

05.02.2025

Court No. 35

ADSL 1

Rakib/Kausik/
Bpg/dc

W.P.A. 21396 of 2024

With

CAN 2 of 2025

With

CAN 3 2025

Akhtar Ali

VS

The State of West Bengal & Ors.

Ms. Kausiki Bose.

... for the Petitioner.

Mr. Ayan Bhattacharjee, Sr. Adv.,

Mr. Sumitava Chakraborty,

Mr. Zohaib Rauf,

Mr. Snehasish Dey.

Mr. Arpit Choudhury

... for the Applicant in CAN 2 of 2025.

Mr. Sabyasachi Banerjee, Sr. Adv.,

Ms. Nahid Ahmed,

Mr. Abhra Jana,

Ms. Akansha Mukherjee.

... for the Applicant in CAN 3 of 2025.

Mr. Ashok Kumar Chakraborty, Ld. ASGI,

Mr. Rajdeep Majumdar, Ld. DSGI,

Mr. Amajit De, Special PP, CBI.

... for the CBI.

Mr. Dhiraj Trivedi, Ld. DSGI,

Mr. Arijit Chakraborty,

Mr. Deepak Sharma.

... for the Enforcement Directorate.

Mr. Sirsanya Bandopadhyay, Sr. St. Counsel,

Ms. Ipsita Banerjee,

Mr. Debangshu Dinda.

... for the State

Leave has been granted by the Hon'ble the
Chief Justice, High Court at Calcutta for filing of
recalling and/or review application in connection with

the order dated 28.01.2025 passed in the WPA 21396 of 2024.

Mr. Chakraborty, learned ASGI took an exception in respect of the prayers sought for in the recalling application and submitted that in a disposed of writ petition a review is maintainable and recalling of the order is not maintainable. Learned ASGI, further submitted that pursuant to the directions passed by this Court there has been change of circumstances and three of the accused persons have preferred application for discharge while one of the accused person being the present petitioner did not file any application for discharge. Additionally it has been submitted that the accused persons have already adopted a dilatory tactics and some of the accused persons have reserved their right for application for discharge.

It has been emphasized by the learned ASGI that the recalling application not being maintainable should not be entertained by this court.

Mr. Banerjee, learned senior advocate appearing for the applicant in CAN 3 of 2025 submits that pursuant to the directions passed by this court, the trial court has passed orders which has prejudiced the applicant.

To that effect, learned advocate has drawn the attention of this court to the orders dated 30.01.2025, 31.01.2025, 01.02.2025 and 04.02.2025. By referring to the said orders what was tried to be impressed upon this court is that the said orders have been passed in gross violation of the present BNSS, 2023 and the same is because of the directions passed by this court on 28.01.2025.

According to the applicant there are 15,000 documents which are to be gone into and even the Central Bureau of Investigation or the prosecuting agency was not prepared which would be reflected from the order passed by the learned Special Court that initially only 70 per cent of the copies were supplied on one day and later on the next day rest 30 per cent of the documents were submitted.

By referring to different provisions of the BNSS, learned advocate tried to impress that the period referred to by this court has been construed in a different manner by the learned Special Court and the interpretation made by the learned Special Court is reflected in its orders itself.

By relying on the judgment of Budhia Swain & Ors. vs. Gopinath Deb & Ors. reported in (1999) 4 SCC 396 learned advocate submits that it is

permissible for the same court to recall its own order without referring the party for any appeal or revision.

Reliance was placed on paragraph 8 of the said judgment which is set out as follows :-

“8. In our opinion a tribunal or a court may recall an order earlier made by it if

- (i) the proceedings culminating into an order suffer from the inherent lack of jurisdiction and such lack of jurisdiction is patent,*
- (ii) there exists fraud or collusion in obtaining the judgment,*
- (iii) there has been a mistake of the court prejudicing a party, or*
- (iv) the judgment was rendered in ignorance of the fact that a necessary party had not been served at all or had died and the estate was not represented.*

The power to recall a judgment will not be exercised when the ground for reopening the proceedings or vacating the judgment was available to be pleaded in the original action but was not done or where a proper remedy in some other proceeding such as by way of appeal or revision was available but was not availed. The right to seek vacation of a judgment may be lost by waiver, estoppel or acquiescence.”

Mr. Ayan Bhattacharya, learned senior advocate appearing on behalf of the applicant Sandip Ghosh has also prayed for recalling, modifying, varying and/or rescinding the order dated January 28, 2025. Learned advocate has submitted that since

the consequence of the order dated January 28, 2025 is touching the provisions of the BNSS, thereby denying the opportunity of fair trial to the applicant and/or accused persons, the said order is required to be recalled. Learned advocate has referred to paragraphs 55 and 77 of the judgment of the Hon'ble Supreme Court passed in A.R. Antulay Vs. R.S. Nayak & Anr. reported in (1988) 2 SCC 602. The relevant paragraphs relied upon by the learned advocate for the applicant is set out as follows:

