

D/L14
09.11.2022
Bpg.

C.R.R.2483 of 2021

In Re: An application under Section 401 read with Section 482 of the
Code of Criminal Procedure, 1973;

Raj Kumar Banerjee
Versus
Radha Shyam Mishra and another

Mr. Abhra Mukherjee,
Mr. Amit Halder,
Md. Wasim Akram,
Mr. Sauradeep Dutta.
...for the petitioner.

Mr. Dhiraj Trivedi,
Mr. S.K. Mishra,
Mr. S. Goswami.
...for the CBI.

Mr. Mukherjee, learned advocate appearing for the petitioner challenges the order dated 15.09.2021 passed by the learned Judge, Special (CBI) Court, Asansol, Paschim Bardhaman in Special CBI Case No.01/2019 arising out of RC05/E/2017-Kol of 2017 dated 25.07.2017.

One of the main thrust of the contentions of Mr. Mukherjee is that the charge-sheet has been submitted under Section 120B read with Sections 420/471 of the Indian Penal Code as well as Sections 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and the provisions of Section 13(1)(d) of the Prevention of Corruption Act, 1988, according to the learned advocate, is no more in existence, as such, the applicability of the same in the background of the instant case is redundant. To that effect, learned advocate relies upon a decision in case of **Kolhapur**

Canesugar Works Ltd. and another Vs Union of India and others

reported in **(2000) 2 SCC 536** and submits that the provisions of General Clauses Act, 1897 would be applicable in respect of the instant case.

On the other hand, Mr. Dhiraj Trivedi, learned DSG appearing for the CBI refutes such contentions and submits that the order passed by the learned Special Court dated 15.09.2021 is a speaking order dealing with the relevant contention of the petitioner and it is settled position of law that the pending proceedings will not be attracted to in case of amendments which have subsequently been incorporated in the Act.

However, the issue of Section 239 of the Code of Criminal Procedure is restricted whether an offence has been made out or not made out. The applicability of Sections is obviously the discretion of the court. The subject matter of applicability of Sections are not matters to be decided at the stage of Section 239 of the Code of Criminal Procedure. When the learned court exercises its powers under Section 240 of the Code of Criminal Procedure, the learned court would appreciate the materials appearing in the records and to its wisdom and exercising its discretion would apply the Sections under which the charge would be framed.

It has been informed that the charge is yet to be framed by the learned Special Court. The learned Special Court, as such, would peruse the materials available on the records and apply its discretion in respect of the applicability of Section so far as the present petitioner and other accused persons are concerned.

With the aforesaid observations, CRR 2483 of 2021 is disposed of.

Pending applications, if any, are consequently disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Tirthankar Ghosh, J.)