

(2018) 10 CAL CK 0069
In the Calcutta High Court
Case No : C.R.M. 6648 Of 2018

Sanjay Agarwal @APPELLANT@Hash State of West Bengal

Date of Decision : 11-10-2018

Acts Referred:

Citation : (2018) 10 CAL CK 0069

Hon'ble Judges : Ravi Krishan Kapur, J; Joymalya Bagchi, J

Bench : Division Bench

Advocate : Sekhar Kumar Basu, Rajdeep Majumder, Moyukh Mukherjee, Anjan Datta, Bivas Chatterjee

Judgement

Heard the learned Senior Counsel appearing for the petitioner. He submits that his client is in jail for 300 days and trial could not progress due to cease

work by the members of the Bar Association of the district court at Barasat. Learned Counsel appearing for the State submits that prosecution

witnesses including a judicial officer were present in court but due to cessation of Harish Uppal (Ex-Capt.) vs. Union of work at the behest of the Bar

Associations attached to the District Court, the witnesses could not be examined and another date has been fixed for recording of evidence.

We are distressed at the pernicious practice of calling cease works in courts causing delay in criminal trials particularly when under-trials are in jail. In

the instant case witnesses were present in court but could not be examined due to a cease work called by the Bar Associations attached to the

District Court at Barasat. One of the witnesses was a judicial officer who had come to depose leaving his post vacant in that day. Lawyers are

officers of the court and it is expected that as responsible members of the judicial fraternity to ensure that the administration of justice is conducted in

a smooth and effective manner. Repeated stalling of criminal proceedings due to cease works cause untold misery to people who come to courts

seeking justice.

Criminal trials where accused persons in jail are unnecessarily halted dates and witnesses are inconvenienced causing loss of public time and money.

In India, (2003) 2 SCC 45, the Constitution Bench of the Apex Court held that lawyers have no right to go on strike or call for bandh or even a token

strike. Only in rarest of rare cases where the dignity, integrity and independence of the Bar and/or the Bench are at stake and a protest abstention

from work not more than a day may be entertained and to do so, the President of the Bar must consult and seeks permission from the Chief Justice or

the District Judge in the matter. The Bench further held as follows:-

“It is held that Courts are under no obligation to adjourn matters because lawyers are on strike. On the contrary, it is the duty of all Courts to go

on with matters on their boards even in the absence of lawyers. In other words, Courts must not be privy to strikes or calls for boycotts. It is held that

if a lawyer, holding a Vakalat of a client, abstains from attending Court due to a strike call, he shall be personally liable to pay costs which shall be

addition to damages which he might have to pay his client for loss suffered by him.”

In Hussain and Another vs. Union of India, (2017) 5 SCC 702, the Apex Court recognized that frequent strikes, abstention from work by lawyers or

frequent suspension of court work after condolence references is one of the prime reason for delay in disposal of criminal cases. The Court held as

follows:-

“One other aspect pointed out is the obstruction of Court proceedings by uncalled for strikes/abstaining of work by lawyers or frequent

suspension of court work after condolence references. In view of judgment of this Court in Harish Uppal versus Union of India, such suspension of

work or strikes is clearly illegal and it is high time that the legal fraternity realizes its duty to the society which is the foremost. Condolence references

can be once in a while periodically say once in two/three months and not frequently. Hardship faced by witnesses if their evidence is not recorded on

the day they are summoned or impact of delay on undertrials in custody on account of such avoidable interruptions of court proceedings is a matter of

concern for any responsible body of professionals and they must take appropriate steps. In any case, this needs attention of all authorities concerned

â?" the Central Government/State Governments/Bar Councils/Bar Associations as well as the High Courts and ways and means ought to be found out

to tackle this menace. Consistent with the above judgment, the High Courts must monitor this aspect strictly and take stringent measures as may be

required in the interests of administration of justice. (emphasis supplied)â??

The instant case is a glaring example of breach of the law declared by the Honâ??ble Apex Court causing immense misery to the stake holders of

justice including the accused who is in custody. It is, therefore, imperative that stringent measures are taken to ensure that administration of justice is

not hindered or affected by the wild cat strikes or impromptu cease work called by the Bar Associations hampering smooth and day to day progress in

criminal trials.

Accordingly, we direct the Presidents and the Secretaries, of Barasat District Bar Association and District Advocate Bar Association respectively,

namely, Umapada Chatterjee, Amal Mukhopadhyay, Ranjit Saha and Sudipta Bose to show cause as to why contempt proceeding shall not be initiated

against them for obstructing the administration of justice by hindering examination of witnesses and smooth progress of trial in the instant case by

calling cessation of work for the entire day in the District Courts at Barasat on 9.10.2018 and 10.10.2018. Such explanation be filed on the next day of

hearing.

The petitioner is languishing in jail for 300 days. In the aforesaid situation, we request the prosecution to forthwith make a prayer before the trial court

to prepone the dates for recording of prosecution evidence and to hold the trial on a day to day basis and conclude the recording of prosecution

evidence as early as possible without granting unnecessary adjournment. Report as to the progress in trial be filed on the next date of hearing. Let this

matter appear for further hearing on 19th November, 2018.

Department is directed to serve a copy of this order upon the President and the Secretary respectively, namely, Umapada Chatterjee, Amal

Mukhopadhyay of Barasat District Bar Association and the President and Secretary, namely, Ranjit Saha and Sudipta Bose respectively of District

Advocate Bar Association for due compliance. Let photostat plain copy of this order, duly countersigned by Assistant Registrar (Court), be given to

the parties on usual undertaking.