

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (Cr.) No. 314 of 2014

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| Surender Singh Rautella @ Surender Singh Bangali @ Surender Bangali..... | Petitioner(s) |
| Versus | |
| State of Jharkhand & Ors..... | Respondent(s) |

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Coram: Hon'ble Mr. Justice Ananda Sen
Through:-Video Conferencing

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| For the Petitioner | : Mr. Lukesh Kumar, Advocate |
| For the State | : AC to AAG-III |

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24/06.01.2021 Reference be made to the order dated 25.11.2020.

2. The petitioner is an accused of Doranda P.S. Case No. 77 of 1987, corresponding to G.R. No. 576 of 1987, registered for the offence under Section 147, 148, 149, 307, 302 of the Indian Penal Code and Section 27 of the Arms Act. The petitioner has several criminal cases registered against him. He is wanted in several criminal cases. Not only that, he has also been convicted in several cases. This fact is gathered from the report, which has been submitted by the Principal Judicial Commissioner, Ranchi pursuant to the order dated 25.11.2020. Surprising the case records of Doranda P.S. Case No 77 of 1987 has gone missing from the court below. The said record, as per the counsel for the petitioner, is missing since 1999. As per the counsel for the petitioner, after the petitioner was remanded, his case was committed to the Court of Session and thereafter, the case record is not traceable. This petitioner is on bail, which was granted by the Session's Court, as per the counsel.

3. In the year 2014, the petitioner filed this criminal writ application invoking the jurisdiction of this Court under Article 226 of the Constitution of India, praying therein to direct the court below to dispose of the trial of Doranda P.S. Case No 77 of 1987, as in spite of he being remanded in the aforesaid case and cognizance taken, the court could not proceeded, as the record is not traceable. This Court, on the aforesaid petition, on 26.10.2015 called for a report from the Judicial Commissioner, Ranchi. As the report was not sent, this Court on 30.11.2015, sent a reminder to the Judicial Commissioner, Ranchi to send the report, but the report was not sent. Thus, on 03.05.2016, a reminder was again sent by this Court to the Judicial Commissioner, Ranchi. The matter was thereafter, listed on 24.06.2016. On that day, this Court observed that the report was not received in spite of the reminders, which were sent on 30.11.2015 and 03.05.2016. The Court further observed that

this is a very serious matter as in spite of the repeated reminders, the report, as called for, is not being sent. The Court again sent a reminder to the Judicial Commissioner, Ranchi to send the report.

4. It is only on 26.07.2016, a report was submitted by the Principal Judicial Commissioner, Ranchi. From the said report, it appeared that after commitment of the case on 21.08. 1999, the record of the aforesaid case went missing and till date (i.e. the date of the order passed by this Court on 03.08.2016), the record has not been traced out. It is further apparent from the report that a Committee was constituted to prepare a list of uncared records. This fact finds place in the order dated 03.08.2016. When the matter was listed on 26.08.2016, this Court directed to call for a fresh report in respect of the case record of Doranda P.S. Case No 77 of 1987, for which a Committee was also constituted. The Court further directed that the fresh report should also indicate as to whether any steps have been taken for reconstructing the records, if the missing records have not been traced out. On 09.09.2016, when the matter was again listed, it is surprising that the report, as called for, was again not submitted. Thus, this Court again directed the office to send a reminder to the Judicial Commissioner, Ranchi to comply with the aforesaid order.

5. On 16.09.2016, this Court observed that a letter was sent on 08.09.2016 by the Judicial Commissioner, Ranchi from which it appears that the steps are being taken for reconstruction of the missing record of Doranda P.S. Case No 77 of 1987. The Court thus adjourned the matter. On the next dated, i.e. 19.10.2016, the Court again sought for a report about the status of reconstruction of the case and the Court also gave time to the State counsel to inform as to whether relevant records, i.e. case diary, charge sheet etc. are available in the office of the Senior Superintendent of Police, Ranchi or not and if the same is traceable, the same should be furnished to the court below. The case was again adjourned. On 17.11.2016, when this case was again listed, time was sought on behalf of the State to give necessary information to the court in respect of the case diary and other documents. When the matter was listed again on 25.11.2016, no information could be given by the State counsel, thus, the Court adjourned the matter, directing the Senior Superintendent of Police, Ranchi to remain present before this Court on 01.12.2016. On that day, the Senior Superintendent of Police, Ranchi appeared before the Court and submitted that all efforts are being made to trace out the case diary and thus, the matter was again adjourned. On the next date, i.e. 20.01.2017, SC-IV submitted a carbon copy of the case diary. The Court

