

16.6.
2021
BR
12

CRR No. 1162 Of 2021

Somnath Chatterjee

-vs-

The Officer-in-Charge, Excise Barabani Circle and anr.

Mr. Prabir Kumar Mitra,
Mr. Pinak Mitra,
.. for the petitioner

Mr. Sandip Chakraborty ... for the State

It appears that pursuant to the order dated February 22, 2021, the petitioner has served a copy of this revisional application upon the opposite parties and an affidavit of service has already been filed to that effect.

Learned advocate for the State is present.

No one appears for the opposite party no. 1.

Mr. Prabir Kumar Mitra, learned advocate appears in support of the revisional application wherein an order of warrant of arrest dated March 3, 2021, issued against the petitioner by the learned Chief Judicial Magistrate, Paschim Bardhaman has been challenged. Mr. Mitra submits that the case has been registered on the basis of a complaint by the relevant Excise Department and in the complaint petitioner's name did not figure. The learned Magistrate ought to have issued summon first before issuance of warrant of arrest against the petitioner since it was a

complaint case.

In this regard he relies upon a judgment reported at **AIR 2008 SC 251 (Inder Mohan Goswami and another – vs- State of Uttaranchal)**.

It appears from the prayer of the Excise Department before the learned Magistrate that the petitioner was served with three consecutive notices under Section 160 of the Code of Criminal Procedure , 1973. Failure on his part to respond to such notices prompted the relevant Excise Authority to pray for issuance of warrant of arrest against the petitioner. Order impugned dated March 3, 2021, reveals that the learned Magistrate proceeded to issue warrant of arrest against the petitioner without assigning any specific reason.

Admittedly, the case has been registered as complaint case. It does not appear that the learned Magistrate was justified in such circumstances in issuing warrant of arrest at the first instance without recording any reason as mandated under Section 68 of the Bengal Excise Act, 1909.

The order impugned is, therefore, set aside. Petitioner will surrender before the learned Chief Judicial Magistrate, Paschim Bardhaman within a period of three weeks from date and in that event learned Magistrate will consider his prayer for bail independently, without being influenced by this order. If the petitioner fails to appear in

terms of this order, the learned Magistrate will be at liberty to execute the warrant in accordance with law.

CRR No. 1162 of 2021 is disposed of.

All parties are to act on the server copy of this order.

(*Kausik Chanda, J.*)