

23.09.2024  
Court No.3  
Item No.12  
Ali

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

**CRR 358 of 2024**

In Re: An application under Section 528 of the Bharatiya Nagarik  
Suraksha Sanhita, 2023;

And

In the matter of: **Shri Chandra Mohan Jha & Anr.**  
**. . . . .Petitioners.**

Mr. Sudipto Kumar Majumder, Senior Adv.  
Mr. Subhankar Datta, Adv.  
... for the petitioners.

The instant CRR is being filed against an order dated 10<sup>th</sup> of  
April, 2023 passed by the learned Judicial Magistrate, 2<sup>nd</sup> Court at  
Siliguri in CR Case No. 1103 of 2007.

Learned senior counsel appearing on behalf of the petitioners  
submits that the impugned order passed by the learned Magistrate is  
illegal in the eye of law. He further submits that initially the Magistrate  
has allowed an application under Section 205 of CrPC and the  
personal appearance of the present petitioner was dispensed with.

He submits that one learned advocate was represented the  
petitioner before the learned Magistrate. However, due to some  
unavoidable circumstances, the Vakalatnama of another advocate was  
tried to be filed before the learned Magistrate who shall represent the  
petitioners. The said prayer was not allowed by the learned Magistrate.  
However, the learned Magistrate has passed the impugned order and

also issued warrant of Arrest against the present petitioner. Mr. Majumder submits that the provisions under Section 205(2)CrPC cannot allow a Magistrate to pass an order of warrant of Arrest.

Heard the learned Senior Advocate perused the materials also perused the impugned order passed by the learned Magistrate on 10<sup>th</sup> of April, 2023. It appears that when an application under Section 205(1) CrPC was allowed by the learned Magistrate by allowing the petitioners personal appearance be dispensed with, and directed him to represent through a learned advocate, then it is the only option to the Magistrate, if he things fit necessary, in any stage of the case, to pass an order for personal appearance of the accused itself as per provision under Section 205(2) CrPC. The issuance of warrant of Arrest by the learned Magistrate by virtue of provision under Section 205(2) CrPC appears to me, prima facie, illegal in the eye of law.

Accordingly, I find justification to entertain the instant criminal revision.

Accordingly, the instant criminal revision be admitted.

The further operation of the impugned order dated 10<sup>th</sup> of April, 2023 as well as the warrant of Arrest issued in favour of the present petitioner is stayed till a period of eight weeks.

Petitioner to serve the CRR upon the opposite parties.

Let the matter go out of the list.

**(Subhendu Samanta, J.)**