

(1999) 05 GAU CK 0002

In the Gauhati High Court

Case No : Civil Original Contempt Petition No. 515 of 1994

Kamala Keot @ Deka

APPELLANT

Vs

Liakat Ali and Another

RESPONDENT

Date of Decision : 06-05-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2A
Constitution of India, 1950 — Article 215
Contempt of Courts (Gauhati High Court) Rules, 1977 — Rule 20
Contempt of Courts Act, 1971 — Section 12

Citation : (1999) 2 GLT 546

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : B.K. Goswami, T. Goswami, B.M. Sharma and T. Islam, for the Appellant; A.K. Phukan, S.N. Sarma, A. Dasgupta, D.R. Gogoi, D.P. Chaliha, A.M. Buzarbaruah and N. Das, for the Respondent

Judgement

J.N. Sarma, J.—I have perused the application for contempt filed u/s 12 of the contempts of Court's Act, 1971 read with Article 215 of the Constitution of India alleging violation of the order dated 7.10.94 passed by this Court in Civil Revision No. 478 of 1994. That order is at pages 15 and 16 of the contempt petition. This contempt petition is supported by an affidavit sworn by Kamala Keot as well by an affidavit filed by Smti. Bhogeswari Deka, the wife of Petitioner-Kamala Keot. (it may be mentioned herein that this poor wife Smti. Bhogeswari Deka is no more in the world). She has verified paras 4, 5, 6, 7, 8, 9, 10 and 10 A of the contempt petition as true to her knowledge and it is further stated in the affidavit that after release of her husband from Jail on 4.11.94 she reported the matter to him. Another affidavit has been filed by Saberuddin Ahmed, advocate on 20.7.95 in support of this contempt petition. After issuance of notice, the two alleged contemnors-Liakat Ali, then Munsiff No. 1 at Mangaldoi and Bakul Dutta, Jailor, Mangaldoi District Jail at Mangaldoi filed affidavits along with certain documents. Thereafter on 6.1.99 this Court passed an order directing examination of

witnesses. There was only a direction to examine the witnesses and to send the same to this Court, but the learned District Judge (Shri J Singh Cherry) submitted a report in the matter which was not asked for by this Court. The learned advocate for both sides submit that this report is absolutely irrelevant and that was not taken into consideration. Before the learned District Judge the following witnesses were examined:

1. A Wahed, advocate, Mangaldoi Bar
2. Saberuddin Ahmed, advocate, Mangaldoi Bar
3. Iftikar Hussain, the then Bench Clerk of Munsiff No. 1 (it may be stated herein that this Iftikar Hussain also filed an affidavit on 14.9.95 before this Court).

The following documents were exhibited:

Ext-1 is the certified copy of the order of the High Court dated 7.10.94.

Ext-2 is the PR Bond.

Ext-3 is the application dated 17.10.94 before the Munsiff.

Ext-4 is the application addressed to Munsiff No. 1 stated to be on 28th day of October, 1994.

2. On perusal of all these materials and after hearing the learned Counsel for the parties, I initiate contempt proceeding as against the alleged contemnors - Liakat Ali, the then Munsiff No. 1 at Mangaldoi and Bakul Dutta, the then Jailor, Mangaldoi District Jail at Mangaldoi in exercise of my power under Article 215 of the Constitution of India. It should be borne in mind that Article 215 of the Constitution of India gives independent power to take action and that power is not subject to any limitation as prescribed in the Contempt of Court's act, 1971.

3. This is a pitiable case. Here is a case where a person was sent to civil imprisonment by the learned Munsiff No. 1 at Mangaldoi by an order dated 14.10.93 passed in Misc. (J) Case No. 12/92. The penultimate portion of that order is quoted below:

In view of above, I hereby order that let the opposite party-Kamala Keot be detained in the civil prison for 2 months and let his properties (opposite parties properties) as mentioned in the Schedule "Ga" of petition be attached.

The Petitioner is directed to deposit the amount of Rs. 410 for expenditure of the civil imprisonment of the opposite party for one month at first stage on or before next date and also take step for attachment of "Ga" properties.

