

18.08.2022
Ct No. 21
D/L 193
ab

C.R.R. 2219 of 2021
With
IA No. CRAN 4 of 2022
With
CRAN 5 of 2022

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

In re : **Manik @ Mani @ Srikanta Sarkar,**

... Petitioner

Mr. Mayukh Mukherjee,
Mr. Abhijit Singh,
Mr. Sarthak Mondal,

... for the petitioner

Mr. Swapan Banerjee,
Mr. Suman De,

... for the State

Re: CRAN 5 of 2022

This is an application for restoration.

I am of the view that the petitioner has sufficiently explained the reason for non-appearance of his learned advocate before this Court on 02.08.2022.

Accordingly, the order dated 02.08.2022 is recalled. The revisional application being CRR 2219 of 2021 is restored to its original file and number.

The application for restoration being **CRAN 5 of 2022** is allowed.

On the earlier occasion, the petitioner approached this Court challenging an order dated 03.05.2021 passed in connection with G. R. Case No. 224/2018 under Sections 302/201 of the Indian Penal Code, 1860 whereby the learned Additional Chief Judicial Magistrate, Uluberia, passed an order of proclamation and attachment against the petitioner simultaneously. That order was set aside by this Court on the ground that the learned Magistrate ought not to have issued proclamation and attachment order simultaneously without recording his satisfaction as to the non-execution of the warrant issued against the petitioner. It was further observed that the proclamation and attachment order cannot be issued simultaneously.

It appears that after the order dated 03.05.2021 was set aside, the case was committed to the Court of learned Sessions Judge and by the order impugned dated 04.10.2021, the learned Additional Sessions Judge, 2nd Court, Uluberia, Howrah recalled the warrant of arrest issued by the learned Additional Chief Judicial Magistrate, Uluberia and issued a warrant of proclamation and attachment as per the provisions of Sections 82 and 83 of the Code of Criminal Procedure, 1973 against the petitioner.

It has been submitted by Mr. Mayukh Mukherjee, learned advocate for the petitioner that the law is well settled that proclamation and attachment order cannot be issued simultaneously. Therefore, the order of the learned Additional Sessions Judge is liable to be set aside.

Mr. Swapan Banerjee, learned advocate appearing for the State on the other hand produces the case diary to show the complicity of the petitioner in the alleged commission of the offence under Sections 302/201 of the Indian Penal Code, 1860.

After hearing the respective parties, I am of the view that the learned Additional Sessions Judge issued the warrant of proclamation and attachment “as per the provisions of Sections 82 and 83 of the Code of Criminal Procedure, 1973”, against the petitioner. The language of the order of the learned Additional Sessions Judge does not really suggest that the order of proclamation and attachment has to be issued simultaneously. What exactly has been directed is to comply with the provisions of Sections 82 and 83 of the Code of Criminal Procedure, 1973 in issuing proclamation and attachment order.

I am also not satisfied with the conduct of the petitioner. When the proclamation and attachment order issued against him was set aside by this Court on an earlier occasion it was open for him to take appropriate steps, but the petitioner neither filed an application for anticipatory bail nor did he surrender before the learned Magistrate.

I am not inclined to permit the petitioner to play with the process of the Court on the ground of alleged defects in the order of the learned Additional Sessions Judge. I am of the view that the order impugned should be read as an order for issuance of proclamation and attachment in accordance with the provisions of Sections 82 and 83 of the Code of Criminal Procedure, 1973.

In that view of the matter, I find no illegality in the order of the learned Additional Sessions Judge.

Accordingly, CRR 2219 of 2021 along with CRAN 4 of 2022 is dismissed.

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

(Kausik Chanda, J.)