

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:

The Hon'ble Justice Apurba Sinha Ray

CRR 281 of 2023

Mithun Mia @ Miya
Vs.

The Central Bureau of Investigation & Anr.

FOR THE PETITIONER : Mr. Arnab Saha
Mr. Md. Shoaib Akhtar
Mr. Saptarshi Banik

FOR THE CBI : Mr. Sudipto Kumar Mazumder, Ld. DSGI
Mr. Ajay Kumar Singhania
Mr. Sourab Kar

CAV ON : MARCH 11, 2025

JUDGMENT ON : MARCH 13, 2025

THE COURT:

1. Read orders dated 10.03.2025 and 11.03.2025.

2. By order dated 10.03.2025 this Court has specifically observed that the accused who is allegedly absconding has also the legal right to challenge the relevant order before a higher forum to urge that a court of law should comply with the directions of the law before issuing warrant of proclamation and attachment. In the said order this court observed that from section 82 of Cr.P.C. it is revealed that the court has certain duties to perform before issuance of a proclamation against an absconding accused. The said section provides, inter alia, that the proclamation shall be published and shall be publicly read in some conspicuous place of the town or the village in which such persons ordinarily resides. It is also the bounden duty of the Court to see that the proclamation shall be affixed to some conspicuous part of the house of the absconding accused where he ordinarily resides. It is a further duty of the Court to see that a copy of the proclamation shall be affixed to some conspicuous part of the Court house. 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. Pursuant to the said order the Central Bureau of Investigation ('CBI' henceforth) has submitted xerox of certified copies of the seizure, orders etc. in connection with relevant G.R. Case No. 311 of 2021 in support of its contention that all legal formalities under Section 82 of Cr.P.C. have been complied with. It is also submitted that on 12.02.2022 necessary steps regarding publication of the proclamation, affixation of such proclamation in conspicuous places as mentioned in Section 82 and announcement of contents of the proclamation in the vicinity of the residences of the accused

persons were made. The learned Deputy Solicitor General of India ('the DSGI' henceforth) has drawn the attention of the court to the relevant report of the Central Bureau of Investigation whereby it has mentioned how, when and the manner in which proclamation was published, affixed and announced as per Section 82 of the Cr.P.C. on 12.02.2022

4. The learned DSGI, Mr. Mazumder has submitted that all conditions required under the above sections have been duly complied with and as such the order dated 01.06.2023 was duly passed by the Learned Trial Judge and therefore, the present revisional application should be dismissed.

5. The learned counsel Mr. Saha for the petitioner has drawn our attention to the several judicial decisions in support of his contention that issuance of proclamation under Section 82 of Cr.P.C. is of enormous importance and issuance of such proclamation cannot be done in a mechanical manner. There is no whisper whether the relevant proclamation specified the date and the place where the accused were asked to appear. The order dated 01.06.2023 passed by the Learned Trial Judge was not in conformity with the requirements as laid down in section 82 of the Cr.P.C.

6. Mr. Saha has referred to the case laws reported in **(2024) 7 Supreme Court Cases 61 (Tarsem Lal Vs. Directorate of Enforcement Jalandhar Zonal Office), one unreported decision of the High Court of Jharkhand at Ranchi in CR. M.P. No. 2722 of 2019 (Md. Rustum Alam @ Rustam & Ors. Vs. The State of Jharkhand), MANU/WB/0554/2014 (Nanki Bhayna**

Vs. State of West Bengal), one unreported decision of High Court of Jharkhand at Ranch in Cr.M.P. No. 792 of 2024 (Sanjay Pandey Vs. The State of Jharkhand), CRR No. 1677 (In Re: Suranjan Das) of Hon'ble Single Judge of Hon'ble High Court at Calcutta.

