

Present :-Sri Pradip Kumar Adhikary
JO Code (UID No.) WB916
CNR No. 1000 0648 2021
MACC-23/21
(Registration number)
MACC-16/21

Order No. 18 dated 03.08.23

Today is fixed for hearing of petition filed by O.P. no.2 u/s.170 of M.V Act.

Neither any steps is taken by any of the parties nor any Ld. Advocate(s) of any parties is/are found present.

This Court is facing boycott by the Basirhat Criminal Court Bar Association on and from **10/04/2023** for the reasons not communicated to the Court by the concerned Bar Association since after an untoward incident happened in the afternoon of **06/04/2023**.

Unfortunately the Ld. Public Prosecutors, being appointees of the State as well as carrying a primary position and having very important role to play in the administration of justice; particularly in criminal justice system, have joined the chorus.

The Ld. Advocates of Basirhat Criminal Court Bar Association including the Ld. Public Prosecutors also started to abstain from appearing / not to participate or attend the Courts of the Additional District & Sessions Judge, Basirhat and Judicial Magistrate, 1st Court, Basirhat on and from 10/04/2023.

On **17/04/2023** the matter was duly informed to the Ld. District Judge, North 24 Parganas.

The Ld. Additional District & Sessions Judge, Basirhat and the Judicial Magistrate, 1st Court, Basirhat also informed the matter before Your Honour.

Subsequently, on **02/05/2023** vide Letter No.- 372/ADJ FTC – I/BSHT dated 02/05/2023 the Presiding Officer of this Court repeatedly requested the Secretary, Basirhat Criminal Court Bar Association to ventilate all or any legitimate, legal and lawful grievance(s) / complaint(s) against the present Presiding Officer of this Court in writing so that the same can be addressed at expeditiously, effectively and properly and also that there can be no room for any confusion and misunderstanding and further that the proceeding of the Court may be continued without any hindrance, obstruction and impediment and no body is deprived of justice.

The Presiding Officer also repeatedly requested him to forward / send / place the grievance(s) / complaint(s) against the present Presiding Officer of this Court before the appropriate authority in the prescribed manner for redress.

Through the same correspondence the Presiding Officer also repeatedly solicited active co-operation of the Bar in discharging of his duties, obligations and responsibilities, since the Bar is the mother of judiciary and Ld. Advocates belong to a respected intellectual class of the society and members of the noble profession as well as gentlemen and officers of the Court.

But whether raising shouting and slogans against the Presiding Officer at Ejlash, abusing him with filthy languages and even abused him by name calling of his parents and thereby, insulting, ridiculing, humiliating and degrading the dignity of the Presiding Officer and breaking of public property at Ejlash is just, apt and reasonable ! The Court left the matter before the wisdom the Ld. Members of the Basirhat Criminal Court Bar Association who are followers of **ETHIC, RESPECT, HONESTY and INTEGRITY** as depicted from the calender of the one of oldest and reputed Bar Associations of West Bengal.

Since the joining the present Presiding Officer has been accelerating uploading of orders to the CIS. Each and every judgment pronounced by the PO have been uploaded to the CIS; every order of hearing of argument, examination of accused under section 313 CrPC, recording of evidence, framing of charge and adjournment orders are being uploaded to the CIS regularly. Other orders are also being uploaded as much as possible. The dates of each case are being forwarded digitally. It gives boost to the transparency of the judiciary in the country. Real-time tracking of cases has become easier through NJDG. Supporting the digitization of the justice delivery system, once Former Chief Justice of India Hon'ble Justice J S Khehar had hoped of "paperless courts" dream soon to become a reality.

The Court also requested the Secretary, Basirhat Criminal Court Bar Association to highlight the deficiency, if any, in this regard so that the same can be addressed at and the Court also highly solicited any feedback and suggestion in this regard.

At the conclusion of the said correspondence (Letter No.- 372/ADJ FTC – I/BSHT dated 02/05/2023) once again the Court requested all the Ld. Members of Basirhat Criminal Court Bar Association including Ld. PPs and law clerks as follows :

With pious hope I request all the leaned respected members of the Basirhat Criminal

Court Bar Association including Ld. PPs, being protector of law, as well as law clerks, who are part and parcel of the Court, its sanctity is not less than that of a holy place reserved for noble souls, to ensure that the proceedings inside the Court are always held in a peaceful, respectful, dignified and orderly manner so that the respect and reverence to the Court, majesty of law and edifice of justice is maintained and the confidence of the public in the efficacy of the institution of the Court is inspired and the rule of law is not undermined and the judiciary remains strong.