4. Thereafter on 21.9.94 the Petitioner-Kamala Keot was arrested as per warrant of arrest issued in accordance with the order dated 14.10.93 and on that date inter-alia the following order, was passed by the Munsiff No. 1 at Mangaldoi and that is quoted below:

Let the opposite party-Kamala Keot be sent to jail for undergoing 2 months civil imprisonment as per my order dtd. 14.10.93 by proper channel.

Inform the jail authority regarding deposit of the amount of cost of Rs. 410.00 which was deposited in Treasury and jail authorities is directed to inform the Court about total cost of 2 months civil imprisonment of the opposite party as soon as possible.

5. I am not of the legality and validity of this order dated 14.10.93 and 21.9.94, but what is important for the decision in this case is the subsequent conduct of the alleged contemnors-the Munsiff No. 1 at Mangaldoi as well as the Jailor. After the arrest was made, Kamala Keot was sent to Jail and a Revision Petition was moved before this Court being Civil Revision No. 478/94 and this Court inter-alia passed the following order:

Mr. Goswami submits that the decree passed in Title Suit No. 18/73 was executed on 11.10.78 and decree once executed cannot be executed for the second time. At present there is no suit or any appeal is pending. Therefore, issuance of order under Order 39 Rule 2A of CPC is illegal. The Petitioner has been now detained in Civil Prison in pursuance of the order dated 14.10.94.

Considering the submissions of the Counsel for the Petitioner, I order that the Petitioner shall be released immediately on PR bond of Rs. 1000/-

6. It is the case of the Petitioner that after obtaining certified copy of this order dated 7.10.94, same was produced before the Jailor i.e. before the Jailor, Mangaldoi District Jail, Mangaldoi - Bakul Dutta, the alleged contemner No. 2. Before that the PR Bond was executed by the Petitioner before the learned Assistant Jailor. On production of the certified copy of the order and the PR Bond before the Jailor, the Jailor-Bakul Dutta did not release the Petitioner on the ground that he would be able to release the Petitioner only on receipt of order from the Munsiff according to whose order the Petitioner has been detained in civil prison. The wife of the Petitioner having no other alternative, again came to the advocate concerned and the advocate-Abdul Wahed advised her to go to residence of the Munsiff at Jalukbari, Guwahati as at that point of time, he was out of station as Puja Vacation was going on. It is the case of the Petitioner that the Petitioner's wife Smti. Bhogeswari (now dead) along with the advocate Saberuddin Ahmed, advocate came to the residence of the Munsiff at Jalukbari and certified copy of the High Court's order and the PR Bond were produced, but the Munsiff instead of passing any order, gave a slip addressed to the office asking for bringing tile record on 17.10.94.

7. Rule 6 of the Civil Rules and Orders reads as follows:

6. without the consent of parties, and in the absence of urgent necessity, no civil trial should proceed on Sundays or Gazetted holidays:

Provided that on such days, the Court shall not refuse to do any act or make any order urgently required which may with propriety be done or made out of Court.

It was in accordance with that Rule, that this application was moved at the residence of the Munsiff as the Munsiff was not in the Station at Mangaldoi and it cannot be expected that the Munsiff was not aware of this Rule 6 of Civil Rules and Orders (Vol. I) as this Vol. I and II of Civil Rules and Orders can be deemed to be the Bible of the Civil Court and a person exercising jurisdiction on the civil side is expected to know the provisions of the Civil Rules and Orders. But he did not exercise that power though there can be no more urgency than this matter as a man was behind the bar and there was a valid order of release of the person by the highest Court of the State and that was shown to the Munsiff and the Munsiff in turn showed scant regard to that order.

8. An affidavit in support of this plea has been filed by Suberuddin Ahmed, advocate who came to the residence of the Munsiff and that is quoted below in its entirety to appreciate the matter:

DISTRICT: DARRANG IN THE GAUHATI HIGH COURT THE HIGH COURT OF ASSAM: NAGLAND: MEGHALAYA: MANIPUR: TRIPURA: MIZORAM AND ARUNACHAL PRADESH

(Civil Original Contempt Jurisdiction) Civil Original Contempt Petition No. 515 of 1994.

