

01. 03.01  
(SL) 2025  
bd. Ct. No. 237

**C.R.R. 5248 of 2024**

**Mamta Hansda**  
**Vs.**  
**The State of West Bengal & Anr.**

Mr. Navnil De  
Mr. Srinjan Ghosh ... for the petitioner.

Mr. Rudradipta Nandy  
Ms. Rajnandini Das ... for the State.

Liberty to the petitioner to correct the prayer portion of the application is granted.

Learned counsel appearing on behalf of the petitioner submits that presently in this Application he is not pressing the prayer for quashing the entire proceeding but being aggrieved by the order dated 16<sup>th</sup> July, 2019, he prays for setting aside said order.

The Court below by the aforesaid impugned order dated 16<sup>th</sup> July, 2019 issued warrant of proclamation and warrant of arrest simultaneously against the petitioner, in violation of the provision laid down in section 82 and 83 of the Code of Criminal Procedure.

Upon hearing learned counsel appearing on behalf of the petitioner and the State the Application is admitted and complainant is not required to be heard since securing the attendance of an absconding accused is a matter between the State and the accused.

The matter is taken up for hearing on merit in the presence of learned counsel for the petitioner and the State.

It appears from the copy of order sheets that on 11.1.2018, no

service return of summon issued to accused Mamta Hansda was received but in spite of that Court issued warrant of arrest against her. Not only that it further appears that on 16.07.2019, Court below issued warrant of proclamation and warrant of attachment simultaneously in spite of the fact that Court did not receive any non-execution report in respect of warrant of arrest issued against accused Mamta Hansda.

Section 82 of the Code starts with the words *“If any Court has reason to believe that (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.....”*

So the pre-condition for invoking section 82 by the Magistrate is that he must be satisfied that the accused is absconding or concealing himself for the purpose of avoiding the service of the warrant. The term “abscond” in ordinary sense means “to hide oneself” and the mere fact that the police could not find the accused in his address, may not be enough under the section.

In the present case neither at the time of issuance of warrant of arrest nor at the time of simultaneous issuance of warrant of proclamation and attachment, the court had made any attempt to ascertain whether the accused is hiding herself and the order impugned does not reflect that Magistrate had reason to believe in support of his issuance of such warrant. In such cases Magistrate ought to have wait till the execution report of the warrant is received before issuance of

warrant under section 82 and 83 of the Code.

That apart simultaneous issuance of warrant of proclamation and warrant of attachment of property is *ex facie* contradictory since it is only after the first that the second can be issued except in case of extreme urgency as mentioned in sub-section (1) of section 83. Said section does not authorize simultaneous issue of the order of proclamation and of attachment unless the circumstances mentioned in proviso to sub-section (1) of section 83 arises.

From the order impugned, I find nothing to hold that Magistrate had reason to believe that the accused is absconding and as such in the absence of compliance of mandatory provision as laid down in section 82 and 83, the issuance of warrant under those sections is liable to be set aside. This is also because settled legal position of law is that where a statute requires to do a certain thing in a certain way, the thing must be done in that way or not at all.

In such view of the matter, the order dated 16<sup>th</sup> July, 2019 passed by the court below regarding issuance of warrant of proclamation and warrant of attachment simultaneously against the petitioner herein Mamta Hansda, and all subsequent orders to that extent in connection with accused Mamta Hansda are hereby set aside.

CRR 5248 of 2024 is accordingly disposed of.

However, if the petitioner accused Mamta Hansda, is found to be not cooperating with the Court proceeding, the Court, below will be

at liberty to secure attendance of the said accused person in compliance with the provisions as laid down in section 82 and 83 of the Code.

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

*(Dr. Ajoy Kumar Mukherjee, J. )*