

GAHC010200532023



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

Case : I.A.(Crl.)/1064/2023

RITA DAS MOZUMDAR
AMICUS CURIAE
GAUHATI HIGH COURT
GUWAHATI
ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REPRESENTED BY THE PUBLIC PROSECUTOR
ASSAM

2:INSPECTOR GENERAL OF PRISONS
JAWAHAR NAGAR
KHANAPARA
GUWAHATI-781022
3:THE SUPERINTENDENT
CENTRAL JAIL
TEZPUR
MAHABHAAIRAB
TEZPUR-784001

Advocate for : MS. R D MOZUMDAR
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND 2 ORS.

BEFORE
HONOURABLE THE CHIEF JUSTICE (ACTING)
HONOURABLE MRS. JUSTICE MALASRI NANDI

Date : 21-12-2023

ORDER

Heard Ms. R. D. Mazumder, Advocate/applicant in person and also Ms. S. Jahan, learned Additional Public Prosecutor.

2. This interlocutory application has been preferred for expunging of remarks made by this Court in I.A. (Crl.) 649/2023 in respect of Advocate/ applicant, Ms. R. D. Mazumdar, learned Amicus Curiae for respondent No. 4.

3. The factual matrix leading to this application is that the applicant was appointed as Amicus Curiae for the appellant Warish Kujur in Criminal Appeal (J) 51/2019 and Ms. D. Saikia was appointed as Amicus Curiae in another linked appeal being Criminal Appeal (J) No.50/2019. Criminal Appeal (J) No.50/2019 and Criminal Appeal (J) No.51/2019 were filed before this Court by appellants Anil Kujur and Warish Kujur respectively challenging the Judgment and Order, dated 28.01.2019 passed by the learned Additional Sessions Judge (FTC) in Sessions Case No. 215/2011 wherein Anil Kujur and Warish Kujur were sentenced to undergo R.I. for life with a fine of Rs.5000/-, each in default RI for a further period of three months. Since after delivery of judgment, the two appellants were subsequently lodged in central jail, Tezpur.

4. This court vide common judgment dated 19.06.2023 passed in Criminal Appeal No. 50(J)/2019 and Criminal Appeal No. 51 (J)/2019 modified the conviction of the appellants from Section 302/34 IPC to Section 304 Part-I IPC.

5. In paragraph 43 of the Judgment, this Court observed that the appellants were in jail hajot for more than 11 years and sentenced were modified to the period of detention already undergone by the appellant. In paragraph-45 of the Judgment, the appellants were directed to be released after they were not wanted in any other case. The relevant part of the judgments are re-produced below:

“43. According to the learned counsel for the appellants, the appellants have served more than 11 years in jail hazot. We have gone through the LCR, which reveals that the case was committed to the Court of Sessions on 05.11.2011. Hence, it transpires that the appellants are in jail hazot for more than 11 years. Taking into account the facts and circumstances in which the offence has been committed, for the modified conviction under Section 304 Part I IPC, the sentence is modified to that of the period already undergone.

44. In the result, conviction of the appellant under Section 302 IPC, read with Section 34 IPC is modified as conviction under Section 304 Part-I IPC and the sentence is reduced to the period already undergone.

45. Both the appeals are partly allowed. The conviction under Section 302 IPC is set aside. The accused appellants be released forthwith, if not wanted in any other case.”

6. On receipt of the copy of judgment dated 19.06.2023, Superintendent of Central Jail, Tezpur on 28.06.23 informed the learned Additional Sessions Judge, FTC, Tezpur, that---the total period of imprisonment undergone by the accused/ appellant Anil Kujur is 4 years 11 months 9 days (as per jail record) and the total period of imprisonment undergone by the accused appellant Warish Kujur was 5 years 1 month (as per jail record). It was also informed that the above period including the period of detention undergone during investigation and trial and as such, actual period of imprisonment undergone by Anil Kujur and Warish Kujur did not tally with the period mentioned in the judgment dated 19.06.2023 passed by this court. Therefore, a request was made to look into the matter and provide necessary clarification.

7. The above letter dated 28.06.2023 of Superintendent, Central Jail was forwarded to the Registry of this Court for necessary clarification. Hence, the I.A (Crl.) 649/2023 has been instituted before this Court.

8. It is submitted by the applicant in person that the observation made in paragraph 6 of the order dated 31.08.2023 that there was no submission in the hearing regarding misrepresentation of any fact. Had there been hearing on misrepresentations on 31.08.2023, the applicant would have clarified the same then and there. The live streaming of the hearing which took place on 20.04.2023 and

31.08.2023 clearly proves the contention of the applicant.

9. It is also the submission of the Advocate/applicant in person that the accused/appellant was in jail for 11 years 8 months based on the paper book which showed that the accused appellant was brought from the jail hajot. At the same time, the applicant sought confirmation from the Additional Public Prosecutor who said that she would go through the records. Thereafter, she went through the record. Subsequently, Additional Public Prosecutor submitted from the LCR, from which date to which date the appellant was in jail and from which date to which date the appellant was out of jail as per the live streaming. Additional Public Prosecutor also mentioned that from 2018 the appellant was in jail. At that time, the applicant counted the years in his finger as could be seen from the live streaming that the appellant was in jail for 5 years. According to the applicant, this clearly shows that there was no misrepresentation on the part of the applicant. In fact, the submission made earlier was corrected. It is further submitted that the observation made by this Court at paragraph 12 of the order dated 31.08.2023 is not based on facts and the applicant prays that the observation made against the applicant be expunged from the order.