Any feedback, suggestion, advice, assistance as well as friendly and constructive criticism is also highly solicited and always welcome from the Ld. Members of the Bar Association so that the present Presiding Officer can move towards more perfection and make out a better tomorrow and I shall be highly obliged.

Thanking you.

The copy of the said correspondence has also duly been sent to Ld. District Judge, North 24 Parganas, Ld. Additional District & Sessions Judge, Basirhat, Secretary, Basirhat Civil Court Bar Association, Basirhat and Secretary, West Bengal Law Clerks Association, Basirhat Court Unit for information.

Referring that

On certain ugly scenes took place in the Courts of the District and Sessions Judge on the issue or the dispute between Public Prosecutors, who were appointees of the State in a very recent case (*Shib Shankar Mahato v. State of West Bengal*) the Hon'ble Court has been pleased to direct the State to ensure that normalcy is restored and the Court starts functioning in a smooth manner and the litigant public in no manner be affected.

the said correspondence has also duly been sent to District Magistrate, North 24 Parganas and Ld. Public Prosecutor, North 24 Parganas for information.

Thereafter, on **12/05/2023** the matter was also informed to the Chairman, Bar Council of West Bengal vide this office letter no.- 420/ADJ FTC-I/BSHT dated 12/05/2023.

The Court also solicited feedback, suggestion, advice, assistance as well as constructive criticism, if any from the Chairman, Bar Council of West Bengal.

The copy of the said letter was also duly forwarded to Ld. District Judge, North 24 Parganas, Ld. Additional District & Sessions Judge, Basirhat and District Magistrate, North 24 Parganas for information.

As per demand of the Bar conveyed through the Ld. Additional District Judge, Basirhat the Presiding Officer of this Court was ready to meet the members of the Bar at office of the Criminal Court Bar Association. But the Presiding Officer was never invited to visit the Bar Association.

After waiting a considerable period of time on and from **17/05/2023** in compliance with the mandates of *Arunava Ghosh and others vs Bar Council of West Bengal* : AIR 1996 Cal 331, *Aijul Gharami v. State of West Bengal* : C.R.M. 12209 of 2019, *Harish Uppal (Ex-Capt.) vs. Union of India*, (2003)2 SCC 45, *Hussain and Another vs. Union of India*, (2017) 5 SCC 702, *Krishnakant Tamrakar Vs. State of M.P.*, (2018) 17 SCC 27, C.R.M. 12209 of 2019, *Mahabir Prasad Singh v. Jacks Aviation Pvt. Ltd.* : 1999 (1) SCC 37, *Roman Services Pvt. Ltd. vs. Subhash Kapoor* : (2001) 1 SCC 118, *B.L. Wadehra (Dr.) v State (Nct Of Delhi)* : AIR 2000 Delhi 266, 85 (2000) DLT 114, 2000 (53) DRJ 450, *Praveen Pandey vs the State of Madhya Pradesh* : Writ Petition No.- 8078 of 2018 and *R. Muthukrishnan v. the Registrar General of the High Court of Judicature at Madras* : Writ Petition [C] No.- 612 of 2016 pronouncement / delivery of judgment was started.

Very recently on 31/03/2023 in *Gopa Sastri v. State of West Bengal* : CRR No.- 19 of 2012 with CRAN 01 of 2012, CRAN 03 of 2012 and CRAN 05 of 2023 the Hon'ble Court has been pleased to observe that

