

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Jay Sengupta

**RVW 143 of 2023
With
CAN 1 of 2023
Sri Koteswara Rao
Vs.
The State of West Bengal & Ors.
With
RVW 101 of 2024
Kallol Kumar Ghosh
Vs.
The State of West Bengal & Ors.
With
RVW 144 of 2023
With
CAN 1 of 2023
Sujoy Kumar Das
Vs.
The State of West Bengal & Ors.
With
RVW 145 of 2023
With
CAN 1 of 2023
Sri Sanjoy Kumar Chakraborty
Vs.
The State of West Bengal & Ors.
With
RVW 146 of 2023
With**

CAN 1 of 2023
Sri Bidhan Chandra Mondal
Vs.
The State of West Bengal & Ors.
With
RVW 147 of 2023
With
CAN 1 of 2023
Sri Kousik Das
Vs.
The State of West Bengal & Ors.
In
WPA 27064 of 2022
With
CAN 1 of 2023
Pintu Mondal
Vs.
State of West Bengal & Ors.

**For the applicant in
RVW 143 of 2023**

: Mr. Amitesh Banerjee, Sr. Adv.
 Mr. Subhabrata Datta
 Mr. Debashis Sarkar.

....Advocates

**For the writ applicant in
RVW 144 of 2023, 145 of 2023,
146 of 2023, 147 of 2023**

: Mr. Subhabrata Datta
 Mr. Debashis Sarkar

.....Advocates

**For the Applicant
in RVW 101 of 2024**

: Mr. Sabir Ahmed
 Mr. Abdur Rakib
 Mr. Shraman Sarkar
 Mr. Dhiman Banerjee

.....Advocates

For the writ petitioner

: Mr. Ravi Prakash Mehrotra, Sr. Adv.
 Mr. Nilanjan Bhattacharjee, Sr. Adv.
 Mr. Abhilash Chatterjee
 Mr. Akash Adak

.....Advocates

For the CID
in RVW 101 of 2024 : Mr. Suddhadev Adak
Advocate

For the State : Mr. Sumon Ghosh
 Mr. Soumen Chatterjee
Advocates

Heard lastly on : 12.11.2025

Judgment on : 04.02.2026

Jay Sengupta, J:

1. These are review petitions filed by the applicants seeking review and recall of the order dated 12th June 2023 passed by Co-ordinate Bench in WPA No. 27064 of 2022. Earlier, the writ petitioner had filed the said writ petition being WPA No. 27064 of 2022 seeking inquiry and disciplinary action against the respondent's nos. 3 to 11 therein, who were police personnel, alleging false implication and custodial abuse of the writ petitioner. By an order dated 12th June, 2023 the Court directed the CID to conduct major disciplinary proceedings against the said respondents. Review applications were filed by some of the respondents. The same were released by the original Bench. One such review application was assigned to a Co-ordinate Bench and by an order dated 4th August, 2023, the same was dismissed apparently by a non-speaking order.

2. Learned senior counsel appearing on behalf of the applicant in RVW 143 of 2022 has submitted and has relied on the written notes as follows. The

instant application has been filed for review of the order dated 12.01.2023 passed in WPA 27064 of 2022. Order 47 Rule 1 specifically permits the filing of the review on, inter alia, 'for any other sufficient reason'. It is pertinent to note that during pendency of the instant application, one of the respondents in the writ petition in whose absence the order was passed filed a review application which was dismissed by a non-speaking order dated 04.08.2023. It is also imperative to note that one of the respondents in the writ petition namely Kallol Kumar Ghosh preferred an appeal being M.A.T. No. 1178 of 2023 on the ground that the order dated 12.06.2023 passed in the writ petition being WPA No. 27064 of 2022 under appeal has been passed behind the back of the respondents without affording any reasonable opportunity to the appellant. The Hon'ble Division Bench was of the view that appellant should file a review in spite of the fact that one review application got dismissed on merit by one Hon'ble Single Bench and as such, liberty was given to file a review application. Therefore, the preliminary objection alleged to have been raised by the writ petitioner during oral argument as regards the maintainability of the review application is not sustainable. The instant review applications have been filed on the following grounds. i) The review applicants have been impleaded in the writ petition by name, however, no copy was served upon them nor has any document have been annexed to the writ petition showing service of the writ petition on the review applicants; ii) The Hon'ble Single Judge passed an order on 02.05.2023 directing the writ petitioner to serve a notice on the review applicants however despite the same no service was effected on the review applicants; iii) The learned

