

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CRR 340 of 2022

Anjay Paswan

-Vs-

The State of West Bengal & Anr.

For the Petitioner: Mr. Sachetan Ghosh, Adv.

For the State: Mr. Madhusudan Sur, Ld. A.P.P.
 Mr. Dipankar Paramanick, Adv.

Heard on: 10 November, 2022.

Judgment on: 10 November, 2022.

BIBEK CHAUDHURI, J. : –

1. The order dated 30th November, 2021 passed by the learned Chief Judicial Magistrate at Paschim Bardhaman issuing warrant of proclamation and attachment against the petitioner in connection with GR Case No.2391 of 2021 arising out of Kultu Police Station Case No.427 of 2021 dated 26th August, 2021 under Section 302 of the IPC read with Section 25/27 of the Arms Act is under challenge in the instant revision.

2. It is submitted by the petitioner in the instant application that on or about 25th November, 2021, petitioner came to know that police attached to Kultu P.S came to his house in connection with some case. Subsequently, he came to know from his Advocate that the aforesaid case is pending against him and the learned Chief Judicial Magistrate, Paschim Bardhaman issued warrant of proclamation and attachment vide

order dated 30th November, 2021 fixing 9th December, 2021 for execution report. The petitioner further came to know that he has been implicated in the aforesaid case only on the basis of a statement of the co-accused. It is contended on behalf of the petitioner that by passing the impugned order the learned Magistrate simultaneously issued proclamation and attachment which he cannot pass in accordance with law. It is also contended that there cannot be a simultaneous issue of warrant and proclamation against an accused in view of the specific provision of Section 82 of the Code of Criminal Procedure. Precondition of issuance of a proclamation is the satisfaction of the learned Magistrate from materials adduced by the Investigating Officer that there has been a non-execution of warrant of arrest as the accused had absconded or concealed himself. Only after such satisfaction being arrived at, the learned Magistrate is authorized to issue an order of proclamation against the accused under Section 82(1) of the Cr.P.C. In support of his contention the learned Advocate for the petitioner refers to a decision of this court in the case of **Sambhu Halder vs. State of West Bengal : (2014) 2 Cal LJ 365.**

3. It is further submitted on behalf of the petitioner that Section 83 of the Cr.P.C states that after issuance of proclamation under Section 82, the learned Magistrate for reasons to be recorded in writing pass an order of attachment of property of the absconding persons. Proviso to Section 83 states the circumstances when the order of attachment and proclamation can be issued simultaneously. However, at the time of issuance of proclamation against the accused, the court must record

reasonable satisfaction for issuance of proclamation and attachment simultaneously. Simply because the accused is absent, the court cannot issue process under Section 82 of the Code. In a most mechanical manner without recording subjective satisfaction as to why it is necessary to issue the proclamation, the learned Magistrate passed the impugned order of proclamation. In the absence of any observation in the impugned order showing subjective satisfaction for issuing proclamation and attachment simultaneously, such order cannot be sustained. Coming to the instant case it is submitted by the learned Advocate for the petitioner that the petitioner was never aware of pendency of a criminal case against him. Police never tried to issue warrant of arrest against him. The learned Magistrate did not even consider non execution report of warrant of arrest against the accused. Therefore, the impugned order is bad in law and liable to be set aside.

4. Learned P.P-in-Charge, on the other hand has supported the impugned order taking me to the order dated 24th November, 2021 and all subsequent orders. By passing order dated 24th November, 2021 the learned Magistrate took cognizance of offence under Section 302/120B IPC on the basis of the police report submitted by the Investigating Officer showing the petitioner as absconder. It is pertinent to mention that during investigation warrant of arrest was issued against the present petitioner on 28th October, 2021. Subsequently, on 30th November, 2021 the Investigating Officer submitted a report praying for issuance of warrant of proclamation and attachment against the present petitioner.

Submission of such report by the Investigating Officer clearly suggests that the learned Magistrate came to subjective satisfaction on perusal of the report of the Investigating Officer that warrant of arrest could not be executed against the petitioner because he was either absconding or concealing himself so that warrant might not be executed. It is true that the learned Magistrate has not assigned any reason in his order dated 30th November, 2021 in support of his issuing warrant of proclamation and attachment.

5. Failure to assign reason in support of the decision by the learned Magistrate may be an irregular order, but the order does not suffer from material irregularity or gross illegality resulting in reversal of the impugned order by the revisional court.

6. Under the facts and circumstances of the cases the learned Magistrate was absolutely justified in passing the impugned order.

7. I, therefore, do not find any merit in the instant revision and the same is dismissed.

(Bibek Chaudhuri, J.)