

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION

Present:

The Hon'ble Justice Jay Sengupta

C.R.R. 569 of 2022

Chiranjit Barui @ Chranjit Barai

Versus

State of West Bengal

For the petitioner : Mr. Sumanta Chakraborty

For the State : Mr. Imran Ali
Mrs. Sutapa Banerjee

Heard on : 25.03.2022

Judgment on : 25.03.2022

Jay Sengupta, J.:

This is an application challenging an order dated 16.12.2021 issuing warrant of arrest against the petitioner as also an order dated 07.01.2022 issuing proclamation and attachment against the petitioner as passed by the learned Chief Judicial Magistrate, Barasat, North 24 parganas in G.R. Case No. 4117 of 2021.

Mr. Chakraborty, learned counsel appearing on behalf of the petitioner submits as follows. The petitioner is a permanent employee of the Railways and he is posted at Tiruchirapalli in Tamil Nadu. Possibly that is the reason why the investigating officer could not get in touch with the petitioner. The FIR in the present case was lodged on 21.11.2021. At the stage of investigation, on 16.12.2021 the investigating officer prayed for issuance of warrant of arrest against the petitioner. The same was issued fixing the next date as 21.01.2022 for execution return. However, before such time, on 07.01.2022 the investigating officer made a prayer for issuance of orders of proclamation and attachment against the petitioner and on such prayer the learned Magistrate was pleased to issue warrant of proclamation and attachment against the present petitioner. This cannot be sustained in the eye of law. There has to be a report regarding non-execution of warrant of arrest and the concerned Magistrate has to be satisfied about the same before he can proceed to issue a proclamation. That apart, an order of attachment can be issued only after exhausting the procedure for issuance of proclamation. Due to such illegal order of issuance of proclamation and attachment, the petitioner's anticipatory bail prayer before the learned Sessions Court was turned down as the same was held not maintainable. The orders issuance of warrant of arrest of proclamation and attachment against the petitioner cannot be sustained in the eye of law.

Learned counsel appearing on behalf of the State submits as follows. The prayer of the investigating officer for issuance of proclamation and

attachment can be treated as a substitute for submission of non-execution report for the warrant of arrest. Even if the issuance of proclamation and attachment is held to be illegal, there is no illegality whatsoever in the issuance of warrant of arrest against the petitioner as he was found absconding.

I have heard the submissions of the learned counsels appearing on behalf of the petitioner and the State and have perused the revision petition.

It is open to an investigating officer of the case to pray for issuance of warrant of arrest against an accused if the accused could not be found or apprehended by him.

As such, there is no illegality in such prayer and after due consideration of such prayer, a warrant of arrest was issued in this case.

However, although a date was fixed for filing of the execution report on 21.01.2022, the investigating officer filed an application at a prior date, i.e., on 07.01.2022 and without filing any non-execution report, simply prayed for issuance of proclamation and attachment.

Learned Magistrate also did not insist upon filing of a non-execution report and simply went on to issue of a proclamation and attachment on such application. This cannot be sustained in the eye of law.

Besides, proclamation and attachment cannot be issued simultaneously on the first date. Sections 82 and 83 of the Code give a detailed procedure in respect of issuance of proclamation and attachment. An order of attachment can be issued only after exhausting the whole process.

Therefore, the order issuing proclamation and attachment in the present case cannot be sustained.

Therefore, although the challenge to the order dated 16.12.2021 is rejected, the order dated 07.01.2022 is partly set aside to the extent of issuance of proclamation and attachment against the petitioner.

With these observations, the revisional application is disposed of.

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

(Jay Sengupta, J)