

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble **Justice Kausik Chanda**

C.R.A. (SB) No. 47 of 2025

SANTOSH PANDEY

-VERSUS-

THE STATE OF WEST BENGAL

For the petitioner : Mr. Manjit Singh, Sr. Adv.,
Mr. Arkaprabho Roy, Adv.,
Mr. Biswajit Mal, Adv.

For the State : Mr. Rudradipta Nandy, Adv.,
Ms. Snigdha Saha, Adv.

Hearing concluded on : 20.03.2026

Judgment on : 23.03.2026

Kausik Chanda, J.:-

A concise yet intriguing issue arises in this case: whether an accused possesses the right to withdraw an appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973—corresponding to Section 415(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023, against an order of conviction.

2. This appeal has been preferred by the appellant against the order dated April 11, 2022, passed by the learned Additional District & Sessions Judge, 2nd Fast Track Court, Calcutta, whereby the learned Judge sentenced the appellant to undergo rigorous imprisonment for five years and to pay a fine of Rs. 50,000/- (Rupees Fifty Thousand only) for the offence under Section 489B of the Indian Penal Code, and, in default of payment of fine, to suffer further rigorous imprisonment for six months.

3. The appellant was further sentenced to undergo rigorous imprisonment for three years for the offence under Section 489C of the Indian Penal Code. Additionally, the appellant was directed to undergo rigorous imprisonment for five years and to pay a fine of Rs. 10,000/- (Rupees Ten Thousand only) for the offence under Section 16 of the Unlawful Activities (Prevention) Act, and, in default of payment of fine, to suffer further rigorous imprisonment for two months.

4. The appellant was also sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs. 10,000/- (Rupees Ten Thousand only) for the offence under Section 17 of the Unlawful

Activities (Prevention) Act, and, in default of payment of fine, to suffer further rigorous imprisonment for two months.

5. The appellant pleaded guilty at the stage of framing of charges. Accordingly, the aforesaid order of conviction was passed under Section 229 of the Code of Criminal Procedure, 1973.

6. Notwithstanding the plea of guilt, the appellant preferred the present appeal under Section 374(2) of the Code of Criminal Procedure, 1973, challenging the quantum of sentence and the fine imposed.

7. Mr. Singh, learned Senior Advocate appearing on behalf of the appellant, submits that the appellant has already undergone the period of sentence imposed by the learned Trial Judge, after accounting for remission granted under Section 432 of the Code of Criminal Procedure, 1973. It is further submitted that the appellant does not wish to pursue the present appeal any further.

8. It is also submitted that the appellant is inclined to pay the fine imposed by the learned Trial Judge and seeks not to undergo the default sentence as provided in the sentencing order passed by the learned Additional District & Sessions Judge, 2nd Fast Track Court, Calcutta.

9. By placing reliance upon a judgment of the Kerala High Court in ***Shaji v. State of Kerala***, reported in **2025 SCC OnLine Ker 7436**, Mr. Singh submits that in similar circumstances, Kerala High Court has allowed an appeal to be withdrawn by the accused.

10. Mr. Nandy, learned Additional Public Prosecutor, opposes the submissions advanced on behalf of the appellant. He contends that the

appellant has no right to withdraw the appeal and that the same cannot be dismissed for non-prosecution at the instance of the appellant. According to him, the appeal ought to be decided on merits, even in the absence of the appellant.

11. In support of his submissions, Mr. Nandy has relied upon the following judgments:

- (i) K. S. Panduranga v. State of Karnataka, reported at (2013) 3 SCC 721;
- (ii) Shyam Deo Pandey v. State of Bihar, reported at (1971) 1 SCC 855; and
- (iii) Bani Singh v. State of U.P., reported at (1996) 4 SCC 720.

