

**IN THE HIGH COURT OF CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Md. Shabbar Rashidi

CRR 209 of 2023

Lokman Hakim @ Lakman Hakim and Ors.

Vs.

The State of West Bengal and Anr.

For the petitioners : Mr. Arjun Chowdhury,
: Ms. Pratasha Dutta Chowdhury,
: Ms. Riya Agarwal.

For the opposite party no. 2 : Mr. Bikash Singha

For the State : Mr. Aditi Shankar Chakraborty, Ld.
APP.
: Mr. Subhasish Misra.

Heard on : November 28, 2023
Judgment delivered on : December 01, 2023

Md. Shabbar Rashidi, J.:

1. The revisional application is directed against an order dated November 02, 2021 passed in GR case No. 1317/2021 allowing the prayer of the investigating officer in respect of issuance of the warrant of proclamation and attachment.

2. It is the case of the petitioner that on August 16, 2021, the de facto complainant lodged a complaint on an allegation that the petitioner along with the other accused persons attacked the father of the de facto complainant due to which the victim died. On the basis of such written complaint, Kotwali P.S. case no. 821 of 2021 dated August 17, 2021 under Section 143/341/326/307/302/34 of the Indian Penal Code was initiated against the petitioner and other accused persons. It was further submitted that the petitioner was falsely implicated in the said case.

3. The police took up the investigation of the case and submitted charge-sheet against the petitioner along with the other accused persons. It has been submitted that by the impugned order dated November 02, 2021, the learned Chief Judicial Magistrate directed issuance of the proclamation and attachment against the petitioner.

4. It has been submitted by the learned advocate for the petitioner that the aforesaid order directing issuance

of the warrant of proclamation and attachment was in total disregard of the provision contained in Section 82 and Section 83 of the Code of Criminal Procedure, 1973. It is contended that while passing the impugned order, the learned Magistrate did not record its satisfaction regarding the compliance of the statutory requirements as mandated under Section 82 of the Code of Criminal Procedure, 1973 and warrant on to pass the impugned order directing simultaneous issuance by one of the proclamation and attachment .

5. By filing the instant revisional application, the petitioner has prayed for setting aside of the impugned order.
6. In support of his contentions, learned advocate for the petitioner relied upon an unreported judgment rendered by this Court in **CRR No. 3446 of 2018 (Monirul Islam @ Manirul Islam@ Manirul Biswas versus State of West Bengal), CRR No. 115 of 2021 (Subhas Saha @ Bhakto Saha versus Union of India)**

**and CRR No. 1620 of 2020 (Amir Manger and others
versus State of West Bengal).**

7. As noted above, a case was started against the petitioner and the other accused persons, being Kotwali P.S. Case No. 821 of 2021 dated August 17, 2021. The police investigated the case and submitted charge-sheet against the petitioner and others. Since the petitioner failed to appear before the Court in connection with such case, warrant of arrest was initially issued against the petitioner. Therefore, on the prayer of the investigating officer, warrant of proclamation and attachment was simultaneously issued against the petitioner with a view to procuring his attendance.

8. I have considered the impugned order. From the impugned order, it transpires that while considering the prayer of the investigating officer for simultaneous issuance of warrant of proclamation and attachment, learned Magistrate appears to have considered the prayer and came to a conclusion that the petitioner was avoiding his arrest and was trying to settle somewhere

outside West Bengal. The impugned order also discloses that while considering the prayer, the learned Magistrate also took note of the legal possession that only in the circumstances mentioned in the proviso of Sub-section (1) of Section 83, the Court has authorized to issue the order of proclamation and attachment simultaneously

9. Sections 82 and 83 of the Code of Criminal Procedure read as follows:-

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) it 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 section 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).]

83. Attachment of property of person absconding.—

(1) The Court issuing a proclamation under section 82 may, for reasons to be recorded in writing, at any time after the issue of the proclamation, order the attachment of any property, movable or immovable, or both, belonging to the proclaimed person:

Provided that where at the time of the issue of the proclamation the Court is satisfied, by affidavit or otherwise, that the person in relation to whom the proclamation is to be issued,—

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the local jurisdiction of the Court, it may order the attachment simultaneously with the issue of the proclamation.