then called for a report from the Judicial Commissioner, Ranchi about the stage of reconstruction the record of Doranda P.S. Case No 77 of 1987. On 03.03.2017, this Court recorded that the fresh report, which was called for, was not received. On 17.03.2017, this Court, on the basis of the report received from the Judicial Commissioner, Ranchi, observed that the records are not yet traceable and the carbon copy of the case diary has also not been received by the court below. This Court, thus, directed the Senior Superintendent of Police, Ranchi to transmit the carbon copy of the case diary to the trial court so that the record can be reconstructed. The case was thereafter, listed on 05.05.2017 when, on the prayer, the same was adjourned.

6. The case was thereafter, again listed on 25.11.2020. On that day, considering all aforesaid facts and the seriousness of the issue, this Court directed the Principal Judicial Commissioner, Ranchi to send a report indicating the following:-

(i) What steps have been taken to reconstruct the record and the present status;

(ii) What steps have been taken in relation to the case record, which has been lost; whether any First Information Report has been registered and/or any proceeding has been initiated against the custodian of the record.

7. Pursuant to the said order, a report has been sent by the Principal Judicial Commissioner, Ranchi. I have gone through the said report. In reply to Clause (i) of the query, which was raised by this Court, the Principal Judicial Commissioner, Ranchi in his report has stated that the case records of Doranda P.S. Case No 77 of 1987, could not be reconstructed till date due to non-availability of the authentic documents of Doranda P.S. Case No 77 of 1987. The report also suggests that the Police Inspector of Doranda Police Station reported that the record is above 29 years old and the building of the police station is very old for which maintenance of the old records could not be taken place properly. Report also mentions that the record could not be traced out, but only 08 (eight) pages of supplementary case diary of the case relating to the accused Bal Govind Tiwary has been submitted. The report reveals that the case was committed to the Court of Sessions on 21.08.1999 by the then Judicial Magistrate, but on 25.08.1999 the same was returned to the court of Judicial Magistrate, hence, on 08.09.1999, the said record was sent to the court of Chief Judicial Magistrate through Peon Book. The report further suggests that thereafter the case records went missing. The report also suggests that when the case was committed to the Court of Sessions, no

sessions trial number was registered in the Sessions Register in relation to Doranda P.S. Case No 77 of 1987. Charge sheet in this case, was submitted on 22.11.1988, showing this petitioner as an absconder. Later on second supplementary charge sheet was submitted on 24.06.1988 naming this petitioner as an accused. The G.R. record suggests that the record was committed to the Court of Sessions on 21.08.1999, but in the Sessions Register no such case was ever entered. After verifying the Peon Book, it appears that the supplementary record was again sent to the court of Chief Judicial Magistrate for perusal. The Principal Judicial Commissioner was surprised as to why the said case did not find place in the Sessions Register and why it was sent back to the court of Chief Judicial Magistrate for perusal. The report also reveals that one Sanjiv Jha (since dead) had received the said record, which was transmitted to the court of Chief Judicial Magistrate. The S.D.J.M., Ranchi on 05.12.2020 had sent reminder to the Senior Superintendent of Police, Ranchi to forward the carbon copy of the case diary, but the same was not sent as yet. The Principal Judicial Commissioner, in his report has stated that they are trying to reconstruct the record but are still unable to do the same.

8. So far as other steps taken, the Principal Judicial Commissioner, informed that the Committee for searching the missing records is functioning in his Judgeship and till date the Committee has not reported in respect of missing record of Doranda P.S. Case No 77 of 1987.

