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Court : Kolkata

Decided On : Oct-28-2009

Judge : Ashim Kumar Roy, J.

Acts : Indian Penal Code (IPC) - Sections 120B, 406 and 497

Appeal No. : C.R.R. No. 2942 of 2009 and CRAN No. 2481 of 2009

Appellant : Sakirul Islam and ors.

Respondent : The State of West Bengal and anr.

Advocate for Def. : D. Roy and ;Apurba Kumar Dutta, Advs. for O.P. No. 2 and ;Swapan Kumar Mullick, Adv.

Advocate for Pet/Ap. : Abhijit Ganguly, Adv.

Judgement :

Ashim Kumar Roy, J.

1. The subject matter of challenge in the present criminal revision is an order of issuance of search warrant on the prayer of the police in connection with a case relating to the offence punishable under Sections 497/406/120B of the Indian Penal Code.

2. Mr. Abhijit Ganguly, the Learned Counsel, appearing on behalf of the petitioner draws the attention of this Court to the order impugned and vehemently urged that the Learned Court below allowed the prayer of the Investigating Officer and issued search warrant mechanically. According to him the said order does not contain any reason which prompted the Court below to issue the impugned search warrant and reflects complete non-application of mind. He, thus, prays for quashing of the said order. Mr. Ganguly in support of his contention heavily relied on a decision of the Hon'ble Supreme Court in the case of V.S. Kuttan Pillai v. Ram Krishnan and Anr. reported in : (1980) 1 SCC 264.

On the other hand, Mr. Apurba Kumar Dutta, the Learned Counsel appearing on behalf of the private opposite party submitted that when a FIR has been registered relating to an offence of criminal breach of trust in respect of stridhan properties, during investigation the police can always make a prayer for issuance of search warrant for recovery of stridhan articles and in such circumstances no reason is required to be recorded while the Court allowing such prayer of the Investigating Agency.

Mr. Swapan Kumar Mullick, the Learned Counsel, appearing on behalf of the State however supported the contentions of the learned advocate appearing for the defacto-complainant.

3. Heard the Learned Counsels appearing on behalf of the parties. Considered their rival submissions. Perused the impugned order as well as the case laws relied upon by them.

4. I find sufficient force in the submission of Mr. Ganguly. In the case of V.S. Kuttan Pillai v. Ram Krishnan and Anr. (supra), the Apex Court categorically held that issuance of search warrant is a serious matter and it would be advisable not to dispose of an application for search warrant in a mechanical way by a laconic order. Issue of search warrant being in the discretion of the Magistrate it would be reasonable to expect the Magistrate to give reason which swayed his discretion in allowing such prayer. A clear application of mind by the Learned Magistrate must be discernable in the order of granting search warrant. Moreover, recording of reason in judicial pronouncement is an indispensable part of a sound judicial

system, reasons are at least sufficient enough to indicate the application of mind in the matter by a Court. One of the salutary requirement of natural justice is spelling out reasons for the order made in other words a speaking order. Failure to give reasons amounts to denial of justice. Any decision without reason, i.e., by its silence, render it virtually impossible for the Court to perform their appellate function or exercise the power of revision or judicial review adjudging the validity of the same. Now having gone through the impugned order I find that Learned Magistrate made the order of search warrant by mere recording as follows;

Perused the prayer of I.O. who has prayed for issuing of warrant for recovery of the articles as per list.

Heard. Considered. Prayer is allowed.

I.O. is directed if the articles are recovered after execution of search warrant, to give Zimma to such a person who is known to both the parties and copy of such Zimma also be given to both the parties as well as to the Court as early as possible.

5. Undoubtedly the order passed by the Learned Magistrate is absolutely mechanical and there has been no reason assigned for making such order and the same runs contrary to the law laid down by the Hon'ble Supreme Court in the case of V.S. Kuttan Pillai v. Ram Krishnan and Anr. (supra).

6. In fact a prayer for issuance of search warrant has been made and in turn same has been allowed mechanically without assigning any reason. In my opinion, the order impugned thus cannot be sustained and is accordingly set aside.

The Learned Magistrate is directed to dispose of the application of the Investigating Officer for issuance of search warrant by passing a reasoned order in accordance with law. Such order must be passed within five days from the date of communication of this order. The Office is directed to communicate this order to the Court below at once.

In view of the disposal of main criminal revisional application, the application for extension of interim order being CRAN No. 2481 of 2009 has become infructuous

and accordingly stands disposed of.

Criminal section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

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