

12.05.2023
Court No.12
S/L. No. 9
Sourav/
Suvayan

MAT 516 of 2023

**Jiban Krishna Poddar
Vs.
State of West Bengal & Ors.**

*Mr. Ram Anand Agarwala
Ms. Nibedita Pal
Mr. Ananda Gopal Mukherjee*

... for the appellant.

*Mr. Sirsanya Bandopadhyay
Mr. Arka Kumar Nag*

... for the State.

1. Heard Mr. Ram Anand Agarwala, learned Counsel for the appellant and Mr. Arka Kumar Nag, learned Counsel for the State.
2. The order dated 02.12.2022 as passed in WPA 4817 of 2021 is impugned in this appeal. On March 24, 2021, the petitioner did not want to proceed with this matter and no liberty was also prayed for moving the matter afresh.
3. Subsequently, the petitioner filed a petition for recalling of the order of dismissal as withdrawn on the ground that the concession was given by mistake.
4. The prayer of the petitioner to recall the order having been rejected, the petitioner preferred the appeal before the Division Bench. The Division Bench remitted the matter by passing order in FMA 1240 of 2021 to reconsider the prayer for recalling of the order.

5. On remand also, the Hon'ble Single Judge thought it proper to reject the petition for recalling the order dated 24.03.2021.
6. The present appeal is moved on the ground that, in fact, the concession for withdrawal was made by junior lawyer who was not a contesting lawyer in the writ petition and the contesting lawyer had also not received any instruction from his client for withdrawal of the writ petition. Out of misinformation, the prayer was made for withdrawal of the writ petition before the Court and the client who has suffered consequence of the impugned order had no fault on his part in any manner whatsoever in the gaffe that was created by un-thought action of a junior counsel.
7. Learned Counsel for the State on the other hand submits that the Hon'ble Single Judge passed an order recording the fact that prayer was made before him for withdrawal of the writ petition, the Division Bench cannot sit in the appeal on the said issue of fact.
8. We do not deny that Hon'ble Single Judge may be one thousand per cent right so far as fact is concerned but on a busy day such gaffe happens at times and some matters are wrongly mentioned in some courts because of the rush by the lawyer who is conducting cases in

number of courts. Such a situation when arises and an order has been passed on the basis of such fair submission, such order should be recalled to give justice to the client who is in no way at fault.

9. In view of such fact, we set aside the order dated 02.12.2022 passed in WPA 4817 of 2021 and restore the writ petition being WPA 4817 of 2021 to file on the day as it was on 24.03.2021. The matter be listed before the Bench with determination of the case for further hearing and disposal on merit.
10. Accordingly, the appeal being **MAT 516 of 2023** along with the interim application being **CAN 1 of 2023** is disposed of.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)