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CRR 1620 of 2020

Amir Manger and Ors.
Vs.
State of West Bengal
(Via Video Conference)

Mr. Pawan Kumar Gupta
Mr. Arnab Saha
...for the petitioner

Mr. S. G. Mukherjee, Ld. P.P.
Mr. Madhusudhan Sur, ld. APP
...for the State

The petitioners are accused persons in Birpara Police Station Case No.32 of 2020 dated 10.02.2020 under Sections 302/34 of the Indian Penal Code read with Section 25/27 of the Arms Act. Grievance of the petitioners in the instant revision is that the learned Magistrate issued proclamation and attachment order against the petitioners on receiving non-execution report of warrant of arrest. According to the learned advocate for the petitioner, proclamation and attachment against any accused can only be issued under the circumstances laid down in Sections 82 and 83 of the Code of Criminal

Procedure. It is also submitted by him that proclamation and attachment cannot be a composite order. First, warrant of arrest against an accused is to be issued. Secondly, the report will come stating non-execution of warrant. Thereafter, under Section 82 Court can issue proclamation for the person absconding after receiving the report of proclamation that the accused still absconds, the Court can pass the order of attachment under Section 83 of the Code of Criminal Procedure.

This Court is in concurrence with the view and submission made by the learned advocate for the petitioners. In the instant case warrant was issued against the petitioners. Non-execution report of the warrant came and was placed before the Magistrate. The duty of the Magistrate was to issue an order of proclamation under Section 82 of the Code of Criminal Procedure but the learned Magistrate issued a composite order of proclamation and attachment.

I have also heard the learned P.P. in the instant case. The learned P.P. frankly submits that the learned Magistrate ought to have

passed an order only under Section 82 of the Code of Criminal Procedure.

It is needless to say that the process under Section 82 of the Code of Criminal Procedure cannot be issued unless it is established that a warrant had already been issued against a person wanted and he is absconding. In the event of non-execution of a warrant, two remedies are open, viz., (i) issue of proclamation under Section 82 (ii) attachment and sale of property under Section 83. But simultaneously issue of proclamation and attachment is illegal.

For the reasons recorded, the impugned order dated 17th April, 2020 in so far as issuance of proclamation and attachment against the petitioners cannot stand and hence the impugned order is set aside.

However, since the petitioners were absconding and the report for non-execution of warrant has already been received by the learned Magistrate, the learned Magistrate is at liberty to issue an order of proclamation strictly under Section 82 of the Code of Criminal Procedure against the petitioners.

Department is directed to communicate a copy of this order forthwith to the learned

ACJM, Alipurduar for information and compliance.

With the above observation the revisional application is disposed of.

(Bibek Chaudhuri, J.)