

19.7.2022
S.D.
26.

C.R.R. 2024 of 2018
With
CRAN 1 of 2019 (Old CRAN 881 of 2019)

Arun Kumar Khanra
Vs.
Subrata Mitra & Anr.

Mr. Shibaji Kumar Das
Mr. Ahshan Ahmed
Ms. Rupsa Sreemani

...For the Petitioner.

Mr. Madhusudan Sur, A.P.P.,
Mr. Dipankar Pramanick

...For the State.

Mr. Goutam Wilson
Mr. Ashok Jha

...For the O.P. No. 1.

Learned advocates for the petitioner and opposite party no. 1 and
opposite party no. 2 are present.

The revisional application is listed today for hearing.

Received report from the Registrar Administration (L & OM) dated
13.7.2022. It is gathered from the report that notice was served upon
Subrata Mitra/O.P. No. 1 by way of pasting it in front of his house as no
one agreed to receive it and that Mr. Mitra was not found available.
Notice has been duly served upon the petitioner.

Learned advocates for the petitioner filed an affidavit of service and submitted that the postal envelop addressed to opposite party no. 1./Subrata Mitra was returned unserved.

This revisional application under Section 482 of the Cr.P.C. read with Section 401 of the Cr.P.C. has been filed by the accused/petitioner assailing order dated 17.5.2018 passed by learned Judicial Magistrate, 1st Court, Malda in connection with C. Case No. 434 of 2011 under Section 138 and 142 of the N.I. Act, 1881 and under Section 420/406 of the IPC.

It is submitted by learned advocates for the petitioner that the petitioner is a resident of Calcutta and the impugned order issuing Warrant of Arrest against him was passed by learned Magistrate without recording his satisfaction. My attention was drawn to an earlier order passed by the Court on 21.5.2013 when Warrant of Arrest was issued against the accused person on his absence. Thereafter, the accused appeared on 25.4.2014 and filed an application under Section 205 of the Cr.P.C. praying for dispensing his attendance during trial. After the accused was represented on few occasions through his learned advocate, the application under Section 205 of the Cr.P.C. came up for hearing. On 13.3.2018, the Jurisdictional Court noted that Warrant of Arrest was issued against the accused and no execution return was received and further observed that as Warrant of Arrest was pending, the hearing of the petition of the accused was not possible and found that the attendance of the accused was misconceived. On the following day, i.e. on 17.5.2018, learned Magistrate rejected the petition of the accused

wherein he prayed for recalling of the Warrant of Arrest. It is submitted by learned advocates for the petitioner that when the accused was already before the Court, the Warrant of Arrest issued against him should have been recalled. It is contended that the impugned order suffers from illegality and the same requires to be set aside.

Heard learned advocates for the State and learned advocates for opposite party no. 1. No objection is raised by learned advocate for the State in this matter.

Considering the submissions made by learned advocates for the respective parties and the contents of the impugned order, I am of the view that when the accused person was present before the Court on several occasions and had filed an application under Section 205 of the Cr.P.C., learned Magistrate ought to have considered his application for recalling of the Warrant of Arrest issued against him on earlier occasion for his absence.

The impugned order dated 17.5.2018 therefore suffers from irregularity and impropriety and the same is set aside.

The revisional application is accordingly allowed on contest.

Petitioner is directed to appear before the Court and file a fresh application for recall of Warrant of Arrest which shall be disposed of in the light of my above observations.

Interim order, if any, stands vacated.

Petitioner is directed to appear before the Court within fortnight from the date of communication of this order.

Let a copy of this order be communicated to learned Judicial Magistrate, 1st Court, Malda for information.

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

(Ananda Kumar Mukherjee, J.)