

CRR 1331 of 2020
CRAN 1 of 2020

In the matter of : **Sri Dibya Tanaya Jowardar & Anr.**

Mr. Kalipada Das For the petitioners

Ms. Aditi S. Chakraborty, Ld. APP
Mr. Niloy Chakraborty ...For the State

Petitioners have assailed the order dated 28.03.2020 passed by the learned A.C.J.M., 1ST Court, Alipurduar in connection with Alipurduar P.S. Case No. 34 of 2020 dated 24.01.2020 under sections 302/120B/34 of the Indian Penal Code read with Sections 25(1)(a)/27/35 of the Arms Act corresponding to G.R. No. 139 of 2020 pending before the learned A.C.J.M., 1ST Court, Alipurduar.

Petitioners are aggrieved for the coercive process of the Court being W.P.A. issued against them by the impugned adverting to the provision of section 82 of the Code of Criminal Procedure 1973 which read thus,

“The proclamation for person absconding – (1) 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 appear at a specified place and at a specified time not less than thirty days from the date of published such proclamation.

(2) The Proclamation shall be published as follows:

i)(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 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;
(ii) the Court may also, if it thinks fit direct a copy of the proclamation to be 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.”

On plain reading of the said provision it transpires that courts are vested with ample power to enforce execution of warrant issued by them but where the warrant is unexecuted then only proclamation under section 82 of the Code of Criminal Procedure may be issued or property may be attached under section 83 of the Code of Criminal Procedure. It is contended that the learned A.C.J.M. issued W.P.A. against four accused persons only on the ground of heinous offence under section 302 of the Indian Penal Code.

To counter such submission of the petitioner, learned advocate for the State at Jalpaiguri Circuit Bench through virtual mode submits that the revisional application is not maintainable in view of the fact that the learned A.C.J.M. has not at all issued any process of warrant of proclamation an attachment simultaneously, rather W..A. was issued since the accused persons / petitioners were absconding for a considerable period of time and submit for rejection of the revisional application on that ground itself as the order dated 28.03.2020 cannot be

assailed on the ground that W.P.A. has been issued against the petitioners.

I fully agree with the submission of learned advocate for the State, having perused the order impugned and bearing in mind the provision of code reproduced above. Now it is submitted by the learned advocate for the petitioners that they are not named in the F.I.R. If that be so and if there be no incriminating evidence against them in the case diary, the petitioners are free to approach the competent court for remedial action that may be available to them under the law.

In the context above, the revisional application being C.R.R. No. 1331 of 2020 with C.R.A.N. 1 of 2020 are disposed of.

(Shivakant Prasad, J.)