

**14.12.2022**  
**Item No.16.**  
**Suman**  
Ct.42

**CRR 3439 of 2022**

**Jacob Cherian**  
**Vs.**  
**The State of West Bengal and Anr.**

Mr. Sabyasachi Banerjee  
Mr. Ayan Bhattacharya  
Mr. Anand Keshri  
Mr. A. Ghosh  
Mr. Arindam Chandra  
Ms. Antara Dey  
.....for the petitioner

It is submitted by 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 156 (3) of the Code of Criminal Procedure before the Court of the learned Chief Judicial Magistrate at Alipore. After completion of investigation CBI submitted charge sheet. The record further goes to suggest that vide order dated 26<sup>th</sup> November, 2013 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 was filed against the petitioner and others under Section 120B read with Section 420 of the Indian Penal Code 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 and by efflux of time the said order has reached its finality.

The grievance of the petitioner is that on the self-same fact and circumstances and upon the same complaint CBI further submitted charge sheet in the year 2016 against the petitioner for the offence punishable under Sections 120B/420/409 of the Indian Penal Code before the same Court. Learned Special Judge finding that CBI submitted charge sheet alleging commission of offence under the Indian Penal Code, transmitted the case record to the learned Chief Metropolitan Magistrate, Calcutta. The learned Chief Metropolitan Magistrate, Calcutta vide order dated 13<sup>th</sup> April, 2022 issued warrant of arrest against the petitioner in the said case being RC/BDI/2002/E/0004. The learned advocate for the petitioner has raised the following issues.

- (1) Whether CBI can file a second charge sheet against the petitioner on the self-same facts and complaint filed on 17<sup>th</sup> September, 2002 specially when the accused/petitioner was discharged vide order dated 26<sup>th</sup> November, 2013.
- (2) The charge sheet was not only filed under the Prevention of Corruption Act but also

under Section 120B/420 of the Indian Penal Code. Therefore, whether second charge sheet under almost the same provisions adding section 409 of the Indian Penal Code can be filed by the CBI specially when in the order of discharge it was specifically recorded by the learned Special Judge that the petitioner and other accused persons were not the public servants at the time of commission of alleged offence.

- (3) Whether the learned Chief 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.
- (4) Whether the case instituted by the CBI can be proceeded with in view of pendency of **SLP (Cri) No. 4230 of 2013 (CBI vs. Budha Priya Mahathrea).**

The learned advocate for the petitioner also refers to the order dated 29<sup>th</sup> August, 2017 passed by a Co-ordinate Bench in CRR No.1650 of 2017 granting stay of all further proceedings since in the CBI case under Section 420/120B of the Indian Penal Code until further orders in view of the pendency of the above mentioned Special Leave to Appeal (Cri.)

The instant revision be admitted.

Execution of warrant of arrest be kept in abeyance for a period of six weeks.

Further proceedings in connection with CBI Case No. RC/BDI/2002/E/0004 be stayed for a period of six weeks.

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

**(Bibek Chaudhuri, J.)**