9. Though, in the order dated 25.11.2020, the Principal Judicial Commissioner was directed to state specifically whether any First Information Report has been lodged or not, or any proceeding has been initiated against the custodian of the record or not, the report is silent on this aspect.

10. This is the seriousness shown by the concerned officials in relation to this grave issue. The judicial record of an accused who has number of cases registered against him and is also convicted in number of cases and is on bail in this particular case, goes missing and for the last 20 years nothing serious has been done either to get the record constructed or to take appropriate action against the persons/officials for whose laches the record got lost. This sort of attitude is absolutely deprecated and cannot be conceived of. In the report, submitted by the Principal Judicial Commissioner, Ranchi since nothing has been mentioned about lodging of the FIR or initiating of proceedings, this Court is bound to believe that no FIR has been lodged nor any proceeding has been initiated against the custodian of the records.

11. Missing of a judicial record is a very serious issue which demands utmost attention and action. Here the same has been handled in a very light manner casually by all concerned. A proper inquiry has also not been conducted in last 20 years. Further, when before this Court the SC-IV had produced a carbon copy of the case diary on 20.01.2017 and on that date the Court directed to transmit the same to the trial court, it is not understood as to why the said carbon copy of the case diary has not been handed over to the court below. This matter cannot be taken lightly or casually as this is very disturbing. The entire issue needs to be inquired into in a proper and in a professional manner, which till date has not been done either by the Judicial Officers or by the State Administration. The sorry state of affairs would be apparent from the report of the Principal Judicial Commissioner, Ranchi, wherein he has mentioned that a Committee for searching missing records is functioning in his Judgeship, but the Committee has not reported till date regarding missing of the case records of Doranda P.S. Case No 77 of 1987.

12. If that be so, this Court fails to understand as to what is that Committee was doing. Is that Committee functional solely on pen and paper? If a Committee is not functioning and performing, the Committee must be scrapped.

13. Considering the seriousness of the issue, I constitute a one man Fact Finding Committee headed by Sri G. K. Roy, Retd. Principal District & Sessions Judge, who will make an inquiry into the matter after taking statements of all concerned in respect of missing case records of Doranda P.S. Case No 77 of 1987. Sri Roy will furnish a report as to how the case record of Doranda P.S. Case No 77 of 1987 went missing and why till date even after lapse of 20 years the record has not yet been reconstructed. The Committee will also report on the aspect for whose fault and as to why it took such a long time and that too only on the direction of this Court after filing of this criminal writ application things started moving that too, in a snail's pace (even a snail pace is faster). All the persons, who are involved in the process and are at fault, will be highlighted in the report of the One Man Fact Finding Committee. The Committee will also inform as to why in spite of the order of this Court, the carbon copy of the case diary was not handed over to the court below and who are the person responsible. The Committee will also inform as to why FIR was not registered and why the departmental proceeding was not initiated against the persons for whose laches the case records of Doranda P.S. Case No 77 of 1987 went missing.

14. Since, in the report dated 08.12.2020, submitted by the Principal Judicial Commissioner, Ranchi nothing has been mentioned about lodging

of FIR for the missing judicial record, I direct the Principal Judicial Commissioner, Ranchi to immediately get a FIR lodged and report to this Court immediately.

15. The Principal Judicial Commissioner, Ranchi and the Senior Superintendent of Police, Ranchi are directed to provide all sorts of assistance and help to the One Man Fact Finding Committee, so that the report can be submitted before this Court preferably within 45 days in a sealed cover.

16. The remuneration of One Man Fact Finding Committee is fixed at Rs. 35,000/- (Rupees thirty five thousand only), which will be paid by the State.

17. Before passing any further order, this case is adjourned for two months awaiting report of the One Man Fact Finding Committee.

18. Let a copy of this order be immediately communicated to the Principal Judicial Commissioner, Ranchi and the Senior Superintendent of Police, Ranchi immediately through FAX and a copy of the same be handed over to the Registrar General of this Court to ensure proper compliance of the direction and handing over a copy of this order to Sri G.K.Ray, Retd. Principal District & Sessions Judge.

(Ananda Sen, J)