

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16916 of 2017

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1. Nalin Kumar Singh S/o Kishori Singh Resident of village - Shahri, P.S. Barh, District - Patna.

.... Petitioner/s

Versus

1. The State of Bihar through Secretary, Home Department, Govt. of Bihar, Patna.
2. I.G. Prison, Bihar, Patna.
3. Superintendent, Mandal Kara, Samastipur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Raj Bansh Dubey

For the Respondent/s : Mr. Sheo Shankar Prasad -Sc8

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

2 30-04-2018 The impugned order herein i.e. the order of punishment dated 05.07.2010 was earlier challenged before this Court in CWJC no. 5826 of 2014 and this court by an order dated 27.07.2017, had disposed of the writ petition as withdrawn with liberty to file a representation.

It is a trite law that once a writ petition has been withdrawn without liberty to file a fresh writ petition, the same would operate as *res judicata* in further proceedings regarding the same impugned order, hence the present writ petition is barred by the principles of *res judicata* and therefore, this Court is not inclined to entertain the present writ petition. In this connection, it would be useful to reproduce hereinbelow, paragraphs no. 8 and 9



of a judgment rendered by the Hon'ble Apex Court, reported in ***AIR 1987 SC 88 (Sarguja Transport Service v. S.T.A.. Tribunal, Gwalior)*** :-

8. The question for our consideration is whether it would or would not advance the cause of justice if the principle underlying rule 1 of Order XXIII of the Code is adopted in respect of writ petitions filed under Articles 226/227 of the Constitution of India also. It is common knowledge that very often after a writ petition is heard for some time when the petitioner or his counsel finds that the Court is not likely to pass an order admitting the petition, request is made by the petitioner or by his counsel, to permit the petitioner to withdraw from the writ petition without seeking permission to institute a fresh writ petition. A Court which is unwilling to admit the petition would not ordinarily grant liberty to file a fresh petition while it may just agree to permit the withdrawal of the petition. It is plain that when once a writ petition filed in a High Court is withdrawn by the petitioner himself he is precluded from filing an appeal against the order passed in the writ petition because he cannot be



*considered as a party aggrieved by the order passed by the High Court. He may as stated in **Daryao and Ors. v. The State of U.P. and Ors.**, [1962] 2 S.C.R. 575 in a case involving the question of enforcement of fundamental rights file a petition before the Supreme Court under [Article 32](#) of the Constitution of India because in such a case there has been no decision on the merits by the High Court. The relevant observation of this Court in **Daryao's case (supra)** is to be found at page 593 and it is as follows:*

"If the petition is dismissed as with- drawn it cannot be a bar to a subsequent petition under [Art. 32](#), because in such a case there has been no decision on the merits by the Court. We wish to make it clear that the conclusions thus reached by us are confined only to the point of res judicata which has been argued as a preliminary issue in these writ petitions and no other."

9. The point for consideration is whether a petitioner after withdrawing a writ petition filed by him in the



High Court under [Article 226](#) of the Constitution of India without the permission to institute a fresh petition can file a fresh writ petition in the High Court under that Article. On this point the decision in Daryao's case (supra) is of no assistance. But we are of the view that the principle underlying rule 1 of Order XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under [Article 226](#) of the Constitution once again. While the withdrawal of a writ petition filed in a High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under [Article 32](#) of the Constitution of India since such withdraw- al does not amount to res judicata, the remedy under [Article 226](#) of the Constitution of India should be deemed to have been abandoned by the



petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission. In the instant case the High Court was right in holding that a fresh writ petition was not maintainable before it in respect of the same subject-matter since the earlier writ petition had been withdrawn without permission to file a fresh petition. We, however, make it clear that whatever we have stated in this order may not be considered as being applicable to a writ petition involving the personal liberty of an individual in which the petitioner prays for the issue of a writ in the nature of habeas corpus or seeks to enforce the fundamental right guaranteed under [Article 21](#) of the Constitution since such a case stands on a different footing altogether. We however leave this question open. ”

However, even on going through the records of the case, I do not find any illegality in the procedure adopted by the respondents for the purposes of awarding punishment to the petitioner herein vide order dated 05.07.2010. Even the appellate authority has dismissed the appeal of the petitioner herein and finally, the representation of the petitioner has also been dismissed



by an order dated 24.10.2017. There is neither any infirmity nor any illegality in passing of the aforesaid orders by the respondent authorities.

In view of the aforesaid, there is no scope of any interference in the order of punishment dated 05.07.2010.

Accordingly, the writ petition is dismissed.

(Mohit Kumar Shah, J)

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