

GAHC010145522023



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

Case No. : I.A.(Civil)/1867/2023

XXXX
X

VERSUS

IN RE- MRIDUL KUMAR BORAH
ADVOCATE, GAUHATI HIGH COURT, S/O LATE DURGESWAR BORAH, FLAT
NO. A-7/021, GROUND FLOOR, SHANTIGRAM HOUSING COMPLEX,
TRIPURA ROAD, KHANAPARA, GUWAHATI-781022

Advocate for the Petitioner : SC, GHC (MS. SUMITRA SARMA)

Advocate for the Respondent : M K BORAH

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 04-08-2023

1. The present proceeding was initiated suo moto on the basis of a direction issued by this court on 09.06.2023 while adjudicating I.A (Civil) 719/2023 Ms. JYS Construction Vs. the General Manager, North Eastern Frontier Railway and 2 Others. The relevant portion is quoted herein below:

“Though the I.A.(Civil)/719/2023 is closed on merit, however, Registry is directed to register a suo-moto case, in the following backdrop:-

Learned counsel Mr. Mridul Kumar Borah, made a mention at the mentioning hour requesting this Court to adjourned this I.A (Civil)/719/2023 on the ground that he has misplaced the copy of the I.A. However, as the matter is listed along with a series of writ petitions this Court declined such prayer of adjournment at mentioning hour.

It is brought to the notice of this Court by the Court Master that, Mr. Borah has requested the Court Master to allow him to go through the record. Accordingly he was allowed in presence of the Office Peon to go through the second file. However, Mr. Borah has taken out the court record and took it beyond the court room even after objection by the Court Peon. The Court Peon had to rush along with learned counsel and had to recover the case record from the corridor of this Court.

After coming to know that the incident has been reported by the Court Master, Mr. Borah has sought for an apology for taking such course of action and submits that he will never repeat it. This Court is not inclined to grant apology in this way. Accordingly, let a Suo-Moto petition be registered and notice be issued to Mr. Mridul Kumar Borah having Enrolment No.787/2004, Mobile No. 97060- 45664, Email ID: mridulkumar.borah@gmail.com asking him as to why action permissible under law, should not be taken against him for unauthorisedly removing Court record from the Court room.

For the purpose of issuing the notice, Registry may collect details of Mr. Borah from the office of The Bar Council of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram, Arunachal Pradesh and Sikkim.

Notice is made returnable on 19.07.2023.

A copy of this order be furnished to Mr. Mridul Kumar Borah by the Registry.

A copy also be served upon the Chairman of the Bar Council of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram, Arunachal Pradesh and Sikkim.

This Court also requests the Chairman of the Bar Council of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram, Arunachal Pradesh and

Sikkim to remain present on the next date fixed and to assist this Court.

List this matter after registration by showing the name of Mr. Mridul Kumar Borah and the Chairman of the Bar Council of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram, Arunachal Pradesh and Sikkim in the cause list."

2. The matter was thereafter listed before this court on 19.07.2023 on which date Mr. M.K. Bora prayed for allowing him to file an affidavit explaining his stand and Mr. P.J. Saikia learned senior counsel made a submission on behalf of Bar council of Assam that the aforesaid Bar Council has already issued a notice for initiation of a proceeding.

3. Be that as it may, the matter was listed on 28.07.2023 on which date Mr. M.K. Borah filed an affidavit explaining his stand.

4. Mr. Chinmoy Choudhry, learned Senior Advocate and Chairman of the Bar Council of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram, Arunachal Pradesh and Sikkim and Ms. S Sharma, learned standing counsel Gauhati High Court were also present and they were requested to go through the affidavit filed by Mr. M.K. Borah and accordingly the matter was again directed to be listed on 04.08.2023.

5. In the affidavit so filed, Mr. Borah took the following stand: -

"1. That on 09.06.2023, in the cause list itself a bunch of Writ Petitions were listed before the Court No.20 (Hon'ble Mr. Justice Arun Dev Choudhury) in the admission column and at the top of the admission column, the Deponent himself, the Advocate in record in these matters, the Deponent while rearranging the chamber, the said files were misplaced and he could not locate the same. Accordingly, the Deponent made a mention in the mention hour of the Hon'ble Court seeking adjournment of the matter, but the prayer of the Deponent was not granted and the Deponent having no other option but to request the Court officer to allow him to go through the case record in the court room itself. Unfortunately the court was packed with the battery of

lawyers, who were in queue to mention their matters and there was no empty chair for the Deponent to sit and peruse the case record. As the Deponent was in a being hurry as his case would be called immediately after the mention was over, the Deponent without thinking and/or realizing took the case record just outside the main door of the Court Room in order to go through the same. The Deponent had no ill intention/motive in the matter and all he wanted to do was to have a brief glance of the case file and before he could look into the file, the Peon of the Court came out and asked him to give back the file and meet the Court Officer, which the Deponent did.

2. That the Deponent humbly submits that he had no ill intention/motive in taking the case record of this Hon'ble Court and the Deponent prays before Your Lordships that the Deponent in any manner acted and in a manner which is unbecoming, unethical or in any manner prejudicial to the decorum of the court proceeding, and the deponent may be forgiven for the same and the Deponent offers his sincere apology to this Hon'ble Court and assures Your Lordship that the same shall never be repeated again. The Deponent acted in a haste and without thinking, as he was totally unprepared to the case that day."

6. Ms. S Sharma, learned standing counsel, Gauhati High Court who was also requested to assist this court in this matter suggested that as the Bar Council has already initiated a proceeding against Mr. M.K. Borah, so instead of continuing with the present proceeding, the Disciplinary Authority i.e., the Bar council of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram, Arunachal Pradesh and Sikkim may be allowed to proceed with the proceeding they have already initiated and to have a logical conclusion at the earliest.

7. Mr. Chinmoy Choudhury learned Chairman of the Bar council of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram, Arunachal Pradesh and Sikkim has also submitted that court will proceed with the matter in terms of the extent of Rules and procedure against Mr. M.K. Borah.

8. Though an affidavit has been filed and apology is sought for, this

court is of the opinion that the explanation given for taking away the court record beyond the court room is not acceptable, inasmuch as for any reason whatsoever, a lawyer is not permitted to take court records beyond the court room, of course as a practice of convenience, sometimes lawyers are allowed to inspect the court records within the court room. However, the explanation given by Mr. Borah is not acceptable to this court.

9. Be that as it may, as the bar council, being the Disciplinary Authority has already proceeded against Mr. Borah on the same subject matter by issuing a show cause notice, this court finds it to be a very reasonable suggestion given by both Mr. Chinmoy Choudhury, Chairman of the Bar council of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram, Arunachal Pradesh and Sikkim and Ms. S Sharma learned standing counsel Gauhati High Court in the given facts of the case. Accordingly this Court deems it fit to close this proceeding at this stage without proposing any action against Mr. M.K. Borah.

10. However, this court expects that the Bar Council of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram, Arunachal Pradesh and Sikkim shall conclude the proceeding initiated against Mr. MK Borah expeditiously by following due process of law.

11. With the aforesaid observations, the present Interlocutory application stands closed.

JUDGE

Comparing Assistant