

BNSS, 2023

LECTURE 12

Notes - Proclamation and Attachment of property

Introduction

In cases where a summons for appearance of the accused person is issued, when the person absconds, or does not obey the summons, a warrant can be issued for his arrest. Now in cases where a warrant of arrest has been issued against an accused person and there are reasons to believe that the accused person has absconded or is concealing himself to avoid the execution of warrant, the court may publish a written proclamation requiring such person to appear before it and may attach his property. If the accused person does not appear even after proclamation, the State government can attach his property and may even sell it.

This stringent provision is made to exert pressure on the accused to make him appear before the court to prevent deprivation from his property. This matter of proclamation and attachment has been dealt under Sections 84 to 89 in the BNSS, which were previously Sections 82 to 86 in CR.P.C..

Proclamation

Section 84 talks about the form of proclamation, proclaimed offenders and the mode of proclamation.

Section 84(1) talks about the terms to be followed when a proclamation can be issued. These terms are mandatory to be followed before the issue of a proclamation. They are :-

- I. A warrant has been issued against that person.
- II. The court has reason to believe that
 - a. person has absconded or
 - b. is concealing himself, thereby avoiding the execution of the warrant

If both the above terms are satisfied, then only the court can issue proclamation. Now when the proclamation is issued by the Court, it shall be written and it will require the person to appear at a specified place and specified time. The specified time shall be after at least 30 days or more.

Proclamation is aimed to give time to the person before attachment is done, even though at times proclamation and attachment can be done simultaneously too if the court feels the need to. Even though popular understanding is that an attachment can be done only after one is declared public offender, it is wrong. Attachment, as we will see later, can be done even after proclamation or simultaneously with it. When someone is declared a public offender, the change that happens is that the criminal trial can happen of that person in ex-parte too under Section 356 of BNSS.

Declaration of a **proclaimed offender** is done under Section 84(4). If proclamation is needed for a person who has committed an offence under any law which is

- I. punishable with imprisonment for 10 years or more
- II. punishable with imprisonment for life, or
- III. punishable with the death penalty

and even after proclamation the person fails to appear at the specified time and place, the court through a declaration can make that person a proclaimed offender

Proclamation in its literal sense means a formal public announcement. Section 84(2) talks about how that announcement is made by the court in public. It says that there are 4 things to do in which a proclamation is published.

- I. The proclamation shall be read in a conspicuous place of the place where the person ordinarily resides;
- II. The proclamation shall be affixed to the house or homestead where such person resides. It will also be affixed to some conspicuous place in the town or village;
- III. A copy of that proclamation shall also be affixed to conspicuous place of Court-house
- IV. If the court feels that it is necessary, it shall direct the proclamation to be published in a daily newspaper circulating in the town where the person ordinarily resides.

As we see proclamation is kind of a public announcement and would cause everyone to know that the person is wanted by the court. In *Gauri Shankar Jain v State of Bihar (1971)*, the Patna High Court said that if an officer goes to someone's house and does not find him there, that does not make the person 'absconding'. Warrant of arrest and proclamation are drastic steps and should be taken cautiously, only when the person is avoiding the court for some time. A single instance of absence does not justify an issuance of warrant or proclamation.

Section 85(3) tells us that when a proclamation is published in the above mentioned way, then the court can release a statement saying that the proclamation was published and this statement shall serve as conclusive evidence that proclamation has been published.

Attachment

Attachment with respect to this act can be defined as taking into custody of the defendant to compel his appearance to the court. Section 85 to 89 of BNSS, previously Sections 83-86 of the CR.P.C. talks about the provisions relating to attachments.

Section 85: Attachment of property of person absconding

On reading Section 85(1), we see that the general rule is that attachment of a property is done after proclamation. It is done for reasons which are to be recorded in writing by the court. Attachment can be done for both immovable and movable property belonging to the accused.

But there can be times when attachment can be done simultaneously with proclamation. For that at least one of two conditions must be met before such simultaneous order can be given. They are :-

- I. the proclaimed person (not proclaimed offender) is about to dispose of his property, either whole or in part; or
- II. is about to remove the whole or part of his property from the jurisdiction of the court. (Such as selling movable property to someone from a different state)

When either one of the above conditions is met, the court can order the attachment of the property with the proclamation itself. The need for this is to ensure the person should not find a way to escape the jurisdiction of the court.

The order of attachment applies to any property belonging to the person within the district it is made. For its application to property belonging to the person that lies outside the district, the District Magistrate of the other district shall endorse the order of attachment so that it is applicable there. This is mentioned in Section 85(2).

For example, a criminal court in Patna orders attachment of the property of the accused, some of which lies in Bhagalpur. The order for attachment from Patna shall be endorsed by the District Magistrate of Bhagalpur and will authorise him to attach any property belonging to that person in Bhagalpur.

The modes of attachment of different types of property are specified in Section 85(3), (4) and (5). These clauses talk about movable, immovable and property either livestock or perishable, respectively.

Movable property

Movable property is attached through either two or all of the three methods in Section 85(3) :-

- I. By seizure, i.e., by taking forcible possession of property by the authorities; or
- II. By the appointment of a receiver, i.e., a person appointed by the court to take receive and preserve property during the time of judicial proceedings; or
- III. Or by a written order prohibiting the repayment of any debt or the proclaimed person receiving any movable property.