advocate for the applicants herein appeared for the first time on the 12.06.2023 and sought for leave to file affidavit, which was not granted and the final order was passed against the applicants; iv) The order under review has been passed in absence of review applicants who had been impleaded as respondents in the writ petition by their names and the order passed severely prejudice the interest of the respondents; v) The meaningful opportunity which ought to have been given to the said private parties, was not given to them as no copy of the writ petition was ever served upon the individuals against whom allegation of false implication and illegal detention were made; vi) Resultantly, relevant materials or evidence, which ought to have produced before the Hon'ble Court for efficacious adjudication of the dispute, could not be produced by the review applicants at the time when the order under review was passed as contemplated under order XLVII Rule 1 of the Code of Civil Procedure; vii) Orders dated 14.05.2018, 13.06.2018, 03.07.2018, passed by the Learned 4th Additional District Judge and the order dated 20.11.2018 passed by the Hon'ble High Court could not be produced wherefrom it shall be evident that the none of the Hon'ble Judges found anything malafide; vii) The principal allegation in the writ petition is relating to false implication of the writ petitioner resulting his illegal detention without furnishing any material particulars in support thereof. Moreover, no document was produced substantiating the said allegation. Furthermore, the judicial orders authorising detention of the writ petitioner expressly negate the allegation of the writ petitioner. In an order dated 19.02.2022 passed by the Learned Session Judge, there is a categorical

finding to the effect that there has been no evidence nor have any iota of matrix that the writ petitioner was a victim of conspiracy and as such, in absence of such material on record, the Learned Court finds no question whatsoever to invoke Section 58 of the NDPS Act. However, the aforesaid finding was never assailed in any court of law and as such the said finding reached finality. Mere acquittal due to want of evidence cannot justify the said allegation for the following reasons. i) In so far as Bishnupur Police Station Case No. 1015 of 2017 is concerned – Petitioner was not arrested or detained by any review applicants during investigation. By an order dated 14.05.2018, learned Additional Sessions Judge, 4th Court, Alipore took cognizance of the charge sheet on the basis of the evidence collected during course of investigation. By an order dated 14.05.2018, learned Additional Sessions Judge, 4th Court, Alipore issued production warrant on the basis of the material available on record. By the orders dated 13.06.2018 and 03.07.2018, the prayer for the bail application filed by the writ petitioner was rejected by the learned Additional Sessions Judge, 4th Court, Alipore. By an order dated 19.11.2018, the learned Additional Sessions Judge, 4th Court, Alipore framed the charges against the accused persons including the writ petitioner. By an order dated 20.11.2018, Hon'ble Division Bench of this Court was pleased to reject the bail application on the basis of the materials available on record. The erring investigating officer was charge sheeted and awarded punishment for dereliction of duties. ii) In so far as Purulia Coastal Police Station Case No. 26 of 2018 is concerned - By an order dated 11.10.2018, the cognizance was taken by the learned Additional Sessions

Judge, 4th Court, Alipore and issued warrant of arrest against the writ petitioner. By an order dated 15.02.2020, learned Additional Sessions Judge, 4th Court, Alipore cancelled the bail of the writ petitioner due to not appearing before the Learned Court on 21 occasions and issued warrant of arrest. In an order dated 19.02.2022, it was observed that there has been no evidence nor have any iota of matrix that the writ petitioner was a victim of conspiracy and as such, in absence of such material on record, the learned Court finds no question whatsoever to invoke Section 58 of the NDPS Act. Judgement relied upon by the applicant herein; i) Applicants placed reliance upon a decision reported in (2013) 8 SCC 320 [In Re: Kamlesh Verma -vs- Mayawati & Ors.] on the proposition that the review will be maintainable as the important document could not be produced at the time of hearing when the order under review was passed. In the instant case, this is one of the grounds for which review applications were filed; ii) Applicants placed reliance upon a decision reported in (2007) 8 SCC 418 [In Re: Dharmpur Sugar (Kashipur) Ltd. -vs- State of Uttaranchal & Ors.] on the proposition that mere assertion, vague averment or bald statement is not enough to hold the action to be malafide. It must be demonstrated by facts and moreover the burden of proving malafide is on the person levelling such allegations. The allegations contained in the writ petition are vague and omnibus; iii) Applicants placed reliance upon a decision reported in (1988) 4 SCC 534 [In Re: Bharat Singh & Ors. -vs- State of Haryana & Ors.] on the proposition that in a writ petition, if facts are not pleaded or the evidence in support of such fact is not annexed, the Court will not entertain the point. In the