(2) Such order shall authorise the attachment of any property belonging to such person within the district in which it is made; and it shall authorise the attachment of any property belonging to such person without such district when endorsed by the District Magistrate within whose district such property is situate.

(3) If the property ordered to be attached is a debt or other movable property, the attachment under this section shall be made—

(a) by seizure; or

(b) by the appointment of a receiver; or

(c) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf; or

(d) by all or any two of such methods, as the Court thinks fit.

(4) If the property ordered to be attached is immovable, the attachment under this section shall, in the case of land paying revenue to the State Government, be made through the Collector of the district in which the land is situate, and in all other cases—

(a) by taking possession; or

(b) by the appointment of a receiver; or

(c) by an order in writing prohibiting the payment of rent on delivery of property to the proclaimed person or to any one on his behalf; or

(d) by all or any two of such methods, as the Court thinks fit.

(5) If the property ordered to be attached consists of live-stock or is of a perishable nature, the Court may, if it thinks

it expedient, order immediate sale thereof, and in such case the proceeds of the sale shall abide the order of the Court.

(6) The powers, duties and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under the Code of Civil Procedure, 1908 (5 of 1908).

10. The proviso attached to Sub-section (1) of the Section 83 of the Code of Criminal Procedure contemplates the two situations, that is to say, (a) is about to dispose of the whole or any part of this or (b) is about to remove the whole or any part of the properties from the local jurisdiction of this Court. It is for these two circumstances, the statute authorizes simultaneous attachment of properties along with issuance of the warrant of proclamation. In other circumstances, the attachment of the property of an accused may be made any time after issuance of the warrant of proclamation.

11. In the case of **Amir Manger (supra)**, the simultaneous issuance of the warrant and attachment was set aside by this Court. In the case of **Subhas Saha (supra)**, it was held that,

“Since the details of the procedure laid down in Sections 82 and 83 could not be duly followed in this case, and sine the case against the petitioner was filed for the present without adhering to the provisions of the law, as contemplated under Sections 82 and 83 of the Code of Criminal Procedure, the court is not prepared to accept the submission, as advanced by Mr. Dastoor that the impugned order issuing warrant of arrest and proclamation followed by attachment simultaneously could not be revisited. When there has been apparent infraction of the provisions of the law, as discussed above, the court has every right to take care of the infractions of the law, so as to make the court below discharge its judicial function within the bounds of law.”

12. Similarly, in the case of **Monirul Islam (supra)**, it was held that,

“The approach adopted by the Court below by issuing warrant of arrest and proclamation of attachment conjointly and simultaneously is devoid of the sanction of the law. The requirement of law as regards simultaneous issuance of warrant of arrest and proclamation of attachment was taken up by a Coordinate Bench of this case, and in an unreported decision rendered in the case of Nanki Bhayna @ Ratan Bhayna & Ors. Vs. The State of West Bengal, being CRR No. 3554 of 2013, it was decided that the Court below committed a gross illegality in passing an order of proclamation and attachment simultaneously with the order of warrant of arrest.”

13. Therefore, in the facts and circumstances of the case, taking the provisions of Sections 82 and 83 of the Code of Criminal Procedure and in view of the ratio laid down in the case of **Amir Manger (supra), Subhas Saha (supra) and Manirul Islam (supra)**, the impugned order directing simultaneous issuance of the warrant of proclamation and attachment seems to be unjustified.

14. Moreover, the subjective satisfaction for simultaneous issuance of the warrant of proclamation and attachment as noted in the impugned order does not appear to fall within the provisions of Sub-section (1) of Section 83 of the Code of Criminal Procedure. There appears no satisfaction noted in the impugned order that the accused person is likely to dispose of or remove his properties from the local jurisdiction of the Court.

15. In the light of the aforesaid discussion made hereinbefore, the impugned order is hereby set aside.

16. Learned magistrate is, however, at liberty to act strictly in accordance with the provisions contained in Section 82 and 83 of the Code of Criminal Procedure.

Consequently, the instant application being **CRR 209 of 2023** is hereby disposed of.

- 17.** Urgent Photostat certified copies of this judgment and order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Md. Shabbar Rashidi, J.)