

GAHC010147772023



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

Case No. : I.A.(CrI.)/583/2023

KAMAL NAYAN CHOUDHURY,
D/O LATE ANJAN DUTTA,
R/O HOUSE NO. 16, BISHNU PATH,
RUKMINI GAON, GUWAHATI, ASSAM-781022

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REPRESENTED BY THE PP, ASSAM

2:DR ANGKITA DUTTA

D/O LATE ANJAN DUTTA
R/O HOUSE NO. 16
BISHNU PATH
RUKMINI GAON
GUWAHATI
ASSAM-781022

3:SRINIVAS B.V.
S/O VENKATESH G.V. RESIDENT OF 726/A
MC MODI STREET
RAJAJINAGAR
BANGALORE NORTH BENGALURU 560010 CURRENTLY THE PRESIDENT
OF INDIAN YOUTH CONGRESS
INDIAN NATIONAL CONGRESS
NEW DELHI

Advocate for the Petitioner : MR. N BARUAH
Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

20.07.2023

Heard Mr. Kamal Narayan Choudhury, learned Senior counsel and applicant herein.

2. Mr. B. Sarma, learned Additional Public Prosecutor, Assam/ opposite party No.1 has accepted notice on behalf of the State respondent.

3. As the instant matter is basically between the applicant and the court, no notice is required to be issued to the other opposite parties.

4. By this Interlocutory Application, the applicant has prayed for expunging of remarks, directions and recording of averments, made in paragraph Nos. 12, 29 and 30 of the judgment and order, dated 04.05.2023, passed in Crl. Pet. No. 377/2023.

5. With regard to the above prayer, the applicant has, *inter alia*, averred as extracted hereinunder:

“2. That the Hon’ble Court had dealt on a sensitive issue with proper judicial fitness, but as the issue had struck an emotive chord, heated arguments were advanced and certain intemperate choice of words were then used by the applicant, which are sincerely regretted by the applicant herein. The applicant conveys his wholehearted and unreserved apology and contrition for any hurt or slight caused to the Hon’ble Court, by his inadvertent and hasty language or arguments. The applicant also avers that it was never his intention to insinuate any colorable motive towards the Court, and again offers his apologies for any unintended impact that his words may have conveyed in this regard.

3. That the petition was adjudicated on merits and same time the Hon’ble Court was pleased to record the averments at paragraph 12 of the said judgment and order. The applicant humbly prays that the said paragraph may be struck off/expunged from the aforesaid judgment and order dated 04.05.2023. The applicant conveys his sincere regret for adopting an unwarranted stance in the first instance towards the Hon’ble Court, which may be attributed to an error of judgment on his part.

4. That it is stated that the paragraphs 29 and 30 are the result of an inevitable judicial

discussion on the contentions raised in paragraph 12, and further prays that the said paragraphs be also struck-off/expunged from the record. The applicant humbly submits that these judicial findings were not pertinent to adjudication of the issues at hand, and sincerely apologies for having incurred the displeasure of this Hon'ble Court by this contentions.

5. That applicant submits that the High Court has inherent power to order deletion of passages which adversely affect the character of persons before the court who are not party to the proceedings. It is also stated that expunction of these adverse remarks would not affect the judgment on merits but leaving these in place, would adversely affect the professional reputation of the applicant."

6. It may pertinently be mentioned that this court in paragraph Nos. 12, 29 and 30 of the judgment and order, dated 04.05.2023, passed in Crl. Pet. No. 377/2023 (Sri Srinivas B. V. vs the State of Assam and Anr.) recorded as hereinbelow extracted:-

" 12. Additionally, out of the context, Mr. K.N. Choudhury, learned Sr. Counsel, abruptly submitted that if in the backdrop of facts and circumstances which the petitioner has averred in the petition, no interim relief as prayed is granted, this Court shall not grant any interim relief in any other petition under Section 482 Cr.P.C. as there must be only one law in this regard. Further, Mr. Choudhury submitted that the Judges, who are on the verge of retirement, it is noticed, always pass orders in favour of the Government. In this regard, referring to a statement of the then Union Minister of Law and Justice for the Government of India, Late Arun Jaitley, made in the parliament, Mr. Choudhury contended that that is why a cooling off period after retirement of a Judge has been advocated. Mr. Choudhury showed some copy of the aforesaid statement of Late Jaitley purportedly published in Live Law from a distance, which this Court, of course, could not read due to distance. Mr. Choudhury advanced his submission at length on the grounds pleaded by the petitioner at the height of his voice creating an unwarranted unruly situation breaking the usually everyday calm and quiet congenial Court environment, in presence of a crowd of learned Advocates, seniors and juniors as well as the Court staff present inside it.

29. So far the contentions made by Mr. K.N. Choudhury, learned Senior Counsel, stated in paragraph No. 9 of the order, dated 26.04.2023 and in paragraph No. 12 in today's order, this Court in exercise of judicial restraint and keeping in mind the glorious past of 75 years of existence of this esteemed High Court and further, being not relevant in the context of the instant petition, is not inclined to take into consideration of those avoidable submissions while deciding the instant petition. It may pertinently be pointed out that a Judge performs his duties with absolute fairness based on record and relevant laws only applicable to the facts and circumstances in each case, without fear or favour or affection or ill-will. Therefore, this Court hopes and trusts that good

conscience shall prevail upon Mr. Choudhury, who is widely assumed to be a legal acumen. This Court is, however, unfortunately compelled to record its displeasure and reserves the right for reference in future in the event of recurrence of such avoidable embarrassing situation in the Court.

30. Forward copy of this order to the Registrar General of this High Court for favour of placing before Hon'ble the Chief Justice for information and to the Registrar (Vigilance) of this High Court for record so far paragraph No. 29 of this order is concerned."

7. It may be noted here that as per order at paragraph 30, the Registry of this Court forwarded copy of the judgment and order to all authorities concerned and eventually the matter came up for discussion in the Hon'ble Full Court held on 20.06.2023. The Hon'ble Full Court after due deliberation unanimously recorded its displeasure on the manner in which the learned Senior Counsel conducted himself during the proceedings of Crl. Pet. No. 377/2023. It may further be stated that on the repeated requests of the learned Senior Counsel/applicant herein, his avoidable and out of the context submissions were merely recorded in the judgment and order dated 04.05.2023. Therefore, the applicant's recorded submissions had formed part and parcel of the judgment and order.

8. Section 362 Cr.P.C. reads as under:

"Court not to alter judgment. Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error."

9. The above statutory procedural provision makes it clear that a court cannot alter or review its judgment or final order after it is signed except to correct clerical or arithmetical error as it ceases to have control over the matter. The Hon'ble Supreme Court in *Hari Singh Mann Vs Harbhajan Singh Bajwa*, reported

in (2001) 1 SCC 169 and in *Sunita Jain Vs Pawan Kumar*, reported in (2008) 2 SCC 705 reiterated the aforesaid law applicable to criminal proceedings.

10. For the above stated bar in Section 362 Cr.P.C., the prayer made by the applicant, learned Senior Counsel is not sustainable in law.

11. However, **the applicant learned Senior Counsel's unreserved and remorseful apology is accepted without any prejudice to any other action that may have been initiated/or contemplated action, if any, by this Hon'ble High Court.**

12. Accordingly, the application stands disposed of.

JUDGE

Comparing Assistant