instant case no evidence / documents were annexed in support of the allegations; iv) Applicants placed reliance upon a decision reported in (2005) 5 SCC 100 [In Re: Bharat Singh & Ors. -vs- State of Haryana & Ors.] on the proposition that non-response does not amounts to proof of any fact doctrine of non-traverse will not be the correct proposition in that regard. In the present context, doctrine of non-travers will not be applicable and burden lies upon the writ petitioner as to how he has been falsely implicated by the review applicants. No such material is available on record; v) Applicants placed reliance upon a decision reported in (1991) 4 SCC 139 | In Re: Tate of U.P. and Another vs Synthetics and Chemicals Ltd.] on the proposition that a decision is binding not because of it's conclusions but in regard to its ratio and the principles laid down therein. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. The dismissal of one review application by a non-speaking order does not have any binding effect; vi) Applicants placed reliance upon a decision reported in (2011) 2 CHN 507 [In Re: Deba Prasad Datta Vs State of West Bengal on the proposition that the decision passed sub silentio and per inquirrium does not have any binding precedential value. Therefore, order of dismissal is of no relevance. Judgement relied upon by the respondent/writ petitioner–i) (2023) 8 SCC 11. An error on the face of record must be such an error which mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions. Since, in the instant case ground was different

as stated before, the judgement does not have any applicability in the instant case; ii) 1996 SCC Cal 63. An order rejecting a Memorandum of Review is not appealable under clause 15 of the Letters Patent. This decision is of no relevance in the instant case; iii) (2010) 13 SCC 336. A Coordinate Bench cannot comment upon the discretion exercised or judgement rendered by another Coordinate Bench of the same Court. In the instant case, Hon'ble Division Bench, despite having knowledge regarding dismissal of a one review application arising out of the order appeal against on merit, was pleased to grant liberty to the appellant to file review application. Therefore, the ratio laid down herein is completely otiose. In view of the aforesaid factual and legal conspectus, it is humbly submitted that the review applications will be allowed by recalling the order under review.

3. Learned counsel appearing on behalf of the applicant in RVW 101 of 2024 has submitted and has relied upon the written notes as follows. The applicant filed an application for review of the order dated 12.06.2023 passed by His Lordship the Hon'ble Justice Rajasekhar Mantha in connection with W.P.A.NO.27064 of 2023 (Pintu Mondal vs. The State of West Bengal & Ors.) pursuant to the leave granted by the Hon'ble Division Bench in connection with M.A.T. No. 1178 of 2023. During a hearing of the Mandamus Appeal, it was pointed out that review applications are pending before the Hon'ble Single Judge arising out of the same order dated 12.06.2023 and applicant was directed to pursue the review application along with the other parties and the applicant filed review application being R.V.W. No. 101 of 2024. One of the respondents, namely Manas Chandra Maity, filed an application for

review and the said application was taken by His Lordship the Hon'ble Justice Avijit Gangopadhyay (as His Lordship then was) and the said application was also dismissed without giving opportunity of hearing. However, the applicant filed a review application pursuant to the leave granted by the Hon'ble Division Bench in M.A.T. No.1178 of 2023. The main contention of the applicant is that the order passed by the Hon'ble Single Judge is in violation of the principle of natural justice, audi alterem partem, the opportunity to revert the contentions made in the writ application was not extended to the applicant. pointed out that the earlier orders passed in W.P.A.No.27064 of 2022 and copy of the writ application was not served upon the applicant. He was completely unaware about the pendency of the writ application and the applicant was transferred from the post of Officer-in-Charge, Baguiati Police Station to the Intelligence Bureau. The cause title of the writ application indicates that in official capacity the applicant was transposed as respondent no.8 and applicant intended to file an affidavit to the writ application, such opportunity of filing affidavit was also not extended to the applicant. The order passed in the writ application is purely based on non-compliance of the earlier orders passed by His Lordship the Hon'ble Justice Rajasekhar Mantha by the State-respondent in delaying to file affidavit-in-opposition. The applicant specifically contended in the writ application that applicant could not get an opportunity to place the actual facts and circumstances of the case. However, from the writ application itself, it transpired that the detention was authorized by the Learned Magistrate and he was subsequently released on bail, such detention under