19. In this case Learned Trial Court was pleased to reject the petition under Section 239 of CrPC on 20th July, 2011 but without framing the charge, fixed 23rd September, 2011 for consideration of charge. This kind of order is unwarranted and it cause impediment in expeditious trial and defeats the right of the litigants to have speedy justice. Natural corollary to the rejection of prayer for discharge would be commencement of trial with the framing of charge. The provision of Section 239 CrPC. and 240 of Cr.P.C. should be considered as two sides of same coin; whether after toss it is 'head' or 'tail' consequence shall have to follow, without any delay. Of course under Chapter XVII of the Code of Criminal Procedure, if learned Sessions Judge does not find any reason to invoke the provision of Section 227 of Cr.P.C., he shall have to take recourse to Section 228 of the Code of Criminal Procedure, where learned Sessions Judge shall have two avenues to tread upon; either learned Sessions Judge shall have to frame charge under Sub-Section (1) (b) of Section 228 of Cr.P.C. or to invoke the provisions as

laid down under Sub-Section (1) 9a) of Section 228 of Code of Criminal Procedure, depending upon the facts of the case. Learned Trial Court shall have to remain alive to this solemn duty while exercising sovereign power and no trial Court thus can or should afford the luxury of fixing two different dates as it has been done in this case.

20. Let a copy of this judgment be sent down to the learned Trial Court for information and necessary compliance. Learned Registrar General is directed to circulate the judgment among the Judges holding criminal trials.

In compliance with the order of the Hon'ble Court on and from **13/06/2023** the case records are being taken up for consideration of charge.

On and from **21/06/2023** small evidence of witnesses in sessions cases is being taken down gradually.

On **26/06/2023** the matter was again ventilate to the Ld. District Judge, North 24 Parganas for placing the same before the Hon'ble Court for initiation of appropriate proceeding of contempt of Court, imposing exemplary costs upon the Ld. Advocates who are, holding vakalatnama, abstaining from attending Court due to boycott and taking other appropriate legal action / measures for obstruction access to justice as well as soliciting necessary instruction vide this office Letter No.- 593/ADJ FTC-I/BSHT dated 26/06/2023.

It is mentioned worthy that Basirhat Criminal Court Bar Association also boycotted the Courts of the Additional District & Sessions Judge, Basirhat and Judicial Magistrate, 1st Court, Basirhat from 10/04/2023. However, on and from 20/04/2023 the Ld. Advocates including Ld. PPs started appearing, attending and participating in proceeding before the Court of the Ld. Additional and District & Sessions Judge, Basirhat. Subsequently, on 17/05/2023 the boycott of the Court of the Ld. Judicial Magistrate, 1st Court, Basirhat was lifted.

It is also pertinent to mention that in recent past years also here in Basirhat several courts such as Court of Ld. Additional District & Sessions Judge, Fast Track Court – III (Presiding Officer was Smt. Arati Sharma), Court of Ld. Additional District & Sessions Judge (Presiding Officer was Smt. Bharati Bhattacharyee), Court of the Ld. Civil Judge (Junior Division), 2nd Court (Presiding Officer was Janab Md. Ruknuddin) and Court of the Ld. Additional Chief Judicial Magistrate (Presiding Officer was Shri Uday Rana) were boycotted. Prior to that Court of Ld. Civil Judge (Junior Division) 2nd Court {Presiding Officer was Shri Rabindranath Samanta (Now Hon'ble Justice of the Hon'ble Court)}, Court of Ld. Civil Judge (Junior Division), 2nd Court (Presiding Officer was Shri Hiren Chandra Das) and some other Courts were also boycotted.

In her correspondence the Ld. Additional District Judge, Basirhat has also categorically stated that *lawyers of Basirhat Bar has a history of unruly behaviour with the P.Os and for which contempt proceedings was also initiated against them earlier.*

After elapse of more than three (03) months since the boycott of this Court started on 10/04/2023, on **20/07/2023** the President of the Basirhat Criminal Court Bar Association requested all the Courts of this station to adjourn all cases so that the litigants may not suffer due to not joining and not to discharge duties as well as to abstain from discharging regular duties by the Ld. Members of the Bar on account of the present and critical situation regarding the Ld. Additional District and Sessions Judge, Basirhat and this Court as well as in order to protest the **poor and immoral behaviours and illegal activities** towards the litigants as well as the Ld. Advocates.

