

Legal Repercussion Of Absconding: Proclamation And Attachment Provision

By Akshitachand | Views 10256

When we observe around in our surroundings, we observe everything. The law defines which act is an offence and which act is not an offence which ultimately reflects the way of the society. From non-offenders to offenders, there is every kind of person around us. In India, the Indian Penal Code, 1860; the Code of Criminal Procedure, 1973; and the Indian Evidence Act, 1872 are the Legislative Acts which majorly deal with the various procedures related to crime. The Code of Criminal Procedure, 1973 is a procedural law which acts like a key to the substantial laws, it complements the substantive criminal law.

There are various stages of procedures in criminal cases and one of the pre-trial procedures is to provide for Processes to compel Appearance. It is important for the accused to be present at the trial in order to get fair justice and receive the sentence in case of conviction. It is the duty of the Judiciary to ensure that no innocent is punished.

This chapter has been divided into 4 parts ensure the presence of the accused at the Trial. Chapter VI of the Code of Criminal Procedure regarding summons, warrant of arrest, Proclamation and attachment; and other rules. Broadly the accused is procured in the trial by summons or warrant but in case, the Court has a reason to believe that the accused may flee, there can be proclamation and attachment of the property of the accused in order to compel him to appear in the court.

This paper will critically examine the provisions related to Proclamation and attachment under the following heads:

1. Need of presence of accused at trial
2. Legal repercussion of Absconding
3. Proclamation and attachment
 1. Proclamation for person absconding
 2. Attachment of property of person absconding
 3. Release, sale and restoration of attached property
4. Conclusion

Need Of Presence Of Accused At Trial

The criminal justice system relied on the principles of natural justice. If any of the principles are denied, the whole proceeding is vitiated. The accused is needed to be present at the trial proceedings. It is important on part of the justice delivery system to keep the trial fair for both the parties in a case.

Fair trial implies that the accused is provided with an opportunity to defend himself. The accused must not be torn off from his right to receive a fair trial. And the same can be ensured by the accused himself when he is present during the trial proceedings. Also, in case of the conclusion of any trial, the accused needs to be present in the court to receive the sentence given to him.

Since the accused needs to be present at the court, his presence can be assured by issuing summons, or in case of his denial to be present at the court, by warrant. This means that his presence can be assured also by arrest and detention. Although if the accused is willing to be present as per the requirements of the trial proceedings, the court may not cause any direct or indirect obstruction in the liberty of the accused. And hence, the court needs the accused to be present at the trial proceedings but without any unreasonable hindrance to his liberties.

Legal Repercussion Of Absconding

Absconding means to hide, as per the legal Dictionary, abscond means traditionally to leave jurisdiction in order to avoid legal proceedings. The Code of Criminal Procedure provides for the manner of any trial to be proceeded.

Whenever one commits a crime, they want to escape the jurisdiction of the courts and try to run away. There are many instances where the criminals elope after commission of a crime. In such circumstances, when there are trial proceedings going on, the accused needs to be present during such proceedings but in case he isn't, the law provides for provisions in such cases. Whenever such a circumstance comes up before the court, the court procures the property of the absconding person which is valuable to them and hence, compels them to be present during the trials.

The code provides direction in case of a summons case that initially a summons is issued to the accused and if the accused is not present after summons, the court issues warrant for arrest of the accused. Under section 174 of the Indian Penal Code, 1860, it is an offence punishable with 6 months of imprisonment, if the accused intentionally does not attend the trial even after summons has been issued for him.

In a particular case, the court provides discretion to judicial officers to deal accordingly. It has been provided under section 204 of the code of criminal procedure that whenever the magistrate is satisfied that a case is either a summons

or a warrants case then the magistrate can issue a summons or a warrant against the accused for the trial proceedings. It is also provided that section 204 will not affect anything in section 87. Under section 87, if any magistrate has the reason to believe that the accused has the capacity to abscond than he can issue a summons or arrest against the same person.

Hence, it can be interpreted that the person who absconds can be liable as per the conditions given regarding proclamation and attachment.

Proclamation And Attachment

As the appearance of person is needed during the trial proceedings, under chapter VI of the Code of Criminal Procedure, 1973 the provisions regarding processes to compel the appearance of an accused is given. Proclamation means an important public announcement.

Under the part C of the chapter, provision regarding proclamation and attachment has been given.

They have been explained as follows:

1. Proclamation For Person Absconding

As per section 87 of the Code, a person who willfully neglects the summons for the trials without a reason before the court, the court can issue a warrant of arrest for that person. Here, the cases in which such warrant of arrest has been issued, there are reasons to believe that the accused may abscond. To avoid the same from happening the court has the authority to publish a written proclamation which would require the person to appear before the court or the court may attach his property. This means that if the accused does not appear before the court, the attached property would be at the disposal of State government and the state government can sell that property.

