

GAHC010103722020



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

Case No. : WP(C) 3057/2020

1:RAHENDRA BAGLARI
ASI, GINGIA POLICE STATION, S/O LT. KHAGENDRA BAGLARI, R/O
LAUDOLONI, P.S. GINGIA, P.O. MIZIKAAN, DIST. BISWANATH, ASSAM

VERSUS

1:THE SUB-DIVISIONAL JUDICIAL MAGISTRATE (M) AND 3 ORS.
BISWANATH CHARIALI, DIST. BISWANATH

2:THE HONBLE GAUHATI HIGH COURT
REP. BY THE REGISTRAR GENERAL M.G.ROAD
LATASIL
UZAN BAZAR
GHY-1
KAMRUP (M)
ASSAM

3:REGISTRAR GENERAL
HONBLE GAUHATI HIGH COURT
M.G. ROAD
LATASIL
UZAN BAZAR
GHY-1
KAMRUP (M)
ASSAM

4:AMARENDRA HAZARIKA
SUB-DIVISIONAL JUDICIAL MAGISTRATE (M)
BISWANATH CHARIALI
DIST. BISWANAT

Counsel for petitioner : Mr. D Saikia, Senior Advocate
Mr. B Gogoi

Counsel for respondent Nos.1 to 3 : Mr. PP Dutta,
Standing Counsel,
Gauhati High Court.

Counsel for respondent No.4 : Mr. P Sengupta

BEFORE
HON'BLE THE CHIEF JUSTICE MR. AJAI LAMBA

15.09.2020

The Court proceedings have been conducted through Video-Conference.

2. This writ petition has been filed to seek issuance of a writ in the nature of certiorari for quashing order dated 20.07.2020 whereby direction was issued to the petitioner to show cause as to why the dead cow was disposed of without informing the trial Court.

The petition also seeks quashing of order dated 31.7.2020 whereby the petitioner was asked to show cause as to why contempt proceedings be not initiated against him for not complying with order dated 28.07.2020 issued in connection to giving zimma of four seized vehicles in connection with Gingia PS case No.92/2020.

For the reasons given below the controversy raised by passing of the impugned orders; or the issues that arise on account of judicial adjudication in passing of the impugned orders are not required to be referred to.

3. I have taken judicial notice of the fact that the petition has been filed by one Sri Rahendra Baglari, ASI, Gingia Police Station.

The respondents in the petition are:-

- (1) Sub-Divisional Judicial Magistrate (M), Biswanath Chariali, who passed the orders impugned by virtue of this petition;

- (2) Gauhati High Court through Registrar General;
- (3) Registrar General of Gauhati High Court; and
- (4) Sri Amarendra Hazarika who at the point in time when the impugned order was issued, was posted as Sub-Divisional Judicial Magistrate (M) in Biswanath Chariali, district Biswanath Chariali.

It is therefore, apparent that the writ petition is directed against a Judicial Magistrate who passed orders in his judicial capacity. The Sub-Divisional Judicial Magistrate has not only been impleaded by designation, but also by name so as to impute personal action.

Likewise, the Gauhati High Court and Registrar General have been impleaded as parties.

4. I fail to understand the purpose of impleading the Gauhati High Court or the Registrar General as respondents in the matter. Learned counsel for the petitioner also has not been able to justify impleading the High Court or the Registrar General.

5. So far as Sub-Divisional Judicial Magistrate is concerned, it is apparent that he passed the judicial orders while dealing with a judicial matter arising out of Gingia PS Case No.92/2020.

6. At the outset, I would like to refer to paragraphs 9 and 10 of judgment rendered by Hon'ble Supreme Court of India in *Anowar Hussain vs. Ajoy Kumar Mukherjee and others*, AIR 1965 SC 1651 in context of provisions of Judicial Officers' Protection Act, 1850. The said paragraphs 9 and 10 read as under:

“XXXXXXXXXXXXX

9. In this appeal, the only question raised is that in ordering the arrest of the respondent the appellant acted in discharge of his judicial duties, and he was on that account protected by the Judicial Officers' Protection Act, 1850. Section 1 of the Act, in so far as it is material, provided:

“No Judge, Magistrate, ° ° ° Collector or other person acting judicially shall be liable to be sued in any Civil Court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction: Provided that he at the time, in good faith, believed himself to have

jurisdiction to do or order the act complained of; ° ° °”.

10. The statute is clearly intended to grant protection to Judicial Officers against suits in respect of acts done or ordered to be done by them in discharge of their duties as such officers. The statute it must be noticed, protects a Judicial Officer only when he is acting in his judicial capacity and not in any other capacity. But within the limits of its operation it grants large protection to Judges and Magistrates acting in the discharge of their judicial duties. If the act done or ordered to be done in the discharge of judicial duties is within his jurisdiction, the protection is absolute and no enquiry will be entertained whether the act done or ordered was erroneously, irregularly or even illegally, or was done or ordered without believing in good faith, that he had jurisdiction to do or order the act complained of. If the act done or ordered is not within the limits of his jurisdiction, the Judicial Officer acting in the discharge of his judicial duties is still protected, if at the time of doing or ordering the act complained of, he in good faith believed himself to have jurisdiction to do or order the act. The expression “jurisdiction” does not mean the power to do or order the act impugned, but generally the authority of the Judicial Officer to act in the matter Tayen v. Ram Lal, ILR 12 All 115.

