
(1998) 07 OHC CK 0018

In the Orissa High Court

Case No : O.J.C. No. 5523 of 1998 and Miscellaneous Case No. 8381 of 1998

Swarnalata Bhuyan

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 22-07-1998

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1998) 86 CLT 442 : (1998) CriLJ 4520 : (1998) 2 OLR 311

Hon'ble Judges : Susanta Chatterji, J; D.M. Patnaik, J

Bench : Division Bench

Judgement

1. 22.7.98.- The Court as an institution has to live with utmost co-operation of the Bar. It is like a bird with two wings. With one wing a bird cannot fly. Only with the Judges or the lawyers alone the Court cannot function. The Bench has to appreciate the Bar and the Bar must be proud of the Bench. If the trust among the two breaks, there will be an end to this institution.

2. Unfortunately here is a story which is something else. This case is an illustration how there is breach of trust by the Bar. At the time of admission of O.J.C. No. 5523/98, it came to the notice of the Court that the certified copy of the impugned order dated 15.7.1991 had been interpolated so far as the date when the copy was actually handed over to the applicant. Going through the said certified copy this Court found that the date on which the copy was ready for delivery was 26.3.1993 and the same had been interpolated ex facie as 26.3.1997 and the date of making over the copy to the applicant was similarly interpolated from 26.3.1993 to 26.3.1997. This Court therefore directed the Addl. District Magistrate, Bhubaneswar from whose office the certified copy had been issued to hold an enquiry and submit his report as to the date on which the copy was ready for delivery and on which date the same was handed over to the applicant. The A.D.M. was directed to cause a proper enquiry to find out whether there was any fraud or forgery while issuing the certified copy. The certified copy was kept in safe custody of the Registrar (J) in sealed cover.

3. Pursuant to the aforesaid order the A.D.M., Bhubaneswar caused a comprehensive enquiry and has filed his report stating that the certified copy in question was a forged one with the date of its delivery being interpolated. While the matter again came up before this Court, by order dated 1.7.1998 this Court dismissed the writ petition summarily and referred the matter to the Court of the S.D.J.M., Bhubaneswar for the petitioner to face criminal trial and she was directed to appear before the said Court on 27th July, 1998. It was also directed that the learned S.D.J.M would take notice of the complaint of this Court and proceed as per the procedure envisaged under the Code of Criminal Procedure.

4. Another story began thereafter. An affidavit was filed by the writ petitioner stating that she being an innocent lady solely depended on her lawyer concerned. If anything wrong has been done, the same might have been by the concerned lawyer of the petitioner in the Court below. Another affidavit has also been filed today that the petitioner depended on her said lawyer Shri Aditya Tripathy and the interpolation, if any, must have been made by Shri Tripathy. It is submitted that the said lawyer of the petitioner in the Court below has died during the last summer vacation.

5. All these questions can be gone into if the petitioner faces criminal trial. Be that as it may, we appointed Shri N.C.Panigrahi, a senior member of this Bar, as amicus curiae to assist the Court. Here is a case where the trust between the Bar and the Bench is at stake. No Court can function unless there is trust in the Bar. A lawyer, however junior he may be has to assist the Court with utmost sanctity.

6. While this case was filed, Shri Aditya Tripathy, Advocate was not concerned and Shri S.C.Das, the present lawyer of the petitioner here was solely responsible for filing the writ petition with the interpolated certified copy. Mr. Panigrahi submits that it depends on the Court to consider the matter sympathetically since it involves a lady, a junior lawyer and a lawyer who is since dead.

7. It is true that fire does not leave young or old. He who puts his finger into fire, burns his finger. Similarly, for any action law will take its own course and the consequence will follow. Yet life always does not follow law. Law is to follow life as is demanded. As a patient depends upon the medical person, a litigant solely depends upon his lawyer. Mr. S. C. Das, the learned lawyer for the petitioner, expresses his utmost regret and while begging apology submits that he has learnt a life's lesson. It is said that "to err is human and to forgive its divine". No Court has the statistic plesure to punish a person, but when law demands the Court has to pass order without fear or favour. Regard being had to the peculiar nature of the case as also the entire scenario where a dead lawyer, a young lawyer and a lady are involved, we give certain benefit of doubt and recall our order dated 1.7.1998 so far as petitioner's facing criminal trial is concerned.

8. We express our utmost displeasure and keep a note of caution to Mr. S.C.Das, learned lawyer for the petitioner, so that he would be more cautious

henceforward in dealing with cases. It must be reckoned here that the Bench always wants to guard the interest of the Bar expecting that the Bar should likewise protect the righteousness of the Bench when situation arises. The Misc. Case is disposed of.