Immovable property

Immovable property can be attached in four different ways. If the immovable property to be attached is a land that is being taxed, it will be attached through the collector of the district where that land lies.

Apart from that other immovable property like building, factories etc shall be attached in a similar way as other movable property. It can be done through two or all of the methods mentioned below :-

- I. By taking possession of the property by the authorities; or
- II. By the appointment of a receiver; or
- III. By an order prohibiting payment of rent from that property to the proclaimed person as well as anyone who would receive the rent on his behalf.

According to Section 85(6), the receiver in the cases of both movable and immovable property shall have the same powers as a receiver appointed under CPC, 1908 whose powers, duties and liabilities are defined under Order XL (40) of the Code.

Livestock or Perishable property

Section 85(5) says that if the property is either livestock or is of a perishable nature, the court may order its immediate sale if it feels that it is prudent to do so. The proceeds from that sale shall be kept as instructed by the court.

Claims and objections to attachment (Section 87 BNSS, corresponding provision Section 84 of CR.P.C.)

It might be a case that A, against whom attachment is ordered, owns a factory jointly with B who is not an accused. When the order of attachment is executed, the whole factory comes under the possession of the Court, and not just parts of it. Thus a claim of B lies on the attached property. Section 87 talks about when, how and by whom such claims will be decided.

According to Section 87(1), any person other than a proclaimed person can prefer a claim or make an objection to attachment within 6 months from the date of attachment. The grounds for claim or objection can be :-

- I. The claimant or objector has claim in the property, and
- II. such a claim is not subject to attachment.

When the claim has been made by the claimant or objector, it can be continued after their death by their legal representatives.

Where :- According to Section 87(2) and (3), this claim can be made in the court which issued the order of attachment. The court will then inquire into the claim and its validity. If the property attached belongs to a different district than the court issuing the attachment order, the claim can be made in the court of the CJM of the district where the property is. The CJM will then give it to his subordinate magistrates for inquiry and disposal.

Appeal :- Section 87(4) says that if any claim is disallowed either in part or in whole, a suit can be instituted under 1 year from that order. In this suit the claimant shall try to establish his right in respect of attached property and the result of this suit will be conclusive.

Release, sale and restoration of attached property (Section 88 BNSS, corresponding section 86 CR.P.C.)

This section talks about what the court can do to dispose of the property after its attachment.

88(1) talks about a case when proclamation and attachment have simultaneously happened. If a person appears before the time specified in the proclamation runs out, the court will restore his property back to him.

In case the person does not appear within the time specified. The property shall be at the disposal of the State government who shall not sell it for at least six months from the date of attachment. But Section 88(2) talks about the exceptions to this rule, some of which extend the time and some which leave such time at the discretion of the court. They are :-

- I. In case of a claim or objection to that property, the sale of such property will not be done until the claim or objection is finally disposed of.
- II. If the property is subject to speedy and natural decay, the court may order it sold whenever it thinks fit. For example, a consignment of fruits seized can be sold even within 6 months of the date of attachment.
- III. If the court considers that sale would be for the benefit of the owner, it may order its sale when it thinks fit.

Section 88(3) applies when the proclaimed person is apprehended or voluntarily appears before the court within 2 years from the date of attachment and the property has been completely or partly sold. If he can satisfy the court that he did not abscond or conceal himself to avoid the warrant and he had no notice of proclamation to enable him to attend the court within the time specified, he will be entitled to the proceeds of the sale in case of complete sale of property. In case of partial sale, he will be entitled to the residue property and the proceeds of the part sale. But from these proceeds mentioned above, the cost incurred in consequence of attachment shall be deducted.

When in the above case, i.e. the return of the proclaimed person within 2 years and on hearing his reason, the court is not satisfied with the reasons provided and refuses restoration or release of the property, the person can appeal through a civil suit in the court where a normal appeal from the case would lie. This has been mentioned under **Section 89** of the BNSS, titled '**Appeal from order rejecting application for restoration of attached property**' which corresponds to Section 86 of the CR.P.C..

In the case of *Ballav Narayan Lenka v State of Odisha (2005)*, a question arose before the court whether a proclamation and attachment of property could be done against a person whose non-bailable warrant was quashed later. The court said that when the warrant is quashed, the court does so when it believes that the person is not absconding or concealing himself and the proceedings of proclamation and attachment have become void.

Section 86: Identification and attachment of property of proclaimed person

This is a new section added to BNSS which provides a framework for law enforcement agencies to collaborate with authorities in different jurisdictions to identify and proceed against assets of proclaimed persons ensuring accountability and compliance across jurisdictions and borders.

According to Section 86, a police officer not below the rank of Superintendent of Police or Commissioner of Police can request a court in a different jurisdiction or from an authority in contracting state to identify, attach and forfeit the property belonging to a proclaimed person. This request will be done in a written format. The court receiving such a written request will then request the court of the state where the property might lie.

The court which will have jurisdiction can then start the process of identification, attachment or forfeiture according to the procedure contained in Chapter VIII which concerns reciprocal arrangements with places outside India for conducting such processes.

Contracting state has also been defined in Section 111 under Chapter VIII, and it means any country or place outside India with which arrangements of identifying, attaching and forfeiting property has been made through a treaty or otherwise.