

**IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE (F.T.C.), AT  
DIBRUGARH**

Present: Shri Sushil Kumar Kabra  
Addl. Sessions Judge (FTC)  
Dibrugarh.

**Criminal Revision Case No. 30(4)/2021**

**In the matter of:**

1. Shri Biplob @ Biplo Roy  
S/o Late Jibon Roy
2. Sri Bikram @ Vikram Singh  
S/o Sri Jibon Roy
3. Sri Biswajit Choudhury  
S/o Late Sapu Choudhury
4. Sri Bikash Baitha @ Guddu  
S/o Sri Shatrughan Baitha
5. Sri Karan Rajak  
S/o Sri Ramesh Rajak
6. Sri Raju Deb  
S/o Late Nanigopal Deb
7. Sri Surajit Dhaar @ Sumon  
S/o Late Mridul Dhar
8. Sri Taposh Dey  
S/o Sri Paritosh Dey

.....Petitioners

Versus

1. Prem Nath Singh  
S/o Deep Chand Singh  
R/o Jyoti Nagar, Bill India Road  
P.S. & District Dibrugarh, Assam

2. State of Assam

...Respondents

**Appearance:**

Counsel for the Petitioners: Shri I. Haque, Advocate.

Counsel for Opposite Parties: Addl. Public Prosecutor

Date of Hearing: 14.12.2021

Date of Judgment: 14.12.2021

**JUDGMENT**

1. This criminal revision petition under section 397/ 398/ 399 & 401 of Criminal Procedure Code, 1973, has been preferred by Sri Biplob @ Biplo Roy, Sri Bikram @ Vikram Singh, Sri Biswajit Choudhury, Sri Bikash Baitha @ Guddu, Sri Karan Rajak, Sri Raju Deb, Sri Surajit Dhaar @ Sumon and Sri Taposh Dey against the order dated 11.11.2021 passed by learned C.J.M., Dibrugarh in G.R. Case No. 4554/2019 (PRC No 1070/2021), whereby the non-bailable warrant of arrest was issued against the above-named petitioners due to their non-appearance on 11.11.2021.
2. The notice of the revision petition was accepted by the state. L.C.R. called for has been received. I have heard the arguments advanced by the parties.
3. The facts relevant for the consideration of the revision petition are as under –

- a) On 28.09.2021, due to non-appearance of the above-named petitioners/accused persons, bailable warrant of Rs. 1,000/- each was issued by the learned Court of C. J. M., Dibrugarh against them and the matter was fixed for 11.11.2021.
- b) On 11.11.2021, the report was received by the learned C.J.M. Dibrugarh Court that said bailable warrants were duly executed. Despite service of bailable warrant, none of the above-named accused persons appeared before the learned Court of C. J. M., Dibrugarh. Accordingly, the impugned order was passed and non bailable warrant of arrest was issued against the above-named accused persons.
4. Aggrieved by the order of NBWA issued on 11.11.2021 the above named petitioners have approached this Court to recall the aforesaid order of NBWA issued against them and has prayed that the same may not be executed against the above named petitioners on the following grounds:
- a) *That the order dated 28.09.2021 passed by the court of C.J.M., Dibrugarh is bad-in-law from the point in view of the Petitioners as there being no mistake on their part, except that; they relied upon the dates mentioned / fixed on the **e-Courts Services** of Dibrugarh Judiciary.*
- b) *That the order dated 11.12.2021 passed by Court of CJM, Dibrugarh where in the Non Bailable Warrant of Arrest was issued by the Petitioners is bad-in-law from the point of view of the Petitioners as there being no mistakes on their part, except that; they relied upon the dates mentioned / fixed on the e-Courts Services of Dibrugarh Judiciary.*
- c) *That as per the **e-Courts Services** the dates of G.R. Case No. 4554/2019 (PRC1070/2020) were fixed on 26.08.2021 and thereafter on 12.11.2021. On the other the record reveals that dates were fixed on 26.08.2021 and thereafter on 28.09.2021 and 11.11.2021.*
- d) *That on 26.08.2021 that Court works being adjourned as the case is not on Special Cause List on the basis of Staggered Roaster in view of the*

*Direction/Notification of the Hon'ble Gauhati High Court regarding Covid-19 Pandemic. So, no steps needed to be taken for the Petitioners.*

*e) That after 26.08.2021 as per the **e-Courts Services** the date was fixed on 12.11.2021, but the Court of C.J.M. on 11.11.2021 issued Non Bailable Warrant of Arrest against the Petitioners.*

*f) That whoever's mistakes which causes to the issuance of the Non Bailable Warrant of Arrest but the Petitioners are the victim as Warrant being issued against them for no fault of the Petitioners and they may be arrested at any time which shall be an injustice in the eyes of Law against the Petitioners.*

5. I have heard both the parties at length.
  
6. Learned Counsel for the petitioners, Sri I. Haque, submitted that non-appearance of the petitioners was not deliberate but due to bonafide mistake. It is submitted by the learned Counsel that on 19.04.2021 petitioners could not appear and had accordingly filed a petition seeking adjournment and prayer was allowed and the matter was posted on 17.05.2021. However, because of the pandemic the matter was simply adjourned from 17.05.2021 to 17.06.2021, then from 17.06.2021 to 23.07.2021, then from 23.07.2021 to 26.08.2021, then from 26.08.2021 to 12.11.2021 as shown on the E-Court services portal.

