

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

PRESENT:

**HON'BLE JUSTICE SUBRATA TALUKDAR
AND
HON'BLE JUSTICE KAUSIK CHANDA**

**M.A.T. 550 of 2021
With
CAN 1 of 2021**

**Anisur Rahaman
vs.
Jahar Sha & Ors.**

For the Appellants	:	Mr. Kalyan Bandyopadhyaya Mr. Atarup Banerjee Mr. Abu Sohel
For the State	:	Mr. Kishore Dutta
For the Respondent No.1	:	Mr. Partha Sarathi Bhattacharya Mr. Soumik Ganguli Mr. S. Nandy
For the Respondent No.6	:	Mr. Sudipto Maitra Mr. Rajdeep Majumder Mr. Bilwadal Bhattacharyya Mr. Mayukh Mukherjee Mr. Aniruddha Bhattacharyya
Heard on	:	11/06/2021
Judgment on	:	02/07/2021

Subrata Talukdar, J:

Under challenge in this appeal is the order of the Hon'ble Single Bench dated 28th of April, 2021 passed in the writ petition being WPA 6315 of 2021. By the said impugned order, the Hon'ble Single Bench allowed CAN 1 of 2021 filed in the writ petition by the respondent No.6 to this appeal namely, one Afjal Ali Sha.

By allowing CAN 1 of 2021, the Hon'ble Single Bench added the respondent No.6 to this appeal as party writ petitioner to the writ petition. The Hon'ble Single Bench at the same time expunged the name of the original writ petitioner/ the respondent No.1 to this appeal from the writ petition and, in place and stead of the original writ petitioner, added the respondent No.6 to this appeal as the writ petitioner.

The operative part of the order impugned dated 28th April, 2021 reads as follows:-

“However, keeping in mind, as indicated earlier, the safety of the writ petitioner and his family, the name of the writ petitioner is expunged from the cause title and the proposed added party, namely Afjal Ali Sha @ Abjal Shaukat Sha, is added as a party-respondent to the writ petition and immediately transposed as the writ petitioner, in view of the primary contentions and allegations of the applicant and the writ petitioner being the same.

That apart, even without going into the veracity of the allegations made in the application for addition of party, it is obvious that the applicant

in the addition of party application wants to further the cause of justice by being impleaded in the writ petition. The court appreciates the plight of the writ petitioner and, thus, instead of permitting the writ petitioner to withdraw the case, the name of the writ petitioner is expunged from WPA 6315 of 2021. Instead, the applicant in CAN 1 of 2021, being Afjal Ali Sha @ Abjal Shaukat Sha, is impleaded as the petitioner in the said writ petition.

It should be recorded in this context that this court deprecates the modus operandi adopted in the present case, since the matter was decided by a Single Judge and went up in appeal. After the appellate court virtually agreed with the trial court's findings and remanded the matter to the same court on the limited aspect of hearing being not given to the accused person, after such remand, the withdrawal of the writ petition would tantamount to frustrate the order of the appellate court as well as the ends of justice. The hands of the court are not fettered under Article 226 of the Constitution of India by limitations in pleadings; rather, a writ petition is only in the nature of a complaint to bring to the notice of the court the alleged irregularities or illegalities committed by the State machinery or other authorities.

The power under Article 226 of the Constitution of India is not exercised within the limited scope of procedural wrangles but is wide enough to take into account any illegality or irregularity of a gross nature, if committed by the authorities, if so required.

Hence, for the ends of justice, the learned Advocate-on-record for the added writ petitioner is granted leave to amend the cause title of the writ petition in accordance with the above order, by including the name of the added party and deleting the name of the writ petitioner from the writ petition itself, during the course of the day.

The writ petition bearing WPA 6315 of 2021 will now be enlisted on May 12, 2021 at 11:15 a.m. for hearing.”

While keeping the writ petition in its amended form pending for consideration, the Hon’ble Single Bench was pleased to further hold as follows:-

“The respondent-authorities shall not give effect to the order impugned in the writ petition and/or release the respondent no.6 from custody without an order of any competent court, till June 15, 2021 or until further orders, whichever is earlier.”

Prior to appreciating the correctness of the order impugned of the Hon’ble Single Bench as assailed in this appeal, it would be necessary to recapitulate the essential facts in brief.