A proclamation can be made by a public hearing at a place the person resides, at his house where he reside and a copy of proclamation to be affixed. However, a proclamation can even be published in the newspaper being circulated at the area the person resides.

This would naturally put pressure on the accused to appear before the court during the trial proceedings to avoid disposal of his property. Section 82 to 86 discuss the provisions related to such proclamation and attachment of property of the accused.

Section 82 of the Code of Criminal provides for the publication of proclamation for the person absconding, it states that:

- i. If any Court has reason to believe (whether after taking evidence or not) 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, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.
- ii. **The proclamation shall be published as follows:**
 - a. it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;
 - b. it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;
 - c. a copy thereof shall be affixed to some conspicuous part of the Court-house;
- iii. the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.
- iv. A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.
- v. Where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under section 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of the Indian Penal Code (45 of 1860), and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.
- vi. The provisions of sub-sections (2) and (3) shall apply to a declaration made by the Court under sub-section (4) as they apply to the proclamation published under sub-section (1).[1]

The term, abscond here does not merely mean to leave a place but rather its etymological sense, to hide oneself. In the case of **N.M.V. Vellayappa Chettiar v. Alagappa Chettiar**[2], it has been elaborated that if a person had gone to a distant place before the issue of a warrant, he cannot be said to be absconding to evade the warrant execution.

Since the section violates the human rights of the accused to some extent, the amendment Act has provided that a person can be declared as a proclaimed offender in case he has committed a serious crime and does not present himself before the court even after the proclamation under section 82 sub-section (4). The term, 'reason

to believe' here is used in reference that the magistrate must be subjectively satisfied that the person has absconded.

2. Attachment Of Property Of Person Absconding

A person against whom a proclamation has been issued by the court under Section 82, his property can be attached as per Section 83 of the Code of Criminal Procedure, 1973. This is done to compel the person to appear before the court on trial proceedings.

Section 83 provides that, if the court has a reason to believe that the proclaimed person is either disposing the immovable property or move it out of court's jurisdiction, then the court may attach the property of the proclaimed person. It can be done by the order of attachment under form 7 or form 6 of second schedule, the Code of Criminal Procedure.

Further, in sub-section 3 it has been provided that the movable property can be attached by seizing, appointing a receiver, or as the court deems fit. In case the property to be attached is immovable, it will be attached by the collector of the District of location of the property. Also, if the property is perishable, it would be sold off on the order by the court and the funds received would be used as the court directs. It has to be kept in mind that there will be a receiver appointed as per the provisions prescribed in the Code of Civil Procedure, 1908.[3]

In the case of **Devendra Singh Negi v. State of U.P**[4], it was observed that the attachment of property as per section 83 cannot be done before the period of 30 days from the issuing of proclamation for person absconding under section 82.

The Constitution of India under Article 300A provides right to property to a person. Right to property is not a fundamental right but rather a statutory right. Article 300 A affirms that no person shall be deprived of his property save by the authority of law. The attachment of property as per the Code of Criminal Procedure provides and it may make it difficult for the accused but it does not infringe any rights of the accused.

Further under section 84 of the Code of Criminal Procedure, if any person other than the proclaimed person is aggrieved by the attachment, the claims and objection to attachment has been provided. It is provided that if the claimant or objector has any interest in the attached property and he objects against the attachment order within 6 months of attachment, that property is not liable to be attached under section 83 and it shall be inquired. In case the claimant or objector dies, his legal representative can carry on with the claim or objection.[5]

3. Release, Sale And Restoration Of Attached Property

Section 85 of the code provides for the release sale and restoration of attached property. If the proclaimed person appears before the court as per the proclamation, his property is released and if not so then the property remains under attachment for 6 months and post this period, it is sold by the State Government after a period of 2 years.

Here, the property attached is given to the State Government because the property is always under the absolute control of the state government. Further, if a person within the period of 2 years from attachment satisfies the court that he was not absconding, the costs incurred during the attachment are delivered back to the person.[6]

Conclusion

In the light of the above discussions, it can be concluded that the legal repercussion of absconding comes in the form of proclamation followed by attachment of property of the person accused. It can be observed that the attachment of property is a last resort for the court in order to compel the person accused to appear before the court.

But the presence of the accused is mandatory in the court as he needs to be there to carry on the trial proceedings. A person who intentionally absconds the trial proceedings is declared as a proclaimed offender. And further in case the accused does not appear before the court post attachment of property the court has the authority to dispose the property attached.



Issue of arrest is the sine qua non of any proceeding of the court under section 82 and further, without the completion of 30 days periods from the proclamation, no attachment of property can be done. Chapter VI of the Code of Criminal Procedure, 1973 extensively provides for proclamation and attachment of property of the person absconding. It is a legal obligation of both the parties to be present during the trials for a fair trial.