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2025
Ct. No. 3

Calcutta High Court
In the Circuit Bench at Jalpaiguri
Criminal Revisional Jurisdiction

C.R.R. 108 of 2025
Sri Dipen Maley
Vs.
The State of West Bengal

Mr. Janardan Periwai

Mr. Deborshi Dhar

Mr. Rajesh Kumar Sharma

...For the Petitioner

Mr. Aditi Shankar Chakraborty

Dr. Arjun Chowdhury

...For the State

This is an application under Section 482 of the Cr.P.C. has been preferred by the petitioner, being aggrieved by Order No. 63 dated 20th November, 2018, Order No. 41 dated 20th June, 2019 and Order No. 47 dated 12th July, 2019 in connection with G.R. Case No. 430 of 2017 arising out of Darjeeling Sadar Police Station Case No. 213 of 2017 dated 13.10.2017. In the said criminal proceeding total 28 persons are arrayed in connection with the case. Charge sheet has been submitted and after submission of charge sheet since the present petitioner did not appear on the date fixed, Court below issued warrant of arrest vide order dated 27.01.2018. Even thereafter petitioner herein did not appear before the Court below and for which the Court below had issued warrant of proclamation and attachment simultaneously on 20.11.2018 against the present petitioner and thereby declared the present petitioner as proclaimed offender on 12.7.2019 under Section 82 of the Cr.P.C.

Learned Counsel appearing on behalf of the petitioner submits that the Court below had issued warrant of arrest and subsequently

issued warrant of proclamation and attachment without assigning any reason and without following the provisions laid down in Section 82 and Section 83 of the Cr.P.C. In this context, petitioner has also relied on *Damodar Adhikary Vs. State of West Bengal*, reported in 2004 Cal Cri LR 690; *Nanki Bhayna @ Ratan Bhayna & Ors. Vs. State of West Bengal*, reported in 2014 (4) CCR 348 and *Niranjan Mahato & Ors. Vs. State of West Bengal & Anr.* (CRR 2375 of 2022 dated 3.5.2023).

Learned Counsel appearing on behalf of the State submits that the petitioner/accused person is absconding since long and for which the Court below was justified in issuing warrant of proclamation and attachment at the same time and as such the order impugned does not call for interference by this Court.

I have considered the submissions made on behalf of the parties. In *Niranjan Mahato & Ors. (Supra)*, this Hon'ble Court has discussed the law regarding proclamation and attachment as has held in paragraph 15 to paragraph 20 as follows :-

“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.

17. The Hon'ble Supreme Court after relying on other judgments, has held in the case of State of Madhya Pradesh versus Pradeep Sharma reported in (2014) 2 SCC 171, that :-

“if a person is declared as proclaimed offender/absconder in terms of Section 82 of the Code, he is not entitled for relief of anticipatory bail.”

Thus, when the relief of anticipatory bail is curtailed, as a consequence of an order passed under Section 82 of the Code, declaring a person absconder/proclaimed offender, the said order cannot be passed in mechanical manner without recording satisfaction and reasons nor can be passed without following the procedure as laid down in the Code. In view of the aforesaid circumstances and the consequence one has to face, the Court has to be very cautious while issuing an order under Section 82 of the Code.

18. While going through the order under challenge, this Court finds that simply after receiving non-execution report of warrant of arrest, the Court had issued order of proclamation and attachment under Sections 82 and 83 of the Code simultaneously in a most mechanical manner without recording subjective satisfaction as to why it is necessary to issue the proclamation and attachment.

19. The petitioners challenged the said order before this Court as the Magistrate issued proclamation and attachment order in terms of Sections 82 and 83 of the Code simultaneously. There is an exception to this rule when both the processes, i.e. proclamation under Section 82 of the Code and attachment order in terms of Section 83 of the Code are issued simultaneously. The first proviso to Section 83 (1) of the Code provides for the circumstance and the situation where it is necessary to issue both the proclamation and attachment order simultaneously and how the same can be issued and the requirements thereof. Court can issue Proclamation and Attachment simultaneously provided the Court should satisfy, 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. Then only Court

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

20. Section 83(1) of the Code clearly provides the Court, which is issuing proclamation under Section 82 of the Code, for the reasons to be recorded in writing, may issue order for attachment of movable or immovable properties. It is, thus, the mandate of the law that the reasons for issuing attachment order simultaneously have to be recorded in the order itself. Non recording of the reasons will make the order absolutely bad and unsustainable in the eyes of law.”

Having considered the facts and circumstances of the case and that the order impugned is cryptic one and does not disclose the reason for issuance both warrant of proclamation and warrant of attachment at the same time, I find that the order impugned has been passed violating the statutory provisions of Section 82 read with Section 83 of the Cr.P.C. and therefore liable to be set aside.

In such view of the matter, the Order No. 63 dated 20th November, 2018 and Order No. 47 dated 12th July, 2019 in connection with issuance of warrant of arrest and warrant of proclamation and attachment simultaneously against the present petitioner and thereby declared him as proclaimed offender are hereby set aside.

Petitioner is directed to appear before the Court below within a period of four weeks from date and on his appearance the Court below will dispose of his prayer for surrender in accordance with law. However, if the petitioner fails to surrender before the Court below within the stipulated period, as mentioned above, the Court below will be at liberty to issue warrant of proclamation and if required proclamation of attachment strictly in compliance with the provisions

laid down in Section 82 and Section 83 of the Cr.P.C., corresponding to Section 84 and 85 of the BNSS, 2023.

The application, being C.R.R. 108 of 2025 is accordingly disposed of.

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

(Dr. Ajoy Kumar Mukherjee, J.)