

**In the High Court at Calcutta
Criminal Revisional Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Subhasis Dasgupta.

CRR No. 115 of 2021

**Subhas Saha @ Bhakto Saha
Vs.
The Union of India**

For the Petitioner : Mr. Abimanyu Banerjee, Adv.

For the Union of India : Mr. Y.J. Dastoor, Ld. Additional Solicitor General.
Mr. Somnath Adhikary, Adv.

Heard on : 05.03.2021

Judgment on : 12.03.2021

Subhasis Dasgupta, J:-

The impugned order dated 18th January, 2018 passed by the Learned Additional District and Sessions Judge, 1st Court, Cooch Behar in NDPS Case No. 32 of 2017 under Sections 8 (c)/20(b)(ii)(c) of N.D.P.S Act, issuing warrant, proclamation and attachment simultaneously is the subject of challenge in this revisional application.

Learned advocate for the petitioner/revisionist taking resort to Sections 82 and 83 of the Code of Criminal Procedure submitted that there could not be any composite order issuing warrant of arrest and proclamation followed by attachment.

Argument was raised by the learned advocate for the petitioner that upon fulfilment of the circumstances, laid down in Sections 82 and 83 of the Code of Criminal Procedure, the learned Magistrate could only issue proclamation and attachment in a case, where there had been a warrant of arrest issued previously against the absconding accused.

Mr. Dastoor, learned Additional Solicitor General representing the Union of India submitted that in this case, the warrant of arrest was issued against the petitioner on 23rd October, 2017, thereafter the same could not be executed against the petitioner due to the petitioner having evaded execution of warrant of arrest.

According to Mr. Dastoor, the case against the petitioner being filed for the present by order of the learned court below, dated 24th April, 2018, the impugned order issuing WPA could not be revisited for the alleged illegality, as contended by petitioner.

Upon perusal of the impugned order, it appears that by the impugned order, the learned court below was pleased to pass an order issuing warrant of arrest and proclamation followed by attachment in one go by a composite order, even on the date of filing the case against petitioner for the present, without receiving any non-execution report of warrant of arrest. The case was thus filed for the present in the absence of any NER of warrant of arrest, issued previously against the petition, upon holding that chance of execution of warrant of arrest against the absconding accused, like petitioner, would be a remote possibility.

Since the details of the procedure laid down in Sections 82 and 83 could not be duly followed in this case, and sine the case against the petitioner was

filed for the present without adhering to the provisions of the law, as contemplated under Sections 82 and 83 of the Code of Criminal Procedure, the court is not prepared to accept the submission, as advanced by Mr. Dastoor that the impugned order issuing warrant of arrest and proclamation followed by attachment simultaneously could not be revisited. When there has been apparent infraction of the provisions of the law, as discussed above, the court has every right to take care of the infractions of the law, so as to make the court below discharge its judicial function within the bounds of law.

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

This will however, not preclude the learned court below from issuing any Tagid for execution of warrant of arrest, which has already been issued against the revisionist/petitioner. It is further clarified that learned court below in an appropriate circumstances will be free to resort to Sections 82 and 83 of the Code of Criminal Procedure, even upon receiving a prayer from the investigating officer to that effect.

With this observation and direction, the revisional application stands disposed of.

Urgent photostat certified copy of this judgment, if applied for, be given to the appearing parties as expeditiously as possible upon compliance with all necessary formalities.

(Subhasis Dasgupta, J.)

