

In the High Court at Calcutta
Criminal Revisional Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Subhasis Dasgupta.

CRR No. 1343 of 2020
With
IA No. CRAN No. 1 of 2020

Tahiruddin Mondal & Ors.
Vs.
State of West Bengal

For the Petitioners :Mr. Rajdeep Majumdar, Adv.
Mr. A. Rathore, Adv.

For the State :Mr. Saibal Bapuli, Adv.
Mr. Arijit Ganguly, Adv.
Mr. Sanjib Kumar Dan, Adv.

Heard on : 09.10.2020

Judgment on : 12.10.2020

Subhasis Dasgupta, J:-

This revisional application is directed against the impugned order dated 03.07.2020, passed by Learned Chief Judicial Magistrate, Murshidabad in connection with Jalangi P.S. Case No. 47/2020, dated 30.1.2020, giving rise to G.R. Case No. 336/2020 under Section 302/326/307/34 of the Indian Penal Code read with Sections 27/35 of the Arms Act issuing warrant of arrest

and proclamation of attachment against the petitioners coincidentally and simultaneously.

Learned advocate for the petitioners submits that there has been complete infraction of the provision of law laid down in Section 82, 83 of the Code of Criminal Procedure for the issuance of proclamation of person absconding, and attachment of property therefore.

It is submitted by the petitioners that the demand of law cannot be bypassed in an ingenious way, and thus issuance of WP&A simultaneously and coincidentally is highly illegal.

Mr. Bapuli, learned advocate representing State submits that specific provisions have been laid down in the Code of Criminal Procedure, which should be complied with, unless there are compelling reasons to the contrary.

Upon perusal of the materials available in the case record, it appears that warrant of arrest was issued against petitioners on 09.06.2020, while WP&A was issued against them on 03.07.2020 i.e. not after expiration of the period stipulated in Section 82(1) Cr.P.C.

The only question to be addressed by this Court is whether the learned Court below duly adhered to the provisions of law, as laid down in Section 82, 83 of the Code of Criminal Procedure, while issuing WP&A coincidentally.

The solitary point raised requiring decision is purely of law, which may be decided upon due consideration of Section 82, 83 of the Code of Criminal Procedure.

Satisfaction of the Magistrate, that the accused is evading or concealing arrest, is a ***sine-qua-non*** to issue a warrant of arrest against any person in a case, where such person has committed a non-bailable offence, whereas the proclamation may be published against an accused in a case, where it is found that such accused person, against whom a warrant of arrest has already been issued, is deliberately absconding arrest or concealing himself, which is patent in nature causing resistance to the execution of warrant of arrest. Section 82(1) and (2) of Cr. P.C. lays down the requirement of law and the formalities to be observed while making order issuing the proclamation by the Magistrate.

Section 82(3) enunciates that the statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified date, in the manner specified, in clause (1) of sub-Section (2), shall be conclusive evidence and that the requirements of the Section have been complied with, and further that the proclamation was published on such day. So a recording of statement of satisfaction of the Magistrate to the effect that the person sought to be arrested is either evading, or concealing arrest is a prerequisite to the issuance of proclamation in terms of Section 82 Cr. P.C., and further a statement in writing by the Court issuing proclamation revealing adherence to the procedure prescribed in Sub-Section 2 of Section 82 is a must prior to passing order of attachment of the property of the person, said to be either absconding or concealing arrest.

After adhering to the procedure laid down in Section 82 of the Code of Criminal Procedure, a person evading arrest may be pronounced to be proclaimed offender.

As soon as the formalities connected with the proclamation is completed, the Magistrate issuing proclamation, for reasons to be recorded in writing may at any time after the issue of proclamation, order the attachment of any property, movable or immovable, or both belonging to the proclaimed person.

Therefore, the demand of the law, while making approach by the Court below to take recourse to Sections 82 and 83 of the Code of Criminal Procedure, is that the requirements, and the formalities to be observed, have to be duly discharged, and contravention thereof has no sanction under the law.

The approach adopted by the Court below while issuing warrant of arrest and proclamation of attachment conjointly and simultaneously is devoid of the sanction of law. The requirement of law as regards simultaneous issuance of warrant of arrest and proclamation of attachment was taken up by a Coordinate Bench of this court, and in an unreported decision rendered in the case of **Nanki Bhayna @ Ratan Bhayna & Ors. Vs. The State of West Bengal**, being **CRR No. 3554 of 2013**, it was decided that the Court below committed a gross illegality in passing an order of proclamation and attachment simultaneously with the order of warrant of arrest.

The revisional application is thus allowed and the impugned order is set aside.

It is, however, made it clear that this order will not preclude the learned Magistrate from issuing any Tagid for execution of warrant of arrest, if issued against the revisionist/accused.

The investigating officer is at his liberty to make approach before the Court with a new prayer in accordance with law, and if any, prayer comes independently from investigating officer of this case, the learned Court below would dispose of the same adhering to the provisions strictly contained in Sections 82 and 83 of the Code of Criminal Procedure.

With this observation, the revisional application along with its connected application stands disposed of.

Office is directed to communicate this order to Court below without making any delay.

Urgent certified copy of this order, if applied for, be made available to the parties upon compliance with requisite formalities.

(Subhasis Dasgupta, J.)