AFFIDAVIT

I, Saberuddin Ahmed, son of late Samsuddin Ahmed aged about 42 years resident of Ward No. 2 Mangaldoi Town, Mouza Chapai PO and PS Mangaldoi in the district of Darrang (Assam) do hereby solemnly affirm and declare as follows:

1. That I am an advocate practising at Mangaldoi Court. I attend the chamber of Mr. Abdul Wahed, advocate Mangaldoi and act as his junior.

2. That one Kamala Keot was the opposite party in Misc. Case No. 12 of 1992. My senior Sri Abdul Wahed appeared in the said Misc. case on behalf of the aforesaid Kamala Keot @ Deka.

3. That on 13.10.94 Smti Bhogeswari Deka wife of Kamala Keot requested me to come to Guwahati in order to obtain release of her husband by virtue of an order dated 7.10.94 passed by mis Hon"ble High Court directing the release of Kamala Keot on PR Bond of Rs. 1000/-. The reason for requesting me to come to Guwahati was that Puja Vacation commence from 4.10.94 and on 13.10.94 the learned Munsiff No. 1 (Liakat Ali) as not at Mangaldoi and he was at his residence at Jalukbari, Guwahati. Smti Bhogeswari Deka showed me the certified copy of the Hon"ble High Court's order and PR Bond signed by Kamala Keot in presence of the Assistant Jailor, Magaldoi, Smti Bhogeswari Deka first went to the chamber of Shri Abdul Wahed, advocate. Sbri Wahed requested me to go to Guwahati with the wife of Kamala Keot He instructed me to place the matter before the Munsiff No. 1, so that the order for release may be passed by the Munsiff. Accordingly, I came to Jalukbari and Smti Bhogeswari also came with me. We both went to the residence of learned Munsiff No. 1 on the same date i.e., 13.10.94. I placed the

certified copy of the order of Hon"ble High Court and also the PE Bond signed by Kamala Keot. I requested him to pass necessary order so that Kamala Keot might be released by the Jail authority. The Munsiff No. 1, Mr. Liakat Ali looked into the papers but did not keep them. He also did not pass any order. He gave a slip addressed to his office asking the office to sent some one to his residence on 17.10.94. The slip was given to me and latter on I handed over the slip to Sheristadar, Sri K. Deka.

4. That on 17.10.94 along with the Paskar of the Munsiff Shri I Hussain went to the residence of Munsiff at Jalukbari. The Paskar took some file with him relating to the detention of Kamala Keot. My senior Shri Abdul Wahed dictated a petition addressed to the Munsiff. Shri Abdul Wahed signed that petition on 17.10.94. By that petition the release of Kamala Keot was prayed. The petition was placed by me before the Munsiff No. 1 Sri Liakat Ali. The learned Munsiff did not pass order of release and returned and papers to me stating that he should be met in the Court chamber on 20.10.94.

5. That on 20.10.94 Smti Bhogeswari Deka wife of Kamala Keot came to the chamber of Shri Abdul Wahed, advocate and requested him as well as me to go the chamber of Munsiff. We both went to the Munsiff chamber and Mr. Abdul Wahed and myself went to the chamber of the Munsiff. Due to some urgent professional work I did not stay in the Munsiff chamber. I left Mr. Abdul Wahed who remained in the chamber and waited for Munsiff. I was not present in the chamber when Mr. Abdul Wahed made his submission before the Munsiff.

6. That the statements made in paragraphs 1, 2, 3, 4 and 5 are true to my knowledge and I sign this Affidavit on this the 20th day of July, 1993 at Mangaldoi.

Sd/- Illegible (Saberuddin Ahmed, Advocate) 20.7.95 Deponent

Solemnly affirm and declare before me by the deponent Shri Saberuddin Ahmed, Advocate on this the 20th day of July, 1995 at Mangaldoi.

Sd/- Illegible Judicial Magistrate, Mangaldoi.

