

Form J(1) **IN THE CIRCUIT BENCH AT JALPAIGURI**
Criminal Revisional Jurisdiction
Appellate Side

Present :
The Hon'ble Justice Bibek Chaudhuri

C.R.R. 65 of 2023

Sukhamoy Chakraborty
Vs.
The State of West Bengal .

For the petitioner : Mr. Milon Mukherjee, Sr. Adv.
Mr. Rana Mukhopadhyay, Adv.

For the State : Mr. Saswata Gopal Mukherjee, Ld.P.P.
Mr. Rudradipta Nandy, Adv.

Heard on : 16.03.2023

Judgment On : 16.03.2023.

Bibek Chaudhuri, J.

The instant revision is taken up urgently in the supplementary list considering the acute urgency of the matter.

The instant revision is directed against an order dated 15th March, 2023 passed by the learned Judicial Magistrate, 3rd Court at Alipurduar, Jalpaiguri by passing of which the learned Magistrate directed the Inspector-in-Charge of Burdwan Police Station to appear personally before his Court on 17th March, 2023 and to file show-cause on affidavit

as well as execution report of warrant of arrest against Dr. Mithilesh Halder who is presently posted at Burdwan. The learned Magistrate also directed the Inspector-in-Charge to take note of the fact that any deviation from this order will make him responsible and liable to face consequent under Section 166A and Section 174 of the Indian Penal Code including issuance of warrant against him under Section 374 of the Code of Criminal Procedure.

Before dealing and discussing about the impugned order, I would like to record at the outset that temperament is not only the essential but basic attribute of a Judge. If judicial act and conduct expresses ill-temperament and projected ill-feeling towards any person who are coming to the Court to seek justice as well as the persons who are responsible for enforcement of law, in other words, Law Enforcing Agency, there shall be occurrence of failure of justice.

It is true that aailable warrant was issued against a charge-sheeted witness namely Dr. Mithilesh Halder who is presently posted at Burdwan through the Inspector-in-Charge, Burdwan Police Station, petitioner herein. The petitioner submitted a report stating, *inter alia*, that the said Medical Officer is on earn leave and presently he is on tour in Rajasthan and he is not present in the city of Burdwan. The learned Magistrate failed to consider such aspect and passed the impugned order which patently expresses his anger towards Law Enforcing Agency.

The learned Magistrate did not take any report from the office of the Superintendent of Police, Alipurduar as to whether the technical and electrical arrangement has been made in his office for transmission of outstation warrants and other processes. He jumped to the conclusion that theailable warrant of arrest issued against the witness, namely, Dr. Mithilesh Halder was served electronically to the present petitioner and he refused to act upon it.

The learned Magistrate also did not consider as to whether the warrantee could be produced before his Court when he was out of station.

On due consideration of the materials on record and submissions made by Mr. Mukherjee, learned Senior Counsel on behalf of the petitioner and in view of the fact that the learned Public Prosecutor is also present on behalf of the State and he has endorsed the submissions made by Mr. Mukherjee, I am inclined to dispose of the instant revision by setting aside the order dated 15th March, 2023.

Accordingly, the instant revision is allowed.

The order dated 15th March, 2023 is set aside.

The learned Judicial Magistrate, 3rd Court at Alipurduar is directed to issue fresh process against Dr. Mithilesh Halder through the Superintendent of Police, Alipurduar to be transmitted to the Inspector-

in-Charge, Burdwan giving him at least fortnight time to execute the process and produce the witness before his Court for recording evidence.

Parties are at liberty to act on the server copy of the order.

(Bibek Chaudhuri, J.)

***Mithun De/
A.R. (Ct).
SI No.01.
S/L.***