But in utter and blatant deviation of the resolution of the Bar conveyed to all the Courts on 20/07/2023 the main gate of the Basirhat Court was blocked, official cars of the Judicial Officers when they were coming to the Court in the morning were restrained, they were compelled to get down from their respective cars during heavy rain, they were constrained to go their respective Courts on foot. The Ld. Advocates were continuously raising shouting and slogans particularly against the Presiding Officer of this Court. All the members of the staff as well as personal security officers (PSOs) of the Judicial Officers were restrained; they were not allowed to enter the Court premises. In spite of assurance that the Ld. District Judge, North 24 Parganas will meet shortly with the Ld. Members of the Bar and have discussion conveyed to the Secretary and other members of the Bar present there, the members of the staff and security personnels were not allowed to enter the Court premises. Without having a single member of the staff and not even security personnel some of the Judicial Officer managed to open their chambers by themselves. Subsequently, all the Judicial Officer assembled at the Chamber of the Ld. Additional District & Sessions Judge, Basirhat. Most of the Judicial Officers were without having water and food for their lunch.

In that situation Ld. Additional District & Sessions Judge, Basirhat on behalf of all the Judicial Officers invited the Secretary to come to the Chamber of the Ld. Additional District & Sessions Judge, Basirhat and accordingly, he came and all the Judicial Officers requested him and other members accompanied him to allow the members of the staff and security personnels to enter the Court premises; he replied that they were not restrained; members of the staffs and security personnels themselves are

not entering the Court premises. Accordingly, all the Judicial Officers again came to the main gate of the Court premises and found that some of the Ld. Members of the Bar blocked the said gate and they restrained the members of the staff and security personnels from proceeding beyond the main gate. Seeing the Officers coming to the main gate the Ld. Members of the Bar again started shouting and slogans particularly against the Presiding Officer of this Court and the Ld. Additional District & Sessions Judge, Basirhat. Amidst shouting and slogans all the Officers repeatedly requested the Ld. Members of the Bar to allow the members of the staff and security personnels to enter the Court premises but they did pay any heed to that request in spite of communication of message given by the Ld. District Judge, North 24 Parganas. Finding no alternatives and feeling unsafe and being humiliated, shocked and hurt all the Officers again came back to the Chambers of the Ld. Additional District & Sessions Judge, Basirhat.

The matter has duly been intimated to the Ld. District Judge, North 24 Parganas by the Ld. Additional District & Sessions Judge, Basirhat.

Subsequently, at the intervention of the Ld. District Judge, North 24 Parganas as well as the Ld. Registrar, North 24 Parganas at around 2-00 PM the members of the staff and PSOs were permitted to enter the Court premises.

Being humiliation, hurt, shocked and shattered under tremendous pressure as well as for mitigating the situation and giving respect to the positive initiative of the Ld. District Judge, North 24 Parganas at night at around 7-30 to 8-00 PM this Court had to make a correspondence to Secretary of the Bar requesting to overlook the letter dated 02/05/2023, one of the illegal demands of the Bar.

In spite of fulfilling their demand as well as in spite of active and positive intervention and endeavor of the Ld. District Judge, North 24 Parganas the boycott of this Court and the Court of the Additional District & Sessions Judge, Basirhat has not been lifted.

This Court is very grateful that the Ld. District Judge, North 24 Parganas intervened into the matter. Although the boycott has not been lifted, the Ld. District Judge instructed the Officers of this station to attend the Bar Association if all the Judicial Officers are invited for tea.

On the next date i.e. on 21/07/2023 the Officers did not get any such invitation. Rather on **21/07/2023** through a letter the President of the Bar informed all the Courts dealing with criminal matters that due to non-availability of private transport Ld. Members as well as litigants were not in a position to discharge their duties on 21/07/2023 and accordingly, those Courts were requested to consider the matter sympathetically and to see that no adverse order / orders be passed so that none of the party / parties would suffer in any case for taking no step / steps for his/her/their case/cases fixed on that day. Giving respect to you said correspondence no adverse order was passed in this Court.

But in the afternoon, it came to knowledge that except this Court and the Court of the Ld. Additional District & Sessions Judge, Basirhat normal work was done in all other Courts; litigants and Ld. Members attended in other Courts and discharged their duties.

From the correspondence of the Civil Court Bar Association it is also clear that functioning of other Courts were proceeded normally.

It is crystal clear that the normal functioning of this Court as well as the Court of the Ld. Additional District & Sessions Judge, Basirhat was hampered and obstructed in a pre-planned manner.

Further on 21/07/2023 in the late afternoon through another correspondence without having any number this Court and the Court of the Ld. Additional District & Sessions Judge, Basirhat were requested not to pass any adverse order / orders in any case / cases till the situation becomes normal.

