

**21.12.2022**

Sl. No. 12.

Mithun

Ct.No.42.

**Calcutta High Court  
In the Circuit Bench at Jalpaiguri**

**CRR 305 of 2022**

**Mrinmoy Bose & Ors.**

**Vs.**

**The State of West Bengal & Anr.**

Mr. Sourav Chatterjee, Adv.  
Mr. Aniruddha Bhattacharjya, Adv.  
Ms. Namrata Chatterjee, Adv.

...for the petitioners.

Issue involved in the instant revision is as to whether the prosecuting agency is justified in filing charge-sheet under Section 409 of the Indian Penal Code against the petitioners when the basic ingredients of Section 409 of the Indian Penal Code is not satisfied. Further issue for adjudication automatically arises as to whether the learned Additional Chief Judicial Magistrate at Alipurduar was justified in taking cognizance of offence under Section 409 of the Indian Penal Code on the basis of the charge-sheet filed by the Investigating Officer against the petitioners.

The learned Advocate for the petitioners has raised another issue relying on the decision of a Coordinate Bench in the case of ***Sharmishtha Chowdhury Vs. State of West Bengal*** reported in ***2018 Cri LJ 359***. In the aforesaid report a Coordinate Bench was pleased to quote Rule 183 of the Calcutta

High Court Criminal (Subordinate Court) Rules 1985 which reads as follows:-

“R.183. Orders requiring the exercise of judicial discretion and the final order shall be recorded by the Magistrate in his own hand or typed by him, others may be recorded under his direction by the Bench Clerk.”

It appears from the order dated 18<sup>th</sup> August, 2022 that the operating portion of the said order passed by the learned Magistrate regarding taking of cognizance and issuance of warrant of arrest was passed by filling in the gaps on the pre-written order. It is urged by the learned Advocate for the petitioners as to whether the order dated 18<sup>th</sup> August, 2022 is just, legal and proper.

The instant revision is admitted.

The petitioners are directed to serve notice upon the private opposite party under registered speed post with acknowledgment due and to file affidavit of service within 3 weeks from the date of this order.

In the meantime, further proceedings in connection with G.R. Case No.2137 of 2014 including execution of warrant of arrest issued against the petitioners be stayed for a period of 6 weeks.

**( Bibek Chaudhuri, J. )**