Section 167 of the Code of Criminal Procedure, 1973 by the Learned Magistrate involves application of judicial mind and the writ petitioner failed to make out a case of false implication in Baguiati Police Station Case No. 207 of 2018 under Sections 386/506 of the Indian Penal Code, 1860 read with Sections 25(1)(A)/27 of the Arms Act. Exercising magisterial powers authorizing detention of the petitioner has never been challenged during his custody. It is pertinent to mention that the individual role of the private respondent has not been explained and/or pleaded in the writ application, only at page 15 the case number has been mentioned in respect of Baguiati Police Station Case No. 207 of 2018 and there is no contemporaneous pleading made against the applicant mere mentioning of the police station case, where the petitioner was acting as Officer-in-Charge and discharging office duty does not in any manner make out a case against the applicant. The entire writ application is based on false implication of the petitioner in a police station case instituted against him under the NDPS Act and after a full-fledged inquiry he has been acquitted from the charges by the trial court. The petitioner never complained of any vexatious entry, search, seizure or arrest during pendency of the trial. However, the Learned Judge also expressed not to invoke Section 58 of the Narcotic Drugs and Psychotropic Substances Act, 1985, the petitioner has never challenged the action either during pendency of the case under the said Act, 1985 or the order of acquittal has challenged never been challenged, the finding of the Learned Sessions Court and such finding has reached its finality. The grievance of the petitioner has not made any pleading in the writ application as to how he has

been falsely implicated and the proceedings in connection with Baguiati Police Station Case No. 207 of 2018 is still pending for adjudication. The action taken during investigation by the applicant has also not been assailed in any of the superior forum. The arrest and detention in connection with Baguiati Police Station Case No. 207 of 2018 have authorised by the order of the Learned Magistrate and in absence of any pleading in respect of Baguiati Police Station Case No. 207 of 2018 in the writ application, the petitioner cannot be held responsible for discharging his official duties, the applicant is an employee of the State and in discharge of his official duties, he has acted with the framework of law established by the procedure and in discharge of his official duties on good faith. The petitioner emphatically submitted that the review application is not maintainable on the ground that the Coordinate Bench has dismissed the review application and, as such, the Hon'ble Single Court cannot exercise discrimination and take contrary view on the judgment rendered by any Coordinate Bench of the same court. However, the review application filed by the petitioner is pursuant to the leave of this Hon'ble Court and dismissal of the review application was well within the wisdom of the Hon'ble Division Bench as the same was pointed out by the writ petitioner at the time of hearing. The Hon'ble Division Bench granted leave to the applicant to file review, in the present review applicant challenge the maintainability of the review application is not sustainable in the eye of law. As the judgment placed by the petitioner opposing the review application have no manner of application. The applicant during the course hearing specifically stated the following points;- a) No pleading has been made in

respect of acts and actions made by the petitioner either in personal capacity or in official capacity; b) Pleadings are completely missing and the petitioner failed to explain the necessity to be added as respondent in the writ application either in personal capacity or in official capacity; c) Except mentioning the police station case at page 15 of the writ application, no other pleadings and grounds have been made in the writ application and there was no specific prayer against the applicant; d) The writ petitioner was not given opportunity of hearing and was not given chance to file affidavit-in-opposition; e) The entire writ application is filed seeking advantage of acquittal in the said NDPS Act, where the applicant and Baguiati Police Station have no connection in respect of the NDPS case; f) The detention of the petitioner was authorised by the Learned Magistrate exercising power under Section 167 of the Code of Criminal Procedure, 1973 and such authorization of detention and/or order of remand has never been challenged by the petitioner and the applicant, being an officer, acted in discharge of his official duties. Such action was also never challenged by the petitioner; g) The applicant in discharging of his official duties acted in terms of the established process of law, which has been endorsed by the Learned Judicial Magistrate exercising his power of remand. The applicant respectfully submits that the review application filed by the applicant, being R.,V.W.No.101 of 2024 be allowed and the applicant be given an opportunity to file affidavit-in-opposition to the writ application to bring the actual facts before this Hon'ble Court and for fresh adjudication of the issues raised by the petitioner in the writ application, being W.P.A. No. 27064 of 2022. The

acquittal in NDPS case has no bearing with the Baguiati Police Station Case No. 207 of 2018 and in discharge of his official duties as Inspector-in-Charge of Baguiati Police Station and has acted within the periphery of the established legal process and the applicant cannot be prosecuted for discharging his official duties. The aforesaid grounds taken by the applicant have never been refuted by the petitioner and no argument was advanced defying the submissions of the applicant and the argument advanced defying the petitioner was solely encircled into the subject of maintainability of the writ application, which is not applicable in respect of the applicant.

