

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 2540 of 2022

With

CRAN 3 of 2023

Md. Asif

-Vs-

The State of West Bengal

For the Petitioner : Mr. Soumya Nag,
Mr. Aditya Tiwari.

For the State : Ms. Anusuya Sinha,
Mr. Pinak Kumar Mitra.

Hearing concluded on : 12.12.2024

Judgment on : 07.01.2025

Shampa Dutt (Paul), J.:

1. The present revisional application has been preferred praying for quashing of the proceedings being G.R. Case No. 2095 of 2021 (presently numbered as SC 3 (04) of 2022) now pending before the learned Additional Sessions Judge, 1st Court, South 24-Parganas arising out of Narkeldanga Police Station Case No. 236 of 2021 dated 22.8.2021 under Sections 307/326/34 of the Indian Penal Code and the orders dated 04.10.2021 and 11.11.2021 passed therein.
2. Learned counsel appearing for the petitioner has relied upon an order dated 16.08.2022 passed by a co-ordinate Bench stating that he is “not pressing” his prayer for quashing of the proceedings before the Trial Court. The only point of challenge in the revisional application as per his modified prayer is the order dated 04.10.2021 and 11.11.2021.
3. The learned counsel for the petitioner has argued that the Court was not right in issuing an order of proclamation and attachment on the same date. **The orders challenged are dated 04.10.2021 and 11.11.2021.**
4. **The order dated 04.10.2021 is as follows:-**

“Accd. Namely (i) Sajjad Md. is in J/C and produced bail move for the accd. person No.(i).

Heard Ld. Defence Counsel for the accused person No.1 namely Sajjad and prays for bail.

Ld. PP raised objection against the bail of the accused person.

On perusal of the materials on the case record, case diary it appears that the charge sheet has been already submitted against accused person under Section 307

and other Sections of IPC within the statutory period.

Accordingly the bail petition of the accused person stands rejected and remanded to JC till 18.10.2021/28.10.2021.

Superintendent of Presidency Correctional Home, Alipore is directed to produce the accused person physically for supply of copy and order.”

5. The order dated 11.11.2021 is as follows:-

“Accd. (i) Namely Sajjad Md. is in J/C and copy is ready.

Ld. Advocate has filed petition on behalf of said accd. (i) namely Md. Sajjad in which prays for bail hearing.

E/R of W/A against the accd. No. (ii) namely Md. Asif is scheduled to retd. From o/c. Narkeldanga P.S. in which praying for issue next process.

Hd. all the sides. Seen the NER accordingly issue WPA against me. Absconding accd. at once.

To 13.12.21 or E/R or WPA.

Later:

Paid the applicants for bail.

Since C/S has been submitted and offence is exclusively triable Ld. Court of Sessions hence, bail prayer stands rejected.

To 25.11.21 for production.”

6. Section 82 Cr. P.C. lays down 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 specific 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 home-stead 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).”

7. Section 83 of Cr. P.C. lays down as follows:-

“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)."

8. **Learned counsel for the petitioner has relied upon the following judgments:-**

A. Babun Midder-Vs- State of West Bengal, reported in 2021

SCC Online Cal 338, relevant paragraphs 7, 9, 10, 11, 12.

B. Nanki Bhayna @ Ratan Bhayna & Ors. -Vs- State of West Bengal, (From CRR No. 3554 of 2013), relevant paragraph 8.

C. Sambhu Halder -Vs- The State of West Bengal, reported in 2014 SCC Online Cal 4268.

D. Rohit Kumar Sah-Vs- State of West Bengal, reported in 2021 SCC Online Cal 1665, relevant paragraphs are 6, 7 and 8.

9. In view of the provision under Section 83(1) Cr.P.C. which lays down:-

".....It may order the attachment simultaneously with the issue of the proclamation....."

10. The orders under revision thus being in accordance with law requires no interference and is affirmed.
11. **CRR 2540 of 2022 is thus dismissed.**
12. All connected applications, if any, stands disposed of.
13. Interim order, if any, stands vacated.

14. Copy of this judgment be sent to the learned Trial Court for necessary compliance.
15. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)