

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction

Present:
The Hon'ble Justice Jay Sengupta

CRR 1537 of 2020
with
CRAN 1 of 2020

BABUN MIDDER
VS
THE STATE OF WEST BENGAL

For the Petitioner	:	Mr. Satadru Lahiri Mr. Safdar Azam
For the State	:	Mr. Madhusudan Sur Mr. Dipankar Paramanick
Heard on	:	9 th February 2021
Judgment on	:	9 th February 2021

The Court:

CRAN 1 of 2020

Learned counsel appearing on behalf of the petitioner submits that there is a delay of thirty-three days in preferring the revision and an application under Section 5 of the Limitation Act seeking condonation of delay has been filed in this regard.

After hearing the learned advocates for the petitioner and the State and upon going through the explanation provided at paragraphs 3 to 5 of the application for condonation of delay, I am satisfied with the explanation given.

In view of the above, the delay is condoned and the application under Section 5 of the Limitation Act is allowed.

Accordingly, CRAN 1 of 2020 is disposed of.

CRR 1537 of 2020

This is an application challenging the orders dated 15.06.2020 issuing warrant, proclamation and attachment against the petitioner.

Learned counsel appearing on behalf of the petitioner submits as follows. The petitioner was not named in the F.I.R. Subsequently, a charge sheet was submitted against the petitioner and other co-accused on 27.07.2020. On 22.05.2020 upon a prayer made by the prosecution, a warrant of arrest was issued against the present petitioner fixing 01.06.2020 as the next date. On 01.06.2020 a non-execution report was filed and the next date was fixed as 15.06.2020. On 15.06.2020 the investigating officer prayed for issuance of proclamation and attachment. On the same day, the prayer of the investigating officer was allowed and an order of proclamation and attachment was issued against the petitioner. First, no report for non-execution of the warrant of arrest was filed on 15.06.2020. Secondly, no period of thirty days was indicated as required under Section 82 of the Code. The impugned orders cannot be sustained in the eye of law. Moreover, an attachment could be issued against an accused under Section 83 of the Code only after the issuance of an order of proclamation. The same cannot be done simultaneously on the first date.

Learned counsel appearing on behalf of the State submits as follows. From the records it is clear that a non-execution report was submitted by the prosecution on 01.06.2020. However, it is true that on 15.06.2020 no non-

execution was filed before the learned Magistrate. The records cannot be disputed that the order of proclamation and attachment was issued together and no period of 30 days was mentioned.

I have heard the submissions of the learned advocates appearing on behalf of the parties and have perused the revision petition and the certified copy of the order sheet annexed with the petition.

Section 82 of the Code requires that if a Court has reason to believe that any person against whom warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

Even if one does not go into the question whether filing of a non execution report in respect of warrant of arrest could serve the purpose if an order of proclamation and attachment issued at a subsequent stage, it is apparent from the records that the order of issuance of proclamation and attachment suffers from serious irregularities.

First, there is no mention of the period of not less than 30 days in the order passed under Section 82 of the Code.

Secondly, it is settled law that an order of attachment as contemplated under Section 83 of the Code cannot be passed without first issuing a proclamation.

In view of the above, the order dated 15.06.2020 issuing proclamation and attachment against the present petitioner is set aside. However, no

interference is made with the order of warrant of arrest issued against the petitioner. It shall also be open to the learned Court below to consider the question of issuance of proclamation afresh. The learned Magistrate shall continue the proceeding from the stage of issuance of warrant of arrest and shall take appropriate steps to secure attendance of the present petitioner.

With these observations, the revisional application is disposed of.

Urgent photostat certified copy of this order may be supplied to the parties expeditiously, if applied for.

(Jay Sengupta,J.)

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