

11.11.2025
Sl. No.21

Ct. No.42
Mujahid

CRR 1341 of 2025

Rocky Sk alias Reyan Habib
Vs.
The State of West Bengal

Mr. Kusal Kumar Mukherjee
Mr. Narattam Acharyya

...for the petitioner

Mr. Suman De
Ms. Sujata Das

...for the State

1. Present petition has been filed for challenging the order dated 30th May, 2024 passed by the learned Additional Chief Judicial Magistrate, Jangipur, Murshidabad in connection with G.R. Case no.750/2024 arising out of Samsheganj P.S. Case No.154 of 2024 dated 15th March, 2024 under Sections 302/34 of the IPC.

2. The petitioner has challenged the order dated 30th May, 2024 whereby the learned ACJM, upon request of the Investigating Officer issued the warrant of attachment and proclamation simultaneously against the petitioner and another co-accused Jahangir Alam.

3. Learned counsel for the petitioner submits that the learned ACJM has fallen into grave error by issuing the proclamation and attachment simultaneously as the same is in

the violation of law. Learned counsel for the petitioner submits that proclamation under Section 82 sub-section (1) can be issued only if after the court has arrived to a satisfaction that the person against whom the warrant has been issued, has absconded or concealing himself on account of which warrant cannot be executed. Learned counsel submits that no such satisfaction has been recorded by the learned ACJM in the order dated 30th May, 2024. Learned counsel further submits that Section 83 sub-section (1) also provides that attachment can be issued only after the person has been declared proclaimed offender as required under Section 82 sub-section (4). It has further been submitted that only in exceptional circumstances as provided under proviso to Section 83 that the proclamation and warrant of attachment can be issued simultaneously.

4. Learned counsel for the State has vehemently opposed the revision petition. Learned counsel submits that present petition is hopelessly barred by limitation. It has been submitted that the petition is liable to be dismissed on account of delay and latches as there is a delay of around 295 days in filing the present petition.

5. Learned counsel has relied upon the judgment of the coordinate Bench of this Court in CRR 1692 of 2014 titled as ***Vandana Agarwal vs. The State of West Bengal & Anr.*** dated 16th September, 2015.

6. Section 82 sub-section (1) of the Code of Criminal Procedure, 1973 provides that if after the warrant issued against

the person has not been executed and the court has arrived to satisfaction or has reason to believe that the person against whom the warrant has been issued, has absconded or concealing himself, the court may issue a written proclamation requiring him to appear at a specified place and at a specified time not less than 30 days from the date of publication of such proclamation. Section 82 sub-section (2) provides certain condition for the publication of such proclamation. The provision also provides time of 30 days for the appearance of the accused person. Section 82 sub-section (4) provides that if a person is accused of the provisions as given in Section 82 sub-section (4) fails to appear at the specified place and time required by the proclamation, the court may after making such enquiry at it thinks fit pronounce him a proclaimed offender and make a declaration to that effect.

7. Section 83 is further stringent provision, whereby the court has been empowered by the law to issue warrant of attachment if the person fails to appear despite the proclamation being issued. The law also provides the exceptional circumstances in which the proclamation and attachment can be issued simultaneously if there is an apprehension that the offender may dispose of the whole or any part of his property from the local jurisdiction of the court.

8. The provisions incorporated in the procedural law are in the nature of safeguard and in fact are embodiment to the settled principles of fairness and natural justice. It has

repeatedly been held that such provisions have to be complied scrupulously without any exception. Any violation of such provisions may be an assault on the principles of fair trial and natural justice.

9. It is settled proposition that discretion conferred upon the court have to be exercised judiciously with all the due, care and caution. It has also repeated been held that merely because the discretion of issuance of warrant has been conferred upon the court, it does not mean that the warrant can be issued mechanically. The courts have to be extremely cautious before issuing the warrant. The co-ordinate Bench of this Court in ***Sambhu Haldar vs. State of West Bengal***, 2014(2) CLJ (Cal) 365 examined the similar issues. The court after taking into account, the ingredients of Section 82 Cr.P.C., inter alia held as under:-

“13.Proclamation under Section 82 of the Code of Criminal Procedure may be issued only when a court has reason to believe that a person against whom warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed. Upon arriving at such satisfaction, the Magistrate shall direct publication of proclamation against the accused calling upon him to appear at a specified place and time not less than thirty days from the date of such publication. In the event the accused fails to appear on that specified time & place as per the proclamation, the court may after due enquiry, as it thinks fit and proper, declare him to be a proclaimed offender provided he is accused of offences as enumerated in sub-section (4) of Section 82. Admittedly, the aforesaid procedure has not been resorted to in the instant case. That apart, bearing in mind the offences alleged in the FIR there is no scope of invocation of sub-section (4) of Section 82, Cr.PC to declare the petitioner a proclaimed offender.

