

GAHC010222392023



undefined

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

Case No. : WA/51/2026

1: HARBINDER SINGH KALSI AND ANR.
SON OF LATE KEWAL SINGH KALSI, R/O 18 EAST LANE,
SUNDARPUR, DISPUR, GUWAHATI-781005, ASSAM.

2: ROUNAK SULTANA SADIAL
D/O MAHIBUR RAHMAN SADIAL R/O OLD LAKHIPUR ROAD
MADHURBAND SILCHAR- 788001 ASSAM. PRESENTLY RESIDING AT HOUSE
NO. 38 GANDHI BASTI P.O.- SILPUKHURI GUWAHATI- 781003 IN THE
DISTRICT OF KAMRUP (M) ASSAM

VERSUS

1: THE STATE OF ASSAM AND 25 ORS. REPRESENTED BY THE CHIEF
SECRETARY TO THE GOVT. OF ASSAM, DISPUR, GUWAHATI-781006.

2: THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HOME DEPARTMENT DISPUR GUWAHATI- 781006.

3: THE COMMISSIONER OF POLICE KAMRUP METROPOLITAN DISTRICT
PANBAZAR GUWAHATI – 781001.

4: THE OFFICER-IN-CHARGE DISPUR POLICE STATION
DISPUR GUWAHATI – 781006.

5: THE OFFICER-IN-CHARGE HATIGAON POLICE STATION
HATIGAON GUWAHATI- 781038.

6: SHRI BIREN BORA
SUB- INSPECTOR OF POLICE CHANDMARI POLICE STATION
CHANDMARI GUWAHATI-781003.

7: JAVED ALI @ SAURAV NATH
9707430687 S/O MD. MUKHTAR ALI R/O HOUSE NO. 23 RAJPATH ROAD
OPPOSITE NAAM GHAR DISPUR TO HATIGAON ROAD GUWAHATI - 781038
P.S. HATIGAON THROUGH THE OFFICER-IN-CHARGE HATIGAON POLICE
STATION.

8:SMTI. NILPAMA NIJARA BORA
9707430687 W/O JAVED ALI @ SAURAV NATH R/O HOUSE NO. 23 RAJPATH
ROAD OPPOSITE NAAM GHAR DISPUR TO HATIGAON ROAD GUWAHATI
-781038 P.S. HATIGAON THROUGH THE OFFICER-IN-CHARGE HATIGAON
POLICE STATION.

9:MD. MUKHTAR ALI
F/O JAVED ALI @ SAURAV NATH 9707430687 R/O HOUSE NO. 23 RAJPATH
ROAD OPPOSITE NAAM GHAR DISPUR TO HATIGAON ROAD GUWAHATI -
781038 P.S. HATIGAON THROUGH THE OFFICER-IN-CHARGE HATIGAON
POLICE STATION.

10:SHRI RAM AVTAR AGARWALLA BURAKIA
9435071111 S/O LT. PRAKASH CHANDRA AGARWALLA R/O HOUSE NO. 19
ARUNDODAYA PATH PRAKASH KUNJ NARAYAN NAGAR KUMARPARA P.S.
BHARALUMUKH GUWAHATI – 781009.

11:SHRI SANJAY KUMAR MOJIK
R/O HOUSE NO. 2 BYE LANE NO. 2 NEAR BANK OF INDIA A.K. AZAD
ROAD REHABARI GUWAHATI – 781008.

12:SHRI GOVIND SHARMA
FATHER OF SHRI RUPAM SHARMA C/O C.K. SARMA BUILDER HOUSE NO.
40 JANPATH ROAD OPPOSITE NAMGHAR GUWAHATI- 781006 P.S.
HATIGAON.

13:SMTI. POONAM YADAV, ADVOCATE
W/O SHRI RAM AVATAR AGARWALLA BURAKIA R/O 19 ARUNDODAYA
PATH PRAKASH KUNJ NARAYAN NAGAR KUMARPARA P.S.
BHARALUMUKH GUWAHATI – 781009.

14:RESPONDENT DELETED
Court Order Dtd. 17/11/17 passed in I. A.(C) 3733/17.

15:SHRI PHON SYIH
R/O VILL- THANGSAKAR P.O. LUMSHONG P.S. KHLIERIANT JAINTIA
HILLS MEGHALAYA PIN – 793200.