4. Learned senior counsel appearing on behalf of the writ petitioner has submitted and has relied upon the written notes as follows. Writ Petition no. 27064/22 was filed by the Petitioner Pintu Mondal, seeking appropriate enquiry and disciplinary action against Respondent nos. 3 to 11 therein, who are police personnel, responsible for the false implication and custodial abuse of the Petitioner. The Petitioner has been the subject of a series of criminal cases initiated in a malafide manner, with the sole objective of political victimisation. The Petitioner was subjected to multiple criminal proceedings, most of which ended in acquittal, discharge, or grant of bail, including: i) FIR no. 1015/17 (NDPS) Acquitted on 15.2.2019; ii) Case no. 6/18 (IPC 489B-C) - Discharged on 4.4.2019; iii) Case no. 26/18 (NDPS) - Acquitted on 19.2.2022 (subject matter of present case); iv) Several other cases resulting in bail being granted between 2018-2019. Owing to sustained police excesses and threats to life, the Petitioner filed WPA 27064/22, which culminated in an order dated 12.06.2023 directing the CID to conduct major

disciplinary proceedings against Respondent nos. 3 to 11. The said order dated 12.6.2023 by the writ Court is now sought to be review by the respondents in the instant Review Petitions (RVW 143 to 147/23 & 101/24) along with a recall petition by the CID on various grounds, including the said order having been passed behind their back without a hearing. It is relevant to state that Review RVW 164/23, filed by R-11 (Manas Maity) on similar grounds, has already been dismissed by a Coordinate Bench on 4.8.2023. Furthermore, Respondent no. 8 Kallol Kumar Ghosh had preferred an appeal MAT 1178/23 which was disposed of by the Division Bench on 26.2.2024 with liberty to file review. The Review Petitions fail to rebut the findings in the order dated June 12, 2023, which are premised on prolonged non-response and prima facie misconduct by the Respondents/Review Petitioners. R-11 (Manas Maity) had filed RVW 164/23 against the same order dated June 12, 2023, which was dismissed by a Coordinate Bench on August 4, 2023, creating the bar of res judicata and reinforcing the finality of the writ order. Though the Review applications were heard by the different Hon'ble Judges as the same assigned to different Hon'ble Benches but considering the provision of Order XLVII rule 5 of the code of Civil Procedure 1908 the same should be treated as the same Hon'ble Judge as the intention behind the provision Order XLVII rule 5 was that if an error apparent on the face of the record is sought to be pointed out then rule 5 provides that the Hon'ble Judge who had fallen into the alleged error should have the opportunity to reconsider it. Order XLVII rule 6 (1) of the code of Civil Procedure 1908 provides where the application for a review, is heard by more

than one Judge and the Court is equally divided, the application shall be rejected. Considering the provision of Order XLVII rule 5 and rule 6 of the code of Civil Procedure 1908 it can be concluded that there is no scope for any departure and/or difference of views to the order passed in already decided Review application. So the order dated 04.08.2023, passed by the Coordinate Bench on RVW 164/23 creating the bar of res judicata and the same cannot be modified and/or altered and/or set aside. The grounds inter alia that the Charge Sheet was based on court orders, no coercive action was taken, and DK Basu guidelines were followed; i) Already considered during writ adjudication; ii) Purely factual and cannot be grounds for review; iii) Demonstrably false in light of multiple cases filed against the Petitioner without legal basis and clear procedural violations including extortion, forced signatures and misuse of legal processes. Scope of Review is extremely limited and narrow under Order 47 Rule 1 read with Section 114 CPC: It is well-settled that review is maintainable only on – i) Discovery of new and important matter or evidence; ii) Mistake or error apparent on the face of the record; iii) or Any other sufficient reason. No new material has been placed by the Review Petitioners. The review grounds merely attempt a re-argument on facts, which is impermissible in law. Case Law - The Hon'ble Supreme Court in the matter of Sant Lal Gupta and Others versus Modern Cooperative Group Housing Society Limited and Others, reported in (2010) 13 SCC 336, by laying down the principal had reiterated that: In paragraph no. 16 of the said judgment, the Hon'ble Supreme Court, reiterated that be that as it may, the High Court has referred to its Division Bench Judgment in B.B. Chibber