“55. Shri Jethmalani urged that the directions given on 16-2-1984, were not per incuriam. We are unable to accept this submission. It was manifest to the Bench that exclusive jurisdiction created under Section 7(1) of the 1952 Act read with Section 6 of the said Act, when brought to the notice of this Court, precluded the exercise of the power under Section 407 of the Code. There was no argument, no submission and no decision on this aspect at all. There was no prayer in the appeal which was pending before this Court for such directions. Furthermore, in giving such directions, this Court did not advert to or consider the effect of Anwar Ali Sarkar case [(1952) 1 SCC 1 : AIR 1952 SC 75 : 1952 SCR 284 : 1952 Cri LJ 510] which was a binding precedent. A mistake on the part of the court shall not cause prejudice to anyone. He further added that the primary duty of every court is to adjudicate the cases arising between the parties. According to him, it is certainly open to a larger Bench to take a view

different from that taken by the earlier Bench, if it was manifestly erroneous and he urged that the trial of a corrupt Chief Minister before a High Court, instead of a judge designated by the State Government was not injurious to public interest that it should be overruled or set aside. He invited us to consider two questions: (1) does the impugned order promote justice? and (2) is it technically valid? After considering these two questions, we are clearly of the opinion that the answer to both these questions is in the negative. No prejudice need be proved for enforcing the fundamental rights. Violation of a fundamental right itself renders the impugned action void. So also the violation of the principles of natural justice renders the act a nullity. Four valuable rights, it appears to us, of the appellant have been taken away by the impugned directions:

“(i) The right to be tried by a Special Judge in accordance with the procedure established by law and enacted by Parliament.

(ii) The right of revision to the High Court under Section 9 of the Criminal Law Amendment Act.

(iii) The right of first appeal to the High Court under the same section.

(iv) The right to move the Supreme Court under Article 136 thereafter by way of a second appeal, if necessary.”

77. *The directions given by the order of 16-2-1984 [(1984) 2 SCC 183, 243 : 1984 SCC (Cri) 172 : (1984) 2 SCR 495, 557] at page 557 (SCC p. 243) were certainly without hearing though in the presence of the parties. Again consequential upon directions these were challenged ultimately in this*

Court and finally this Court reserved the right to challenge these by an appropriate application.”

An accommodation has been prayed for on behalf of the learned advocate appearing for the petitioner and it was submitted by the advocate on record that earlier an application for addition of party was preferred on behalf of the present applicant Sandip Ghosh which was dismissed by this Court.

The genesis of the writ petition was in respect of certain complaints made by one Akhtar Ali relating to corruption wherein the complaints were not addressed properly by the police authorities and, as such, a co-ordinate Bench of this Court was pleased to direct to transfer the investigation to the CBI. The applicant in CAN 2 of 2025 namely, Sandip Ghosh challenged the said order dated 23.08.2024 before the Hon’ble Supreme Court of India which was dismissed.

I have considered the submissions particularly after the order was passed by this Court on 28th January, 2025 by directing the Special Court to proceed in terms of the directions passed therein. What has been brought to the notice of this Court today by way of the recalling application is in respect of the subsequent orders passed by the learned Special Court. The subsequent developments before the learned Special Court are judicial orders. Now the

said judicial orders cannot be interfered with as there has been change in the stage of the proceeding. In fact, attention of the Court was drawn to the order taking cognizance, supply of copies as well as the application for discharge preferred before the learned Special Court. What has been tried to be canvassed and impressed upon this Court is regarding the nature of the orders passed, the paucity of time and the voluminous documents referred to therein. This Court has given a specific guideline considering the delay which has occurred. As it was specifically and consciously stated in the order dated 28th January, 2025 that if a charge-sheet is submitted on November 2025, there is no reason to take two more months' time for granting sanction order.

Having regard to the judgements referred to by both the applicants, I am of the view that the stress made on the merits of the judicial orders cannot be gone into by this Court in the sphere of exercising the powers under Article 226 of the Constitution of India. The powers of superintendence under Article 227 of the Constitution of India and the exercise of writ jurisdiction under Article 226 of the Constitution of India are two different aspects.

The Hon'ble Supreme Court in ***Radhey Shyam & Anr. Vs. Chhabi Nath & Ors.*** reported in **(2015) 5**

SCC 423 has been pleased to hold that where the provisions of appeal and revision are available in a statute, the judicial order as such cannot be interfered by way of a writ under Article 226 of the Constitution of India or under Article 32 of the Constitution of India.

Further in *State of Uttar Pradesh vs. Brahm Datt Sharma*, (1987) 2 SCC 179 the Hon'ble Supreme Court was pleased to deprecate entertaining miscellaneous application in respect of writ petitions which stood terminated by way of final disposal. It has been held in paragraph 10 of the reported judgment:

“10. The High Court's order is not sustainable for yet another reason. Respondents' writ petition challenging the order of dismissal had been finally disposed of on 10-8-1984, thereafter nothing remained pending before the High Court. No miscellaneous application could be filed in the writ petition to revive proceedings in respect of subsequent events after two years. If the respondent was aggrieved by the notice dated 29-1-1986 he could have filed a separate petition under Article 226 of the Constitution challenging the validity of the notice as it provided as separate cause of action to him. The respondent was not entitled to assail validity of the notice before the High Court by means of a miscellaneous application in the writ petition which had already been decided. The High Court

had no jurisdiction to entertain the application as no proceedings were pending before it. The High Court committed error in entertaining the respondent's application which was founded on a separate cause of action. When proceedings stand terminated by final disposal of writ petition it is not open to the court to reopen the proceedings by means of a miscellaneous application in respect of a matter which provided a fresh cause of action. If this principle is not followed there would be confusion and chaos and the finality of proceedings would cease to have any meaning.”

The aforesaid observations are relevant because of the fact that the learned advocates appearing for the applicants have repeatedly drawn the attention of the Court to the orders passed by the learned Special Court. Such orders cannot be entertained either by way of invoking powers of this Court under Article 226 of the Constitution of India or by way of recalling application.

In view of the aforesaid, I am not inclined to entertain the prayers as advanced by the applicants.

Accordingly, the applications being CAN 2 of 2025 and CAN 3 of 2025 are dismissed.

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

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)