10. It is further contended by the applicant that she was aggrieved by the observation made in paragraph 13 of the order dated 31.08.2023 against the applicant that the applicant had made prayer for releasing the respondent Nos.3 and 4 for the period undergone by "irresponsible conduct in calculating the time period in jail hajot while making prayer for respondent No.3 and 4 for the period undergone...." According to the applicant this observation of this Court is not based on fact. The applicant prayed for release of the appellant by taking into consideration the time of 5 years that he had spent in jail. Therefore, the applicant prays that the observation made by this Court in paragraph 6, 12, 13, 14 and 15 of the order dated 31.08.2023 be expunged.

11. We have considered the submissions of the Advocate/applicant as well as the learned Additional Public Prosecutor.

12. Hon'ble Supreme court in the case of *State of Uttar Pradesh –vs- Mahammad Naim*, reported in AIR 1964 SC 703 held as follows:

“The court in its inherent jurisdiction can expunge the adverse remarks suo moto or even on application of a party. However, there must be a ground for expunging as such remarks were not justified, or without foundation, or were wholly wrong or improper and expunging thereof is necessary to prevent abuse of the process of the court or otherwise to secure the ends of justice. However, the court must bear in mind that such jurisdiction being of exceptional nature must be exercised only in exceptional cases. The cardinal principle of the administration of justice requires for proper freedom and independence of Judges and such independence must be maintained and Judges may be allowed to perform their functions freely and fairly and without undue interference by anybody, even by this Court. However, it is also equally important that in expressing their opinions the Judges must be guided by consideration of justice, fair play and restraint.

It should not be frequent that sweeping generalizations defeat the very purpose for which they are made. Thus, it is relevant to consider:

(a) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself.

(b) whether there is evidence on record bearing on that conduct justifying the remarks; and

(c) whether it is necessary for the decision of the case as an integral part thereof, to animadvert on that conduct.”

13. In the instant case, the applicant admitted that she had submitted before this Court that the appellant was in jail for 11 years 8 months based on the paper book which showed that the appellant has brought from the jail hajot. The applicant in I.A. CrI 818/2023 also supported the fact by stating that the present applicant has argued that the appellants have been languishing in jail for the last 11 years. Learned Additional Public Prosecutor subsequently submitted that the appellants were in jail when the case was committed in Sessions court and during trial, they were on bail and thereafter, they had been defaulted and again were arrested and brought into jail. The submission of the learned Additional Public Prosecutor did not clarify or negate the submission of the learned Amicus Curiae.

14. In the case of *Rashid Khan Pathan (Applicant) in Re: Vijay Kurle* reported in 2020 SCC Online SC 711 held as follows:

“9. In a country governed by the rule of law, finality of the judgment is absolutely imperative and great sanctity is attached to the finality of the judgment. Permitting the parties to reopen the concluded judgments of this Court by filing repeated interlocutory applications is clearly an abuse of the process of law and would have far-reaching adverse impact on the administrative of justice.”

15. In the case of *Meghmala vs- Narasimha Reddy* reported in (2010) 8 SCC 383, the Hon’ble Supreme Court has held as below:

“12. The hallmark of judicial pronouncement is its stability and finality. Judicial verdicts are not like sand dunes which are subject to the vagaries of wind and weather. A disturbing trend has emerged in this court of repeated application, styled as Miscellaneous Applications, being filed after a final judgment has been pronounced. Such a practice has no legal foundation and must be firmly discouraged. It reduces litigation to a gambit. Miscellaneous Applications are becoming a preferred course to those with resources to pursue strategies to avoid compliance with judicial decisions. A judicial pronouncement cannot be subject to modification once the judgment has been pronounced by filing a miscellaneous application. Filing of a miscellaneous application seeking modification/clarification of a judgment is not envisaged in law. Further, it is a settled legal principle that one cannot do indirectly what one cannot do directly. ”

16. Coming to the case in hand, paragraphs No.12 and 13 of the I.A. (Crl.) 649/2023 are reproduced herein below:

“12. Reverting to the impugned judgment dated 19.06.2023, it reveals that the learned Amicus Curiae representing the respondent Nos. 3 and 4, submitted before this Court that the appellants have served more than 11 years in jail hazot. On the basis of bonafide belief/submission of learned Amicus Curiae, this Court passed the order that the appellants were in jail hazot for more than 11 years and taking into account the facts and circumstances in which the offence has been committed for the modified conviction under Section 304 Part I IPC, the sentence was modified to that the period already undergone.

13. Usually, the court appoints the amicus curiae to assist the court. It is not expected such irresponsible conduct in calculating the time period in jail hazot while making prayer for releasing the respondent Nos. 3 and 4 for the period undergone. It can be said that the judgment was delivered by this Court on erroneous premises and the order had been obtained by deliberately misrepresenting facts before this Court. As such, the order in question cannot be allowed to subsist. ”

17. After going through the aforesaid paragraphs, it transpires that the so called alleged adverse remarks had been made as it was necessary to do so while deciding the controversy involved therein.

18. Admittedly, the point has been raised by the applicant to release the appellants as they had been detained in custody for 11 years. Though learned Additional Public Prosecutor made her clarification but her explanation cannot be stated to be denial for the submission of the applicant. However, as the applicant has

failed to show that the order dated 31.08.2023 reflected any adverse remarks against her which are required to be expunged, hence, the arguments advanced by the applicant are not justified. The submission so made is not worth acceptance.

19. With the above observations, the interlocutory application stands disposed of.

JUDGE

CHIEF JUSTICE (ACTING)

Comparing Assistant