versus Anand Lok Coop. Group Housing Society Ltd., wherein the same provision had been considered and it had categorically been held that deeming approval was not legally permissible. In view of the above, it was neither desirable nor permissible by the co-ordinate bench to disapprove the earlier judgment and take view contrary to it. More so ex-tension of the period from 6 months to 1 year amounts to legislation. In paragraph no. 17 of the said Judgment, the Hon'ble Supreme Court reiterated that A coordinate Bench cannot comment upon the discretion exercised or judgment rendered by another coordinate Bench of the same Court. The rule of precedent is binding for the reason that there is a desire to secure uniformity and certainty in law. Thus, in judicial administration precedents which enunciate the rules of law form the foundation of the administration of justice under our system. Therefore, it has always been insisted that the decision of a coordinate Bench must be followed. In paragraph no. 19 of the said Judgment, the Hon'ble Supreme Court reiterated that in the instant case, the position before us is worse as the latter Bench has taken a divergent view from an earlier co-ordinate Bench, particularly taking note of the earlier decision holding otherwise, without explaining why it could not follow the said precedent even while extensively quoting the same. Judicial property and discipline are not served by such conduct on the part of the Division Bench. Thus in view of the above, it was not permissible for the High Court to take the course, which it has adopted and such a course cannot be approved. Power of Review cannot Be exercised as an Appellate Power: The Review Petitioners are seeking to re-agitate issues already decided in the

original writ proceeding. There is no manifest error or mistake apparent on the face of the record. Case Law - The Hon'ble Supreme Court in the matter of Arun Dev Upadhyaya versus Integrated Sales Service Limited and Another (2023) 8 SCC 11, by laying down the principal had reiterated that: In paragraph no. 35 of the said judgment, the Hon'ble Supreme Court, reiterated that from the above, it is evident that a power of review cannot be exercised as an appellate power and has to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC. An error on the face of record must be such an error which, mere looking at the record should strike and it should not required any long drawn process of reasoning on the points where there may conceivably be two opinions. Order 47 Rule 7 CPC bars appeal against rejection of Review: Multiple review petitions are aimed at challenging the final writ order dated 12.6.2023, which is not permissible. Case Law - The Hon'ble Calcutta High Court in the matter of Robin Paul and Others versus Kumkum Mittal and Others reported in 1996 SCC Online Cal 63, by laying down the principal had reiterated that - In paragraph no. 29 of the said judgment, the Hon'ble Calcutta High Court, reiterated that it is well settled that an order refusing to review an earlier order on a Memorandum of Review filed under Order 47 of the Code of Civil Procedure, itself because Order 47 Rule 7 creates an express bar to the maintainability of an appeal against an order rejecting the Memorandum of Review and Order 43 Rule 1 of the Code of Civil Procedure does not provide for an appeal against the order rejecting a review petition. In paragraph no. 30 of the said judgment, the Hon'ble Calcutta High Court, reiterated that, likewise it is equally well settled that an

order rejecting a Memorandum of Review is not appealable under Clause 15 of the Letters of Patent because the two following case have held that if a Memorandum of Review is dismissed, the this does not amount to a judgment within the meaning of Clause 15 of the Letter of Patents. In a case of Musst. Raghoo Bibi versus Noor Jahan Begum, in which the Special Bench of three Learned Judges of the Hon'ble High Court at Kolkata took the view of rejection of a Memorandum of Review which is not appealable order under Clause 15 of the Letters of Patent and further held that an appeal against an order rejecting the Memorandum of Review is not maintainable under Clause 15 of the Letters patent. Order 47 Rule 7 creates a bar on the maintainability of appeal against the order rejecting review. Rejecting order of review is not a judgment, thus not appealable under clause 15 Letter Patent. ADG CID's recall application CAN 1/23 - The ADG CID's recall application (CAN 1/23) based on lack of disciplinary jurisdiction is not disputed, and as such, the impugned order can be modified only insofar as the disciplinary authority can be changed, from CID to the State Government.

5. Learned counsel appearing on behalf of the CID has submitted as follows. By solemn order dated 12.06.2023, while disposing of the writ petition, the Hon'ble Court was pleased to direct the CID, West Bengal to conduct major penalty disciplinary proceedings against the respondent nos. 3 to 11 and that the proceedings shall be conducted as per the service rules applicable to the respondent nos. 3 to 11. The Disciplinary Authority was also entitled to issue orders of suspension of the respondent nos. 3 to 11 if deemed necessary as per rules. His Lordship was further pleased to hold,

inter alia, that it is expected that the said departmental proceedings shall be completed within a period of six months from the date after complying with all rules and that the defense of respondent nos. 3 to 11 shall be considered in accordance with law by the disciplinary authority uninfluenced by any observation made by the Hon'ble Court. The CID, West Bengal is not the Disciplinary Authority of the concerned officers and that the officers concerned is not under the administrative control of the CID, West Bengal and as such it is not an agency to conduct departmental proceeding against the said respondents. The CID, West Bengal has been created under Section 12 of the Police Act, 1861 and Chapter IX of the Police Regulations of Bengal, 1943 deals with the powers and functions of CID, West Bengal, more specifically Regulation 612 thereof. In fact, all the said respondent nos. 3 to 11 belong to different ranks of West Bengal Police and none of the said respondents are amenable to the disciplinary power of the competent authority of CID, West Bengal. For instance, the State Government is the disciplinary authority in respect of respondent no. 4.