XXXXXXXXXXXXXX”

(emphasised by me)

7. I would also like to refer to contents of paragraph 14 of a later judgment i.e. (1999) 2 SCC 577, *Savitri Devi vs. District Judge, Gorakhpur and others*. Paragraph 14 reads as under:

“XXXXXXXXXXXXXX

14. Before parting with this case, it is necessary for us to point out one aspect of the matter which is rather disturbing. In the writ petition filed in the High Court as well as the special leave petition filed in this Court, the District Judge, Gorakhpur and the 4th Additional Civil Judge (Junior Division), Gorakhpur are shown as respondents and in the special leave petition, they are shown as contesting respondents. There was no necessity for impleading the judicial officers who disposed of the matter in a civil proceeding when the writ petition was filed in the High Court; nor is there any justification for impleading them as parties in the special leave petition and describing them as contesting

respondents. We do not approve of the course adopted by the petitioner which would cause unnecessary disturbance to the functions of the judicial officers concerned. They cannot be in any way equated to the officials of the Government. It is high time that the practice of impleading judicial officers disposing of civil proceedings as parties to writ petitions under Article 226 of the Constitution of India or special leave petitions under Article 136 of the Constitution of India was stopped. We are strongly deprecating such a practice.

XXXXXXXXXXXXXX”

(emphasised by me)

8. Reference to Sub-section 1 of Section 3 of the Judges (Protection) Act, 1985 in verbatim is important and relevant. The provision reads as under:

“3. Additional protection to Judges.-(1) *Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of sub-section (2), no court shall entertain or continue any civil or criminal proceeding against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function.*

XXXXXXXXXX”

It is apparent that sub-section 1 of Section 3 of Judges (Protection) Act, 1985 directs that no Court shall entertain any civil or criminal proceeding against any person who is or was a Judge for any act, thing or word committed, done or spoken by him, or in the course of, acting or purporting to act in the discharge of his official and judicial duty or function.

It is apparent on perusal of the impugned orders, and not disputed, that the Sub-Divisional Judicial Magistrate (Respondent No.1 & 4) was acting in discharge of his judicial duty while passing the impugned orders. The orders might be illegal, however, law provides appropriate remedies to the petitioner to challenge the said orders. The actions of the Judge, however, stand protected by virtue of the Judges (Protection) Act, 1985 (subject to the provision of sub-section 2 of Section 3 of the Act of 1985).

9. A conjoint reading and understanding of the Act of 1850 (supra) and the Act of 1985 (supra) make it clear that protection available to a Judge under Judicial Officers' Protection Act, 1850 is in respect of any action taken in good faith; whereas the protection available under the Judges (Protection) Act, 1985 is absolute and is available not only to a sitting Judge but also to an Ex-Judge in respect of the actions taken or words spoken by him while discharging his official or judicial functions.

If in passing every wrong or illegal judicial order, the concerned Judge is sued before the higher judicial forum, it shall result in demoralising the judicial officers, particularly, at the adjudicating level, other than the public losing faith in the judiciary. In case a purported illegal order is passed on wrong facts, law always provides for filing of appeal, revision or writ petition against the **ORDER**, however, not by impleading the Judge to seek his accountability. It is for this purpose that the Judges have been given protection by legislations such as Act of 1850 (supra), and Act of 1985 (supra).

10. This Court has taken a serious view of the nature of pleadings in this matter. Not only the High Court and the Registrar General of the High Court have been impleaded, apparently without any legal and factual cause, *de hors* the Central Legislation of 1850, and the Act of 1985, even the Judicial Officer who passed the judicial orders in his capacity as a Judicial Officer has been impleaded by designation, and by name. It shows complete disregard, on the part of the petitioner, to the protection given to every Judicial Officer/Judge, in service or not, discharging judicial functions, by the two central legislations.

This Court cannot permit proceedings of this nature to continue by virtue of which, while challenging a judicial order, Judicial Officers are impleaded, including by name, and by designation, and also the High Court. I have taken notice of the fact that other than the four persons mentioned in earlier part of the order, no other person has been named as respondents. It is thus clear that for passing a judicial order in a pending judicial proceeding the Judicial Magistrate by name and designation; and the High Court and the Registrar General are being held accountable, which is not permissible in law.

11. In view of the above, this petition is dismissed with costs, in the sum of Rs.10,000/- (Rupees ten thousand) only, to be recovered from the salary of the petitioner, and deposited

with Assam State Legal Services Authority within 45 days from today.

Let a copy of this order be conveyed to the Superintendent of Police, Biswanath Chariali who shall ensure that the cost amount is deducted from the salary of the officer and the said fact is carried to his ACR.

12. This, however, does not curtail the liberty of the petitioner of challenging the orders impugned by virtue of this petition before appropriate forum, however, without impleading Judicial Officer or the High Court. The petitioner would be at liberty to avail the legal remedies as provided in law in challenge to the orders impugned by virtue of this petition, however, after showing deposit receipt of the cost amount.

13. This Court makes it clear that this Court has not considered the merit or demerit in the impugned orders passed by the Judicial Magistrate. Merit or demerit would be considered by appropriate forum in appropriate proceedings to be initiated by the petitioner, if so advised.

CHIEF JUSTICE

Comparing Assistant