

Form J(1)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

CRR 1673 of 2022

**Subhas Chandra Sarkar
Vs.
Central Bureau of Investigation**

Mr. Ranjan Kumar Roy
Mr. Ranajit Roy
...for the petitioner

Mr. Kallol Mondal
...for CBI

Item No.08

Heard & Judgment on: 14.09.2022

Bibek Chaudhuri, J.

By filing the instant revision under Section 482 of the Code of Criminal Procedure, the petitioner who has been discharged by the trial Court vide order impugned dated 23rd February, 2018 in Special

Case No.2 of 2014 arising out of RC 0102013A0029 of 2013 under Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act 1988 has assailed the legality and validity of the aforesaid order.

At the outset, Mr. Kallol Mondal, learned advocate for the CBI submits that the impugned order was passed on 23rd February, 2018 and the instant revision has been filed on 13th May, 2022, i.e., after long expiry of limitation and accordingly, the instant revision is hopelessly barred by limitation.

I am not in a position to accept such submission made by Mr. Mondal, learned advocate for the CBI on the ground that an aggrieved person may invoke an inherent power of this Court assailing an order on the ground of abuse of process of the Court.

By passing the impugned order dated 23rd February, 2018 the learned trial Judge discharged the petitioner under Section 239 of the Code of Criminal Procedure after considering the examination-in-chief of P.W.1 who was cited in the charge sheet filed by the CBI as the sanctioning authority.

On due consideration of the evidence on record the learned trial Judge found that P.W.1 had no authority to issue sanction for prosecution against the petitioner in respect of the Special Case No.02 of 2014.

At the outset, I like to record that the impugned order is absolutely illegal in view of the fact that the provision of Section 239 of the Code of Criminal Procedure cannot be exercised in favour of an accused after framing of charge. When trial of the case started by way of examining P.W.1, the learned trial Judge cannot invoke Section 239 of the Code of Criminal Procedure and pass an order discharging the accused/petitioner. Therefore, the order being illegal is set aside.

It is submitted by Mr. Roy, learned advocate for the petitioner that the learned trial Judge may be directed to record an order of acquittal against the accused in view of the fact that no proper sanction was obtained for prosecution against him. At this stage, Mr. Mondal, learned advocate for the CBI submits that CBI has already filed supplementary charge sheet along with valid sanction order against the accused.

The learned trial Judge took cognizance of offence against the accused on the basis of the said supplementary charge sheet. The accused also surrendered before the trial Court after submission of supplementary charge sheet and the learned trial Judge permitted him to remain on same bail.

An issue as to whether supplementary charge sheet can be filed after obtaining a second sanction order against the accused has not been agitated before this Court. The scope of the instant revisional

application under Section 482 of the Code of Criminal Procedure cannot be extended at this stage. This question is left open for adjudication of the trial Court in accordance with law.

The instant revision is, thus, disposed of with the above order.

(Bibek Chaudhuri, J.)