The appellant herein is an accused in Panskura Police Station case No. 495 of 2019 dated 4th of October, 2019 registered under Sections 302/120 B of the Indian Penal Code read with Sections 25/27 of the Arms Act. Upon charge-sheet being submitted, Sessions Trial No.1 (03) 2020 (SC 33 of 2020) has commenced against the appellant and the other charge-sheeted accused before the Learned 3rd Additional District and Sessions Court, Tamluk, District Purba Medinipur. During the pendency of the trial, the appellant was kept in judicial custody.

On the 26th of February, 2021, the Office of the Superintendent and Remembrancer of Legal Affairs, Government of West Bengal, issued a Memo. which reads as follows:-

“Memo No.: 1188-C/R.O./W – 14/2021

Dated: 26.02.2021

ORDER

The undersigned is directed to say that the Governor has been pleased to instruct the concerned Ld. Public Prosecutor for withdrawal of the case being Sessions Case No. 33 of 2020 arising out of Panskura P.S. Case No. 495 of 2019 dated 08.10.2019 u/s 302/120B IPC and u/s 25/27 of the Arms Act, pending before Ld. 3rd Additional District and Sessions Judge, Tamluk, Purba Midnapore under the provisions of Section 321 of Cr.P.C. subject to consent of the Ld. Court.”

The newly appointed Special Prosecutor in the Sessions Trial lost no time in bringing the Memo. to the notice of the Learned Trial Court. By order No.32 dated 1st of March, 2021, the regular 3rd Additional Sessions Court, Tamluk, being on leave, the Presiding Officer (for short the PO) In-Charge recorded as follows:-

“Order No. 32 dated 01.03.2021

The record is put up by way of put up petition filed by the Ld. PP.

The LD. PP files a petition praying for withdrawal from prosecution and also files a copy of the order of Judicial Department Govt. of West Bengal.

Ld. PP and Ld. Advocate for the accused are present.

Ld. Advocate for the accused submits that the petition be heard instantly since any further detention will amount to infringement of his fundamental right and will amount to illegal detention.

Heard Ld. PP and the Ld. Advocate for the accused persons.

Considered.

Fix 02.03.2021 for passing order on petition dated 01.03.2021.”

On the very next date and, notwithstanding the fact that the regular 3rd Additional Sessions Court, Tamluk had fixed the 10th of March, 2021 for taking evidence of the PW 1 in the trial, the PO (In-Charge) by order No.33 dated 2nd of March, 2021 held as follows:-

“Order No. 33 dated 02.03.2021

Today is fixed for passing order in respect of petition filed on 01.03.2021.

I have heard Ld. PP and Ld. Advocate for accused yesterday i.e. 01.03.2021.

Considered.

Perused the materials of record and also the document filed by the Ld. PP in charge on 01.03.2021 as to withdrawal of State from prosecution.

The Ld. PP submitted that he has perused the materials and documents concerning the present case and has applied his free and independent mind and come to the conclusion of withdrawing from prosecution in the instant case. The Ld. PP further submitted that the continuation of the instant case will be futile exercise and will rather bring adverse effects on public interest. The instant case is an example of implication as a result of political and personal vendetta. The Ld. PP also submitted that the Judicial Department, Govt. of West Bengal has also taken decision

to withdraw from prosecution in the instant case and he has also filed a copy of such Government Memo dated 26.02.2021. the Ld. Advocate for the accused submits that any further detention of the accused even for a single day entails his right of freedom and amounts to illegal detention.

Section 321 CrPC which deals with withdrawal from prosecution lays down as under-

321. Withdrawal from prosecution. The Public Prosecutor or Assistant Public Prosecutor in charge of a case may, with the consent of the Court, at any time before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried; and, upon such withdrawal,-

[\(a\)](#) if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences;

[\(b\)](#) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted in respect of such offence or offences: Provided that where such offence-

[\(i\)](#) was against any law relating to a matter to which the executive power of the Union extends, or

[\(ii\)](#) was investigated by the Delhi Special Police Establishment under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or

[\(iii\)](#) involved the misappropriation or destruction of, or damage to, any property belonging to the Central Government, or

[\(iv\)](#) was committed by a person in the service of the Central Government while acting or purporting to act in the discharge of his official duty, and the Prosecutor in charge of the case has not been appointed by the Central Government, he shall not, unless he has been permitted by the Central Government to do so, move the Court for its consent to withdraw from the prosecution and the Court shall, before according consent, direct the Prosecutor to

produce before it the permission granted by the Central Government to withdraw from the prosecution.