7. I have considered the rival submissions of the parties along with the judicial decisions cited above. After going through the provisions of Section 82 and 83 of Criminal Procedure Code ('the Code' henceforth), I find that the directions contained in the said provisions of law are, essentially, the duties of the concerned court which contemplates to declare an accused a proclaimed offender and, consequently to issue an order for attachment of his property. The entire duties, as reflected in such provisions of law, have been cast upon the concerned court. As already pointed out, it is the duty of the learned court in issuing a warrant of proclamation and attachment to show that he has correctly complied with the directions or the requirements under Section 82 of Cr.P.C. The Second Schedule of the Code has given a format(Form no. 4) showing how a warrant of proclamation can be issued by the concerned court. In the report submitted by CBI I do not find that there is any whisper that form no. 4 has been duly issued by the Learned Additional Chief Judicial Magistrate Mathabhanga under his own hand and signature. It is not clear what were the contents of the proclamation which were allegedly publicly read in the vicinity of residence of the petitioner or the relevant places as claimed by the CBI. It is also not acceptable why the CBI, in view of the sensitivity of the case, was not directed to publish a copy

of proclamation in a daily newspaper circulating in the place of residence of the accused.

8. Another disturbing feature is that the Learned Court did not consider the provisions of Section 82(3) of the Code. It has been a mandate upon the concerned court to make a statement in writing in the relevant order sheet to the effect that the proclamation was duly published on a specified day in the manners specified in clause (i) of sub-section (2) of section 83 of the Code. If we go through the order dated 01.06.2023 we shall find that there is no such observation of the Learned Trial Court before issuance of direction for attachment.

9. From a combined study of sub-section (2) and sub-section (3) of section 82 it transpires that the concerned court is under a duty to deal with each and every condition as mentioned in sub-section (2) specifically and separately. In other words, the concerned court is to deal with the conditions viz., whether or not the proclamation has been duly published, whether or not the same has been publicly read in some conspicuous place of the town or village in which the absconding accused resides, whether or not the proclamation has been duly affixed in some conspicuous part of the house of the absconding accused where he ordinarily resides, whether or not affixation of proclamation has been done to some conspicuous part of the court house. Further, if the court directs for publication of such proclamation in a daily newspaper whether or not such publication has duly been made in such newspaper. If the court did not direct the publication of

such proclamation in the newspaper, the reasons for not giving such direction of publication in the newspaper. The order directing attachment should also indicate that compliance of above conditions has been duly examined by the court. Sub-section (3) of Section 82 has given a mandate upon the concerned court to make a statement in writing to the effect that the proclamation was duly published on a specified day and the manners as specified under sub-sections (2) clause (i). Therefore, the concerned court should make a detailed order observing that all the relevant conditions as mentioned above have been duly carried out. Without such observation the concerned court cannot issue a writ of attachment.

10. In this case it appears that the order dated 01.06.2023 is conspicuously silent about the manner of publication, affixation, announcement of proclamation etc. The Learned Trial Court relied upon the submission of the investigating officer. The relevant excerpts of the order dated 01.06.2023 may be quoted herein below:-

“The I.O. of this case is examined today in open Court and he confirms that the proclamation proceedings are already completed in respect of the accused persons whose warrants are pending for execution. In the light of such submission and on perusal of the record, it appears that attachment proceedings should be initiated against the proclaimed offenders.”

11. In fact, the Learned Trial Court did not take into account his duties as mentioned in sub-sections (2) and (3) of section 82. There is no attempt on the part of the Learned Trial Judge to deal with the compliance of pre-requisite conditions as discussed above specifically. He did not make any statement in the order sheet as required under sub-section (3) of section 82. The order dated 01.06.2023 is undoubtedly passed in a mechanical manner.

12. The relevant order being no 16 dated 01.06.2023 passed by the Learned Additional Sessions Judge, 1st Court, (NDPS) in Special Court Case No. 08 of 2022 suffers from serious irregularities and infirmities. The said order as it appears is a conjoint order. By the said order bail applications have been disposed of and further at the fag end of such order the learned court passed the order of issuance of attachment of properties in a very cryptic manner which is not at all desirable.

