for attachment of the properties of the petitioner. Hence the impugned order dated 15.07.2024 stands quashed and set aside.

11. The trial court is directed to decide the application filed by the petitioner in the light of judgment passed by the Hon'ble Apex Court in the case of **Vimlaben Ajitbhai Patel** (supra) expeditiously as early as possible preferably within a period of 30 days from the date of receipt of certified copy of this order.

12. Accordingly, the criminal writ petition stands disposed of.

(ANOOP KUMAR DHAND),J

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