

GAHC010076092023



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

**Case No. : I.A.(CrI.)/381/2023**

BIJON KUMAR MAHAJAN



VERSUS

THE STATE OF ASSAM  
REP. BY THE PP, ASSAM

2:NIHAR KUMAR DAS



**Advocate for the Petitioner : MR. P K GOSWAMI**

**Advocate for the Respondent : PP, ASSAM**

Linked Case : AB/235/2023

NIHAR KUMAR DAS



VERSUS

THE STATE OF ASSAM  
REP .BY THE PP

ASSA

-----  
Advocate for : MR. A CHAUDHURY  
Advocate for : PP  
ASSAM appearing for THE STATE OF ASSAM

**BEFORE**

**HON'BLE MR. JUSTICE KALYAN RAI SURANA**

For the applicant : Shri P.K. Goswami, Senior Advocate,  
: Shri K.N. Choudhury, Senior Advocate,  
: Shri A. Choudhury, Shri A.K. Baruah,  
: Shri D. Borah, Advocates  
For the opposite party : Shri K. Baishya, Addl. P.P.  
Date of hearing : 29.01.2024.  
Date of order : 02.02.2024.

**ORDER**

**(CAV)**

Heard Mr. P.K. Goswami, learned senior counsel appearing assisted by Mr. A.K. Baruah, learned counsel for the applicant. Also heard Mr. K. Baishya, learned Addl. P.P. for the State.

2. By this interlocutory application, the applicant has prayed for alteration/ modification of the order dated 27.01.2023, passed by this Court in A.B. No. 235/2023. The prayer made in this application, *inter alia*, is to recall/ strike off/ delete/ expunge the order dated 27.01.2023.

3. It may be mentioned that a pre-arrest bail matter, being A.B. 235/2023 was listed before this Court on 27.01.2023. The applicant, who is a practicing advocate, has admitted in para-3 of this application that he had appeared before the Court attired in a *jeans*. Thus, the following order was passed by the Court on the said date:-

*“Matter stands adjourned today as Mr. B.K. Mahajan, learned counsel for the petitioner is attired in jeans pant. Therefore, the Court had to call for the police personnel to decourt him outside the High Court campus.*

*Let this order be brought to the notice of the Honourable the Chief Justice as well as to the learned Registrar General. The matter be also brought to the notice of Bar Council of Assam, Nagaland, Mizoram and Arunachal Pradesh.*

*List after a week.”*

4. By referring to the statements made in para-9 of this application, the learned senior counsel for the applicant had submitted that although under Rule 49 of the Bar Council of India Rules, in respect of dress of the male advocates, amongst others, it is prescribed that trousers (white, black, striped or grey), dhoti, excluding jeans can be worn, but under Rule 16 of the Gauhati High Court (Conditions of Practice of Advocates) Rules, 2010 does not exclude jeans. Therefore, the Court could not have de-courted the applicant. It was also submitted that as the applicant had expressed his regret and assured the Court not to repeat the same and was not discourteous or unruly, the Court ought not to have called the police personnel to de-court him as he was not a security threat. It was also submitted that the Court could have refused him an audience but the Gauhati High Court Rules did not empower the Court to de-court him.

5. In support of his submissions, the learned senior counsel for the applicant has cited the following cases, viz., (i) *Resident’s Welfare Association & Ors. v. The Union Territory of Chandigarh & Ors.*, AIR 2023 SC 570, (ii) *Pravin C. Shah v. K.A. Mohd. Ali & Anr.*, (2001) 8 SCC 650, (iii) *Dilip Kumar Deka v. State of Assam*, (1996) 6 SCC 234.

6. At the outset, we would first examine the cases cited by the learned senior counsel for the applicant.

7. The case of *Dilip Kumar Deka (supra)* was cited to impress upon the Court that before passing the order, the applicant ought to have been given

a notice to explain his conduct. In this regard, the Court is of the view that as the dress of an Advocate is prescribed by the Gauhati High Court Rules conjointly read with the Rules framed by the Bar Council of India. Thus, as the applicant was not properly attired, the Court is inclined to disagree with the submissions made by the learned senior counsel for the applicant that he was entitled to a notice before he was refused an audience by the Court and/or de-courted for not being in uniform. Therefore, the said cited case does not help the applicant.

8. The case of *Pravin C. Shah (supra)*, cited by the learned senior counsel for the applicant is an authority on the point that the Court can regulate the proceeding inside the Court. In other words, it was being urged that the applicant could not have been de-courted outside the Court campus. Be that as it may, in this case, the Court had exercised its powers within the Court campus. The applicant was de-courted for the concerned moment. However, no order was passed to restrain him to appear even on the same day if he came in the proper prescribed dress. Thus, the right of the applicant to practice in Court was not infringed by the order dated 27.01.2023. But such a right must be exercised in accordance with the Bar Council of India Rules read with the Gauhati High Court Rules. Hence, the said case also does not help the applicant in any way.