6. I heard the learned counsels for the parties and perused the applications, affidavits and written notes.

7. One of the respondents namely, Kallol Kumar Ghosh preferred an appeal against the order dated 12th June, 2023. The Division Bench disposed of the appeal in MAT No. 1178 of 2023 by granting liberty to the appellant to file a review petition in spite of the fact that one review application had been dismissed by a Single Bench. Thereafter, rest of the

review applicants were assigned to this Bench and were heard at length including on the question of maintainability.

8. As regards the issue of maintainability of the review application after dismissal of a similar application by a Co-ordinate Bench by a non-speaking order, it is indeed true that a Co-ordinate Bench cannot sit in appeal over a decision rendered by another Bench in the guise of a review. Moreover, an order rejecting a memorandum of review is not appealable under Clause 15 of the Letters Patent Act. In this regard the writ petitioner has also taken up the plea of *res judicata*.

9. However, Order 47 Rule 1 of the Code of Civil Procedure specifically permits the filing of a review, *inter alia*, on the ground of “for any sufficient reason”.

10. It is germane here to quote the order passed by the Co-ordinate Bench in dismissing one of the review applications being RVW 164 of 2023 as under—

*“I am going through the Review Application.
There is no ground on which the Review
Application can be maintainable.*

*Therefore, the Review Application is
dismissed.”*

11. From the above it is evident that the order of dismissal was a non-speaking one and was not preceded by any discussion or reason.

12. In the State of U.P. and Another vs Synthetics and Chemicals Limited (*supra*), the Hon’ble Apex Court held that a decision was binding not

because of its conclusions, but in regard to its ratio and the principles laid down therein. Any declaration or conclusion arrived at without application of mind or preceded without any reason cannot be deemed to be a declaration of law or authority of a general nature binding as a precedent.

13. As recorded by the Hon'ble Apex Court in *A-One Granites vs. State of U.P. and Ors.*, (2001) 3 SCC 537, the Court of Appeal in *Lancaster Motor Co. (London) Ltd. v. Bremith Ltd* laid down that when no consideration was given to the question, the decision cannot be said to be binding and precedents *sub silentio* and without arguments are of no moment. Following the said decision, the Hon'ble Supreme Court in the case of *Municipal Corpn. of Delhi v. Gurnam Kaur*, (1989) 1 SCC 101, *inter alia*, observed that

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"Precedents sub silentio and without argument are of no moment. This rule has ever since been followed."

14. In *State of U.P. v. Synthetics and Chemicals Ltd.*, (1991) 4 SCC 139, the Hon'ble Supreme Court observed thus:

"A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141."

15. In the case of *Arnit Das v. State of Bihar*, (2000) 5 SCC 488 while examining the binding effect of such a decision, the Hon'ble Apex Court held:

"20. A decision not expressed, not accompanied by reasons and not proceeding on a conscious consideration of an issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. That which has escaped in the judgment is not the ratio decidendi. This is the rule of sub silentio, in the technical sense when a particular point of law was not consciously determined."

16. Therefore, the dismissal of the earlier review application by the non-speaking order as quoted earlier would not be binding on this Court.

17. Significantly, even after such dismissal of a review application by a non-speaking order, liberty was granted by the Appellate Court to one of the review applicants to move an application for review.

18. In view of the above, I find that the review applications are quite maintainable and I proceed to deal with them on merits.

19. So far as the original order dated 12th June, 2023 passed by the other Co-ordinate Bench of this Court is concerned, it is the case of the review applicants that although they were impleaded in the writ petition by name, no copy was served upon them. Nor was any document annexed to the writ petition showing service of the writ petition upon them. In fact, by an order dated 2nd May, 2023 the writ petitioner was directed to serve a notice on the review applicants, but the same could not be effected. According to the review applicants, they appeared for the first time on 12th June, 2023 and sought for leave to file affidavit, which was not granted and a final order was passed against the applicants.

20. According to the applicants, there is a patently erroneous finding made in the said order that the review applicants were avoiding the Court and not taking steps despite service.

21. The question of service of notice / writ petition upon the respondents has been gone into by this Court. It appears that although some of the respondents were served with notice at the official address, it was clear of some of such respondents, by that time, were not holding offices there.

