

22
13.05.2024
Ct. No.3
RS

**IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
Criminal Revisional Jurisdiction
Appellate Side**

CRR No. 345 of 2023

DEVENDRA KUMAR SAXENA
-VS-
CENTRAL BUREAU OF INVESTIGATION CBI

Mr. Tapes Ch. Bhattacharya, Adv.
Mr. Subhajyoti Ghosh, Adv.

... for the petitioner

Mr. Sudipto Kumar Mazumdar, D.S.G.I.
Mr. Ajoy Kumar Singhania, Adv.

... for the CBI

Mr. Tapes Ch. Bhattacharya, learned counsel, is
appearing for the petitioner.

Mr. Sudipto Kumar Mazumdar, learned D.S.G.I. is
appearing for the CBI/respondent.

The petitioner has filed the present application
under Section 401 read with Section 482 of the Code of
Criminal Procedure, 1973 challenging the order passed by
the learned Special Judge (CBI) Court, Siliguri dated 21st
September, 2023 in Special CBI Case No.41 of 2012 (CBI
vs. D.K. Saxena and Another) wherein the learned Special

Judge (CBI) Court has rejected the application filed by the petitioner for his discharge.

Counsel for the petitioner submits that the Government of State of West Bengal has not accorded sanction to the CBI to exercise of power and jurisdiction under Section 6 of the Delhi Special Police Establishment Act, 1946 against the petitioner. He further submits that the Government of West Bengal has also not issued any notification to register FIR, investigation and prosecute any private person in the State of West Bengal.

Learned D.S.G.I. appearing on behalf of the CBI has drawn the attention of this Court to the order passed by the co-ordinate Bench of this Court in CRR No.13/2022 dated 4th March, 2022 wherein the co-ordinate Bench of this Court has rejected the application filed by the petitioner. Being aggrieved with the order dated 4th March, 2022, the petitioner has preferred an SLP before the Hon'ble Supreme Court and the Hon'ble Supreme Court has also dismissed the application by giving liberty to the petitioner to raise objection at the time of trial. After the order passed by the Hon'ble Supreme Court, the petitioner had again filed an application before the learned Special Judge (CBI) Court for his discharge on the same ground and the learned Special Judge (CBI) Court has passed the following order :-

“So from above discussion it is appeared that both the Hon’ble Calcutta High Court and the Hon’ble Supreme Court confirmed the order no-140 dated 23-11-2021 passed by this Trial Court. It appears that by order dated 13-04-2022 passed by the Hon’ble Supreme Court in special leave petition (Criminal) no-3372 of 2022, Hon’ble Supreme Court affirmed the judgement and order dated 04-03-2022 passed by Hon’ble Calcutta High Court in C.R.R. No-13 of 2022 as well as the order no-140 dated 23-11-2021 passed by this Trial Court and at the same time gave liberty to the petitioner to raise objections at the time of trial. What I perceive, the Apex Court gave permission to the petitioner to raise his defence as taken before Hon’ble Court at the time of the trial. What I feel, the Hon’ble Apex Court expressed its opinion that the defence which is available to the petitioner shall be ventilated before this trial court either by adducing evidence as defence-evidence or by raising the point through cross-examination of the concerned prosecution witnesses.

I do not find any reason to entertain the self-same discharge petition filed on behalf of accused petitioner, in respect of which this trial court has already passed a detail order and Hon’ble High Court and Apex court confirmed the same.

In view of the above, the self-same petition filed praying for dropping the proceeding against the accused petitioner is not maintainable and accordingly liable to be dismissed. In view of the above discussion, I find that the application/petition dated 22-06-2022 for dropping the proceedings against the accused

petitioner/discharging the accused petitioner from this case is liable to be dismissed.

Accordingly, the prayer for dropping the proceeding against the accused petitioner and/or prayer for discharging the accused petitioner from this case is rejected and the application/petition dated 22-06-2022 is dismissed.”

Being aggrieved by the said order, the petitioner has filed the present application.

Heard learned counsel for the respective parties.

This Court finds that the similar application was filed by the petitioner on the earlier occasion and this Court has rejected the same and the same was duly affirmed by the Hon’ble Supreme Court. In spite of the same, the petitioner has again filed the application before the Special Judge (CBI) Court and the learned Special Judge (CBI) Court taking into consideration of the order passed by the co-ordinate Bench on 4th March, 2022 and the order passed by the Hon’ble Supreme Court on 13th April, 2022, has rejected the application filed by the petitioner.

From the order passed by the learned Special Judge (CBI) Court dated 21st September, 2023 which is impugned, in the said order it has been categorically mentioned that the trial Court has framed the charges against the petitioner on 15th July, 2013 and the trial has

already been commenced and 27 witnesses have been examined by the prosecution.

Learned counsel for the petitioner submits that the next date is fixed on 1st July, 2024 for further examination of prosecution witnesses.

Considering the above facts and circumstances, this Court finds that the application filed by the petitioner is misconceived and the order passed by the trial Court does not require any interference. Accordingly, CRR No. 345 of 2023 is dismissed.

The learned trial Court is directed to proceed with the matter in accordance with law.

(Krishna Rao, J.)