13. I, accordingly, hold that it was impermissible for the Magistrate to simultaneously issue warrant of arrest and proclamation against the petitioner as prayed for by the investigating agency. The Magistrate rightly issued warrant of arrest only in the first instance and upon issuance of such warrant, it was incumbent upon the investigating agency to satisfy the Magistrate by adducing cogent materials that it had failed to execute the warrant of arrest as the petitioner had absconded or concealed himself. Only then the Magistrate would be clothed with requisite jurisdiction to issue proclamation against the petitioner under Section 82(1) of the Code of Criminal Procedure.”

10. The co-ordinate Bench of this Court in ***Niranjana Mahato & Ors. Vs. The State of West Bengal & Anr.***, CRR 2375 of 2022 in its judgment dated 3rd May, 2023 dealt with the proposition that whether proclamation and attachment can be issued simultaneously without assigning any reason or satisfaction of the court.

11. The court after taking into account, the procedural law inter alia held as under: Para 15 and 16

“15. It is clear from the provision mentioned in Sub-section (1) of Section 82 of the Code that the Court must have reasons to believe that the person, against whom warrant has been issued, has absconded or concealing himself so that the warrant cannot be executed. In view of the said provision, only after the Court is satisfied that the person is absconding, or is concealing, and it is not possible to arrest him, the Court should issue proclamation requiring the accused to appear on a specified date on specified time not less than 30 days from the date of publication of such proclamation.

16. Thus, satisfaction of the Court has to be recorded in the order while issuing processes under Section 82 of the Code but order does not indicate the same. Sub-section (1) of Section 82 of the Code provides that the Court has to publish the written proclamation requiring the person to appear on a specified date and specified place not less than 30 days from the date of such publication. Thus, it is the duty of the Court to mention the specific place and the date where the person needs to be present him in

compliance of the proclamation order. This date and place should be mentioned in the order itself. Form IV, which is part of Second Schedule of Code is the Form in which proclamation is required to be issued. This is a statutory Form. This Form is required to be filled up by the Office of the Court. Thus, the date and place, which is mentioned in the said Form, must also be reflected in the order sheet. This will mean that the Court has fixed the place, time and the date and not the Bench Clerks or the Office Clerks, as it is the mandate of the law that the Court has to fix the place, time and the date of appearance. The Form IV, must be filled up as per the date, time, place fixed by the Court, which should be reflected in the order sheet.”

12. In view of the settled law, this court is of the considered opinion that there is nothing more to discuss to inter alia held that the learned trial court passed the impugned order mechanically without following the due procedure of law. The proclamation and warrant of attachment could be issued simultaneously only under the exceptional circumstances as provided under the proviso to Section 83. It is also pertinent to mention here that in the impugned the court has not even recorded any satisfaction for issuing the process under Section 82 Cr.P.C.

13. Last but not the least the objection as to the maintainability of the petition on the ground of delay as raised by the learned counsel for the State is noted to be rejected only. The impugned order on the face of it is against the violation of the law. The procedure is the handmaid of justice and the endeavour of the court is to impart justice and in such cases merely on account of delay which is around 295 days in the present case the court cannot deny justice to the party. Hence

the order dated 30th May, 2024 is set aside. The proclamation and warrant of attachment are withdrawn.

14. During the course of submissions, it has been informed that pursuant to the stay of the operation of the impugned order, the petitioner had once appeared before the court and, therefore, again absented himself. The learned trial court has, therefore, issued the warrant. Let the warrant be executed in accordance with the law. Learned ACJM may issue, if required, the proclamation and warrant of attachment in accordance with the procedure without being influenced by the present order.

15. Accordingly, CRR 1341 of 2025 stands disposed of.

16. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Dinesh Kumar Sharma, J.)