

27.09.2022
S/L No.86
KS

C.R.R. 1956 of 2021
Pummy Thakur & Anr.
-Vs.-
The State of West Bengal & Anr.

Mr. S. S. Roy
Mr. Dilip Kumar Samanta
Mr. Debapriya Samanta
..... For the Petitioners

Mr. Ranabir Roychowdhury
Mr. Mainak Gupta
.....For the State

The order dated 17.11.2020 passed in Misc. Execution Case No.23 of 2020 reflects that the Court was pleased to issue notice upon the opposite parties which included the present petitioners. The order dated 22.11.2020 as also the orders dated 25.01.2021, 26.02.2021, 29.03.2021, 29.04.2021, 03.06.2021 and 04.08.2021 do not reflect that any service was effected and the learned Magistrate issued warrant of arrest against the present petitioners.

Mr. Roy, learned advocate appearing for the petitioners submits that the order dated 04.08.2021 suffers from inherent illegality. In view of the fact that the learned Magistrate at the first instance issued warrant of arrest without initially issuing a distress warrant. To that effect, learned advocate draws the attention of this Court to Section 128 of the Code of Criminal Procedure and submits that it was incumbent upon the learned Magistrate first to comply with the provisions of Section 128 and thereafter, issue a warrant for levying the amount due in the manner provided for levying fine which in usual terms is called distress warrant.

Learned advocate submits that the order of the learned Magistrate issuing warrant of arrest at the first instance, as such, was never the intention of the legislature and the said order suffers from inherent illegality and, as such, is liable to be set aside.

I find substantial force in the submission of the learned advocate appearing for the petitioners. In view of the learned Judicial Magistrate, 6th Court, Asansol, Paschim Burdwan is directed to first issue warrant in the nature and manner as provided under Sub-Section (3) of Section 125 for recovery of the amount and not against the person concerned.

Thus, the warrant of arrest so issued is hereby quashed.

Learned Judicial Magistrate, 6th Court, Asansol, Paschim Burdwan is directed to issue warrant for recovery of arrears at the first instance and, thereafter, for non-compliance of the same to the next harsher process of law. The order dated 04.08.2021 issuing warrant of arrest so far as the present petitioners are concerned are hereby set aside. Learned Magistrate would act in accordance with the directions set out above.

With the aforesaid observations, C.R.R. 1956 of 2021 is allowed.

Pending applications, if any, are consequently disposed of.

All parties are directed to act on the server copy of this order downloaded from the official website of this Hon'ble Court.

(Tirthankar Ghosh, J.)