

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CRR 2984 of 2022

Shishir Ghosh & Ors.

-Vs-

The State of West Bengal & Anr.

For the Petitioner: Mr. Kallol Mondal, Adv.,
 Mr. Krishan Ray, Adv.,
 Mr. Souvik Das, Adv.

For the State: Mr. Rudradipta Nandy, Adv.,
 Mrs. Sonali Das, Adv.

For the Opposite Party No.2:
 Mr. Soumyajit Das Mahapatra, Adv.,
 Mr. Shamik Chatterjee, Adv.,
 Mr. Aditya Bikram Mahata, Adv.,
 Ms. Pushpita Bhowmick, Adv.,
 Ms. Rima Biswas, Adv.

Heard on: 16 November, 2022.

Judgment on: 09 December, 2022.

BIBEK CHAUDHURI, J. : –

1. Petitioners are the charge-sheeted accused persons in connection with Mangalkote Police Station Case No.34 of 2021 dated 27th January, 2021 for offences punishable under Sections 341 /326 /307 /302/120B/212/34 of the Indian Penal Code corresponding to GR Case No.89 of 2021 pending before the learned Additional Chief Judicial Magistrate, Katwa in the District of Purba Bardhaman.

2. The petitioners have challenged order dated 9th April, 2021 and all other subsequent orders passed by the learned Magistrate in connection with aforesaid case.

3. It is submitted by the petitioners that after registration of the aforesaid FIR case on 27th January, 2021 the learned Additional Chief Judicial Magistrate, Katwa issued warrant of arrest against the petitioners vide order dated 18th March, 2021. In execution of warrant of arrest, some accused persons were arrested. On 9th April, 2021 the Investigating Officer made an application before the learned Magistrate for issuance of proclamation and attachment against the petitioners. The learned Magistrate allowed the prayer for issuance of proclamation. On 14th April, 2021 charge-sheet was filed against 44 accused persons including the petitioners before the said court of the learned Magistrate. On 24th June, 2021 the Investigating Officer submitted a report of proclamation issued against the accused persons/petitioners. On 16th February, 2022 the learned Magistrate issued order of attachment against the petitioners. The Investigating Officer submitted a report on 5th April, 2022 after executing the writ of attachment with 'Nil' seizure list.

4. It is submitted by Mr. Kallol Mondal, learned Advocate for the petitioners that an order of proclamation for person absconding can only be passed by the learned Magistrate under the provision of Section 82(1) of the Code of Criminal Procedure if the court has reason to believe that the person against whom warrant of arrest has been issued has absconded or is concealing himself so that such warrant cannot be

executed. The order dated 9th April, 2021 does not contain subjective satisfaction of the learned Magistrate on the point that the petitioners have been absconding or concealing themselves so that warrant issued against them could not be executed.

5. The learned Advocate for the petitioners then takes me to the order dated 24th June, 2021 passed by the learned Magistrate regarding non-execution of warrant of proclamation and attachment against the petitioners. On the same date the Investigating Officer submitted execution report of proclamation after service against the petitioners. Finally on 16th February, 2022, the learned Magistrate issued order of attachment of property, movable or immovable belonging to the proclaimed offenders.

6. It is ascertained from the submission made by the learned Advocate for the petitioners that they are aggrieved against the order dated 9th April, 2021 on the ground that the order of proclamation was issued without subjective satisfaction which is contrary to the provision of Section 82 of the Cr.P.C.

7. The learned P.P-in-Charge, on the other hand has supported the impugned orders passed by the learned Magistrate. He specifically refers to the order dated 9th April, 2021 where it is recorded by the Magistrate that he has perused the prayer of the Investigating Officer. He also heard the learned Counsels and prayer of the Investigating Officer for proclamation which was allowed. Therefore, it is not the case as pointed

out by Mr. Mondal that Investigating Officer did not make any prayer for issuance of proclamation against the accused persons.

8. Indisputably, the petitioners are accused in a case under Section 302 of the IPC. In **Vimalben Ajitbhai Patel vs Vatslabeen Ashokbhai Patel & Ors** reported in **(2008) 4 SCC 649** it was held by the Hon'ble Supreme Court that Section 82 of the Cr.P.C was enacted to secure presence of the accused before the court. On the achievement of the said purpose, the order of force of the attachment does not exist. Section 82 of the Code has laid down the conditions when a person against whom an order of proclamation is issued may be declared to be an absconding offender. Where a court has issued warrant of arrest against a person and the court has presumed to believe that such person has either absconded or is concealing himself so as to ditch the court, the court may issue an order of proclamation against such person, ordering them to appear before the court on a certain date at a certain time. If in terms of the order of proclamation the accused fails to appear he is declared as proclaimed offender. It is at that stage, the court can issue an order of attachment of that property of the absconding accused.

9. Coming to the instant case, it is found from the order dated 9th April, 2021 that the learned Magistrate issued order of proclamation against the accused persons on the prayer of the Investigating Officer who failed to execute the warrant of arrest and prayed for issuance of order of proclamation.

10. I do not find any illegality or material irregularity in the impugned order.

11. Accordingly, the instant revision being devoid of any merit is dismissed on contest.

12. The records of CRM (A) 461 of 2022, CRM 6018 of 2021 and CRM (DB) 3295 of 2022 be returned to the Criminal Section.

(Bibek Chaudhuri, J.)