

25.07.2023
Serial no. 37
[G.S.D]

CRR 2363 of 2023

In the matter of : Mainul Sk @ Mainul Islam

... .. Petitioner

Mr. S. S. Roy
Mr. D. K. Samanta
Mr. D. P. Samanta

... For the Petitioner

Mr. Madhu Sudan Sur
Mr. Manoranjan Mahata

... for the State

The present revisional application has been preferred challenging the Order No. 15 dated 06.04.2022 issuing Warrant of Arrest against the petitioner by the Learned Judge, Special Court, under NDPS Act, Murshidabad in connection with NDPS Case No. 229 of 2021 arising out of Raninagar P.S. Case No. 451 of 2021 dated 09.10.2021 under Sections 21(C)/29 of the NDPS Act, 1985.

Mr. Roy, Learned Advocate for the petitioner, submits that the order dated 06.04.2022 passed by the Learned Special Court is bad-in-law in view of the fact that there were no reasons assigned by the Learned Magistrate while issuing warrant of arrest so far as the present petitioner, being Mainul Sk. @ Mainul Islam, is concerned.

In order to substantiate his submissions, Learned Advocate has relied upon Hon'ble Division Bench judgment

reported in 1974 CRL.L.J. 176 (*Subol Mondal & Anr.-Vs-The State and Anr.*).

The attention of this Court is drawn to Paragraph 3 of the said judgment, which is set out as follows:

"3. The order dated 8-3-72 is again wrong for another reason. Sub-section (1A) of Section 204 lays down that no summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed. There is no note in the order dated 8-3-72 that the list of prosecution witnesses has been filed. Under Section 90 of the Code of Criminal Procedure, a court may, in any case in which it is empowered by Criminal Procedure Code to issue summons for the appearance of any person, issue after recording its reasons in writing, a warrant for his arrest in lieu of or in addition to summons. In this case, the learned Magistrate issued warrant of arrest against the accused persons on 8-3-72 without recording his reasons in writing in accordance with Section 90 of the Code of Criminal Procedure. As provided in Section 204(2), the provisions of Section 90 are to be observed when issuing process under Section 204(1). The order dated 8-3-72 shall,

therefore, be set aside. Necessarily, the order dated 30-8-72 vacating the Subdivisional Magistrate's order staying operation of that order shall also be set aside. The Subdivisional Magistrate Sri R. K. Bhattacharyya or his successor in office shall now consider the report of the inquiring Magistrate, together with the statements made on oath by the complainant and his witnesses, if any, and decide whether summons should issue or not. He will fix a date, hear the complainant and/or his lawyer and then make an order under Section 203 or Section 204 of the Code of Criminal Procedure."

Reliance has also been placed on a Co-ordinate Bench judgment passed in CRR 4678 of 2022, wherein it was recorded by the Learned Trial Court that since no reasons were assigned as contemplated under Section 87 of the Code of Criminal Code, the said warrant of arrest was set aside and the Learned Co-ordinate Bench was pleased to direct the Ld. Trial Court for issuing fresh warrant of arrest following the provisions of Section 87 of the Code of Criminal Procedure expressing his subjective consideration to the extent that if issuance of summons do not serve the purpose, warrant of arrest should be issued.

Reliance is also made by the Learned Advocate for the petitioner in respect of another point of law, particularly, on the issue if the initial order is bad-in-law, the subsequent orders are also bad-in-law.

To that effect, Learned Advocate has placed his reliance upon paragraphs 72 to 76 of the judgment of the Hon'ble Supreme Court reported in *AIR 2012 SC 364 (State of Punjab v. Davinder Pal Singh Bhullar & Ors.)*.

Reliance is also placed on the celebrated judgment of the Hon'ble Supreme Court reported in *AIR 1936 PC 253 (Nazir Ahmad -vs- King-Emperor)*, wherein it has been held that "where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden."

I have considered the submissions of the Learned Advocate appearing for the State and also considered the Case Diary. The Case Diary reflects that there are G.D. Entries which have been reported by the concerned Sub-Inspector of Raninagar P.S., wherein it has been stated that after the raid was conducted, the present petitioner Mainul Sk. @ Mainul Islam could not be found. List of such raid is reflected in the General Entry Diary dated 17th March, 2022.

The Charge-sheet in this case was filed on 6.4.2022 under the provisions of Section 21(C)/29 of the NDPS Act and the recording in the charge-sheet of the Learned Special

Court is that "Seen the charge-sheet. Cognizance is taken, ... I.O. has prayed for issuance of warrant against Mainul Sk., ... Issue warrant of arrest against the c.s. accused no. VI".

The Division Bench judgment reported *in 1974 Cr.L.J. 176* was dealing with a complaint case wherein the issue was called upon at the stage of Section 204 of the Code of Criminal Procedure and after examination of the complainant and its witnesses.

The observations in *AIR 2012 SC 364* relates to the question as to whether a High Court can pass an order to an application entertained after final disposal of the criminal appeal or even *suo motu* particularly, in view of the provisions of section 362 of the Code of Criminal Procedure 1973 and as to whether in exercising its inherent jurisdiction under Section 482 of the Cr.P.C., the High Court can ask an investigating agency to investigate a case following a particular procedure, through exceptionally unusual method which is not in consonance with the statutory provisions of Cr.P.C.

In the judgment of the Privy Council, their Lordships were deciding on the issue relating to the provisions of Section 164 and Section 364 of the Code of Criminal Procedure.

The present proceedings are under the provisions of the NDPS Act. The petitioner approached this Court at a

stage when the order of attachment was directed to be executed and date was fixed on 3.8.2023.

The duty of this Court while exercising its powers under Section 482 of the Code of Criminal Procedure is not only to see that there has been abuse of the process of law or the interest of justice has been jeopardized but also to ascertain as to whether there has been an adherence to the provisions of law.

This Court while exercising its powers under Section 482 of the Code of Criminal Procedure would also examine the effect of Section 397 of the Code of Criminal Procedure, to satisfy itself regarding the correctness, illegality or propriety of any finding or sentence or any order. The correctness of an order is to be assessed from the background of the circumstances of each and every case.

In this case, the petitioner was absconding and/or was not available and the Investigating Agency in course of the investigation, in spite of raid, could not trace out the present petitioner. As such, while submitting the charge-sheet, the petitioner was shown as an absconder and prayer was advanced under Section 87 of the Code of Criminal Procedure. If the Court, which is empowered to issue summons for the appearance of any person, is convinced that the person is absconding, in that case, the said Court is entitled to issue warrant of arrest at the first instance.

Having regard to the statutory provisions and the nature of the order passed by the Learned Special Court on 6.4.2022, I am of the view that since the Learned Special Court has observed that it has seen the charge-sheet prior to the order of warrant of arrest being recorded, I am of the opinion that the same would suffice for the purposes of the issuance of process to the satisfaction in relation to the warrant of arrest, so issued.

Accordingly, I do not find any reason to interfere with the order dated 6.4.2022 and, as such, the issue so canvassed in the present revisional application, do not call for any interference.

With the aforesaid observations, CRR 2363 of 2023 is dismissed.

Pending application(s), if any, is also dismissed.

Parties to act on a server copy of this order, duly collected from the official website of the Hon'ble High Court, Calcutta.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

(Tirthankar Ghosh, J.)