

CRR 1717 of 2020

**Seikh Saddik & Anr.
Vs.
State of West Bengal**

In Re: An application under 482 of the Code of Criminal Procedure, 1973 in connection with Kulti Police Station Case No.354/2019 dated 25.08.2019 under Sections 302/201/120B of the Indian Penal Code and Sections 25/27/35 of the Arms Act pending before the Learned Chief Judicial Magistrate, Paschim Burdwan.

**Mr. Sekhar Kr. Basu, Sr. Counsel
Mr. Kushal Kr. Mukherjee
Mr. Diptangshu Basu
.....For the Petitioners
Mr. Rana Mukherjee
Ms. Sujata Das
.....For the State**

Report submitted by the Investigating Officer be kept with the record.

Mr. Basu, learned senior counsel appearing for the petitioners draws the attention of this court to the order dated 12.12.2019 wherein proclamation and attachment was issued simultaneously without compliance with the relevant provisions of Sections 82 and 83 of the Code of Criminal Procedure. The report so submitted by the Investigating Officer reflects that the proclamation and attachment order was executed. However, the nil seizure list reflect no attachment was made in respect of property. The enclosure to the report further reflects that notices were affixed at the addresses available with the Investigating Agency.

The next point so urged by the learned senior counsel is regarding the Forms, which have been used for execution of proclamation and attachment. My attention has also been drawn to Form No.4 and Form No.7 of the 2nd Schedule of the Code of Criminal Procedure, 1973. It would certainly be proper in the fitness of circumstances to use Form No.4 and Form No.7 of the present Code, instead of the Forms so used being under the old Code.

Having regard to the fact that the order so passed was of 12.12.2019 and till date the petitioners did not enter appearance in the proceedings and are apprehensive at present because of the warrant of arrest, order of proclamation and attachment pending, I am of the opinion that for the limited purpose of availing the provisions of Section 438 Cr. P. C., some breathing space must be available to them. At this stage it would be worthwhile to state that a court of law should follow the spirit of the Section and it is a settled principle of law that proclamation and attachment order cannot be passed simultaneously. The said order being passed mechanically although passed in the year 2019, I am of the opinion that a balance has to be drawn between the right of the accused and also the plight of the victim. Accordingly, the order of proclamation and attachment so executed may be stayed and the provisions of Sections 85 of the Cr. P. C. be not given effect to for a period of three weeks (same period). The said order of proclamation and attachment would revive on and from 05.02.2021. The petitioners will be at liberty

to take steps according to the remedies available in law within the meantime.

With the aforesaid observations CRR 1717 of 2020 is disposed of.

Registrar General, High Court, Calcutta is directed to see that the Forms so used by the subordinate courts are rectified and the Forms under the Code of Criminal Procedure, 1973 are used.

Department is directed to communicate this order to the Registrar General, High Court, Calcutta.

(Tirthankar Ghosh, J.)