16:SHRI MUKESH AGARWALLA
C/O SHRI RAM AVATAR AGARWALLA BURAKIA R/O 19 ARUNDODAYA
PATH PRAKASH KUNJ NARAYAN NAGAR KUMARPARA P.S.
BHARALUMUKH GUWAHATI – 781009.

17:RESPONDENT DELETED
Court Order Dtd. 17/11/17 passed in WP(C) 5139/2016.

18:SHRI N.A.K. SYIEM MCS
PERSONNEL and A.R. A DEPARTMENT
MEGHALAYA SHILLONG-1.

19:SHRI SANTOSH SINGH
MAN SINGH DRIVER C/O SHYAM BIHARI SINGH TAXI OWNER/DRIVER
A.S.T.C. TAXI PARKING STAND PALTANBAZAR GUWAHATI - 781008
THROUGH THE OFFICER-IN-CHARGE PALTAN BAZAR POLICE STATION.

20:SHRI ROCKYBUL HUSSAIN
MLA MLA HOSTEL DISPUR GUWAHATI – 781006.

21:SHRI UMESH MANDAL
DRIVER 8135085694 C/O ANUP MISHRA TAXI OWNER A.S.T.C. TAXI
PARKING STAND PALTAN BAZAR GUWAHATI- 781008 THROUGH THE
OFFICER-IN-CHARGE PALTAN BAZAR POLICE STATION.

22:THE BRANCH MANAGER STATE BANK OF INDIA DISPUR BRANCH
DISPUR GUWAHATI- 781006.

23:THE POST MASTER GENERAL
MEGHDOOT BHAWAN PANBAZAR GUWAHATI -781001.

24:DOWN TOWN HOSPITAL REP. BY ITS SUPERINTENDENT
DISPUR GUWAHATI- 781006.

25:GUWAHATI MEDICAL COLLEGE AND HOSPITAL REP. BY ITS
SUPERINTENDENT BHANGAGARH GUWAHATI – 781032.

26:SHRI PABAN RAI MECHANIC
9085293805 C/O TRIBUBHAN SINGH TAXI OWNER A.S.T.C. TAXI PARKING
STAND PALTAN BAZAR GUWAHATI - 781008 THROUGH THE OFFICER-IN-
CHARGE PALTAN BAZAR POLICE STATION

For the Appellant(s) : Mr. H. Singh Kalsi (Petitioner-in-person).

For the Respondent(s) : Mr. A. Mena, Advocate for respondent Nos.6, 7 & 8.

– B E F O R E –

HON'BLE THE CHIEF JUSTICE MR. ASHUTOSH KUMAR
HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

31.08.2026

(Ashutosh Kumar, CJ)

We have heard Mr. Harbinder Singh Kalsi, one of the appellants in person and Mr. A. Mena, learned Advocate for the respondent Nos.6, 7 and 8.

This appeal is directed against the judgment of the learned Single Judge dated 23.03.2023 passed in WP(C) No.5139/2016 and the order dated 30.05.2023 passed in Review Petition No.63/2023, whereby though the writ petition has been dismissed, where the appellants were the lawyers, but suspecting it to be a case of ghost filing as the writ-petitioner could not be produced before the Court nor could she be found by the police, imposed a fine of ₹ 50,000/- (Rupees Fifty Thousand) on each of the appellants and also referred the matter to the Bar Council, Assam Chapter for holding an enquiry against the appellants.

The appellants are the practicing Advocates of this Court, who, according to their claim, were approached by another fellow Advocate for appearing in a matter in which Ms. Beolin Kharbhih, daughter of a former Deputy Superintendent of Police, had sought a Court monitored probe with regard to the death of her father. The fellow Advocate, who had made a request to the appellants to appear, was reluctant himself to sign the *Vakalatnama* for the reason of some clash of interest.

The appellants, it has been argued, accepted such request in good faith. Despite the request of a fellow lawyer, the appellants before signing the *Vakalatnama*, were satisfied about the averments made in the writ petition being correct and the writ- petitioner being in existence and not a fictitious character. The writ-petitioner, according to the appellants, was physically present in the High Court campus accompanied by another client, who had been in touch with the fellow Advocate for a long number of years, who had made such request to the appellants.

