

17.02.2025
rc/ct.no.34
Item No.22

CRR No.5014 of 2024
with
CRAN No. 1 of 2024

**In the matter of : Obaidur Rahaman alias Md. Obaidur
Rahaman & Anr.**

.....Petitioners

Mr. Shankar Nath Mukherjee
Mr. Soupal Chatterjee
Mr. Anupam Das ...for the Petitioners

Mr. Anit Kumar Das
Ms. Rupsa Chakraborty
Mr. Biswajit Tewari ...for the O.P.

Mr. Debasish Roy, Ld. P.P.
Mr. Arijit Ganguly
Ms. Sreemoyi Royfor the State

Heard learned counsels for the parties.

The petitioner is aggrieved by the order dated August 06, 2024 passed by the learned Additional Chief Judicial Magistrate, Chanchol, Malda in G.R.Case No. 864 of 2024 directing issuance of warrant of proclamation against him. Placing reliance on judgments of the Supreme Court as well as a coordinate Bench of this Court, learned counsel for the petitioner submits that subjective satisfaction of the Court in issuance of warrant of proclamation is absent in the order impugned. Though the learned Magistrate, vide an order dated August 05, 2024, directed the Investigating Officer to remain present before the Court and explain why the warrant could not be executed, warrant of proclamation was issued by the learned Magistrate on the next

date, i.e. on August 06, 2024 on prayer of the Investigating Officer.

It appears that warrant of arrest was issued against the petitioner vide an order dated July 05, 2024. On August 05, 2024 a non-execution report was submitted before the Court with a prayer for further opportunity to execute the warrant of arrest. By the said order, the learned Magistrate directed the Investigating Officer to appear before the Court on the adjourned date, i.e. on August 16, 2024 and explain why the warrant of arrest could not be executed against the petitioners. The learned Magistrate further recorded that in default of such explanation, the matter would be brought to the notice of the Superintendent of Police, Malda. Strangely, on the next date, i.e. on August 06, 2024 the Investigating Officer prayed for issuance of warrant of proclamation which was allowed by the learned Magistrate by a single liner. Subjective satisfaction of the learned Magistrate for issuance of warrant of proclamation was not recorded. There is also no explanation in the said order as to why the prayer of the Investigating Officer was allowed on August 06, 2024 despite the direction given by the learned Magistrate in the order dated August 05, 2024.

In view of the above, this Court is inclined to hold that the order impugned dated August 06, 2024 directing issuance of warrant of proclamation is in violation of the provision laid down under Section 82 of the Code of Criminal Procedure and is required to be set aside.

Accordingly, the revisional application being CRR No. 5014 of 2024 is allowed.

The order impugned dated August 06, 2024 passed by the learned Additional Chief Judicial Magistrate, Chanchol, Malda in G.R.Case No. 864 of 2024 is set aside/quashed.

In view of the above, the connected application being CRAN No. 1 of 2024 is also disposed of.

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

(Suvra Ghosh,J)