

19.01.2021

Item no.6

Ct. No.42

PA

C.R.R. No. 950 of 2020

In Re: An application under Section 482 of the Code of Criminal Procedure, 1973.

In the matter of:-

Sankar Khan

.....petitioner

Mr. Abhijit Kumar Adhya

... for the petitioner

Mr. Aniket Mitra

.... for the W.B.S.E.D.C.L.

Mr. S.G. Mukherjee, Ld. P.P.

Mr. Arijit Ganguly

... for the State

The impugned order dated 03.12.2015, furnishing charge-sheet under Section 135 (1) (a) of the Electricity Act against the petitioner for having committed theft of electricity illegally, and issuing warrant of arrest and proclamation of attachment simultaneously by order dated 21.11.2019, against the petitioner are the subject of challenge in this revisional application under Section 482 Cr.P.C.

It is submitted by the learned advocate for the petitioner that the offence being compoundable, he has already deposited the necessary amount so as to obtain order compounding the offence.

Mr. Mitra, representing W.B.S.E.D.C.L submits that this court has nothing to do with the prayer for compounding, and necessary steps may be taken before the competent authority for compounding the offence.

Learned advocate for the State submits that since the petitioner was non-cooperative, the court below had to issue warrant of arrest against the petitioner, which may be taken in view incidental to the principal prayer for compounding the offence.

Upon perusal of the materials and upon hearing the both sides, it appears that the core issue claiming compounding of offence has been sought to be established taking a claim of deposit of money before the appropriate authority. The further thrust in the instant revisional application is against the order issuing warrant of arrest and proclamation of attachment against the petitioner simultaneously, by the order dated 21.11.2019.

Section 82 and 83 of the Code of Criminal Procedure, if read together then the demand of law is that there cannot be simultaneous issuance of warrant of arrest and proclamation of attachment.

The approach, thus adopted by the learned court below, while issuing warrant of arrest and proclamation of attachment conjointly and simultaneously, is devoid of sanction of law.

The requirement of law, as regards the simultaneous issuance of warrant of arrest and proclamation of attachment was taken 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 and order of proclamation and attachment simultaneously with the order of warrant of arrest.

The relevant order issuing proclamation and attachment simultaneously with the order of warrant of arrest is thus set aside.

The purpose of justice in the given circumstances of this case may be best subserved by disposing of the instant revisional application with a direction upon the petitioner to surrender before the learned court below within three (3) weeks from the date of communication of this order, and if any bail petition is furnished upon surrendering within the stipulated period, the same shall be disposed of in accordance with the law, providing sufficient opportunity of hearing to the either parties to this case.

This order will not deter the court below for making issuance of proclamation and attachment after making due adherence of the provision of law, as mentioned hereinabove, if presence of the petitioner goes unsecured for any reasons whatsoever.

As regards the proposed prayer for compounding the offence, the petitioner is free to exercise his right in accordance with the provisions of law before the competent authority after adhering to the provisions of law.

The prayer for compounding thus goes unanswered in this revisional application, which is left to be determined by the competent authority under the provisions of law.

With this observation and direction, the instant criminal revisional application is disposed of.

Learned advocate for the petitioner is directed to make communication of this order to the learned court below furnishing copy of the order.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

(Subhasis Dasgupta, J.)