

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
Appellate Side

Present:

Justice Bibhas Ranjan De

C.R.R. 4314 of 2024

UBS Switzerland AG

Vs.

The State of West Bengal & Ors.

For the Petitioner

:Mr. Sanjay Banerjee, Adv.

Mr. Srinivas Chatti, Adv.

Ms. Labony Ray, Adv.

For the State

:Ms. Rituparna De Ghosh, Adv.

Ms. Diksha Ghosh, Adv.

For the opposite party no. 2

:Mr. Ayan Bhattacharya, Sr. Adv.

Mr. Shonok Monda, Adv.

Mr. A.K. Dey, Adv.

Last Heard on

:09.07.2025

Judgment on

:21.08.2025

Bibhas Ranjan De, J.

1. Petitioner/ UBS Switzerland AG lodged a complaint against the accused/ opposite party no. 2 to 7 herein before West Port Police Station on 28.03.2018 which was registered as West Port Police Station Case No. 88 of 2018 on an allegation that the petitioner pledged goods of over Rs. 55 crores which were delivered in Kolkata and those goods were misappropriated by the accused/opposite party no. 2 to 7 herein. At the time of granting anticipatory bail an amount of INR 10 crores was deposited by accused no. 2 to 4 and subsequently petitioner/defacto complainant was allowed to withdraw the said amount.
2. After successive investigation two closure reports were filed and the Ld. Chief Judicial Magistrate, Alipore was pleased to set aside both the closure reports by directing further investigation. The order in respect of second closure report and further investigation was challenged in criminal motion no. 213 of 2024 before the Ld. Sessions Judge, Alipore which was, in turn, transferred to the Court of Ld. Additional Sessions Judge, 12th Court, Alipore, South 24 Paraganas for disposal.

- 3.** On 27.06.2024 on behalf of the State one application was moved seeking an order for issuance of summons in terms of Section 105 of Code of Criminal Procedure (hereinafter referred to as CrPC) which was allowed. But, subsequently on 12.08.2024, Ld. Additional Sessions Judge passed an order dispensing with the service on the sole ground of representation of defacto complainant through one Ld. Advocate before the Court of Ld. Chief Judicial Magistrate.
- 4.** Being aggrieved by and dissatisfied with the said order dated 12th August, 2024, the instant revision application has been preferred by the defacto complainant/petitioner herein.
- 5.** Mr. Sanjay Banerjee, Ld. Counsel, appearing on behalf of the petitioner has submitted that on June 27, 2024 one application was moved on behalf of the State for issuance of the summons on the opposite party under Section 105 CrPC and Ld. Additional Sessions Judge, 12th Court allowed the application directing service of notice under Section 105 of CrPC. But, subsequently, on 12.08.2024 the order was recalled and that service was dispensed with solely on the basis of submission on behalf of the accused that one Ld. Advocate had earlier represented the petitioner/defacto

complainant before the Court of Ld. Chief Judicial Magistrate. It is submitted by Mr. Banerjee that appearance before Ld. Chief Judicial Magistrate does not necessarily lead to a presumption of appearance before the revisional court. Mr. Banerjee has also contended that there was reciprocal arrangement between India and Switzerland and therefore the petitioner, being a swiss entity can only be served with a judicial document in a criminal matter by following the mandatory provision under Section 105 CrPC. Mr. Banerjee has again contended that Section 105 CrPC specifically mandates service of summons in relation to criminal matters and the said provision cannot be interpreted destructively by excluding service of notice upon the petitioner, a swiss entity, who is arrayed as respondent in revision petition.

- 6.** Per contra, Mr. Ayan Bhattacharya, Ld. Senior Counsel, appearing on behalf of the opposite party no. 2 has contended and earnestly submitted that the meticulously prescribed procedural framework governing the issuance of summons to the accused, as comprehensively delineated under the provision of Section 105 of the CrPC, bears no applicability whatsoever and stands entirely divorced from

the distinct procedural requirements pertaining to the issuance of notice upon the opposite party in the context of a revision application.

7. In support of his contention, Mr. Bhattacharya relied on a case of ***Durlab Singh vs. The District Magistrate, 1974 CRI.L.J. 1182 (DELHI HIGH COURT)***.

8. Mr. Bhattacharya has further referred to the registration fees and postal track reports showing service of notice upon the defacto complainant.

