

8.5.2023
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Ct. no. 3
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CALCUTTA HIGH COURT
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction

CRR 86 of 2023

In the matter of : Shyamal Barman
...petitioner

Mr. Arnab Saha ...for the Petitioner

Mr. Aditi Shankar Chakraborty, Ld. APP
Mr. Aniruddha Biswas
...for the State

Being aggrieved by the impugned order dated 26.4.2022 passed by the learned Additional Chief Judicial Magistrate at Mathabhanga in G.R. case no. 120 of 2020, the present application under Section 397,401 and 482 of the Code of Criminal Procedure has been preferred.

By the impugned order, learned court below, after receiving non-execution report of warrant of arrest, was pleased to issue both proclamation and attachment against the petitioner/accused Shyamal Barman.

Being aggrieved by that order, learned counsel for the petitioner submits that the order impugned is ex facie bad in law in view of Sections 82 and 83 of the Code of Criminal Procedure. In fact, learned court below has erred in appreciating the law as laid down in Sections 82 & 83 of the Code, which mandatorily demands that after the issuance of

proclamation, the order of attachment of any property, movable or immovable or both, belonging to the person can be passed provided the court is satisfied regarding the urgency of such claim made by way of an affidavit or otherwise regarding the chance of disposal of his property or the chance of removing of such property from the local jurisdiction of the court. In the instant case, the order directing the issuance of warrant of proclamation as well as attachment was passed simultaneously without specifying any reason. He further submits that under the scheme of the code, proclamation of offender and attachment of properties of the accused are two distinct and independent act and both cannot be passed by a common order. Moreover such order was passed without expressing any judicious observation. He also submits that petitioner is innocent and he has been falsely tagged with the case. Learned court below has erred in the present proceeding by issuing order of proclamation and the procedure adopted by court below to reach such conclusion is in derogation of the mandate of the provision of Section 82 read with section 83 of the Code of Criminal Procedure and the order regarding attachment of the property of the petitioner by a single order even before declaring the petitioner as a proclaimed offender has been passed in gross violation of Section 83 of the Code. Accordingly the petitioner has prayed for setting aside the said order.

In this context, the petitioner has relied upon three judgments of this court passed in CRR 1620 of 2020, CRR 115 of 2021 and CRR 3446 of 2018.

Learned counsel appearing on behalf of the State candidly submits that the law is well-settled on this point that simultaneous issuance of proclamation and attachment without assigning reason is not proper.

Before going to further details let me reproduce the order impugned

“04. Accd. Persons on curt bail are absent by petition.
Prayer for time is NER of W/A is received from Ps. Of accd. Shyamal Barman.
So issue P & A against accd (1) Shyamal Barman.
To fixed 07-07-22 for ER of WP & A.”

Law on this point is well settled that in a case where the accused charged under non-bailable offence is evading arrest, warrant can be issued under section 73(1) of the code, whereas under the provisions of section 82(1), the proclamation may be published against an accused, where court has reason to believe that such accused, against whom already an warrant of arrest has been issued, is absconding and concealing himself, so that warrant of arrest cannot be executed. The word “reason to believe” used in section 82(1) is guided by the definition given in section 26 of the Indian Penal Code, which contemplates subjective satisfaction on the basis of materials before the Magistrate acting under section 82. In this regard section 82(3) states that a statement in writing by the court issuing proclamation to that effect that the proclamation was

duly published on a specified day and in the manner prescribed in section 82(3) shall be conclusive evidence that the proclamation was published in compliance with the provisions of law. Section 82(4) stipulates that if even after publication of proclamation, as above, the accused fails to appear in certain cases at the specified place and time required by proclamation, the court may after making such inquiry as it thinks fit, pronounce such accused as proclaimed offender and make a declaration to that effect. Accordingly it is important to note that section 82(3) casts a duty upon court to write a statement regarding the fulfillment of the necessary procedure regarding publication of proclamation on a specified day and in specified manner which shall stand as conclusive proof to that effect.

Now section 83 deals with the situation where after the issuance of proclamation order, the court can by a reasoned order in writing direct for attachment of property belonging to proclaimed offender, but proviso to section 83(1) provides that court may order the attachment simultaneously with the issue of proclamation, if the court is satisfied regarding urgency of such claim that there is chance of disposal of the property or there is chance of removal of such property from the jurisdiction of court by the absconder. In view of above it is clear that the order of attachment can be issued simultaneously with the proclamation only under

circumstances mentioned in the proviso to sub-section (1) of section 83 of the code.

In the present case, court below has issued order of attachment simultaneously with the issue of the proclamation without having any observation about his satisfaction to the law mandated in the proviso to section 83(1) of the code. Needless to say that the object of attaching property of an absconder accused is not to punish him but to compel his appearance. Accordingly order impugned is liable to be set aside.

In view of above, the order impugned being order no. 84 dated 26.04.2022 so far as issuance of both proclamation and attachment against the petitioner by the self same order without assigning reason, is hereby set aside.

CRR 86/2023 is thus allowed to that extent.

However, since it appears from the order that the petitioner is absconding and non-execution report has already been received by the Magistrate, and the materials on record shows that the accused having knowledge of the court proceeding, avoids process of the court, this order will not preclude learned court below to resort to appropriate provisions of section 82 and/or section 83 of the code in appropriate circumstances, but in strict compliance of the law laid down therein.

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

(Ajoy Kumar Mukherjee, J.)