Contd ...

Contd ... Order No. 33 dated 02.03.2021

The section empowers the Public Prosecutor to withdraw from the prosecution at any time before the judgment is pronounced. The Ld. PP has of his own free will and independent opinion come to conclusion of withdrawal from prosecution. The State has a pivotal role in the prosecution of cases initiated on the basis of FIR where State is rendered as the complainant. This Court finds the Ld. PP has opined the instant case as implication due to political and personal vendetta and that the order of Judicial Department, Govt. of West Bengal has also permitted for withdrawal from prosecution. I find enough substance in the submissions of the Ld. PP and find it fit to accord consent for the same in the instant case.

As such, the petition of the Ld. PP is allowed under Section 321 CrPC and he is allowed to withdraw from prosecution under Section 321 CrPC. Since the charge had been earlier framed against the accused persons, hence they become entitled to acquittal.

Hence it is

ORDERED

That the petition for withdrawal from prosecution of Ld. PP is allowed under Section 321 CrPC. Resultantly, the accused persons in this case are acquitted of the charges framed against them in the instant case. The accused be discharged from their respective bail bonds if any and they surety be discharged from the bail bond liability in accordance with law.

In view of the above, the pending application in this case also stands disposed of accordingly.

The case stands disposed.

Note in TR”

Immediately following the said Order No.33 dated 2nd of March, 2021 allowing withdrawal of the prosecution in terms of the Memo. issued under Section 321 CrPC (*supra*), the accused persons, including the appellant, stood acquitted and discharged from their respective bail bonds.

The aforesaid sequence of events occurred simultaneous to a hearing before the Hon'ble Single Bench on the 2nd of March, 2021 on the writ petition filed by the respondent No.1. The Hon'ble Single Bench was *prima facie* satisfied that the parameters required to be followed for exercise of powers under Section 321 CrPC as laid down *In Re: Bairam Murlidhar vs. State of Andhra Pradesh reported at 2014 (10) SCC 380* were not observed. The Hon'ble Single Bench, therefore, proceeded to set aside the Memo. dated 26th of February, 2021 as well as any consequential action taken in aid thereof.

Being informed that the newly appointed Special Public Prosecutor (for short the *SPP*) had already placed the Memo. dated 26th of February, 2021 before the Learned 3rd Additional Sessions Court, Tamluk (In-Charge) and the Learned Court had been pleased to allow the prayer of the Learned *SPP*, the Hon'ble Single Bench further proceeded to set aside any consequential action taken pursuant to the said Memo. dated 26th of February, 2021, including the order passed by the Learned 3rd Additional Sessions Court (In-Charge) allowing the application of the Learned *SPP*. Hence, in view of the order dated 2nd of March, 2021, the liberty of the appellant along with the other accused stood

curtailed and the appellant was brought back to judicial custody where he remains to this date.

The order of the Hon'ble Single Bench dated 2nd of March, 2021 (*supra*) was challenged by the appellant before the Hon'ble Division Bench in MAT 317 of 2021. In the said appeal, being MAT 317 of 2021, the present respondent No.6 to this appeal, Afjal Ali Sha, filed an application for addition of party being CRLCP 2 of 2021.

The Hon'ble Division Bench heard MAT 317 of 2021 with CRLCP 2 of 2021 along with WPA (P) 67 of 2021 with WPA (P) 68 of 2021 along with their respective applications. By a common order dated 3rd of April, 2021, the Hon'ble Division Bench was pleased to set aside the order of the Hon'ble Single Bench dated 2nd of March, 2021 only on the ground that there has been a breach of the principles of natural justice. The Hon'ble Division Bench observed that it has not examined the merits of the case and left all questions open to be urged before the Hon'ble Single Bench to be decided on merits pursuant to the remand. The Hon'ble Division Bench further permitted the respondent No.6 to the present appeal to apply for being added as a party respondent to the writ petition being WPA 6315 of 2021, which was to be decided on merits. Leave was accordingly granted to the respondent No.6/the applicant to apply for being added as a party to WPA 6315 of 2021.