Through another correspondence vide reference no.- 195/23 dated 21/07/2023 the President of the Bar requested this Court to arrange a meeting with the Extended Committee members of the Bar Association and giving an hour / couple of hours for having a positive discussion to mitigate the dispute in between the Bar and the Bench preferably on Monday or Tuesday or as convenient to the Court.

Although in his correspondence the President of the Bar mentioned about **certain lawful demands** of the Bar but he has not placed the same in written so that the same can be addressed at with due care, properly and lawfully and there can be no room for any confusion and misunderstanding in future as various misunderstanding have already been taken place between the Bar and the Bench.

However, so far as demands of the Bar Association came to knowledge from **agitation, slogans and media reporting** (links are <https://www.youtube.com/watch?v=mOQxunrKjkw> and <https://www.facebook.com/TV9BanglaLive/videos/599247722317901/?mibextid=rS40aB7S9Ucbxw6v&ref=sharing>) that the Presiding Officer of this Court may be transferred from this station; charge of corruption against the Presiding Officer; illegal orders passed by the Presiding Officer as well as the members will not obey the Fast Track Court – I, judicial decorum as well as administrative protocol demands that the same may be addressed before the proper authority / forum in appropriate manner for redress.

Regarding **behaviour resulting an agitation** neither any allegation regarding any behavior of this Court has ever been labelled against the Presiding Officer by Ld. Members of the Bar nor any

incident of such nature has ever been ventilated before the Presiding Officer either by any Ld. Members of the Bar Association or by any Ld. Members of the Executive Committee or by any Ld. Members of the Extended Committee or by any Ld. PPs or by any Law Clerks. Since joining here in this station in this Court no untoward incident was happened at any point of time except the incident on 06/04/2023 relating to another Court. On the contrary some of the Ld. Advocates have appreciated the hard work and dedication of the Presiding Officer in open Court. Even some of the Ld. PPs have also expressed their thanks for the initiative taken by this Court. This Court is grateful to Ld. Advocates and the Ld. PPs for their generosity.

Here in Basirhat Court frequent call of boycott on various pretexts is required to be stopped for promoting the ends of justice as well as to prevent the miscarriage of justice.

On **24/07/2023** at 4-00 PM all the Judicial Officers were supposed to meet at the members of the Criminal Court Bar Association but due to meeting with the Ld. CPC on the same time at Barasat the same was postponed. It was rescheduled at the same time on 25/07/2023.

As per said schedule on **25/07/2023** at around 3-55 PM the Presiding Officer of this Court went to the Chamber of the Ld. Additional District & Sessions Judge, Basirhat to go the Bar Association and there, it was informed that the meeting was cancelled. It was conveyed from the Bar that due to publication of the statement of the Presiding Officer in a newspaper meeting was cancelled.

During proceeding of any case the Presiding Officer never made as such statement as published in the newspaper.

The matter was duly informed to the Hon'ble Court.

On and from **26/07/2023** the litigants and accused persons are being obstructed in the ground floor and they are not being allowed/permitted to enter and appear in this Court situated in the first floor of the building.

The accused in judicial custody are also not being allowed to produce before the Court.

The civil volunteers deputed to this Court are also not being allowed to enter the Court.

It also came to knowledge that the litigants, accused persons and civil volunteers are also not being permitted / allowed to enter and appear/produce before the Court of the Ld. Additional District & Sessions Judge, Basirhat.

On 26/07/2023 this Court received a correspondence from the Basirhat Civil Court Bar Association wherein it is stated that "*on request of "BASIRHAT CRIMINAL COURT BAR ASSOCIATION, Ld. Advocates Members of our BASIRHAT CIVIL COURT BAR ASSOCIATION will not take any steps for any cases today, Wednesday i.e. 26/07/2023."*

On **27/07/2023** this Court received a correspondence from the Basirhat Civil Court Bar Association wherein it is stated

"I want to inform you that, in the emergent general meeting of BASIRHAT CIVIL COURT BAR ASSOCIATION, the Ld. Advocate Members unanimously resolved that condemning the words used in the judgement passed by LD. A.D.J. F.T.C. I at Basirhat, North 24 Parganas in the CNR No.- WBNP 1000 0262 2021, Criminal Appeal no.- 12 of 2021 dated 24/07/2023 vide order no.26, against the Ld. Advocates of Basirhat Court as well as denouncing the indirect disparaging and defamatory words used in that judgement towards our predecessor Ld. Advocates, who were not only the renowned Lawyers but also their contribution towards society, culture, politics is still remembered today.