9. Along with this, we must also read the evidence of Abdul Wahed, advocate who conducted the case, (it may be stated herein that in pursuance of the order of this Court dated 6.1.99 the statement of witnesses were recorded). Mr. Wahed, advocate deposed before the learned District Judge that though he is not the eye witness, but he categorically stated that on receipt of the order of the Hon"ble High Court he instructed the poor lady to have the PR Bond from Kamala Keot. That PR Bond was obtained, but the Jailor did not release him and thereafter it was he who instructed the poor lady to go to Jalukbari along with advocate Saberuddin Ahmed and Paskar-I Hussain and accordingly they went and came back but the Munsiff did not pass any order, but sent a slip for the record. There is nothing to disbelieve this witness Saberuddin Ahmed, advocate as well as Abdul Wahed, Advocate. They have categorically stated that the poor

lady along with the Advocate Saberuddin Ahmed and I. Hussain, the then Paskar of the Munsiff went to residence of Munsiff along with the order of the High Court and wanted to have a bail order from the Munsiff, but the Munsiff did not pass any order. No doubt, Mr. I. Hussain, the then Paskar (witness No. 3) while deposing before the learned District Judge has denied it in its entirety. He stated that he did not go to the residence of Munsiff along with the advocate and during Puja Vacation he was not attending the office from 15.10.94 to 24.10.94.

10. In the affidavit-in-opposition filed by the Munsiff in para 6 it has been denied the statement made in para 6 of the contempt petition and that para 6 is verified partly to his knowledge and information. This is not an affidavit in the eye of law in a Contempt proceeding inasmuch as this is not in compliance with O 19 R 2 and 3 of CPC. Be that as it may, in view of the categorical statement of Abdul Wahed and Saberuddin Ahmed - both advocate I disbelieve the statement of the Bench Clerk-I. Hussain as well as the statements made in the affidavit filed by the Munsiff and accordingly I hold that the poor lady came to the residence of the Munsiff and moved the application for release of the Petitioner but the Munsiff did not pass any order.

11. The next relevant date is 17.10.94. It is in the affidavit of Saberuddin Ahmed, advocate as well as in the evidence of Abdul Wahed, advocate that advocate Saberuddin Ahmed along with L Hussain, Bench Clerk came to the residence of Munsiffat Jalukbari and the records also was produced by him with an application signed by advocate Abdul Wahed also was placed before him, but the Munsiff did not pass any order asking them to come to office on 20.10.94. The application dated 17.10.94 is Annexure-III to the Contempt petition. PR Bond is dated 12.10.94 and is at Annexure-II A to the Contempt petition. There is a seal of the Assistant Jailor of the District Jail with a date and that also shows that it was executed on 12.1.94. On 20.10.94 the matter was again moved before the Munsiff and even on that date no order was passed by him. The plea of the Munsiff in his affidavit is that on 17.10.94 he was not at Jalukbari, but he was at Mangaldoi as will be evident from the Attendance Register and it is his further plea that on 20.10.94 he was not available in office as he was on leave from 19.10.94. But there is an application dated 28th October, 1994 filed by this poor lady and that application is quoted below:

Annexure-IV

To

The Munsiff No. 1 Mangaldoi, Darrang. Dated the 20th day of October, 1994

Ref: 1 . Detention of Kamala Keot @ Deka in Civil Prison in pursuance of your order dated 21.9.94 passed in Misc (J) Case No. 12 of 1992.

2. Order dated 7.10.94 passed by the Hon"ble Gauhati High Court in Civil Revision No. 478 of 1994.

Applicant: Smti. Bhogeswari Deka Wife of Kamala Keot @ Deka Santipur, Ward

No. 4 Mouza Chapai, PO and PS Mangaldoi, District Darrang.

