

Form J(2)

**IN THE HIGH COURT AT CALCUTTA  
Criminal Revisional Jurisdiction  
Appellate Side**

**Present :  
The Hon'ble Justice Bibek Chaudhuri**

**C.R.R. 1848 of 2022**

**Bibhas Dutta & Anr.  
Vs.  
State of West Bengal**

**For the petitioner : Mr. Allen Felix, Adv.**

**For the State : Ms. Anasuya Sinha, Adv.  
Mr. Pinak Kr. Mitra, Adv.**

**Heard on : 30.06.2022**

**Judgment On : 30.06.2022.**

**Bibek Chaudhuri, J.**

Affidavit-of-service be kept with the record.

The petitioner has challenged the legality, validity and propriety of the order dated 18<sup>th</sup> September, 2021 where the learned Additional Chief Judicial Magistrate, Katwa, Purba Burdwan issued proclamation against 16 accused persons of whom Bibhas Dutta and Amlan Chatterjee @ Johor are the petitioners.

Having heard the learned Advocate for the petitioners and the learned Public Prosecutor-in-Charge who in all fairness submits that the impugned order is not passed in accordance with law, this Court finds that prior to issuance of proclamation against the accused persons, it is required for the Court to first issue warrant of arrest. After receiving non-execution report of warrant of arrest, the learned Magistrate is empowered to issue an order of attachment, when attachment fails, the accused may be declared as proclaimed offender.

It appears from the order dated 31<sup>st</sup> July, 2021 that warrant of arrest was issued against the accused persons but execution report was not received by the Trial Court.

It is also pointed out by the learned Public Prosecutor-in-Charge that the petitioner has not annexed the orders dated 13<sup>th</sup> August, 2021 and 1<sup>st</sup> September, 2021. The learned Advocate for the petitioner has handed over the certified copy of the order dated 1<sup>st</sup> September, 2021 where the learned Magistrate fixed 14<sup>th</sup> December, 2021 for execution report of warrant of arrest in respect of the accused persons whose names are appearing in the order dated 18<sup>th</sup> September, 2021.

The order per se is illegal.

Accordingly the order dated 18<sup>th</sup> September, 2021 is set aside. However, the instant revision has been filed by two petitioners out of the above named 16 accused persons. The said two petitioners are directed to surrender before the Trial Court within 7 days from the date of this order.

The learned Trial Judge shall pass necessary order in respect of the petitioners of the instant revision if they surrender in accordance with law.

During this period, the execution of warrant of arrest against the petitioners be stayed.

**(Bibek Chaudhuri, J.)**