In respect of the remaining Public Interest writ petitions being WPA (P) 67 of 2021 and WPA (P) 68 of 2021, the Hon'ble Division Bench directed the

proceedings to remain coterminous with the orders as recorded to be granted by the Hon'ble Apex Court. The Hon'ble Division Bench was pleased to also carefully record as follows:-

“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.”

Therefore, by the order of the Hon'ble Division Bench dated the 13th of April, 2021, the writ petition being WPA 6315 of 2021 arrived on the desk of the Hon'ble Single Bench with an application by the present respondent No.6 for addition of party. The issues up to such stage being cumulatively adjudicated by the order impugned dated 28th of April, 2021, the instant appeal has been preferred.

Mr. Kalyan Bandyopadhyaya, Learned Senior Counsel, has appeared for the appellant and placed extensive submissions. On behalf of the respondent No.6, the matter has been argued by Mr. Sudipta Moitra, Learned Senior Counsel. The respective Learned Senior Counsel have been ably assisted by their Learned Counsel and instructing Advocates whose names are printed in the order of their appearance with the names of the appearing Learned State Counsel in the cause-title of this judgement.

From the arguments of the parties the following issues have arisen for consideration in this appeal.

First, whether the Hon'ble Single Bench was right in allowing the application of the present respondent No.6 to be added as a party petitioner to the writ petition?

Second, whether the Hon'ble Single Bench was right in expunging the name of the original writ petitioner/the respondent No.1 in this appeal and substituting his name with that of the respondent No.6?

Third, whether the Hon'ble Single Bench could have continued to hear the writ petition *suo motu* in the absence of the original writ petitioner?

From the arguments and counter arguments of the respective parties and on an adequate scrutiny of the materials placed, this Court arrives at the following findings.

A) That Rule 53 of the Calcutta High Court – Appellate Side Rules as amended by notification No. 7103-G dated 18th November 1999 provides as follows:-

“53. Save and except as provided by these Rules and subject thereto, the provisions of the Code of Civil Procedure (Act V of 1908) in regard to suits shall be followed, as far as it can be made applicable, in all proceedings under Article 226 and nothing in these Rules shall be deemed to limit or otherwise affect the inherent power of this Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Courts.”

B) Logically therefore the Hon'ble Single Bench could have treated the application for addition of party filed by the Respondent No. 6 as an

application under Order 1 Rule 10 (2) CPC and, such has been argued by some of the parties. It would therefore lie in the statutory jurisdiction of the Hon'ble Single Bench to allow the transposition of the proposed added party, the Respondent No.6, to be added either as a petitioner or, as a respondent to the writ petition.

C) Order 1 Rule 10 (2) CPC postulates the capacity of the Court to add or strike out either as a plaintiff or defendant at any stage of the proceeding, the name of any party, if it may appear to the Court that such a step is necessary in order to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit. Order 1 Rule 10(2) CPC reads as follows:-

“(2) Court may strike out or add parties. – The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.”

D) Therefore, in the plain exercise of powers under Order 1 Rule 10 (2) CPC read with Rule 53 of the Appellate Side Rules, it is within the jurisdiction of the Hon'ble Single Bench to consider the propriety of the application for addition of party filed by the Respondent No.6 in the writ petition. It has been noticed correctly by the Hon'ble Single Bench that the

Respondent No. 6 is the full brother of the victim, one Kurban Sheikh. The Respondent No. 6 is also a charge-sheeted witness in the Sessions Trial. The Respondent No. 6 therefore shares an identity of status with the original writ petitioner, Jahar Sha, who now wants to withdraw from the writ petition.

Accordingly, the Hon'ble Single Bench acted within its powers to determine the requirement of the Respondent No. 6 to be added as a party to the writ petition since, in the absence of the original writ petitioner, the presence of the Respondent No. 6 may be necessary for the Court to effectively and completely settle all questions involved in the writ petition.

E) It would be at this stage pertinent to mention that the question which requires to be adjudicated in the writ petition following the principles of natural justice - as directed by the Hon'ble Division Bench - is the validity of the Memo. dated 26th of February 2021 invoking the powers of the prosecution to withdraw the case against the appellant as well as the other accused under Section 321 CrPC. At this point, it would be necessary to reiterate that such a Memo. withdrawing prosecution in a Sessions Trial arising out of heinous and grave charges invite a decision to be delivered in public interest.

