

07.09.2022
Item No.148.
M/L.
Mithun
Ct.42

CRR 3042 of 2022

Namita Biswas @ Nandita
Biswas @ Nandini Biswas
Vs.
State of West Bengal

Mr. Angshuman Chakraborty, Adv.
Mr. Shashanka Shekhar Saha, Adv.

...for the petitioner.

The petitioner is the mother-in-law of the deceased who had met with an unnatural death at her matrimonial home within six years of her marriage.

The petitioner has approached this Court assailing an order dated 22nd February, 2022 where the learned Judicial Magistrate, 2nd Court at Diamond Harbour issued proclamation and attachment issued simultaneously vide order dated 22nd February, 2022.

It is found from the record that in connection with Magrahat Police Station Case No.25 of 2022 which is assailed in the instant revision, police submitted charge-sheet on 4th April, 2022 and the learned Magistrate took cognizance of offence on 18th April, 2022.

It is contended on behalf of the petitioner that the petitioner being the mother-in-law cannot exercise his statutory rights praying for anticipatory bail on the ground that the order of proclamation and attachment issued simultaneously are pending against him.

It is also submitted by her that the husband and father-in-law of the deceased are on bail.

Needless to say that an order of proclamation and attachment cannot be passed simultaneously in a composite order. If warrant of arrest is issued against any accused, the Court issuing warrant of arrest must wait till receipt of non-execution report. On receipt of non-execution report, the learned Magistrate is empowered to pass an order of attachment of property only after receiving execution report of attachment and in case non appearance of the accused, he / she may be declared as a proclaimed offender.

In view of such circumstances, order dated 22nd February, 2022 is per se illegal and liable to be set aside. Accordingly, the instant revision is allowed. The order dated 22nd February, 2022 is set aside.

The learned Magistrate is directed to follow the procedure against the absconding accused as laid down hereinbefore.

(Bibek Chaudhuri, J.)