

CRR 2101 of 2024

Biswajit Biswas
Vs.
Registrar of Companies

Adv. Apalak Basu,
Adv. Nazir Ahmed,
Adv. Sanghamitra Mridha
... for the petitioner.

Adv. Rajdeep Mazumder, Ld. DSGI,
Adv. Moyukh Mukherjee,
Adv. Sankarshan Biswas,
...for the O.P.

The petitioner prays for quashing of the orders passed by the learned Judge, 2nd Court, Calcutta in complaint case no. 22 of 2020 on 24th February, 2022, 26th April, 2022 and 11th December, 2023 on the ground that the dates were fixed by the learned trial Court for execution return of warrant of arrest though summons was not served upon the petitioner.

It appears from the orders impugned that the warrant of arrest was filed by the company prosecutor though summons was not served upon the petitioner. Despite there being no direction of the Court for issuance of warrant of arrest against the petitioner, dates were fixed for execution return of warrant of arrest.

Learned counsel for the petitioner places reliance on the authority in Tarsem Lal vs. Directorate of Enforcement Zonal Office reported in 2024 INSC 434 and submits that since the petitioner was not arrested during investigation and report has already been submitted, the question of issuance of warrant of

arrest against the petitioner or his applying for bail does not arise at all.

Per contra, learned counsel for the opposite party submits that the offence is non-bailable in nature and is a serious offence. In the event the petitioner surrenders before the learned trial Court, the learned trial Court may consider the application of the petitioner in terms of Section 212(6) of the Companies Act.

Since the warrant of arrest was issued against the petitioner despite the fact that no such direction was given by the learned trial Court at all, said warrant is required to be set aside on this ground alone.

However, it is pertinent to mention that the learned counsel for the opposite party has drawn the attention of the Court to the order passed by the learned trial Court on 10th March, 2022 by which the learned Judge has granted bail to one of the accused Prasanta Ghosh on an observation that the alleged offences are bailable.

Allegation against the petitioner is violation of Section 73 of the Companies Act, 2013 which prescribes punishment to the extent of seven years along with fine under Section 76A(b) of the Act. It is therefore recorded that the observation made by the learned Judge in the order dated 10th March, 2022 is not correct.

Accordingly, the revisional application, being CRR 2101 of 2024 is allowed.

The orders impugned dated 24th February, 2022, 26th April, 2022 and 11th December, 2022 in complaint case no. 22 of 2020 pending before the learned Judge, 2nd Court, Calcutta are quashed/set aside.

The petitioner is directed to surrender before the learned trial Court within three weeks from date.

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

(Suvra Ghosh, J.)