

D/L15  
05.09.2024  
Bpg.  
ct.no.35

**W.P.A.19461 of 2019  
With  
CAN 1 of 2022**

**Narayan Chandra Manna  
Versus  
State of West Bengal & Ors.**

Mr. Srijib Chakraborty  
Ms. Rupsa Sreemani.  
...for the petitioner.

Mr. Amitesh Banerjee  
Mr. Tarak Karan.  
...for the State.

**In Re: CAN 1 of 2022**

Affidavit-of-service so filed by the petitioner  
be kept with the record.

The grounds so assigned in the application  
for restoration are found to be just and sufficient.  
Accordingly, the order dated 10<sup>th</sup> November, 2022 is  
hereby recalled. Let the writ petition be restored to its  
original file and number.

CAN 1 of 2022 is allowed.

**WPA 19461 of 2019**

Learned advocate for the State produces the  
case diary. It is reflected from the case diary that the  
investigating agency on or about 26<sup>th</sup> June, 2019  
submitted their report under Section 173 of Cr.P.C.

with an opinion of mistake of fact and prayed for discharge of the accused persons.

Learned advocate for the petitioner is present and submits that the writ petition was preferred at a stage when there was dissatisfaction because of the FSL report not being available, although charge-sheet was submitted.

I have considered the grievance of the petitioner as well as the case diary presented by the learned advocate appearing for the State and on an appreciation of the same, I am of the view since the jurisdictional court was/is in *seisin* of the matter pursuant to the report under Section 173 Cr.P.C. filed by the police authorities, it would be duty of the petitioner to approach the appropriate jurisdictional court if there is any grievance relating to the investigation at this stage. In case the petitioner is able to show before the learned Magistrate that no notice was issued subsequent to the final report being filed before the jurisdictional court, then the learned Magistrate would allow the petitioner to file his application under Section 173(8) of Cr.P.C. However, so far as the merits of the application under Section 173(8) of the Code of Criminal Procedure is concerned, the learned Magistrate will apply his

discretion and would decide the issue whether such application merits further investigation or not.

With the aforesaid observations, WPA 19461 of 2019 is disposed of.

Case diary be returned to the learned advocate appearing for the State.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

Urgent Photostat certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

***(Tirthankar Ghosh, J.)***