

11.1.2021
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CRR 65 of 2021

D & I Taxcon Services Pvt. Ltd.
vs
State of West Bengal & Anr.

Mr. Mritunjoy Halder
...For the petitioner.

Mr. S.G. Mukherjee
Mr. Arijit Ganguly
.... For the State.

This is an application seeking transfer of a pending case from ACJM, Arambagh (G.R. Case No. 1825 of 2013) to learned C.M.M., Calcutta alleging that the learned Magistrate has mechanically proceeded with this case issuing warrant of arrest against the complainant of the instant prosecution who was shown in the charge-sheet as charge-sheeted witness no.1.

Learned Public Prosecutor is present in Court and submits that at the first instance issuance of a non-bailable warrant of arrest against an witness/complainant is not encouraging one.

The prime thrust in support of the prayer for transfer of the pending proceeding is against the learned court below issuing non bailable Warrant of Arrest against a witness, what is alleged to have mechanically discharged the judicial function without making application of the mind. From the xerox certified copy of the order annexed dated 3.7.2018, it appears that fresh summons upon complainant/witness no.1 was directed to be issued on 3rd July, 2018 fixing 17th July, 2019. On the date so stipulated, a non-bailable warrant of arrest was

issued against the charge-sheeted witness no. 1. There is nothing shown in the impugned order that summons was duly served upon the witness and he has deliberately refused to attend the Court in obedience to the summons. Moreso, there is nothing conspicuous as regards issuance and service of summons to witness by mentioning a corresponding process number.

Having considered the submissions of both sides, the Court finds sufficient reasons to dispose of the instant revisional application setting aside the impugned order dated 17th July, 2019 passed by the learned ACJM, Arambagh, Hooghly. The order dated 17.07.2019, passed by Ld. A.C.J.M., Arambagh is set aside.

Learned Trial Court is further directed to issue fresh summons upon the complainant/witness no. 1 and proceed with the trial after making due adherence to the provisions of law. The Court makes it clear that while issuing warrant of arrest, the Trial Court should venture to obtain the service report as regards service of summons upon witness, without which issuance of warrant of arrest is not supportive of application of the principle governing issuance of warrant of arrest, for the deliberate failure on the part of the witness to respond to summons. Witness no. 1/complainant is directed to respond to summons upon receiving the same on the date so stipulated by the learned Trial Court, and testify the evidence, for which the Trial Court is there to record his evidence.

Learned Trial Court is further directed to dispose of the pending application, if there be any filed by the defacto complainant, providing sufficient opportunity of hearing to either of the parties to this case.

Learned Advocate for the petitioner is requested to repose his confidence upon the learned Trial Court below with a hope that the trial would be smoothly finished taking co-operation from both sides.

With the above observation, this revisional application stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon complying all the formalities.

(Subhasis Dasgupta, J.)