

15.10.2020

Sl.No. 06

Ct.No.10

Amalranjan

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION
APPELLATE SIDE**

(Via Video Conference)

**CRR No. 3195 of 2019
With
CRAN 1 of 2020 (Old CRAN 844 of 2020)
With
CRAN 2 of 2020 (Old CRAN 1295 of 2020)
With
CRAN 3 of 2020 (Old CRAN 3079 of 2020)**

In re: Sudip Debnath

..... Petitioner

Re: An application under Section 401 read with Section 482
of the Code of Criminal Procedure, 1973.

Mrs. Soma Chowdhury (Bandhu)
Mr. Phatick Chandra Das

..... For the Petitioner

Affidavit of service placed before the court shows that the service has been effected upon the opposite party wife. But the learned advocate is not represented by the respondent wife.

The matter relating to CRR 3195 of 2019 filed on behalf of the petitioner husband is pending in which an order of stay of the impugned order issuing warrant of arrest passed on 11th July, 2019 by the learned Magistrate was granted on condition that the petitioner will deposit Rs. 1.20 lakh with the executing court within a period of 15 days from date.

It is submitted by Mrs. Soma Chowdhury (Bandhu), learned advocate for the petitioner husband that a sum of Rs. 1.20 lakh had already been deposited in compliance of the order dated 28th November, 2019 passed in CRR 3195 of 2019 of this court. Yet the learned Magistrate by the impugned order dated 26th February, 2020 an warrant of arrest has been issued against the opposite party wife. No doubt, that the warrant of arrest once issued has got to be executed and so long it is not executed it remains pending and is alive.

The learned Magistrate has taken note of the order of stay passed by the Hon'ble court on 28th November, 2019 in CRR 3195 of 2019 and the stay was granted on condition to deposit the sum of Rs. 1.20 lakh and the said sum has been deposited with judicial cashier of executing court but the learned Magistrate received the execution of pending warrant of arrest as the revisionist husband was absent and no further order of stay was filed. So the Magistrate presumed that there was no further stay.

I am of the view, that the learned Magistrate ought to have sought for instruction from the Hon'ble court in such a situation before proceeding with the execution of the warrant of arrest since the stay of the impugned order was granted on condition to deposit the 50% of the total awarded amount Rs. 2.40 lakhs. It is submitted that the petitioner stays in Dubai at his work place which is well in the knowledge of the

opposite party wife and for this reason, the petitioner could not attend the executing court.

The purpose of execution proceeding in a maintenance case is to satisfy award of maintenance granted in favour of wife against her husband. So no coercive process ought to be issued without prior process of distress warrant.

The learned Magistrate could have passed the order directing the petitioner husband to deposit further amount for the satisfaction of the execution, but instead the warrant of arrest was revived for execution. But the prayer of the petitioner for issuance of arrest warrant afresh was rejected.

Learned advocate for the petitioner husband submits that the said sum of Rs. 1.20 lakh has been deposited by the father of the petitioner as the petitioner is away from India and in this out break of Covid-19 situation is unable to attend court, but the amount of maintenance will be paid to the wife by way of installments.

In the context above, the revisional application is required to be disposed of with direction upon the petitioner to satisfy the award in the execution case pending before the executing court by deposit of the rest of the sum by 3 equal installments.

Thus, revisional application being CRR 3195 of 2019 stands disposed of.

(Shivakant Prasad, J.)