

12.04.2021
Item No.21
Ct. No.42
CHC

**C.R.R. No.1009 of 2021
(Physical Hearing)**

In Re: An application under Section 401 read with Section 482 of the Criminal Procedure Code, 1973.

In the matter of:-

Pankaj Shah
.....petitioner

Mr. Partha Pratim Das,
Mr. Biswabrata Basu Mallick
... for the petitioner

Md. Anwar Hossain,
Ms. Sreyashee Biswas
... for the State

This is for quashing of a proceeding being Case No.87310 of 2015 relatable to Bhowanipore Police Station Case No.320 dated 3rd September, 2015, under Section 401A of the K.M.C. Act, 1980, now pending before learned Senior Municipal Magistrate, Calcutta.

Learned advocate for the petitioner adverting to an F.I.R. lodged against the petitioner on 15th July, 2015, submits that over the selfsame allegation, petitioner has again been subjected to prosecution twice by filing a separate F.I.R. on 31st August, 2015. At the threshold of this case, learned advocate for the petitioner candidly submits that the F.I.R. lodged against the petitioner on

15th July, 2015 alleging to have undertaken construction without obtaining sanctioned plan, was ended in acquittal.

The attention of the Court is drawn to the subsequent F.I.R. dated 31st August, 2015, it appears that the Building Plan has already been cancelled and revoked as per order of the Commissioner, dated 13th July, 2015, on the basis of mutation cancelled by Chief Manager, Revenue dated 9th June, 2015. That being the position, the contention so raised by the petitioner, on the face of the subsequent F.I.R., is not same and identical.

Mr. Hossain, learned advocate representing the State after being served with copy of the application raises strong objection against the prayer for quashing, submitting that the issues involved in the subsequent F.I.R. are totally different, and cannot be taken to be identical with the first F.I.R., submitted against the petitioner on 15th July, 2015.

It is also contended by the learned advocate for the petitioner that the learned court below has mechanically issued Warrant of Arrest against the petitioner for having misused privilege of bail, and that too for absence of couple of occasions, after being infected with COVID-19.

Mr. Hossain, learned advocate for the State challenges the submission of Mr. Partha Pratim Das submitting that the misuse of privilege of bail should not be lightly viewed.

Having considered the submission of both sides and bearing in mind that the petitioner could not ensure his appearance before the learned court after being infected with COVID-19, the

Warrant of Arrest issued against the petitioner be stayed for a fortnight subject to the condition that the petitioner will surrender before the learned court below within such period of time, and if any bail petition is filed upon surrendering, the same shall be considered in accordance with the provisions of the law.

Learned advocate for the petitioner is directed to produce sufficient documents in support of his illness, relatable to the COVID-19 with which the petitioner got infected, before the learned court below upon surrendering.

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

All parties shall act in terms of copy of this order downloaded from the official website of this Court.

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

(Subhasis Dasgupta, J.)