

04.06.2021
Item no.3
Ct. No.42
CHC

**C.R.R. No.1115 of 2021
(Through Video Conference)**

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

And

In the matter of:-

Rohit Kumar Sah @ Rohit Kumar Shaw
@ Rohit Shaw

... petitioner

Mr. Anand Keshri

...for the petitioner

Mr. Saswata Gopal Mukherji, Ld. P.P.

Mr. Madhusudan Sur, Ld. A.P.P.

Mr. Dipankar Paramanick

...for the State

This is an application under Section 482 of the Code of Criminal Procedure wherein order dated 17th January, 2020 and subsequent order dated 3rd February, 2020 of learned Additional Chief Judicial Magistrate, Sealdah, South 24 Parganas issuing a Warrant of Arrest and Warrant of Proclamation and Attachment in connection with Sessions Case No.5 (3) 21 being G.R. Case No.2684 of 2019 under Sections 302/34 of the Indian Penal Code are under challenge.

Learned advocate for the petitioner/revisionist Mr. Anand Keshri taking resort to Sections 82 and 83 of the Code of Criminal Procedure submits that there cannot be any composite order

issuing Warrant of Arrest and Proclamation followed by Attachment in one go.

Argument is raised by learned advocate for the petitioner that upon fulfillment of the circumstances laid down under Sections 82 and 83 of the Code of Criminal Procedure, learned Magistrate can only issue Proclamation and Attachment in a case, where there has been Warrant of Arrest issued previously against the absconding accused.

Learned Public Prosecutor along with Mr. Madhusudan Sur representing the State conjointly submit that Warrant of Arrest issued against the petitioner on 17th January, 2020 could not be executed against the petitioner due to the petitioner having evaded execution of Warrant of Arrest.

According to State, the case has been committed to the court of Sessions after filing the case against the petitioner for the present. The State strongly contends that the case against the petitioner being filed for the present by order of the learned court below dated 6th April, 2020, the impugned order dated 3rd February, 2020 issuing WPA cannot 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 the petitioner for the present, the learned court below has not stressed upon receiving the non-execution report of Warrant of Arrest already issued against the petitioner.

The case was thus filed for the present on the simple score that the Warrant of Arrest could not be executed against the petitioner in the address for his unavailability. The chance of execution of Warrant of Arrest was thus observed by learned court below to be a remote possibility.

Since the details of the procedure laid down in Sections 82 and 83 Cr.P.C. has not been duly followed in this case, and since 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 State that the impugned order issuing Warrant of Arrest and Proclamation followed by Attachment simultaneously cannot 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 infraction of the law so as to make the court below discharge its judicial function within its bounds of the law. The instant 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 the execution of Warrant of Arrest, which has already been issued against the revisionist/petitioner.

It is further clarified that learned court below in appropriate circumstances will be free to resort to Sections 82 and 83 of the Code of Criminal Procedure even upon receiving the prayer from the investigating officer to that effect.

At this stage, Mr. Anand Keshri, learned advocate for the petitioner assures this Court that petitioner will shortly offer himself to the course of law in accordance with the provisions of the law. He also proposes for recording his submission accordingly.

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

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.)