

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

Present:

The Hon'ble Justice Subhasis Dasgupta.

CRR No. 354 of 2021

**Asoke Sharma @ Ashoke Sharma @ Ashok Sharma
Vs.
The State of West Bengal**

For the Petitioner :Mr. S. Chatterjee, Adv.
Mr. Ayan Chakraborty, Adv.
Ms. Shalini Mukherjee, Adv.

For the State :Mr. Madhusudan Sur, Ld. A.P.P.
Mr. Dipankar Paramanik, Adv.

Heard on : 24.02.2021.

Judgment on : 01.03.2021.

Subhasis Dasgupta, J:-

The impugned order dated 3rd February, 2021, passed by learned Additional District and Sessions Judge, 2nd Court, Tamluk, Purba Medinipur in S.T. No. 1 (9) of 2016, rejecting the prayer of the petitioner thereby refusing to pass an order, allowing execution and registration of a power of attorney by the petitioner/accused, while in custody, in favour of his wife, is the subject of challenge in this revisional application.

Admittedly, the petitioner is in custody since 8th May, 2014, for his alleged involvement in connection with the referred case under Sections 364/364A/302/201/120B/379/411 of the Indian Penal Code read with Sections 25(1B)(a)/35 of the Arms Act.

On 4th January, 2021, the petitioner being the custody accused, made an application, pursuant to the observation made by the Division Bench of this Court in connection with CRM No. 10400 of 2019, while rejecting the prayer for bail of the petitioner, with a prayer soliciting a direction upon the Superintendent of Correctional Home, Medinipur to allow the Registrar/Additional District Sub-Registrar to come to the correctional home, where the petitioner has been undergoing detention, for execution of a power of attorney by the petitioner in favour of his wife. The petition was supported by annexures showing the details of the properties with respect to which power of attorney was sought to be executed by the petitioner in justification of proposed claim that the properties shown in details of properties were free from any encumbrances.

The petitioner was previously favoured by State Bank of India, extending cash credit loan of Rs. 55 lakhs from Jhargram branch on 17.10.2008, and such accounts have already been settled after receiving **Rs. 20,57,618/- (Rs. Twenty Lakhs Fifty Seven Thousands Six Hundred and Eighteen only)**. A certificate was also annexed in proof of closure of that account following a settlement reached, upon liquidation of amount, as stated above.

A similar prayer, touching upon the properties of petitioner, situated in the district of East Singhbhum, State of Jharkhand was also rejected on 18th March, 2017.

In connection with hearing of bail application before a Division Bench of this Court, the financial stringency suffered by the petitioner to maintain his family members was brought to the notice of the Court, when the Division Bench observed that in the event of filing any such application before the Trial Court, the same shall be considered in accordance with law keeping in mind the urgent need for financial liquidity on the part of petitioner to prepare his defence.

In the petition filed before the court below, petitioner had taken two grounds to reveal his financial difficulties. One pertaining to meet up his legal expenses as well as day to day expenses of his family members, and another relating to medical expenses of his ailing wife, who is also co-accused in connection with the same case under reference.

Mr. Sourabh Chatterjee, learned advocate representing the petitioner submitted that both in the petition and the documents supporting the petition enough reflection had been there to reveal that the properties, with respect to which the power of attorney was sought to be administered in favour of his wife, were free from any encumbrances. But even after settlement of cash credit loan amount by the petitioner, upon making deposit of some amount, referred above, the State Bank of India issued a bank certificate reserving its right to proceed against the borrower/guarantor, as the case may be, in respect of other loan liabilities, if there be any, which according to Mr.

Chatterjee, was nothing but a disclaimer certificate ordinarily mentioned by Bank upon information being furnished following a closure or settlement of any loan account maintained in a particular bank.

According to Mr. Chatterjee, such portion of certificate being a disclaimer certificate, would be inconsequential so as to allow the prayer of the petitioner claiming execution of power of attorney in favour of his wife followed by registration of same in presence of a Registrar, to be brought before the correctional home, where petitioner is now put up.

Mr. Chatterjee proposed that petitioner could be directed to file a fresh application supported by documents before the court below for the purpose, upon setting aside the impugned order, so that the doubts surfaced over such disclaimer certificate could be eliminated.

Mr. Madhusudan Sur, learned advocate representing the State submitted that the petition including the annexures supported therewith was not sufficient enough to reveal if the two proposed properties involved were free from any encumbrances (as shown in the details of the properties being page no. 39 of the instant application).

Mr. Sur thus, tried to impress upon Court submitting that since there had been enough obscurity exposed in the petition, and the documents connected therewith, the learned court below rightly declined to pass any order, as the documents *per se* failed to inspire any confidence upon learned court below, while making consideration of the prayer of the petitioner.

It is thus clear that there developed some doubt from the documents produced, for which the prayer of petitioner could not be effectively adjudicated upon.

There has to be a complete and definite disclosure that the properties proposed to be sold to a third party upon execution of power of attorney by the petitioner in favour of his wife, who are the co-owners of the properties, so as to come to any reasonable inference that the properties were free from any encumbrances, and more so over which neither the petitioner, nor his wife has any existing liability with reference to any claim of any bank or any financial institution whatsoever.

It is thus, obligatory upon the petitioner, while venturing upon sell of the properties during the period of his incarceration, to establish convincingly that the properties proposed to be sold upon execution of power of attorney by petitioner also were not subject to any attachment issued by the order of court, irrespective of civil or criminal jurisdiction of court.

Since, the petitioner is in bare need of money to meet up expenses for preparing his defence and also to maintain his family members involving the treatment of his wife, there will be no prejudice caused to the State, if the prayer is considered afresh upon setting aside the impugned order.

The purpose of justice will be best sub-served, if a direction accordingly be given for filing an application afresh supported by necessary documents, in the light of observation made in the body of this order, within seven (7) days from the date of communication of this order to the learned court below.

The impugned order dated 3rd February, 2021, passed by learned Additional District and Sessions Judge, 2nd Court, Tamruk, Purba Medinipur, rejecting the prayer of the petitioner is set aside.

Petitioner is given liberty to make an application afresh supported by necessary documents, as stated above within seven (7) days from the date of communication of this order to the learned court below.

Petitioner is directed to make communication of this order to the learned court below.

It is clarified that if any such application is filed by the petitioner, the same shall be disposed of expeditiously as possible providing sufficient opportunity of hearing to either party to this case preferably within a fortnight from the date of filing application by petitioner, upon sensing the true purport of the order, passed by Division Bench of this Court, passed in CRM No. 10400 of 2019, wherein the financial crisis expressed by the petitioner was adequately taken care of.

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.)