

GAHC010222302023



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

Case No. : CRP (Suo Moto)/1/2023

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VERSUS

IN RE- STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE L.R.-CUM-SECRETARY TO THE GOVT. OF ASSAM,
JUDICIAL DEPARTMENT, JANATA BHAWAN, DISPUR, GUWAHATI

2:THE ASSISTANT SESSIONS JUDGE

DHUBRI

3:SRI SHAKTI SHARMA

CIVIL JUDGE (SR. DIV.) AND ASSTT. SESSIONS JUDGE
DHUBRI

4:ASSAM STATE LEGAL SERVICES AUTHORITY

REPRESENTED BY THE MEMBER SECRETARY
GAUHATI HIGH COUR

Advocate for the Petitioner : MR. T J MAHANTA (SC, GHC)

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 03.01.2024

Heard Mr. T.J. Mahanta, learned senior counsel and standing counsel for this Court, assisted by Mr. A. Baruah, learned instructing counsel. Also heard Mr. D. Nath, learned Senior Govt. advocate along with Mr. J. Singh, learned Govt. advocate appearing for the State respondent no.1 and Ms. G. Das, learned standing counsel for respondent no.4, State Legal Service Authority, Assam. There is no representation from the respondent no. 3 on whom notice was issued.

2) It has been brought to the notice of the Court that instead of entering appearance, the respondent no.3 has sent a communication to the Court through Deputy Registrar (Judl-V). The same has been opened and the communication has been perused. It appears from the contents of the said communication contained in seal cover marked confidential by the respondent no.3, bearing letter no. CJ&ASJ/2023/JUD/331-342/G dated 08.11.2023, it contains the reply on behalf of respondent nos.2 and 3. The respondent no.2 is the Assistant Sessions Judge, Dhubri and the respondent no.3 is the concerned Judicial Officer, who is posted as the Civil Judge (Senior Division) –cum- Assistant Sessions Judge, Dhubri. The said letter is addressed to the Registrar General of the Court. The said letter dated 08.11.2023, not being in a proper format of an affidavit-in-opposition is out rightly rejected being not entertainable as the same is not in the proper form. Therefore, no cognizance of the contents of the said letter dated 08.11.2023 by respondent nos. 2 and 3 is taken.

3) This CRP (Suo Moto) has been registered on the basis of the

note put up by the Registrar (Judicial), on the basis of a letter no. DLSA/DBB/SECY/2014/1194-95 dated 03.08.2023 whereby the District Legal Services Authority, Dhubri (DLSA) had referred to the observations made against the said officer by the learned Assistant Sessions Judge (respondent nos. 2 and 3) in the order dated 05.04.2023 passed in Sessions Case No. 36/2022. The observations which is projected to be detrimental to the career of the concerned DLSA, Dhubri, which is contained in order dated 05.04.2023 is extracted hereinbelow:

“District Legal Services Authority, Dhubri is working without adequate staff. So the omission to undertake fact finding exercise by the Secretary, District Legal Services Authority, Dhubri, may be bonafide.

So, in view of that matter this Court is of the considered opinion that sometime a little good advise or a word of suggestion May do Wonders to a person and may meet the ends of justice.

So, keeping in mind the forbearing approach, the Ld. Secretary, District Legal Services Authority, Dhubri, is advised to be more vigilant and more judicious while writing any letter to the senior officers, particularly in respect of the Court matters, because, any carefree attitude may affect adversely the dignity and majesty of the Court and may cause prejudice or interferes with the due course of judicial proceedings.”

4) From the contents of the said communication dated 03.08.2023 by the DLSA, Dhubri, it is noted that the said authority had received list of UTPs dated 26.08.2022 from the Inspector General of Police, Guwahati wherein the name of an accused in Golakganj PS Case No. 836/2020 corresponding to Sessions Case No. 36/2022 for offence committed under Section 120B IPC read with Section 6/12 of Passport Act read with Section 14 of the Foreigners Act, who was found to be languishing in jail for non-furnishing of bail bond/ sureties

although bail was granted to him. Moreover, it appears that the State legal Services Authority, Assam by letter dated 26.08.2022 bearing no. ASLSA-114/2010/Pt-I/768 had requested the DLSA, Dhubri for filing petitions for modifying/ alternation of bail conditions in respect of the UTPs whose name contained in the list, which was pursuant to directions issued in WP (Suo Moto) 8/2018, passed by this Court. Moreover, an application was also received from the Superintendent, District Jail, Dhubri vide letter no. DJD.18/2019/UTP/1/1377 dated 04.09.2022, requesting the DLSA, Dhubri to release the UTPs whose name appear in the list sent by the Inspector General of Police, who had granted bail but still languishing in jail for non-furnishing of bail bond/ surety. It appears that there were several communications between the State Legal Services Authority, Assam and the District Legal Services Authority, Dhubri with regard to the release of under trial prisoners who had granted bail but were languishing in jail for non-furnishing of bail bond/ surety. As there is several communications, the Court is not burdening this order with the details of communications made between the said two authorities. It would suffice to mention that by a letter dated 18.02.2023, State Legal Services Authority, Assam had requested the DLSA, Dhubri to go through the judgment dated 31.01.2023 passed by the Supreme Court of India in Suo Moto WP(Crl.) 4/2021 and the DLSA, Dhubri was asked to follow the guidelines contained in the said judgment. Accordingly, the DLSA, Dhubri in order to comply with the directions contained in clause 4 of the order of the Supreme Court of India dated 31.01.2023, referred above, sought for socio-economic conditions of the UTPs who had been bailed out but not released due to non-submission of bail bond and the said communication was made to all courts to relax the conditions of bail bond/ surety vide letter dated 28.03.2023.

