

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

CRR 742 of 2021

SANDIP KUMAR BAJAJ & ANR.
Vs.
STATE OF WEST BENGAL & ANR.

For the PetitionerS : Mr. Samrat Goswami

Heard on: : 11th MARCH 2021

Judgment on : : 11th MARCH 2021

The Court:

This is an application challenging an order dated 24.02.2021 passed by the learned Metropolitan Magistrate, 17th Court in Complaint Case No. 51661 of 2019, thereby refusing to recall the warrant of arrest issued against the present petitioners.

Learned counsel appearing on behalf of the petitioners submits as follows. The petitioners are the accused in a case under Sections 138 and 141 of the Negotiable Instruments Act. As would appear from a certified copy of the order sheet, on 17.10.2019 cognizance of the offence was taken and the case was transferred to the learned Metropolitan Magistrate, 17th Court Calcutta. On 01.11.2019 summons were issued against the accused and 03.12.2019 was fixed for appearance. On

03.12.2019 the complainant filed a petition and invoked Section 27 of the General Clauses Act. On the complainant's prayer, warrant of arrest was issued against the accused. However, from the actual track report for such attempted service, it would appear that the addressee could not be located and as such, these notices could not be served upon the petitioners. The petitioners brought this to the notice of the learned Trial Court. However, by an order dated 24.02.2021, the application of the petitioners for recalling of warrant of arrest was rejected and next date was fixed for execution of warrant of arrest. Although the order dated 24.02.2021 stated that the offence was bailable in nature, however, while issuing of warrant of arrest it was not mentioned that it was bailable of warrant of arrest that was being issued.

I have heard the learned counsel appearing on behalf of the petitioners and have perused the revision petition.

No prejudice would be caused to any one if the question of setting aside the warrant of arrest issued against the petitioners are decided here and they are directed to join the proceeding before the learned Trial Court on the next date. Therefore, to avoid any protraction of the proceeding, notice need not be issued upon the private opposite party.

The learned Magistrate in the impugned order recorded as follows;-

“In spite of the same the accused did not show respect to the court by appearing in this case. Now a warrant of has been issued and as per law the accused must appear before the court in person. Even then the accused

did not appear, which clearly shows the intention of the accused not adhering to the court's order."

A Court of Law is to administer justice. This is done best in a self-effacing manner.

It is not clear from the order sheet whether notices could be served upon the petitioners. The doubt is reinforced by the complainant's prayer to invoke Section 27 of the General Clauses Act on 03.12.2019.

In view of the same, the issuance of warrant of arrest against the petitioners cannot be sustained.

The learned Magistrate ought to have realised that in view of the decision of the Hon'ble Supreme Court in the case of ***Bhaskar Industries Limited Vs. M/s. Bhiwani Denim & Apparels Ltd. & Ors. (2001) 7 SCC 401***, the accused can be granted the privilege of exemption of personal appearance under Section 205 of the Code even on the first date of appearance. Merely because a warrant of arrest was wrongly issued against the petitioners, it does not mean that the petitioners would have to forego this right and in order to 'pay respect' to a particular learned Court, appear in person on the first day.

In view of the above and to avoid any further delay in delving into the question any further, I set aside the warrant of arrest issued against the petitioners and direct the petitioners to join the proceeding before the learned Trial Court on the next date of hearing and the learned Trial Court shall continue with the proceeding from that stage. The petitioners

shall be at liberty to file an application under Section 205 of the Code on the next date of hearing and the same shall be considered in accordance with law.

With these observations, the revisional application is disposed of.

Urgent photostat certified copy of this order, if applied for, is to be given to the parties upon usual undertakings.

(Jay Sengupta, J.)

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