

## CHAPTER 15

# Proceedings Against Absconders and Record of Evidence in their Absence

### Part A

#### MEASURES TO ENFORCE APPEARANCE

**1. Attachment and sale of property**—Sections 87 and 88 of the Code of Criminal Procedure [Sections 81, 82, 83 and 84 of new Code] provide for the attachment and sale of the property of any accused person or witness whose presence is required by a Criminal Court as a last remedy for compelling his attendance. The procedure laid down must be strictly followed, otherwise the attachment and subsequent sale will be liable to be set aside. The proper forms for the proclamation, attachment etc., to be used in such proceedings are given in Schedule V of the Code.

**2. Proclamation**—No proclamation can issue under Section 87 unless a warrant has issued in the first instance and the Court has reason to believe that the person against whom it was issued has absconded or is concealing himself so that such warrant cannot be executed. The proclamation must fix a date for the appearance of the person at a specified place and that date must be not less than thirty days from the date of the publication of the proclamation. The proclamation must be published in the manner specified in sub-section (2) of Section 87 [Sections 81, 82, 83 and 84 of new Code], and the Court should be careful to record the statement as records the due publication of the proclamation as required by sub-section (3) of that section. The Court has the discretion to issue an order for attachment of property simultaneously with the issue of a proclamation. Section 88 (as amended in 1923) now provides for the summary investigation of claims of objectors to the attachment by Magistrates. The decision of the Magistrate can be challenged by a civil suit within a year.

**3. Consequences of non-appearance of proclaimed person : Sale of property**—If the proclaimed person does not appear within the time specified in the proclamation, the property under attachment remains “at the disposal of Government”. It can be sold at once at the discretion of the Court when it is liable to speedy decay if the Court considers that the sale would be for the benefit of the owner. But, otherwise it cannot be sold until the expiration of six months from the attachment and until the disposal of claims of objectors (if any) by the Magistrate.

**4. Directions for sale : Only life interest can be sold in certain cases**—In conducting sales, the interest of the absconding person in the attached property which is to be sold should be clearly specified so as to avoid complications in the future. It has been held by a Full Bench of

the Punjab Chief Court that only the life-interest of an absconder governed by agricultural custom in ancestral immovable property can be sold under Sections 87-88, Criminal Procedure Code. As a result the reversioners of the absconder have a right to claim such property after the death of the absconder (*See* 18 P. R. 1908 F. B., 52 P. R. 1915).

**5. Property or its proceeds may be given to absconder if he appears before Court**—If the absconder appears or is apprehended and brought before the Court within two years from date of the attachment of his property and satisfies the Court (i) that he did not abscond or conceal himself for the purpose of evading execution of the warrant, and (ii) that he had no such notice of the proclamation as could enable him to attend within the specified time, he can get the property back or its net proceeds if it has been sold (Section 89).

#### Part B

#### RECORD OF EVIDENCE IN THE ABSENCE OF THE ACCUSED

**1. Introductory**—The provisions of the Code of Criminal Procedure in regard to the taking and recording of evidence in the absence of accused persons are important and should not be overlooked.

**2. Evidence recorded in absence of the absconding accused may be used against him in certain cases**—Section 512(1) [Section 299 of new Code] provides that whenever it is proved that an accused person has absconded and there is no immediate prospect of arresting him, any Court competent to try or commit such person for trial for the offence complained of may, in his absence, examine the witnesses produced for the prosecution and record their depositions, and such depositions may, on the arrest of the accused person, be used in evidence against him, if the deponent is dead or is incapable of giving evidence, or his attendance cannot be conveniently procured. It is also to be noted in connection with this the Section 164 enables a Magistrate to record, in the same manner as evidence, any statement regarding an offence made by an accused person whomsoever it may implicate.

**3. Proceedings under Section 512**—Proceedings under Section 512 [Section 299 of new Code] should commence by evidence being taken and recorded (1) that the accused person has absconded, and (2) that due pursuit having been made, there is no immediate prospect of arresting him.

**4. Medical evidence should be recorded in some cases**—In cases where the crime has terminated fatally, or where medical evidence would ordinarily be required at the trial the evidence of the medical officer as to the cause of death or as to the injuries inflicted, should invariably be recorded.

**5.** In cases where the crime has been committed by some persons unknown and the offence is punishable with death or imprisonment for life, the High Court may order an inquiry similar to that under Section 512 (1) of the Code [Section 299 of new Code] and statements recorded in that inquiry can be used as evidence against the offender subsequently discovered.

**6. Confession by accused implicating an absconder cannot be used after the execution of the confession case**—It should be remembered that confession by accused persons, who have been executed, implicating an absconder cannot be used after the execution of the confessor against the absconder, when the latter is found and placed upon his trial, as he is not being tried in a joint trial with the other, and has had no opportunity to cross-examine. (*See* Section 30 of the Indian Evidence Act, 1872).