F) It is now trite from a catena of decisions, that private disputes having a civil flavor can be settled, hence compounded and even quashed in

exercise of plenary and inherent powers granted to High Courts under the CrPC. However, such privilege to settle, hence compound and quash criminal proceedings where no private interest is involved, has not been extended to grave charges impacting public interest or the Rule of Law. Hence, the sudden decision of the State to lift the prosecution of a crime involving heinous and grave charges requires to be tested by a Constitutional Court in appropriate circumstances. In this connection, this Court finds sustenance from the observations of the Hon'ble Division Bench *In Re: Lakhinder Samaddar & Ors. Versus State of West Bengal and Ors.* as reported in 2010 (1) CHN 132 which reads as follows:-

“They have also said that they have their common interest and same affectation with those of the writ petitioners by the aforesaid memos which have been challenged here in the instant writ petition. The petitioners have narrated sequence of the events which had taken place in the said writ petition. We are not concerned with all these details. In the affidavit-in-opposition filed by the State it has not been denied and disputed that the applicants are the licensees and was also affected by the same decisions and orders. The writ petition has been filed by an association and we have asked production to be given of the original writ petition, since it is not annexed. We have examined the scope and purport of the same and we find that affectation of right of the members of the said association are also same as it has been alleged in the application for addition of parties.

Mr. Saktinath Mukherjee, Learned Senior Counsel appearing for the appellant submits narrating facts which had taken place during pendency of this writ petition and even thereafter, that his client has seriously been prejudiced by the aforesaid Government circulars/notification which were challenged in the writ petition. He says that his clients in order to join the proceeding have taken action before the Hon'ble Supreme Court. The Learned Trial Judge ought not to have allowed to withdraw the writ petition affecting the

petitioners' right. He submits that when it is urged that the interest of the original writ petitioners' association as well as the present applicants are same such contention ought to have been examined and prayer for addition should have been allowed and thereafter if the Court finds original writ petitioner is not willing to proceed with the matter, for the sake of avoidance of multiplicity of judicial proceedings and resolving the disputes once for all the petitioners should have been transposed to the capacity of the writ petitioners. Prayer for addition normally is allowed when it is found that interest of the person or persons in the lis is the same.

Mr. Ashis Sanyal Learned Senior Advocate appearing for the writ petitioner/respondent submits that his client is a company and had duly taken action to challenge the aforesaid decision of the Government notices. There are various events which had taken place subsequently and as such his client has decided not to proceed with the writ petition. The said decision was taken by and under a valid resolution and with the authority of resolution, his client has approached this Court with a prayer for withdrawal of the writ petition. He, of course is candid to say that his clients have no objection if the prayer for addition is allowed, however, his client should not be kept in the record of the said writ petition.

Mr. Gupta appearing for the State seriously opposes to the prayer for addition of parties. He has taken a preliminary point that the impugned judgment and order consists of two parts viz. one is order of withdrawal and, another is refusal to add the person as parties. He contends that the appellants/applicants being third parties have no locus standi to challenge the said order of withdrawal in fact no leave has been obtained of this Court to prefer appeal against the aforesaid order. He then contends that when writ petitioners decided not to proceed with the matter no one should be allowed to continue with the same either by addition in the capacity of the writ petitioners or otherwise. He further contends that Learned Trial Judge has made it clear that they would be entitled to approach the Court afresh independently and for this reason the writ petition which was filed previously need not be restored on file.

