

11.5.2023
Sl.19
Ct. No.3
SD

CALCUTTA HIGH COURT
In the Circuit Bench at Jalpaiguri

CRR 118 of 2023

In re: Biki Sharma @ Bikash Sharma @ Vikash

... petitioner.

Mr. Arnab Saha

... for the petitioner.

Mr. Aditi Shankar Chakraborty

Mr. Ujjwal Luksom

... for the State.

Being aggrieved and dissatisfied with the order dated 14.02.2023 passed by learned Additional District Judge, 1st Court, Jalpaiguri in NDPS Case No.20 of 2022, present application has been preferred under Section 482 read with Section 397/401 of the Code of Criminal Procedure.

In the instant case, petitioner has made out an arguable case that by the order impugned, learned court below has issued warrant of proclamation and warrant of attachment by a single order against the petitioner herein without complying with the provision as laid down in Section 82/83 of the Code of Criminal Procedure.

It is submitted on behalf of the petitioner that the petitioner has been falsely implicated and learned court below has taken cognizance in the charge sheet mechanically. In fact, the petitioner is neither owner of the subject house-cum-godown wherefrom the alleged contraband substances have been recovered nor the petitioner is the tenant therein and as such, he has no direct control over the said godown.

Learned court below issued warrant of arrest by an order dated 28.11.2022 but on the next schedule date, i.e. on 14.02.2023 the court below

has mechanically issued warrant of proclamation and warrant of attachment against the accused persons without applying judicial mind and without appreciating relevant law to that effect. He further submits that it is apparent from the record that no execution report has been received by the court below and it is absolutely against law to issue warrant of proclamation and warrant of attachment simultaneously, even without having any report of about non-execution of warrant of arrest. Accordingly, petitioner has prayed for quashing the order impugned in respect of the present petitioner.

Having considered the facts and circumstances of the case it appears that learned Court below has issued warrant of arrest under the provision of Section 73 of the Cr.P.C. to secure the arrest of the accused persons, but without receiving any report regarding non execution of the warrant of arrest, he has jumped to the next course of action under the provisions as laid down under Section 82 for proclamation and under Section 83 for attachment of property of the person absconding.

Section 82 deals with the situation where Court has reason to believe that any person against whom a warrant of arrest 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. The word “reason to believe” used in Section 82(1) has to be read with Section 26 of the Indian Penal Code (IPC), which stipulates that the Court must have sufficient cause to believe, in other words, such satisfaction must be a subjective satisfaction on the basis of the materials available in the record.

Furthermore, the proclamation and attachment can be issued simultaneously only in the circumstances specifically mentioned under proviso

to Section 83(1) of the Cr.P.C. and not otherwise. In the present context, the order is cryptic and does not disclose how it attracts proviso of Section 83(1) of the Cr.P.C.

Accordingly, the order impugned has been passed in gross violation of Section 82/83 of the Cr.P.C. and as such is not sustainable in the eye of law.

The order impugned dated 14.02.2023, passed by learned Additional District Judge, 1st Court, Jalpaiguri in NDPS Case No.20 of 2022 arising out of Jaigaon Police Station Case No.35 of 2022 dated 25.02.2022 is hereby set aside.

However, since the materials show that the petitioner is well aware of the Court proceeding and still he is avoiding the Court proceeding, this order will not preclude the Magistrate concerned to take recourse of the appropriate provisions of law to secure attendance of the absconder as laid down under Section 82/83 in appropriate circumstances but on strict compliance of the provision laid down therein.

Accordingly, CRR 118 of 2023 is disposed of.

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.)