

13/04/2021
Item 10-13 (a)
Court No.1.
AB/S DE

Through Video Conference

**F.M.A. 471 of 2021
(M.A.T. 317 of 2021)**

With

IA CAN 1 of 2021

IA CAN 2 of 2021

IA CAN 3 of 2021

IA CAN 4 of 2021

Anisur Rahaman

Vs

Jahar Sha & Others

With

C.R.L.C.P. 2 of 2021

Afjal Ali Sha @ Abjal Shaukat Sha

Vs

Anisur Rahaman & Others

With

W. P. A. (P) 67 of 2021

With

I. A. CAN 1 of 2021

Dipak Mishra

Vs

The State of West Bengal & Others

With

W. P. A. (P) 68 of 2021

With

I. A. CAN 1 of 2021

I. A. CAN 2 of 2021

I. A. CAN 3 of 2021

I. A. CAN 4 of 2021

Nilanjan Adhikary

Vs

The State of West Bengal & Others

Mr. Sandipan Ganguly, Sr. Adv,
Mr. Samik Chakraborty,
Mr. Ayan Poddar,
Ms. Moumi Yasmin ...for the Appellant.

Mr. Kishore Dutta, Ld. AG,
 Mr. Abhratosh Majumdar, Ld AAG,
 Mr. Sayan Sinha ...for the State.

Mr. Salauddin Ahmed,
 Mr. Razzak Hossain,
 Mr. Sandipan Maity ...for the Respdt. No.1.

Mr. Rajdeep Majumdar,
 Mr. Sourav Chatterjee,
 Mr. Sarthak Mondal ...for the Petitioner in
 WPA (P) 67 of 2021 &
 WPA (P) 68 of 2021.

Mr. A. Bhattacharya ...for the Intervenor.

In re : F.M.A. 471 of 2021

The judgment and order dated March 2, 2021, whereby WPA 6315 of 2021 was disposed of by a learned Single Judge, is impugned in the present appeal.

The appellant stands accused in several criminal cases. The writ petition was filed by a person challenging the proposal of the State Government to initiate action in terms of Section 321 of the Code of Criminal Procedure for withdrawal of the criminal cases pending against the appellant. The appellant was not made a party in the writ petition.

At the hearing, it was submitted by learned Advocate General representing the State that an order under Section 321 of the Code of Criminal Procedure had already been passed by the concerned Trial Court. The effect of this would have been that the criminal charges against the appellant would have stood

withdrawn. However, the learned Single Judge quashed the order that was passed by the learned Trial Court under Section 321 of the Code of Criminal Procedure.

Mr. Ganguly, learned Senior Counsel appearing for the appellant submits that quashing of the order under Section 321 of the Code of Criminal Procedure without hearing the appellant amounted to clear and flagrant violation of the principle of *audi alteram partem*. The order, which conferred substantial benefits on the appellant, could not have been set at naught without giving the appellant an opportunity of hearing.

Learned Counsel assailed the order on several other grounds which we need not go into at this stage since we are in agreement with the learned Counsel that there has been a breach of the principles of natural justice in this case. On that count alone, we set aside the order impugned under appeal. The matter is remanded to the learned Single Judge for being heard afresh.

We have not gone into the merits of the case at all. All questions are left open to be urged before the learned Single Judge, who will decide the matter in accordance with law without being influenced by anything contained in this order.

Needless to say that by reason of this order, the status that prevailed on the day when the learned Single Judge disposed of the writ petition, shall stand restored, whatever the effect thereof be.

We request the learned Single Judge to hear out and decide the writ petition as soon as the business of the Court of the learned Judge permits.

The application filed by Afjal Ali Sha @ Abjal Shaukat Sha for being added as a party respondent in this proceeding is closed with liberty to Afjal Ali Sha to renew his prayer before the learned Single Judge.

With the aforesaid directions, the appeal and all the connected applications are disposed of.

In re : C.R.L.C.P. 2 of 2021

Learned Counsel for the petitioner seeks leave to withdraw this application without prejudice to the petitioner's right to take recourse to law in any other jurisdiction as he may be entitled to in respect of the allegations made in this application.

Such leave is granted.

CRLCP 2 of 2021 is, accordingly, disposed of.

**In re : WPA (P) 67 of 2021 &
WPA (P) 68 of 2021**

The order dated 31.03.2021 in both these writ petitions will continue to be in force co-terminous with the order of stay granted by the Hon'ble Supreme Court of India in order dated 26.03.2021 in Diary

No.8430 of 2021 taken up along with Special Leave to Appeal (Crl.) Nos.2669-2670 of 2021 [The State of West Bengal & Others Vs Dipak Mishra].

Let both the writ petitions appear on 19.04.2021 for further consideration.

Urgent Photostat Certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Thottathil B. Radhakrishnan, C.J.)

(Arijit Banerjee, J.)