Learned Counsel submitted that due to pandemic they were following the e-Court services. Accordingly, believing the date to be 12.11.2021 learned Counsel has noted in his Court diary as 12.11.2021. However, learned Counsel was not aware that the matter was fixed after 26.08.2021 to 28.09.2021 and thereafter, from 28.09.2021 to 11.11.2021. Accordingly, the above named petitioners could not appear on 28.09.2021 and thereafter on 11.11.2021. And when on 12.11.2021 the accused persons appeared before the Court of learned CJM, they came to know that the matter was not listed on

that day and matter was listed on 11.11.2021 and NBWA were issued against the above named petitioners.

Learned Counsel further submitted that on 12.11.2021 a petition was filed before the Court of learned CJM to show the bonafide of the accused persons. However, the said petition was not taken on record as the matter was not fixed on the said date.

7. Ld. Counsel for the petitioner has taken me meticulously through the entire case record including the print out of the e-Court services pages pertaining to present case.
8. I have also perused the materials available in the case record of G.R. Case No.4554/2019.
9. The case record reveals that on 26.08.2021 the matter was posted on 28.09.2021 for appearance. Bailable warrant of Rs.1,000/- each was issued against the above-named petitioners/accused persons due to their non-appearance on 28.09.2021, and the matter was fixed for appearance on 11.11.2021. Since none appeared for the above-named petitioners/ accused persons on 11.11.2021, learned C.J.M., Dibrugarh issued non-bailable warrant of arrest against the above-named petitioners/ accused persons.

On the other hand, it appears from the print out pages of e-Court services, filed by the petitioners along with the revision petition, that after 17.06.2021 the matter was posted on 23.07.2021 and on 23.07.2021 it was posted for appearance on 26.08.2021. Then on 26.08.2021 the matter was posted for appearance on 12.11.2021.

Today I have verified the e-Court services portal and found that on business date of 26.08.2021 it is shown that the next date is 11.11.2021. Even learned counsel for the petitioners have verified the

e-court services app on his mobile in the open court and found that the on business date of 26.08.2021 the next date fixed is shown as 11.11.2021. Whereas the print out of the relevant pages of e-Court services app filed by the petitioners/accused persons shows that on business date of 26.08.2021 the next date is fixed as 12.11.2021. Learned counsel for the petitioner submitted that in many of his cases the e-court services app is showing incorrect dates. It appears there is some anomaly in the e-Court services portal/app. Be that as it may be.

The fact remains that the e-Court services portal/app was not showing the date 28.09.2021 which is mentioned in the case record. The submission of the learned counsel for the petitioners/accused persons that they were following the e-Court services portal/app during the pandemic is taken into cognizance.

10. This Court queried from the learned counsel for the petitioners as to why the petitioners did not appear before the Court of learned CJM, Dibrugarh, on 11.11.2021 upon receipt of warrant.

Learned Counsel submitted that upon receipt of the warrants the above-named petitioners/accused persons called him up; and after verifying his court diary and the e-Court services portal he had told to the petitioners that the date fixed is 12.11.2021. Learned counsel submitted that the non-appearance of the petitioners on 11.11.2021 is due to bonafide mistake and not deliberate.

11. Considering the entire facts and circumstances, I am of the view that the non-appearance of the above named Petitioners / accused persons is unintentional and bonafide.

12. In view of the above, the present revision petition is allowed and order dated 11.11.2021 passed in G.R. Case No. 4554/2019 (PRC No 1070/2021) by the learned CJM, Dibrugarh, is hereby set-aside and non-bailable warrants of arrest issued against the above named petitioners, i.e. Sri Biplob @ Biplo Roy, Sri Bikram @ Vikram Singh, Sri Biswajit Choudhury, Sri Bikash Baitha @ Guddu, Sri Karan Rajak , Sri Raju Deb, Sri Surajit Dhaar @ Sumon and Sri Taposh Dey, are hereby recalled. The petitioners are directed to appear before the Learned CJM, Dibrugarh, on the date already fixed, i.e. 20.12.2021, without fail and apply for appropriate bail which shall be decided by the learned CJM in accordance with law.
13. That with the above direction, this revision petition is accordingly disposed of.
14. Send back the L.C.R. of G.R. Case No. 4554/2019 to the court of learned C.J.M., Dibrugarh, along with a copy of this order.

Given under my hand and seal of this court on this day, the 14<sup>th</sup> December, 2021.

  
Addl. Sessions Judge (F.T.C.)  
Dibrugarh