9. The case of *Resident's Welfare Association (supra)* was cited to bring home the point that as the Gauhati High Court had framed rules to regulate the dress of the advocates, it would override the Bar Council of India Rules on dress of advocates. This point would be taken up a bit later.

10. It must be mentioned that while this Court was taking up pre-arrest bail application, it was exercising its jurisdiction under the Criminal Procedure Code. From the submissions made by the learned senior counsel for

the applicant, there is no iota of doubt that it is being urged that the Court had passed an incorrect order to de-court the applicant. In this regard, the Court is of the considered opinion that by making a prayer to recall/ strike-off/ delete/ expunge the order dated 27.01.2023, passed by this Court in A.B. No. 235/2023, the applicant is seeking a review of the said order, which is not permissible in law as the Criminal Procedure Code does not confer review jurisdiction to this Court.

11. The applicant has stated in this interlocutory application that he has put in 37 years of practice and by way of prayer made in this application, the applicant is making an attempt in this application to justify wearing of *jeans* in Court on the ground that *jeans* is not excluded under the Gauhati High Court Rules though it was excluded under the Bar Council of India Rules.

12. In this regard, although it *prima facie* appears that (i) the provisions of Section 34 and 49(1)(gg) of the Advocates Act, 1961, as well as the Bar Council of India Rules and the Gauhati High Court (Conditions of Practice of Advocates) Rules, 2010 operate in different fields and that incidental encroachment of dress code prescribed under the Rules framed by the Bar Council of India by the Gauhati High Court (Conditions of Practice of Advocates) Rules, 2010 would not have the effect of diluting the dress code prescribed by Bar Council of India, but this Court refrains from conclusively deciding this issue without notice to the proper and necessary parties, like Bar Council of India, Bar Council of Assam, Nagaland, etc., as well to this Court. Thus, the case of *Resident's Welfare Association (supra)* would not help the applicant. Nonetheless, the said issue is left open to be decided in a more appropriate proceeding.

13. It appears that by virtue of this interlocutory application, the

applicant is making an attempt to open Pandora's Box, which may create more problems than one can expect. If *jeans* can be worn in Court, then the applicant may next ask why he shall not be permitted to appear in Court in "torn" *jeans*, "faded" *jeans*, *jeans* with "printed patches", which are considered to be fashionable, or why he should not be allowed to appear in black track pant, or black pajamas merely because the Gauhati High Court Rules has not specifically excluded those. Thus, in light of the nature of plea taken, the indelible impression of the Court is that the expression of "regret" expressed by the applicant in para-4 of this application was not a genuine expression of regret.

14. Therefore, in this regard, the Court is of the considered opinion that in the guise of deciding an interlocutory application for recall/ strike-off/ delete/ expunge the order dated 27.01.2023, passed by this Court in A.B. No. 235/2023, this Court cannot and/or ought not to venture in interpreting the scope of Gauhati High Court (Conditions of Practice of Advocates) Rules, 2010, which has been made under Section 34 of the Advocates Act, 1961 as well as the scope of "Form of dresses or robes to be worn by Advocates", which has been framed by the Bar Council of India in exercise of power conferred under Section 49(1)(gg) of the Advocates Act, 1961. Hence, we refrain from examining those issues, which are collateral and/or incidental and/or ancillary.

15. Under the circumstances, the Court is of the considered opinion that as this proceeding arise in jurisdiction under Criminal Procedure Code, review of earlier order is legally not permissible.

16. Be that as it may, this is not a case where the applicant has been able to demonstrate that some inadvertent typing or clerical error has crept in the order dated 27.01.2023, passed by this Court in A.B. No. 235/2023. On that day, as the applicant had entered the Court room wearing *jeans*, the Court had

an inherent right to refuse an audience to the applicant. The order passed on 27.01.2023 had been implemented and the applicant was de-courted from the Court premises, which cannot be undone.

17. As the applicant was not properly attired, his legal or fundamental right to get an audience from the Court cannot be said to have been infringed on being de-courted for wearing *jeans*. In this regard, the Court is of the considered opinion that it is within the domain of every presiding judicial officer, including the Judge of this Court to uphold adherence to the advocate's dress code within the Court campus.

18. It is reiterated at the cost of repetition that the Court had de-courted the applicant by passing a judicial order, which was implemented. The order of the Court, which has been implemented, cannot be undone by subsequent order of the same Court.

19. Therefore, in light of the discussions above, the Court is of the considered opinion that the applicant has not been able to make out a case for any modification/ alteration of the order dated 27.01.2023.

20. Hence, this interlocutory application stands dismissed.

**JUDGE**

**Comparing Assistant**