The humble applicant above named begs to state as follows:

1. That the applicant's husband Shri Kamala Keot @ Deka is detained in Civil Prison on and from 21.9.94 in pursuance of an order passed by you in Misc (J) Case No. 12 of 1992.
2. That against the order of detention a revision petition was filed on behalf of Kamala Keot @ Deka and the Hon'ble High Court by an order dated 7.10.94 was pleased to issue a notice of motion and was further released to order that the Petitioner (Kamala Keot @ Deka) shall be released immediately on PR Bond of Rs. 1000/-
3. That on 11.10.94 and 12.10.94 the applicant went to the Jailor. A PR Bond was signed by Kamala Keot before the Assistant Jailor on 12.10.94 and the same was produced before the Jailor. The certified copy of the order of Hon'ble High Court was produced before him and photocopy of the said certified copy was left with him. The Jailor stated that he could release Kamala Keot @ Deka only on receipt of an order from your honour as he was detained by order of your honour.
4. That at mat time your honour was not at the headquarters and so on 13.10.94 the applicant along with the advocate Shri Saberuddin Ahmed came to your honour's residence at Jalukbari, Guwahati. The certified copy of the Hon'ble High Court's order and the PR Bond signed by Kamala Keot @ Deka were produced before your honour for necessary order to release Kamala Keot in pursuance of the Hon'ble High Court's order. Your honour did not keep the paper nor did your honour pass any order. Your honour wrote a slip addressed to your honour's office at Mangaldoi asking somebody of the office to come to your residence on 17.10.94 with papers. The said slip was handed over to the advocate Shri Saberuddin Ahmed who gave the slip to Shri K. Deka, Sheristadar.
5. That on 17.10.94 the advocate Shri Saberuddin Ahmed and your Paskar Shri I Hussain came to your residence at Jalukbari. The Paskar took with him the necessary papers relating to the detention of Kamala Keot. An application signed by Shri A. Wahed advocate from Kamala Keot praying for his release was also placed before you. For reasons not known to the applicant why did not pass any order and told the advocate Shri Ahmed to meet you in your Court chamber at Mangaldoi on 20.10.93. On 20.10.94 the applicant accompanied by her advocate Shri Wahed and Shri Saberuddin Ahmed went to your Court. You were doing some official works in your chamber. Mr. Abdul Wahed submitted that the Hon'ble High Court's order should be implemented faithfully and detenue Kamala Keot @ Deka should be released forthwith. The certified copy of the order of the Hon'ble High Court dated 7.10.94, the PR Bond signed by Kamala Keot @ Deka on 12.10.94 and the petition dated 17.10.94 addressed to you filed by Shri Abdul Wahed, advocate were again produced before you. You declined to pass any order on the plea that during the vacation you could not pass any order in civil matters. You further said that you would pass necessary order only on

4.11.94 when the civil Court is re-open.

6. That the order of the Hon"ble High Court was passed on 7.10.94 but unfortunately the order is not implemented till now. The applicant has been running from pillar to post for release of her husband on the strength of Hon"ble High Court's order. It appears that there has been wilful disobedience of the Hon"ble High Court's order. The poor man Kamala Keot @ Deka is languishing in jail despite the clear order of the Hon"ble High Court for his release.

7. That the applicant respectfully states that the entire facts as stated above will be brought to the notice of Hon"ble High Court without prejudice to any other remedies that may be available to Kamla Keot @ Deka.

8. That I once again pray that your honour may be pleased to see that the order of the Hon"ble High Court is carried out forthwith. It is needless to say that the order passed by the Hon"ble High Court is to be strictly obeyed and faithfully implemented by all authorities concerned Executive, Judicial and other. I pray for the minimum justice from you.

I, once again enclose herewith the following documents and I hope you will receive the same.

I, therefore, request you once again to immediately release the applicant's husband Shri Kamala Keot @ Deka.

Yours faithfully SdA Sd/- (Smt. Bhogeswari Deka) Wife of Kamala Keot @ Deka, Santipur, Ward No. 4 PO and PS Mangaldoi, Mouza Chapai, Dist Darrang.

