

SL-1 18.12.
2023

Ct. No. 04

Ab

MAT 2479 of 2023

**Prosenjit Mukherjee
Vs.**

Aparna Modak and others.

Mr. Prosenjit Mukherjee.

... the appellant (in person).

The Bench has been constituted to assemble beyond the judicial hour because of the unprecedented events happened in Court today.

The instant Mandamus Appeal has been registered on the basis of a letter written by one Mr. Prosenjit Mukherjee, a practicing Advocate of this Court, assailing an order passed in CPAN 9 of 2023 by which he was directed to be taken into custody and undergo for three days civil imprisonment. The letter would disclose that the custody of the appellant was taken by the Sheriff/Deputy Sheriff despite repeated unconditional apology having tendered before the learned Single Judge.

It is revealed from the said letter that the appellant was representing the West Bengal Madrasah Service Commission in the writ petition being WPA 2504 of 2021 wherein an order was passed to give the respondent no. 1 appointment on compassionate ground in an aided Madrasah. The said order was assailed by the said Commission before the Division Bench in MAT 194 of 2023 and by an order dated 23rd November 2023 the said order passed by the Single Bench was modified on the prayer of the beneficiary of the said order that her appointment shall be made in an unaided Madrasah but near to her residence as she is a widow having eight year old child.

According to the appellant, when the contempt application was appearing before the Single Bench the order of the Division Bench was handed over, but in spurt of the moment without any reasonable cause or the

ground having shown, he was sent and taken into custody for a period of three days.

There is no representation on behalf of the respondents.

We are reminded of the celebrated observations of the Apex Court in *P.D. Gupta vs. Ram Murti*, reported in (1997) 7 SCC 147 wherein it is held “lawyer owes a duty to be fair not only to his client but also to the court as well as to the opposite party in the conduct of the case. Administration of justice is a stream which has to be kept pure and clean. It has to be kept unpolluted. Administration of justice is not something which concerns the Bench only. It concerns the Bar as well. The Bar is the principal ground for recruiting Judges. No one should be able to raise a finger about the conduct of a lawyer. While conducting the case he functions as an Officer of the Court”.

We are also not unmindful of the well settled proposition of law that the maintenance of purity of administration of justice so as to uphold the independence of the judiciary is a sole task of the Courts. The Court should also maintain a judicial restraint and discipline as necessary to the orderly administration of justice as they are all to be effectiveness of the army. The duty of restraint humility should be constant theme of our Judges. This quality in making a decision making process is as much necessary for the Judges to command, respect as to protect the independence of judiciary. (See *Prakash Singh Teji vs. Northern India Goods Transport Co. (P) Ltd.*, reported in (2009) 12 SCC 577, para – 16)

In *Himalayan Coop. Group Housing Society vs. Balwan Singh*, reported in (2015) 7 SCC 373, the Apex Court succinctly highlighted “lawyers are perceived to be their client’s agents. The law of agency may not strictly apply to the client-lawyer’s relationship as lawyers have certain authority and certain duties. Because lawyers are

also fiduciaries, their duties will sometimes be more demanding than those imposed on other agents”.

We are not unmindful of the fact that one of the foremost duty cast upon the lawyer is to uphold and protect the interest of his client fearlessly by all fair and honourable manner. Any inhibition in presenting the case of his client or to protect his interest before the Court of Law and Equity shall not bring the health judicial system nor such system see a growth or development so that the posterity may be benefited thereby. The lawyers assist the Court and bring the true and correct facts touching or concerning the issues, which is highly expected from such noble profession as suppression of material facts are viewed seriously by the Court. The reliance upon the order of Division Bench cannot be perceived a contumacious act nor would tarnish the majesty and sanctity of the Court. There is no reflection of any other incident in the letter as the said order has not been uploaded on the server.

We must hasten to add that we had no occasion to go into the text of order as the instant mandamus appeal has been listed on the basis of a letter written by the appellant vividly reflecting the happening of the events and the orders being passed, which harshly affected him as he was, in fact, taken into custody though for a brief period through the machinery of the Court.

It is fairly and candidly submitted by the appellant that he was later on released from the custody taken by the Sheriff but still apprehends that the order may, if implemented, put him again in custody and considering the extreme urgency and the unprecedented events happened in the Court, the Bench was constituted for taking up the instant matter and to pass an appropriate order as may be deemed fit and proper.

Taking clue from the celebrated observations of the Supreme Court as quoted above, and solely relying upon the statements made by the appellant in the said letter

narrating the events happened, we feel that it is a fit case where the interim protection is to be extended to the appellant being a Member of the Bar and of a legal profession.

We, therefore, stay operation of the order dated 18th December 2023 by which the appellant has been directed to undergo a period of three days civil imprisonment until further order of this Court.

Since the mandamus appeal has been registered on the basis of a letter, the appellant is directed to file an affidavit disclosing all the facts as disclosed in the said letter by tomorrow (19.12.2023). The appellant shall also file the Memorandum of Appeal along with the said affidavit. In the event, the order is uploaded in the server, the same shall be included in the Memorandum of Appeal.

Let the matter be placed before the Hon'ble the Chief Justice for listing the matter before the appropriate Bench.

(Harish Tandon, J.)

(Hiranmay Bhattacharyya, J.)