

GAHC010093212022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Cont.Cas(C)/279/2022

PRADIP CHANDRA DEKA
S/O- LATE PRABHAT DEKA, R/O- VILL. AGDIA, P.S. BAIHATA CHARIALI,
DIST.- KAMRUP(R), ASSAM

VERSUS

CHAMPAK DEKA
EXECUTIVE MAGISTRATE, RANGIA, DIST. KAMRUP(R), ASSAM

Advocate for the Petitioner : MR I RAFIQUE

Advocate for the Respondent : MR. A PAUL

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

16.08.2023

Heard Shri I. Rafique, learned counsel for the petitioner whereas, Shri A. Paul, learned counsel is present for the respondent.

In this petition, filed under Section 12 of the contempt Court Act, 1971 read with Article 215 of the Constitution of India, the petitioner has alleged

willful and deliberate violation of an order dated 03.11.2021 passed by this Court in Criminal Petition No. 100/2021.

It is the case of the petitioner that pertaining to a dispute with another party, apart from a title suit being Title Suit No. 12/2018 in the Court of the learned Munsiff, Rangia, the other party has instituted a proceeding under Section 145 of the Cr.P.C.

This Court in the Criminal Petition No. 100/2021 instituted by the petitioner against the 145 proceedings had however passed an order dated 03.11.2021 whereby a direction was issued to the learned Executive Magistrate to decide the petition by examining all witnesses from both the sides and dispose of the same within a period of 3 (three) months from the date of production of the certified copy of the order.

Shri Rafique, the learned counsel has submitted that in spite of furnishing certified copy of this order, the said direction has not been complied with and therefore, it is submitted that the present is a fit case for initiating contempt proceedings.

Per contra, Shri A. Paul, learned counsel appearing for the respondent has submitted that the allegations made against the respondent are not correct. By referring to the affidavit-in-opposition filed on 20.12.2022, the learned counsel has submitted that immediately on being apprised of the order of this Court, the proceeding was taken up in the right earnest and dates were fixed and in none of the dates, the parties were present. The order sheet has also been annexed as Annexure-A to the said affidavit-in-opposition from which it reflects that the proceeding was taken up on 26.11.2021, 30.12.2021 and 27.01.2021 in which the parties were absent. He accordingly submits that it cannot be said that the

present is a case of willful and deliberate disobedience and rather all steps were taken by his client for compliance of the direction of this Court.

It is also submitted that as on date, his client is not holding the said post of Executive Magistrate, Rangia and has been transferred to another Department in the Government of Assam and is posted at Tezpur.

Shri Rafique, the learned counsel for the petitioner however submits that at no point of time, notices were issued to his client and therefore, they could not appear.

An application alleging contempt is required to be considered by examining the conduct of the respondent against whom contempt has been alleged. It is a settled law that such disobedience / non-compliance has to be willful and deliberate.

Juxtaposed, in the instant case, the pleadings supported by the records would reflect that steps were duly taken for compliance of the order of this Court and the proceeding under Section 145 of the Cr.P.C. was tried to be continued in which the parties were absent and therefore the matter was deferred. This Court has also taken note of the fact that the respondent is not holding the said post at the moment.

This Court is of the *prima facie* view that during the tenure of the respondent as the Executive Magistrate, Rangia, due steps were taken for compliance of the direction of this Court and therefore the allegation of contempt does not appear to be substantiated. Accordingly, the present proceeding stands closed.

However, keeping in the view that a new incumbent had joined the post of Executive Magistrate, Rangia, for meeting the interest of justice, the petitioner is

at liberty to approach the present Executive Magistrate, Rangia with a copy of the initial order along with a copy of today's order with a request to restart the proceedings and bring the same to a logical conclusion. It is however made clear that the learned Executive Magistrate, Rangia is required to issue notice to the parties notifying the next date so as to enable the parties to appear and place their respective cases in terms of the original order dated 03.11.2021.

Contempt petition accordingly stands disposed of.

JUDGE

Comparing Assistant