9. Ms. Rituparna Saha, Ld. Counsel, appearing on behalf of the State by relying on the materials on record has conceded the arguments advanced on behalf of the petitioner.

Analysis:-

10. After keen evaluation of the rival contentions adduced on behalf of the parties, I feel it to be apt to first discuss about the structural framework and interpretation of Section 105 of the CrPC. The provision as enumerated in the Code, confers a specific, guided and controlled power to authorities for executing certain processes, particularly relating to search, seizure, issuance of warrant and attachment of property with built in safe guards and procedural requirements. It is not an

unguided or arbitrary power, but one that is subject to judicial oversight, statutory conditions and constitutional principles. The specific object of inserting Section 105 CrPC was to provide a clear, statutory procedure for executing searches, seizures, issuance of warrant and attachment of property especially in cases involving extraterritorial elements or complex matters. The main aim of this specific enactment is to balance effective law enforcement with safeguards against abuse, as can be seen by several judicial pronouncements of the Hon'ble Apex Court. It is also trite law that Judicial Review is a very key safeguard to prevent abuse of powers under Section 105 CrPC.

11. In the aforesaid view of the matter, if I now shift my focus towards the case at hand, the sole determining factor that comes up for adjudication is whether in case of a revision application there lies any statutory requirement to send notice to an opposite party/defacto complainant therein who is residing outside the territory of India in consonance with the structural framework of Section 105 CrPC.

12. To respond to the aforementioned question, if I keep in mind the interpretation of Section 105 CrPC which has been

thoroughly discussed in the foregoing paragraph, it would be further crystallized that there is no statutory requirement under Section 105 that mandates sending notice to an opposite party/defacto complainant residing outside the territory of India in each and every revision application. The provisions and judicial interpretations would further suggest that while service of process through diplomatic channels or international arrangements is contemplated and facilitated, the Law does not explicitly impose a mandatory obligation to send notice to such parties in the context of revision proceeding. The logical interpretation of the various judicial decisions would further clarify that failure to effect service under Section 105 of CrPC does not necessarily vitiate the proceedings of the entire criminal revision.

13. Moreover, in the case at hand, it is admitted fact that notice was indeed sent to the correct address of the petitioner through registered post with AD. Therefore, it cannot be said that the petitioner's right to a fair hearing has been prejudiced in any manner whatsoever.

14. However, I would like to add that I am not disputing the plea of Mr. Banerjee that just because the petitioner was

represented through a Ld. Advocate in the Trial Court, only on that particular ground service of notice upon the person residing outside the territory of India can be dispensed with by the Ld. Additional Sessions Judge, Alipore. As mere representation by counsel does not substitute or waive the necessity of valid notice as prescribed by law. Service of notice is a procedural requirement that must be fulfilled independently of the appearance or representation of counsel. The Hon'ble Apex Court in this regard, has consistently held that procedural compliance cannot be bypassed merely because the person is represented by counsel as the purpose of service is to ensure actual notice and opportunity to be heard, which cannot be presumed solely on the basis of the legal representation.

- 15.** Revision applications, in my humble opinion, are primarily concerned with errors of law or jurisdiction in the proceedings of Sub-ordinates Courts. The procedural requirement to serve a notice to an opposite party residing abroad is not explicitly mandated in the revision process itself. The Courts have consistently acknowledged the existence of procedural flexibility, especially in international

contexts. Alternatively, it can be held that while procedural diligence is desirable, the law recognizes that in absence of prejudice, proceedings are not automatically invalidated.

16. Conglomeration of the aforesaid discussion, therefore clearly boils down to the only logical conclusion that Section 105 CrPC cannot be said to be applicable in case of service of notice to an opposite party/ defacto complainant in criminal revision.

17. At this juncture, I would like to clarify that the reasoning provided by the Ld. Additional Session Judge in coming to his conclusion cannot be said to be backed by substantial basis. But, the ultimate direction of not allowing issuance of notice under Section 105 CrPC is correct. The actual reasons for reaching to that conclusion has been provided hereinabove.

18. On that score, the instant revision application (CRR 4314 of 2024), being devoid of merits, stands dismissed.

19. Connected applications, if any, stand disposed of accordingly.

- 20.** All parties to this revisional application shall act on the server copy of this order duly downloaded from the official website of this Court.
- 21.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]