We have carefully considered the submissions of the Learned Counsel for the parties and we have examined the matter in details. From the pleading it appears that there is no dispute

that affectation of the right and interest of the original writ petitioners is similar and same with that of the present applicants/appellants. Had it been a case of an application for addition of parties simplicitor then by virtue of Order 1 r.10 of the Civil Procedure Code prayer should have been allowed but the complexity of the problem has arisen because of the prayer for withdrawal of the writ petition. Therefore, point for consideration before us is as to whether Court should keep the writ petition pending for addition of party even when the original writ petitioners seek to withdraw the same. The Learned Trial Judge in his wisdom has decided the application for withdrawal first though the application for addition was filed earlier. Logically it is quite convenient for the Court that if the original proceeding is allowed to be withdrawn then no addition is required. According to us while hearing both the applications the Learned Trial Judge had not adopted the correct approach in this case for the application for addition which was filed earlier than the application for withdrawal ought to have been dealt with first, even applying principle of Section 10 of Civil Procedure Code hearing of the earlier application for withdrawal at least should have been stayed, and should have been heard after disposal of the application for addition. This rule, however, is not inflexible one and the Court can hear both the matters analogously and the Learned Trial Judge attempted to do so but while doing so His Lordship has given preference of hearing of the application for withdrawal and while deciding and allowing the same the application for addition of party has automatically been rendered infructuous. Had the application for addition been made later than that of for withdrawal, then perhaps the Learned Trial Judge was justified in doing so. In any view of the matter we are to examine whether order for withdrawal of the writ petition is justified or not. We are having the rules for proceeding, and hearing of the writ petition being rule 53 of the Writ Rules under which provision of Civil Procedure Code has been made applicable. Right to apply for withdrawal of the proceedings has been provided in Order 23 Rule 4 of the Civil Procedure Code which is quoted hereunder :-

"1. Withdrawal of suit or abandonment of part of claim.

-(1) At any time after, the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim" (2) An application for leave under the proviso to sub-rule(1) shall be accompanied by an

affidavit of the next friend and also, if the minor of such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other persons.

(3) Where the Court is satisfied,-

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

On careful perusal of sub Rule (3) of Rule 1 it emerges that Court is to record its satisfaction that a suit (read petition) must fail by reason of some formal defect or (b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of the suit or part of the claim.

It is also evident that the right of withdrawal is not a matter of course and it is absolutely Court's discretion and this can only be exercised when the Court records its satisfaction on two eventualities viz the suit(here writ petition) must fail by reason of some formal defect or that there are sufficient grounds for allowing the plaintiff to institute the fresh suit for the subject matter of the suit or part of the claim. There is no other eventuality or situation provided in the said rules for withdrawal of any action. The Legislature in its wisdom has provided the aforesaid restricted provision for withdrawal for the simple reason, in our opinion is that a party cannot go out from the Court after filing a lis, at their own whims, for once a lis is filed it has to be dealt with in appropriate manner by the Court and Court alone. The Learned Trial Judge has nowhere recorded such satisfaction and even there is no prayer that the suit is formally defective or for some other reason fresh action is to be brought. It appears from the judgment and order of the Learned Trial Judge that no leave was prayed for by the petitioner to bring a fresh action nor leave is granted either. According to us if any order is required to be passed for withdrawal the Learned Trial Judge cannot assume jurisdiction unless the application mentions either of the aforesaid two grounds. We have already noted that neither of the two grounds has been mentioned in the said application for withdrawal, we have

seen so from the original petition produced before this Court in terms of the earlier order of this Court. We, therefore, are of the view that application for withdrawal has been allowed even without applying the mind and without being satisfied the aforesaid conditions being fulfilled. We find impossibility to uphold the order of withdrawal.

Now we are to consider whether the application for addition is to be allowed or not. We have already noted on fact that interest of this applicant/appellant is same with that of the present writ petitioners and principle governing for addition of party is also mentioned in Order 1 r.10 of the Code of Civil procedure which is adopted in the writ proceeding by virtue of Rule 53 of the Writ Rules.

Sub Rule 2 of Order 1 rule 10 provides when Court can strike out or add parties. One of the conditions is that presence of person(s) before the Court is necessary to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit. The questions in the writ petition are whether the said orders and notices of the Government were lawful or not, and whether the appellants before us are also affected likewise the writ petitioner or not. Prima facie we find they are. For allowing the prayer for addition of party by the Court one of the tests is that if separate action were brought, any identical question of fact and law would have been raised and Court was called upon to decide the same, applying this test we find here the common question of fact and law could have arisen, had the separate writ petition been filed by the applicant/appellants herein. The Learned Trial Judge has recorded that they have their right to bring a fresh action; we are unable to subscribe this view for the approach of the Court is not to invite fresh proceeding on the same issue but to keep the same litigation pending for decision bring all person or persons who are equally affected and interested, to bring about the settlement of the issues, once for all. We, therefore, of the view that Learned Trial Judge was not assisted properly to come to above conclusion as such we express our inability to uphold this portion of order rejecting the application for addition of parties.

