

Item-		MAT 2008 of 2023
SL-1.	06-10-2023	CAN 1 of 2023
		Sourav Kumar Mukherjee
		Versus
sg	Ct. 8	Md. Danish Farooque & Ors.

Mr. Joydip Kar, Sr. Adv.
Mr. Biswaroop Bhattacharya, Adv.
Mr. Ritzu Ghosal, Adv.
Ms. Anjana Banerjee, Adv.
Mr. Subhankar Nag, Adv.
Mr. Chittapriya Ghosh, Adv.
Mr. Anindya Lahiri, Adv.
Mr. Abhishek Banarjee, Adv.
Mr. Rwitendra Nath Banerjee, Adv.
Mr. Bratin Kumar Dey, Adv.
Mr. Joydip Das, Adv.
Mr. Debasish Kundu, Adv.
Ms. Saswati Chatterjee, Adv.
Mr. Pawan Gupta, Adv.
Mr. Nilanjan Pahari, Adv.
Mr. Saibal Acharya, Adv.
Ms. Mahasweta Pramanik, Adv.
Ms. Silpi Basu, Adv.
Mr. Suman Rai, Adv.
Ms. Parna Roy Choudhury, Adv.
Mr. Awadhesh Rai, Adv.
Ms. Sofia Nesan, Adv.
Mr. Santanu Sett, Adv.
Mr. Chanddak Dutta, Adv.
...for the appellant

Mr. Videkananda Bose, Adv.
Mr. Sankha Biswas, Adv.
Mr. Ankan Das, Adv.
Mr. Abhrajit Roychowdhury, Adv.
...for the writ petitioner
Mr. Srijib Chakraborty, Adv.
Mr. Subhrangsu Panda, Adv.
Ms. Mithu Singha Mahapatra, Adv.
Ms. Ira Bhattacharyya, Adv.
...for the respondent nos.7 to 9
Mr. Arka Kumar Nag, Adv.
...for the State

1. We have heard the learned Counsel for the parties including the learned Counsel for the writ petitioner.
2. The appellant is an advocate of this Court. He was appointed to represent the respondent no.25. In paragraphs 3 and 4 of

the stay petition, the facts have been narrated as relevant for the aforesaid purpose. Paragraphs 3 and 4 are set out:

“On 04.10.2023 at about 19:53 hours (evening) a copy of the petition filed in the subject writ petition was served upon the said respondent no. 25 to the writ petition. It was, thereby informed that the matter was scheduled to heard on 05.10.2023 at 2pm. Since it was served so lately, the said client could not meet the applicant herein and merely over telephonic interaction engaged him. No conference could be held and as such no appropriate instruction could be received far from necessary facts and particulars. Such fact had been brought to the notice of the Hon'ble Single Judge, by the applicant herein and categorically it was submitted to permit him to come back with necessary instruction and after considering relevant documents. However, the Hon'ble Single Judge refused to consider such prayer and for the reason best known to him he became desperate to adjudicate the writ petition on 05.10.2023 itself.

The applicant herein respectfully submits that the learned Single Judge in passing the impugned judgement and order proceeded with a preconceived notion and predetermined view, interjected the him, did not permit him to make any submission and when the applicant herein asked for time to use an affidavit, he was asked to take instruction over the telephone from inside the Court itself. When the applicant herein asked for time to take such instruction not over the phone, but in person from his client, the learned Single Judge held that he was not assisting the Court and referred his name to the Bar Council of West Bengal and even holding the learned Counsel of professional misconduct without any basis or at all. As such, the entire process following which the impugned order was passed, was in complete violation of the of natural justice and fairplay”.

3. It is submitted by Mr. Joydip Kar, learned Senior Counsel representing the appellant that refusal was with regard to making a telephonic call to the respondent no.25 from the Court room to obtain necessary instruction. It is submitted that the appellant has only prayed for a day's accommodation in order to enable him to obtain necessary instruction from the respondent no.25.
4. Having regard to the fact that the respondent no. 25 writ petition was served at the late hours of the previous night, a time ought to have been given to the learned Counsel for the respondent no.25 to obtain necessary instruction. The law does not permit any Court to decide a matter on the basis of a telephonic conversation between the Court and any of the respondents. Moreover, the communication between the Advocate and his client is a privileged communication and protected under Section 126 of the Evidence Act.
5. Having regard to the fact that the learned Counsel has prayed for time to obtain necessary instruction, it cannot be construed to be a misconduct. An Advocate is expected to defend his client in a Court of law. The matters are required to be decided on affidavits. No one can be condemned unheard. These are the basis principles of law. We do not find conduct of the appellant which can be considered to be a professional misconduct.
6. We do not find any tearing hurry to proceed with the matter and the learned Advocate ought to have been given a day's accommodation to obtain necessary instruction. We do not also find the behaviour of Mr. Mukherjee to be unacceptable

in the aforesaid facts and circumstances of the case.

7. Accordingly, the reference to the Bar Council of West Bengal for initiation action against Mr. Mukherjee for professional misconduct is set aside.
8. The appeal and the application are accordingly, disposed of.

(Uday Kumar, J.)

(Soumen Sen, J.)