

Court No. 3
Item 20
Sk & Ali
02.08.2022

**Calcutta High Court
In The Circuit Bench at Jalpaiguri**

CRR 67 of 2019

**In Re: An application under Section 401 read with Section
482 of the Code of Criminal Procedure.**

Ajay Jha

Vs

The State of West Bengal & Anr.

Mr. Aditishankar Chakraborty

Mr. Nilay Chakraborty

...for the State

None appears on behalf of the petitioner on call.

The petitioner has preferred the present revisional application for quashing of the proceedings being Petition Case No. 117 of 2018 pending before the learned Sub-Divisional Executive Magistrate, Siliguri under Section 107 of the Code of Criminal Procedure, 1973 and all orders passed therein including the order dated 30.08.2018.

Precisely by the present revision the petitioner has challenged the issuance of proclamation under Section 82 of the Code of Criminal Procedure. Mr. Niloy Chakraborty, learned advocate for the State submits that there is no infirmity in this impugned order as it has been passed in accordance with law.

It would be profitable to reproduce the provision of Section 82 of the Code which is as hereunder:-

82. "Proclamation for person absconding- (1) *If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.*

(2) *The proclamation shall be published as follows:-*

(i)(a) *it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;*

(b) *shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;*

(c) *a copy thereof shall be affixed to some conspicuous part of the Court-house;*

(ii) *the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in*

the place in which such person ordinarily resides.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section(2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

[(4) Where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under sections 302, 304, 364, 367, 382, 392, 393,394,395,396,397,398,399,400,402,436,449,459 or 460 of the Indian Penal Code (45 of 1860), and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.

(5) The provisions of sub-sections(2) and (3) shall apply to a declaration made by the Court under sub-section(4) as they apply to the proclamation published under sub-section(1).]”

On perusal order No. 6 dated 30.8.2018 passed in Petition Case No. 117 of 2018, it appears that warrant of arrest issued against the petitioner could not be executed despite repeated attempts and there is a categorical finding by the Sub-Divisional Magistrate, Siliguri that there is deliberate conscious effort on the part of the petitioner to conceal his whereabouts. On such basis, the proclamation under Section 82 of the Code was issued. Further, it is found that the petitioner has been directed to appear before the Court on 4th October, 2018 i.e. more than period of thirty days as envisaged in the provision.

In the aforesaid backdrop, this court finds that such order does not call for any interference.

Accordingly, the present revisional application stands dismissed.

All connected applications stand disposed of.

Interim order, if any, stands vacated.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Bivas Pattanayak, J.)