22. In fact, as was contended on behalf of the applicant Koteswara Rao, the address was given only as “1, Kiran Sankar Roy Road”. There were several offices there and it was not indicated as to where exactly the notice was to be served and the return memo did not contain any signature as would be evident from the copy annexed. As per the applicant, even for the notice to be served on the respondent nos. 3 to 11 as per the order dated 02.05.2023, on the next date i.e., on 12.06.2023, no affidavit of service was filed and no satisfaction was recorded as regards service of notice.

23. There was indeed a direction passed on 02.05.2023 to serve notice upon the review applicants. But, there is no recording that affidavit of service was filed or mention of any satisfaction about service of notice.

24. Charts regarding service of the writ petition and of the order dated 02.05.2023 were filed by the writ petitioner in Court. It appears that the writ petition was only sent, but not served, upon two respondents being the review applicants in RVW 146 of 2023 and RVW 144 of 2023. As regards communication of the order dated 02.05.2023, the notice was not served

and was redirected as the addressee had moved so far as the respondent no. 7/the applicant in RVW145 of 2023 was concerned and was not served as the addressee had left without information so far as the respondent no. 8/the applicant in RVW 101 of 2023 was concerned and was not served and was returned to sender as the addressee had moved as regards the respondent no. 9.

25. The contention of the applicants that Acknowledgement Cards did not come back in certain cases, however, does not mean much when delivery reports are available from the postal authorities.

26. But, there are serious infirmities in service of writ petitions on some respondents. Two review applicants were not served. Even as regards the subsequent notice, three respondents including two review applicants went unserved. By all counts, at least the two above referred review applicants not receiving a copy of the order dated 02.05.2023 would have a clear right of review.

27. Yet, a finding was arrived at in the said original order that the review applicants have not taken any step despite service of notice. This appears to be an error on the face of the record. But, it was the determining factor in directing departmental proceeding against the applicants. Therefore, a strong case is made out a case for review and recalling of the order and granting the respondents/review applicants a further and fair opportunity of hearing.

28. In fact, as the writ petitioner ought to have known that service of notice in respect of the order dated 02.05.2023 was not complete at least as regards three respondents, it was incumbent upon him to have specifically mentioned the same before the High Court before proceeding to obtain an order. Courts depend on assistance rendered by the litigants and their learned counsels. If such arrangement is breached, consequences would have to follow. Therefore, the above-referred non-disclosure of material facts by the writ petitioner about non-service of notice to some goes to the root of the matter and itself renders the order so obtained a subject of review.

29. It also appears that the review applicants' contention that the Criminal Court gave a specific finding that there was no material to show that the accused was a victim of conspiracy apparently could not be placed before the Co-ordinate Bench on the day of the final judgment/order. After all, that the Investigating Agency cannot be hauled up for any lapses merely because the prosecution ended in an acquittal, especially when there is a categorical finding made by the Trial Court to the contrary, would have been a material consideration.

30. The further ancillary contentions of the review applicants that the arrest of the petitioner was confirmed by subsequent orders of courts of law and the proceeding was duly sustained by framing of charges by a competent court of law are also matters that were relevant in deciding whether a disciplinary proceeding should be initiated against the Investigating Officers or not. However, all these could not be placed before the Court by the review applicants as such opportunity was closed.

31. There is another apparent error that is present in the said order, which is borne out by a subsequent application made by the CID being CAN No. 1 of 2023. The same is now been supported by the writ petitioner. According to the said applicant, the CID West Bengal was not the disciplinary authority of the concerned officers and officers concerned were not under the Administrative Control of the CID West Bengal and as such, it was not the agency who could conduct departmental proceedings against the said respondents. Therefore, a prayer has been made to seek review of the same order to have the CID, West Bengal replaced by the State Government as the competent authority to conduct disciplinary proceedings.

32. The order under review has far reaching consequences so far as the rights and liberties of the review applicants are concerned, especially those who were not served with the notice/order dated 02.05.2023, although a purported last opportunity to respond had apparently been granted therein.

33. In view of the above, for the balance of convenience and in the interest of justice, this Court finds it fit and proper to review and recall the order dated 12th June, 2023 passed in WPA No. 27064 of 2022.

34. The writ petition being WPA No. 27064 of 2022 would consequently revive and be placed before the appropriate Bench for passing necessary order afresh on merits.

35. With the above observations, the review applications and the connected applications are disposed of. Interim order, if any, shall stand vacated.

36. Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon completion of requisite formalities.

(Jay Sengupta, J.)