12. It is seen that the allegation that the Munsiff did not pass order on 13.10.94, 17.10.94 and 20.10.94 and this allegation was repeated again and again and on this the Munsiff must have a say in the order that on all these occasions the Petitioner along with advocate concerned did not come to him. In para 4 it has been specifically stated that on 13.10.94 the client along with advocate Saberuddin Ahmed went to his residence at Jalukbari, but he did not pass any order and again on 17.10.94 along with record of the case they went to his residence and on that also no order was passed. On 20.10.94 they again appeared before Munsiff and on that date also no order was passed. It has been specifically stated in para 7 that this matter would be brought to the notice of Hon"ble High Court. If these allegation are baseless, he must record these things in the order. But that was not done. Serious allegations have been made against the Munsiff in that application, but on that point the Munsiff himself was silent. There is a note where it is stated that the application dated 17.10.94 which was filed before him at residence, on that application he refused to pass any order. That is available at page 135 of the original record i.e. Misc. Case 12/92 and that is Ext. 4 to that petition. That these facts are correct that will be further evident from Annexure-V to contempt petition. That is the application to Jailor and that is Annexure to the contempt petition and that is quoted below:

To The Jailor, Mangaldoi District Jail,

Darrang, Mangaldoi.

Dated Mangaldoi, the 28th day of Oct 94

Sir,

1. That Shri Kamala Keot @ Deka was sent to the Mangaldoi District Jail under Order of the Munsiff No. 1, Mangaldoi passed in Misc. (J) Case No. 12 of 1992. He has been detained in Civil Prison on and from 21.9.94.

2. That against the order of detention a Revision Petition was filed before the Hon"ble High Court and the said petition was registered as Civil Revision No. 478 of 1994. The Hon"ble High Court by an order dated 7.10.94 directed that the Petitioner Kamala Keot @ Deka shall be released immediately on PR Bond of Rs. 1,000/-.

3. That the certified copy of the order dated 7.10.94 was shown to you on 11.10.94 and a photocopy was left with you. You stated that you cannot accept the PR Bond and that the PR Bond may be accepted only by the Munsiff Saying so, you did not release the detenue Kamala Keot @ Deka.

4. That on 12.10.93 a PR Bond signed by Kamala Keot in presence of Assistant Jailor District Jail, Mangaldoi was produced before you, but you did not release Kamala Keot and did not accept the document saying that you could release Kamala Keot only on receipt of an order from the Munsiff, who sent him to Jail.

5. That thereafter the undersigned who is the wife of the detenue met the Munsiff on three occasions and the learned Munsiff did not pass any order saying that during Puja Vacation he could not pass any order. He further said verbally that the Jailor can release by taking the PR Bond.

6. That from the facts stated above, it will appear that in spite of Hon"ble High Court's order you have not released the detenue Kamala Keot @ Deka. On 20.10.94 the undersigned met you again and requested you to release Kamala Keot @ Deka, but you did not. You have wilfully disobeyed the Hon"ble High Court's order. The Hon"ble High Court's order is very clear that the Petitioner Kamala Keot @ Deka shall be released immediately on PR Bond of Rs. 1,000/- PR Bond was produced before you but you did not keep it and did not release the Petitioner Kamala Keot @ Deka. As a result of your action you have illegally detained Kamala Keot in spite of order of the Hon"ble High Court. By violating the High Court's order you have committed gross contempt of Court. You have also illegally detained him. Necessary application shall be filed before Hon"ble High Court for drawing up contempt of Court proceeding against you. Necessary steps shall also be taken in the appropriate Court against you for damage for wrongful confinement and detention of Kamala Keot @ Deka.

However, I am filing this petition requesting you once again to release Kamala Keot @ Deka on the PR Bond signed by him on 12.10.94. It may be stated that under the law, production of PR Bond is sufficient and there is no question of

acceptance of the PR Bond by anybody. The PR Bond which was executed on 12.10.94 is again produced before you to-day.

I, therefore, request you to release Kamala Keot @ Deka immediately.

Yours faithfully, Sd/- (Smt. Bhogeswari Deka) Wife of Kamala Keot @ Deka, Santipur, Ward No. 4 PO and PS Mangaldoi, Mouza Chapai, Dist Darrang (Assam).