Mr. Sanyal, learned Counsel appearing for the writ petitioner/respondent says that his client does not want to remain as the petitioner not as parties even. In that view of the matter we add the applicants/appellants as party

respondents first in the writ petition and we strike out the names of the writ petitioners, and transpose the present appellants/applicants as the writ petitioners and the power of transposition is also conferred upon the Court in a fit case under Order 1 Rule 10 of the code. As we find that this action is brought by a number of persons, and numerous persons might be opposing or supporting the Government action, we direct the present petitioners to advertise in the newspaper inserting the action and the prayer made and also invite the person or persons who might be interested to come and join the proceedings either to support or to oppose. We direct the department to effect necessary amendment pursuant to the aforesaid order and this shall be done within a period of three weeks from the date of communication of this order.”

G) It is therefore *apropo* the present factual situation that withdrawal from the writ petition is not a matter of right. The Hon’ble Single Bench has the power to deny the prayer for withdrawal, even without allowing the application for addition of party. This Court is accordingly of the view that a cause of action concerning a matter of substantial public importance can be continued to be heard by the Hon’ble Single Bench even in a situation where there is a prayer for withdrawal by the original writ petitioner and, none has applied for addition of party.

H) However, since the Hon’ble Single Bench has the benefit of a prayer for addition of party, to the further mind of this Court, no illegality has been committed by deciding to proceed with the writ petition by including the name of Respondent No.6 to the writ petition. Such exercise both inheres in a Constitutional Court and also carries the statutory flavor of Order 1 Rule 10(2) CPC.

To sum up, the Hon'ble Single Bench arrived at the right decision to hear out the writ petition on merits. It is clarified that the discussion in this judgement and order is illustrative of both the present Constitutional and statutory powers of the Hon'ble Single Bench in discharging its functions without creating further procedural impediments.

The issues stand accordingly answered in the affirmative in favour of the judgement and order of the Hon'ble Single Bench dated 28th of April 2021.

The appeal and the application thus fail.

Before parting with this discussion, it would be *apropo* the discharge of its public interest functions of the Hon'ble Single Bench to seek a clarification from the then Presiding Judge (In-Charge), 3rd Additional Sessions Court, Tamluk with regard to:- a) The nature of the requirement to fix the matter on the very next date, i.e. the 2nd of March 2021, when confronted with the Memo. dated 26th of February 2021 by the Learned *SPP* on just the previous date, i.e. the 1st of March 2021; b) The requirement to fix the Memo. dated 26th of February 2021 for consideration on the 2nd of March 2021 at a stage when the Learned 3rd Additional Sessions Judge (In-Charge), Tamluk on the 1st of March 2021 was in *seisin* of the fact that the Learned Presiding Officer was on leave and had fixed the date for recording evidence in the trial on the 10th of March 2021; c) Whether the Learned 3rd Additional Sessions Judge, Tamluk (In-Charge) on the 1st of March 2021 was also in *seisin* of the fact that a writ petition on the self-same subject matter connected to the validity of the Memo.

dated 26th of February 2021 was to be placed for consideration before the Hon'ble Single Bench on the 2nd of March 2021; *d*) Whether the *de facto* complainant was put on notice of the proceedings on consideration of the prayer for withdrawal of the prosecution as fixed by the Learned 3rd Additional Sessions Judge (In-Charge), Tamluk on the 1st of March 2021 on the next date, i.e. the 2nd of March 2021.

It will be open to the Hon'ble Single Bench to opine on the clarifications sought for as above, along with any further clarification which may appear relevant to be obtained by the Hon'ble Single Bench, from the Hon'ble 3rd Additional Sessions Judge (In-Charge), Tamluk as sitting on the 1st and the 2nd of March, 2021.

In the backdrop of the above discussion, **M.A.T. 550 of 2021** with **CAN 1 of 2021** stand **dismissed**.

There will be no order as to costs.

Parties shall be entitled to act on the basis of a server copy of this Judgement and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities

I agree.

(Kausik Chanda, J.)

(Subrata Talukdar, J.)