

31.03.2023
Court-42
Jaydev

CRR 1142 of 2023

Jacob Cherian

-Vs-

The State of Bengal & Anr.

For the Petitioner:- Mr. Sabyasachi Banerjee, Adv.,
Mr. Ayan Bhattacharjee, Adv.,
Mr. Anand Keshri, Adv.,
Mr. Atish Ghosh, Adv.,
Ms. Antara Dey, Adv.

It is submitted on behalf of the petitioner that CBI, the opposite party No.2 investigated into a case which was initiated on the basis of a complaint filed under Section 156(3) of the Code of Criminal Procedure before the learned Chief Judicial Magistrate at Alipore. After completion of investigation, CBI submitted charge-sheet. The record further goes to suggest that previously the present petitioner being one of the accused was discharged by the learned Special Judge, CBI Court at Calcutta. It is pertinent to mention that in the said case charge-sheet filed against the petitioner and others under Section 120(b) read with Section 420 of the IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. The order of discharge from the aforesaid case was not challenged by the CBI in any higher forum and the said order has become final.

The grievance of the petitioner is that on the self-same fact and circumstances upon the same complaint, CBI further submitted charge-sheet against the petitioner under Sections 120B read with Section 420/409 of the IPC before the court of the learned Metropolitan Magistrate, 22nd Court at Calcutta. Subsequently, the case was committed to the court of the learned Special Judge,

CBI, 3rd Court, Calcutta and the learned Special Judge finding that the CBI submitted charges-sheet alleging commission of offence under the IPC transmitted the case record to the learned Metropolitan Magistrate, Calcutta. The case was transferred to Metropolitan Magistrate, 22nd Court at Calcutta and vide order dated 11th March, 2022, the learned Metropolitan Magistrate issued warrant of arrest against the petitioner in the said case being RC/BD-1/03/E/2002-CBI/EOW/Kolkata.

The learned Advocate for the petitioner has raised the following issues:-

- (i) Whether CBI can file a second charge-sheet against the petitioner on the self same facts and circumstances especially when the petitioner was discharged previously in connection with the same offence.
- (ii) It is further contended that over the self same issue if addition of charge under Section 409 of the IPC makes the instant case separate from the earlier.
- (iii) Whether the learned Metropolitan Magistrate was justified in issuing warrant of arrest considering the fact that the petitioner was discharged in the earlier proceeding arising out of the same incident.
- (iv) Whether the case instituted by the CBI can be proceeded with in view of the pendency of SLP(Cri) No.4230 of 2013 (CBI vs. Budha Priya Mahathrea).

The learned Advocate for the petitioner has also refers to an order dated 29th August, 2017 passed by a Coordinate Bench in CRR 1650 of 2017 granting state of further proceeding in CBI Case under Section 420/120B of the IPC until further

orders in view of the pendency of the above mentioned Special Leave to Appeal (Crl).

The instant revision be admitted, execution of warrant of arrest be kept in abeyance for a period of till after summer vacation.

Further proceeding in connection with CBI Case No. RC/BD-1/03/E/2002-CBI/EOW/Kolkata under Section 120B read with Section 420/409 of the IPC be stayed till two weeks after summer vacation.

In the mean time the petitioner is directed to serve notice upon the opposite parties under registered speed post with AD and file affidavit of service within three weeks from the date of this order.

(Bibek Chaudhuri, J.)