The writ-petitioner was identified before the Oath Commissioner

by the registered Clerk of the fellow Advocate. The writ petition remained pending before this Court for about 6(six) years.

During the pendency of the writ petition, the respondent Nos.6, 7 and 8, who were suspected of causing the disappearance and death of the father of Ms. Beolin Kharbhih/writ-petitioner, alleged before the Court that Ms. Beolin Kharbhih was a fictitious entity. It appears that a CID enquiry was initiated in which also it was reported that the writ-petitioner could not be located at her provided address.

The learned Single Judge appears to have accepted such report without any demur and held that the writ petition had been filed by a fictitious person. The writ petition was dismissed but a fine of ₹ 50,000/-, as stated above, was imposed upon each of the appellants and a direction was given to the Bar Council of Assam, Nagaland, Mizoram and Arunachal Pradesh to initiate disciplinary proceedings against the appellants.

While the appellants were making preparations for challenging the afore-noted judgment passed by the learned Single Judge, they could lay their hands upon a copy of the Caveat No.84/2016 filed in the Court of Munsiff No.1, Kamrup (Metro) by the respondent No.7 against the writ-petitioner with respect to a property dispute.

On this ground, a review petition was filed before this Court which too was dismissed on the ground that the claim of the writ-petitioner not being a fictitious lady and in existence, was only inferential, which did not require a re-look at the judgment which had found the writ-petitioner to be non-existent.

The appellants have questioned such judgments and orders on

the ground that the CID report confirming that the writ-petitioner could not be found at her given address, did not actually mean that the writ-petitioner did not exist as a person; more so when the Advocate's Clerk, who had identified her in the Court campus had made a statement before the CID that he had seen and had identified the writ-petitioner in 2016.

It is contended by the appellants that the learned Single Judge completely ignored this aspect of the matter. That apart, what was not given importance by the learned Single Judge was actually the misleading statement made by the respondent Nos.6, 7 and 8 that the writ-petitioner is a fictitious lady when the respondent No.7 had actually filed a caveat petition against the writ-petitioner before the Court of Munsiff No.1, Kamrup (Metro) in a property dispute matter.

Even otherwise, the appellants being Advocates cannot be made guarantors for the physical whereabouts of a writ-petitioner after filing of the writ petition and arguing the same.

The vulnerability of an Advocate gets further exacerbated when a request of a fellow Advocate is accepted and the writ petition is filed by way of standard institutional channels, i.e. on the identification of a registered Clerk of an Advocate practicing in this Court.

It has also been urged by the appellants that the learned Single Judge was not justified in holding that the statement made by respondent Nos.6, 7 and 8 was incorrect and that the discovery of the caveat petition filed by the respondent No.7 against the writ-petitioner was only used for the purposes of inference, which did not actually occasion any re-look at the matter by the learned Single Judge.

After having given our anxious consideration on the issues, we find that the appellants ought not to have been held responsible for the non-appearance of the writ-petitioner. The conclusions of the learned Single Judge were correct in so far as the writ- petitioner was not to be found, who actually had prayed for a Court monitored probe with regard to the death of her father. The writ petition was rightly dismissed but the cost imposed on the Advocates as professionals, does not appear to be justified in the facts and circumstances of the case.

Similarly, any referral to the Bar Council over this issue would also tantamount to a very harsh treatment to the learned Advocates, who have practiced before this Court and have spent good time at the Bar.

Taking a holistic view of the matter, we thus modify the judgment & order of the learned Single Judge dated 23.03.2023 passed in WP(C) No.5139/2016, upholding the correctness of dismissal of the writ petition but we set aside the fine imposed upon the Appellants as also the referral to the Bar Council of Assam, Nagaland, Mizoram and Arunachal Pradesh.

The judgment & order dated 23.03.2023 passed in WP(C) No.5139/2016 is modified to the extent indicated above.

However, the order dated 30.05.2023 passed by the learned Single Judge in Review Petition No.63/2023, is set aside.

The appeal is thus allowed with the modification of the order passed by the Writ Court, as indicated above.

However, while parting, we express a note of caution for the learned Advocates to be more careful in accepting *Vakalatnama* on the request of a friend without probing into the correctness of the

averments made in the writ petition and being satisfied that the writ-petitioner is not masquerading as a litigant.

JUDGE

CHIEF JUSTICE

Comparing Assistant