13. Needless to mention, the order no. 16 dated 01.06.2023 cannot be sustainable in the eye of law on other grounds as well. If we go through the entire materials on record we shall find that a warrant of proclamation was issued by the Learned Additional Chief Judicial Magistrate, Mathabhanga by virtue of order no. 32 dated 08.02.2022 in connection with G.R. Case No. 311 of 2021 fixing April 18, 2022 for execution report for such proclamation. The report of CBI shows that compliance of Section 82 of the Code as per directions of the order dated 08.02.2022 was carried out by the CBI on 12.02.2022. Therefore, it is clear and also in all probability, the

proclamation has been published by the CBI by directing the absconding accused to appear before the Learned Additional Chief Judicial Magistrate, Mathabhanga, on or before 18.04.2022. It can safely be held that the date for appearance of the absconding accused before the court, in all probability in the proclamation, was given on 18.04.2022 and the court where the absconding accused was required to be present himself was the court of Learned Additional Chief Judicial Magistrate, Mathabhanga. If we peruse the record we shall find that the court received an execution report on 16.02.2022. Learned Additional Chief Judicial Magistrate was not approached on 18.04.2022 for issuance of proclamation. Rather the order dated 18.04.2022 reflects that no report was received from CBI, Kolkata. W & PA was not received from CBI, Kolkata in respect of 7 (seven) absconding accused and CBI was given reminder. By order no. 40 dated 16.09.2022 the Learned Additional Chief Judicial Magistrate, Mathabhanga transferred the case record to the Learned Special Court under SC/ST Act, Cooch Behar as the chargesheet submitted before the Learned Additional Chief Judicial Magistrate disclosed the commission of offences under SC/ST Act which were exclusively triable by the Learned Special Court. On 01.06.2023 the Learned Additional Sessions Judge, 1st Court, Cooch Behar being the Special Court under SC/ST Act issued the impugned order for initiation of attachment proceedings.

14. From the above materials on record and report of the CBI it is very much pertinent to mention that warrant of proclamation was issued by the Learned Additional Chief Judicial Magistrate, Mathabhanga directing the

absconding accused to appear before him on 18.04.2022 but initiation of attachment proceeding was made by the Learned Special Court under SC/ST Act. **Section 83** shows that the court which issued the warrant of proclamation should initiate the attachment proceeding after recording the subjective satisfaction as disclosed in sub-section (2) and (3) of **section 82**. In this case, warrant of proclamation was issued by one court i.e. Learned Additional Chief Judicial Magistrate, Mathabhanga but attachment proceedings were commenced by the Learned Special Court. In my view, when the case was transferred after filing of the charge sheet to the Learned Special Court, the said court should have been approached for issuance of fresh writ of proclamation because the absconding accused has already been directed to appear before the Learned Additional Chief Judicial Magistrate, Mathabhanga on 18.04.2022. The Learned Special Court without issuing a fresh warrant of proclamation cannot rely upon issuance of proclamation by the Learned Additional Chief Judicial Magistrate, Mathabhanga. The record shows that the CBI has been claiming that proclamation was duly published as per order dated 08.02.2022 but needless to mention that the specified date and specified place in the said proclamation were 18.04.2022 and the Learned Court of Additional Chief Judicial Magistrate, Mathabhanga respectively. The basis of the order dated 01.06.2023 is, therefore, irregular and not in accordance with law.

15. In fine, after going through the provisions of section 82 of the Code and also taking into consideration the factual aspects involved in the matter,

this court is not at all satisfied that requirement under Section 82 have been duly complied with by the Learned Additional District and Sessions Judge, 1st Court, Cooch Behar (NDPS) in passing the order for initiation of attachment proceedings.

16. However, I want to make it clear that though the above order has been set aside, that will not prevent the CBI to apprehend the petitioner in accordance with law, nor cause any hindrance to the CBI for taking fresh steps under section 82 Cr.P.C. (84 BNSS) if circumstances so arise, after complying with all the legal formalities in that regard.

17. Accordingly, the order dated 01.06.2023 is hereby set aside. The CRR No. 281 of 2023 is, therefore, allowed on contest. No order as to costs.

18. Urgent certified website copies of this Judgments, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(APURBA SINHA RAY, J.)