5) The respondent nos. 2 and 3 by a letter dated 31.03.2023 directed the DLSA, Dhubri to produce before him the details regarding materials relied by the said authority and to explain as to why and on what basis letter dated 28.03.2023 was submitted and further a direction was also issued to submit a report within seven days. The DLSA, Dhubri vide letter dated 04.04.2023 submitted a report before the respondent nos. 2 and 3 regarding non-release of the UTP of Sessions Case No. 36/2022 who was bailed out but not released due to non-furnishing of bail bond/ surety. On receipt of the said reply, the respondent nos. 2 and 3 had passed an order dated 05.04.2023 in connection with Sessions Case No.36/2022 and the remarks against the DLSA, Dhubri was passed, which is extracted hereinabove.

6) The learned senior counsel and standing counsel of this Court has submitted that as per his opinion, the DLSA, Dhubri was doing its duty and was complying with the orders of the Supreme Court of India passed in *Suo Moto WP(Crl.) 4/2021*, which contained a direction that the Secretary, District Legal Services Authority, would find out the economic conditions of the accused with the help of Probation Officers and Para Legal Volunteers to prepare a report on socio-economic conditions of the inmates to be placed before the concerned Court with a request to relax the condition(s) of bail/ surety.

7) The learned senior counsel and standing counsel of this Court has brought to the notice of the Court that the Supreme Court of India has registered a *Suo Motu WP(Crl.) 4/2021* under the caption "*In Re: Policy Strategy for grant of bail*" and various orders are passed therein from time to time and that by an order dated 14.09.2022, which is reported in (2022) 0 Supreme (SC) 1746 direction has been issued to the Registrars of each High

Court to depute an Nodal Officer of the rank of the Registrar in each of the Courts to carry out the monitoring of the same. Hence, it is submitted that as per paragraph 10 of the said order, it was expressed by the Supreme Court of India that all the State Governments are required to fully cooperate as the crowding of the jail is the problem creating in the Country as a whole, more or less. Certain other suggestions were also made. It is also pointed out that by another order in the same Suo Motu writ petition dated 31.01.2023, the Supreme Court of India had observed that the NALSA (National Legal Services Authority) is in the process of creating a master data of all such undertrial prisoners in excel sheet with all relevant details, including reasons for non-release and steps qua persons who are unable to furnish bail bonds or surety are being taken up with the respective State Legal Services Authorities on the District Legal Services Authorities and it was expected that the results would be obtainable in about one or two months time. Hence, it is submitted that the DLSA, Dhubri had taken steps in accordance with the direction contained in the order passed by the Supreme Court of India from time to time and also in view of various communications received from the State Legal Services Authority, Assam.

8) The learned senior Govt. counsel appearing for the State of Assam has also submitted that the State Government is taking the matter in the right earnest and reports have been submitted from time to time to the various authorities. Moreover, as the DLSA is an office whose control is vested on the State Government, he has no objection as to expunging of the remarks made against the DLSA, Dhubri. Similar view has been expressed by the learned counsel for respondent no.4.

9) Having regard to the various directions contained in the orders passed from time to time by the Supreme Court of India in the proceedings of *Suo Motu WP(Crl.) 4/2021* and having regard to the contents of the communication made by the DLSA, Dhubri to the Assistant Sessions Judge, Dhubri, the opposition which is held by the respondent no.3, the Court is of the considered opinion that the adverse remarks appearing against the DLSA, Dhubri in the order dated 05.04.2023 passed by the learned Assistant Sessions Judge, Dhubri in connection with the Sessions Case No. 36/2022 which are quoted in para 3 of this order stands expunged forthwith. The said order is vitiated by jurisdictional error because the Secretary, DLSA, Dhubri has not interfered with the administrative of justice and moreover, the Secretary, DLSA, Dhubri was performing his statutory duty in terms of the power vested in him under the said office and his actions were guided by orders passed by the Supreme Court of India.

10) It is seen that the learned Assistant Sessions Judge, Dhubri had overstepped his authority to question the DLSA, Dhubri on the communication made by him. Moreover, if the respondent nos. 2 and 3 felt aggrieved by the letter sent by the Secretary, DLSA, Dhubri, he could have reported it to the District Judge or it could have been brought to the notice of this Court. Therefore, the Court is of the considered opinion that this is a fit case for the action taken by the respondent no.3 should be examined by the Registry of the Court at an appropriate level and the matter be also placed before the concerned Portfolio Judge of the District of Dhubri to bring this order to the notice of the Hon'ble Portfolio Judge for his Lordship's perusal.

11) The respondent nos. 2 and 3 shall expunge the observation

which have been extracted in sub-paragraph to para 3 of this order.

12) This revision stands allowed to the extent as indicated above.

JUDGE

Comparing Assistant