So, it cannot be said that the allegations that on 13.10.94, 17.10.94 and 20.10.94 the Munsiff did not pass any order are after thought. I find that by these two petitions the poor lady who is no more in the world had the courage to tell the Munsiff that she went to his residence along with advocate on all these occasions but the Munsiff did not pass any order. Ultimately the order for release was passed on 4.11.94 and because of arbitrary and whimsical conduct of the persons, the Petitioner Kamala Keot was detained in Jail for a period from 12.10.94 to 4.11.94 and it was only on 4.11.94 after re-opening of the vacation, that the order of release was passed. An order stating later on 4.11.94 had been passed by the Munsiff ex parte denying all these things. He instead of passing such an order behind the back of the Petitioner have passed it in the presence of party and advocate.

13. I have heard Mr. B.K. Goswami, learned Counsel for Petitioner, Mr. A.K. Phukan, learned Counsel assisted by Mr. R. Gogoi for Munsiff and Mr. D.P. Chaliha, learned Counsel for Jailor.

14. Mr. B.K. Goswami, learned Counsel has rightly pointed out that he has no locus standi in the matter to argue but he will only place the facts before the Court for consideration of the Court. Mr. A.K. Phukan, learned Counsel strenuously urges that the story that on 13.10.94, 17.10.94 and 20.10.94 applications were moved before the Munsiff for release of the Petitioner are not correct and he submits that on all those dates, no application was moved. I am not inclined to accept this plea of the learned Counsel for Munsiff in view of the discussions made above both oral and documentary and I find that applications were moved before the Munsiff on 13.10.94, 17.10.94 and 20.10.94, but the Munsiff wilfully and deliberately did not pass any order for the release of the Petitioner Kamala Keot and the poor lady had to run from pillar to post for the release of her husband.

15. Judiciary is respected not for technicality but for its bold attempt to make justice. An attempt should be made to wipe out the tears from the eyes of everybody. It is not possible to wipe out the tears from each and everybody's eyes, but it is the duty and responsibility of the judiciary to make an attempt to do so, if possible. If we fail to discharge our duties and responsibilities to wipe out the tears from the eyes of the persons where it is possible, it is definitely a failure of justice.

16. Regarding conduct of the Jailor-Bakul Dutta I feel that his conduct is also not above suspicion. He must know what power and right vested to him. He must be

conscious about his duties and responsibilities. Be that as it may, I do not find him guilty for contempt as without the order from the Munsiff according to whose order the Petitioner has been detained in Jail, he may not be able to release the Petitioner, but here I add a word of caution for him to be more cautious in future in dealing with such a matter. But I find the Munsiff Liakat Ali (the then Munsiff at Mangaldoi) to be guilty for contempt for his wilful, deliberate violation of the order of the High Court and by doing so, he has tarnished the image of judiciary. I find him guilty for contempt u/s 12 of the Contempt of Court's Act, 1971 and also under Article 215 of the Constitution of India inasmuch as it is the order of his Court which has been violated by him.

17. The next question remains is what should be the sentence. Section 12 of the Contempt of Court's Act, 1971 provides for punishment for simple imprisonment for a term not exceeding 6 months period or fine of Rs. 2,000/- or both. In the instant case, I sentence Shri Liakat Ali, the men Munsiff No. 1 at Mangaldoi to undergo simple imprisonment for a period of 1 (one) month and fine Of Rs. 2,000/- in default for detention of one month more. The fine of Rs.2,000/- if realised, that shall be paid to the poor Petitioner who was a victim of the deliberate action of the alleged contemner-Liakat Ali, the then Munsiff No. 1 Mangaldoi.

18. With the above direction, this contempt petition stands disposed of.

19. At this stage, Mr. A.K. Phukan, learned Counsel of alleged contemner-Liakat Ali prays for one months time to file appeal as against this order. I grant him 3 (three) weeks time only to do so, if advised.

20. Place a copy of this order before the Hon''ble Chief Justice for doing the needful on the administrative side. The Registrar General shall issue warrant of arrest as provided under Rule 20 of the Gauhati High Court (Contempt of Court's) Rules, 1977 for arrest and detention of the alleged contemner-Liakat Ali, a judicial officer wherever he is at present and he shall be detained in prison to undergo the sentence. The warrant shall be issued after 3 weeks from today subject to any order which may be passed in the appeal, if filed.