12. This Court is not persuaded by the submissions advanced by Mr. Nandy. The judgments relied upon by him pertain to the question whether an appellate court may dismiss an appeal for default without entering into the merits in the absence of the parties. The law laid down in **Bani Singh** cannot be read in isolation from the facts of that case. There, the High Court had dismissed the appeal for non-prosecution without examining the merits of the conviction. The Supreme Court held that such dismissal is impermissible and that the appellate court is under an obligation to dispose of the appeal on merits after perusal of the record. There can be no quarrel with this proposition. The underlying rationale is that the absence of the accused may be for justifiable reasons, and the Court must safeguard his interest by

independently scrutinising the correctness of the conviction. **Bani Singh** approves the law laid down in **Shyam Deo Pandey**, and the same has been followed in **K. S. Panduranga**.

13. The present case, however, stands on a materially different footing. Here, the appellant has consciously expressed his intention not to pursue the appeal any further against the order of conviction. An absence cannot always be equated with not voluntary abandonment.

14. It is true that neither the Code of Criminal Procedure, 1973 nor the Bharatiya Nagarik Suraksha Sanhita, 2023 contains a provision analogous to Order XXIII of the Code of Civil Procedure, 1908 governing withdrawal of proceedings. Nevertheless, in the considered view of this Court, there is ample scope within Section 386 of the Code of Criminal Procedure, 1973, corresponding to Section 427 of the Bharatiya Nagarik Suraksha Sanhita, 2023, for withdrawal of an appeal preferred at the instance of an accused.

15. An Appeal Court in terms of Section 386 of the Code of Criminal Procedure, 1973, “after perusing such record and hearing the appellant or his pleader, if he appears, and the public prosecutor, if he appears, can allow an appeal to be withdrawn by the accused in terms of Sub-section (e) of Section 386 of the Code of Criminal Procedure, 1973 (corresponding to Section 427 (e) of the Bharatiya Nagarik Suraksha Sanhita, 2023), which empowers the Appeal Court to pass “any consequential or incidental order that may be just or proper.”

16. Appeal is a statutory right, not a duty. No one is compelled to file an appeal. So logically there cannot be any compulsion to continue it. It would be illogical to hold that while an accused is under no compulsion to prefer an appeal against conviction, he is, once having filed such appeal, precluded from withdrawing the same.

17. The determinative consideration, in such cases, is whether any prejudice would be caused to the respondent, or whether any right accrued in favour of the respondent would be defeated by permitting withdrawal of the appeal.

18. An appeal at the instance of an accused under Section 374(2) of the Code of Criminal Procedure, 1973, or under Section 415 of the Bharatiya Nagarik Suraksha Sanhita, 2023, does not confer any corresponding right upon the State to seek enhancement of sentence.

19. It is well settled that the State cannot seek enhancement of sentence in an appeal preferred by the accused under Section 374(2) of the Code of Criminal Procedure, 1973. This position of law has been clarified by the Supreme Court in **(2025) 8 SCC 331 (Nagarajan v. State of Tamil Nadu)**. Therefore, it cannot be said that any prejudice would be caused to the State if the appellant is permitted to withdraw the appeal.

20. The position would have been different had the appeal been preferred by the State under Section 377 of the Code of Criminal Procedure, 1973 or Section 418 of the Bharatiya Nagarik Suraksha Sanhita, 2023, challenging the adequacy of the sentence. In such a case,

even if the State chose not to prosecute the appeal, it would remain open to the High Court to enhance or reduce the sentence, or even to pass an order of acquittal, in exercise of its powers under Section 377(3) of the Code of Criminal Procedure, 1973 or Section 418(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023. It confers a corresponding right upon the accused to seek acquittal or reduction of sentence.

21. Accordingly, the appellant is permitted to withdraw the present appeal.

22. **C.R.A. (SB) No.47 of 2025** is, accordingly, dismissed as withdrawn.

23. The appellant shall be at liberty to deposit the fine before the Trial Court within a period of two weeks from the date of this order.

24. Let the records of the Trial Court be sent back forthwith. The appellant is directed to deposit the requisite fees towards Special Messenger costs within the course of this day.

25. Urgent certified website copy of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Kausik Chanda, J.)