Along with, in support of ongoing movement of BASIRHAT CRIMINAL COURT BAR ASSOCIATION, Ld. Advocate Members of our BASIRHAT CIVIL COURT BAR ASSOCIATION decided to pen down in all cases since 27/07/2023 till further resolution of our Bar Association."

On 27/07/2023 the matter was duly informed to the Ld. District Judge, North 24 Parganas.

In the mean time as per verbal direction of the Ld. District Judge, North 24 Parganas on **26/07/2023** this Court asked the Bench Clerk of Additional District & Sessions Judge, Fast Track Court – II to meet or contact the President and /or Secretary of the Basirhat Criminal Court Bar Association and invited him/them to have a discussion over the matter at my Chamber. The said Bench Clerk informed that he contacted the Secretary of the Bar over phone and they refused to come to the Chamber and demanded a written correspondence in this regard.

Subsequently, again this Court sent the Bench Clerk of this Court to meet personally with the President and / or Secretary of the Bar and he met with them and conveyed the invitation of this Court to come to the Chamber for having a discussion but they refused to come to the Chamber and raised the same demand of a written correspondence.

On **27/07/2023** again this Court sent the Bench Clerk of this Court to invite the President and / or Secretary of the Criminal Court Bar Association for having discussion at the Chamber or to inform the time when this Court or the Judicial Officers of this station can visit the Criminal Court Bar Association to meet the members of the Bar but they again turned down both the proposals without having written communication.

Thereafter, this Court again sent the Bench Clerk of this Court to meet the President and Secretary of the Basirhat Civil Court Bar Association personally and invited them to come to Chamber

for having a discussion over the stagnant situation and he meet both of them and conveyed the request of this Court and they replied that they will inform shortly.

But after waiting considerable period of time this Court requested the Ld. Civil Judge (Senior Division), Basirhat to get the response of the President and Secretary of the Civil Court Bar Association and after getting their response he informed that they are not willing to come to the Chamber without having a written communication.

The matter has duly been informed to the Ld. District Judge, North 24 Parganas as well as to the Ld. Additional District & Sessions Judge, Basirhat being senior most Officer of the station as well as other Officers to decide the future course of action to sort out the matter immediately.

On **28/07/2023** the Ld. Additional District & Sessions Judge, Basirhat through separate correspondences requested the respective Secretary of both the Criminal Court Bar Association and the Civil Court Bar Association to participate in a meeting may be held on 31/07/2023 at 4-30 PM to remove the stalemate in both this Court and the Court of the Ld. Additional District & Sessions Judge, Basirhat.

On **31/07/2023** the Secretary, Basirhat Criminal Court Bar Association through his correspondence being Ref. No.- 200/2003 dated 31/07/2023 informed that

“In pursuance of the letter of your Honour, the Association has called for an urgent meeting today i.e. on 31/07/2023 at 4.00 p.m. with all of our Ld. Members to discuss the same, as such the Association is not in a position to seat in any meeting with Ld. Judicial officers today and the Association shall inform your Honour the decision of the Association shortly after the meeting is over or tomorrow.”

In the words of the Hon’ble Apex Court - *Judicial function cannot and should not be permitted to be stonewalled by browbeating or bullying methodology, whether it is by litigants or by counsel. Judicial process must run its even course unbridled by any boycott call of the Bar, or tactics of filibuster adopted by any member thereof.*

It is required to *insulate judicial functionaries within their territory from being demoralised due to such onslaughts by giving full protection to them to discharge their duties without fear.*

On going boycott of this Court started from 10/04/2023 and subsequent incidents happened one after another started from 20/07/2023 brought the administration of justice to a standstill.

To 06.09.23 for hearing of petition filed by O.P. no.2 u/s.170 of M.V Act.

Dictated & corrected by me

ADJ FTC – I, Basirhat

ADJ FTC – I, Basirhat