

17.06.2022

Item No.4
Ct.No.34
dc.

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

C.R.R. 449 of 2022

**Md. Shamshad Hussain @ Raja & Anr.
versus
The State of West Bengal**

In Re: An Application under Sections 397/401 read with Section 482 of the Code of Criminal Procedure, 1973.

Mr. Sourav Chatterjee,
Mr. Avik Ghatak,
Mr. Sagnik Mukherjee ... For the Petitioners.

Mr. Saibal Bapuli,
Mr. A. Bhattacharyya ... For the State.

Mr. Sandipan Ganguly, Sr. Adv.,
Mr. Dwaipayan Banerjee,
Mr. Abir Das ... For the *de facto* complainant.

Report dated 13.06.2022 submitted by Mr. Bapuli, learned advocate appearing for the State be kept on record.

Report reflects that the police authorities on several occasions attempted to arrest the present petitioners at their available addresses, but they were unsuccessful. However, no execution report was filed before the jurisdictional court in seisin of the matter. In spite of the same, on 22.06.2021, the learned court issued proclamation and attachment at the same breath.

Mr. Chatterjee, learned advocate appearing for the petitioners challenges the manner in which the proclamation and attachment has been issued by the learned court without adhering to the necessary requirements of Section 82 of the Code of Criminal Procedure.

Mr. Ganguly, learned senior advocate, appearing for the *de facto* complainant, on the other hand, submits that the petitioners are absconders in heinous offence and there should not be any interference in the order passed by the learned Magistrate which was in the greater interest of justice.

Having regard to the submissions advanced by the learned advocates for the petitioners as well as the *de facto* complainant, I am of the opinion that as no subjective satisfaction was recorded by the learned Magistrate prior to issuance of the order of proclamation and the impugned order reflects that both the proclamation and attachment order was issued parallelly, I am of the opinion that there is non-application of mind of the learned Magistrate. However, the case is of the year 2020 and the petitioners are yet to come within the fold of the court proceedings.

Accordingly, I direct that the proclamation and attachment order issued on 22.06.2021 and subsequently reiterated by the learned Magistrate be stayed till 11.07.2022. The learned Magistrate will revive the order of proclamation and attachment on 12.07.2022 in accordance with the provisions of Section 82 of the Code of Criminal Procedure.

The police authorities are directed to submit report on 12.07.2022 before the jurisdictional court.

With the aforesaid observations, the revisional application being CRR 449 of 2022 is disposed of.

All pending connected applications, if any, are consequently disposed of.

All parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)