
(2016) 06 JH CK 0096

In the Jharkhand High Court

Case No : Writ Petition (PIL) No.3730 of 2015

Court On It Own Motion

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 17-06-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 3 AIRJharR 814 : (2016) 3 JLJR 610

Hon'ble Judges : Mr. D.N. Patel and Mr. Ratnaker Bhengra, JJ.

Bench : Division Bench

Advocate : M/s Indrajit Sinha, Advocate, for the Petitioner; J.C. to A.G, for the Respondents

Final Decision : Disposed Off

Judgement

D.N.Patel, J.—The fact that Dhullu Mahto, who is an accused in not less than two dozen cases, was sent to hospital without any sickness, reflects the mental sickness of the doctors of the State of Jharkhand and this sickness of doctors of the State of Jharkhand needs an urgent attention. It further appears on perusal of the order dated 13th November, 2013 passed by this court and the affidavit filed by the Principal Secretary, Department of Home, Govt. of Jharkhand as called for vide the aforesaid order and another affidavit filed by the Under Secretary, Department of Home, Govt. of Jharkhand (in such a grave matter, affidavit should have been filed by the Principal Secretary of the concerned department and not by the Under Secretary) in compliance of the order dated 30th March, 2016 of this court, that it certainly was not for any serious sickness the accused, namely Dhullu Mahto, was referred to All India Institute of Medical Science, New Delhi because the said hospital at New Delhi had not even admitted him and later on he had even been seen drinking and partying.

2. This bizarre matter speaks volume about the standard of doctors in the State of Jharkhand, who are required to remind themselves that they are the

employees of the sovereign State and not of the accused. It appears that the State of Jharkhand a separate battalion of doctors for examining VIP patients and promptly this practise should be stopped. It become a fashion in the State of Jharkhand that whenever any VIP political person is arrested, immediately he is sent to hospital on account of some illness.

3. We, therefore, direct the Chief Secretary of the State of Jharkhand to ensure that only doctors have impeccable character and integrity will examine the so-called VIP accused. The State can also take assistance of the doctors serving in the Armed Forces, whose integrity is not in question. It is high time for the State of Jharkhand to appoint such doctors, who have impeccable characters and whose honesty and integrity cannot be questioned.

4. Following are the cases in which accused namely Dhullu Mahto is an accused:

Sr.No.

G.R./S.T. No.

P.S. Case No./Date/Sections

Charge sheet/Final Form/Pending

Present Stage

01.

G.R. No. 3093 of 2000

Baghmara (Barora) P.S. Case No. 199/2000, Dated 19.10.2000, Sections 341/323/379/384/504/324 I.P.C.

Charge-sheet

02.

G.R.No. 1095 of 2001

Baghmara (Barora) P.S. Case No. 230/01 dated 16.04.2001, Sections 341/323/504/324 I.P.C.

Charge-sheet

03.

G.R. No. 3127 of 2001

Baghmara (Barora) P.S. Case No. 230/01 dated 31.10.01, Sections 147, 148/149/323/324/307/385/427 I.P.C.

Charge-sheet

04.

G.R. No. 1155 of 2003

Baghmara (Barora) P.S. Case No. 91/03 dated 29.04.2003, Section 385 I.P.C and 3(2d) Prevention of Damage Public Properties Act-1984

Charge-sheet

05.

G.R. No. 1157 of 2003

Baghmara (Barora) P.s. Case No.97/03 Dated 01.5.2003 Section 385 I.P.C and 3(2d) Prevention of Damage Public Properties Act-1984

Charge-sheet

Acquittal

06.

G.R. No. 3032 of 2003

Baghmara (Barora) P.S. Case No. 274 of 2003 dated 19.10.2003 Sections 147/148/149/448/379/427/341/342 I.P.C.

Charge-sheet

07.

G.R. No. 2429 of 2003

Baghmara (Barora) P.S. No. 316 of 2003 dated 27.11.2003 Sections 447/341/342/384/385/34 I.P.C.

Charge-sheet

08.

G.R. No. 1254 of 2004

Baghmara (Barora) P.S. Case No. 27/04 dated 16.01.2004 Sections 143/341 I.P.c. and 3(2d) Prevention of Damage Public Properties Act-1984

Charge-sheet

Acquittal

09.

G.R. No. 3091 of 2005

Baghmara (Barora) P.S. Case No. 165/05 dated 09.07.05 Sections 147/323/379/341/504/427 I.P.C.

Charge-sheet

10.

G.R. No. 3428 of 2004

Baghmara (Barora) P.S. Case No. 343 of 2004 dated 25.01.2004 Sections 341/323/379 I.P.C.

Charge-sheet

11.

G.R. No. 1782 of 2006

Baghmara (Barora) P.S. Case No. 133/06 dated 06.06.06 Sections 143/144/341/504/290 I.P.C.

Charge-sheet

For Evidence

12.

G.R. No. 198/2006

Baghmara (Barora) P.S. Case No. 149 of 2006 dated 25.06.06 Sections 147/148/149/307/323/379/504 I.P.C.

Charge-sheet

13.

G.R. 1982/06

Baghmara (Barora) P.S. Case No.150/06 dated 25.06.06, Sections 147/148/149/307/323/379/504 I.P.C.

Charge-sheet

14.

G.R. No. 4041/06

Baghmara (Barora) P.S. Case No. 307/06 dated 26.12.06 Sections 147/148/149/307/323/379/504 I.P.C.

Charge-sheet

Conviction

15.

G.R. 851/07

Baghmara (Barora) P.S. Case No. 61/07 dated 16.03.07 Sections 147/148/149/307/323/379/225/504 I.P.C.

Charge-sheet

Acquittal

16.

G.R.1471/07

Baghmara (Barora) P.S. Case No. 105/07 dated 04.05.07 Sections 147/148/149/307/323/379/225/504 I.P.C. & 27 Arms Act.

Charge-sheet

17.

G.R. No. 1292/08

Baghmara (Barora) P.S. Case No. 114/08 Dated 05.06.08 Sections 147/148/149/307/323/379/225/356/504 I.P.C.

Charge-sheet

Acquittal

18.

G.R. 3704/11

Baghmara(Barora) P.S. Case No. 226/11 dated 04.11.11 Sections 341/323/504/307/120(B) I.P.C.

Charge-sheet

19.

G.R. 1550/12

Jogta(Loyabad) P.S. Case No. 46/12 Dated 20.04.12 Sections 147/148/149/323/325/326/107/302 I.P.C. & 3/4

Charge-sheet

20.

G.R.1001/13

Katras P.S. Case No. 61/13 Dated 09.03.13 Sections 341/342/323/34 I.P.C.

Charge-sheet

21.

G.R. No. 2023/13

Katras P.S. Case No. 120/13 Dated 12.05.13 Section 147/148/149/341/342/353/332/290/427/383/224/225/504 I.P.C.

Charge-sheet

For Evidence

22.

G.R. No. 322/13

Baghmara (Madhuban) P.S. Case No. 25/13 Dated 31.01.13 Sections 147/148/149/447/448/324/326/120(B) I.P.C. and 27 Arms Act.

Charge-sheet

Pending for Production

23.

S.T.No. 422/14

Baghmara(Dharmbandh) P.S. Case No. 220/06 dated 04.09.06 Sections 147/148/341/323/332/333/338/353/307/407/290 I.P.C.

Charge-sheet

Framing of Charge

24.

G.R. 3182/10

Baghmara P.S. Case No.207/10 Dated 15.09.10 Sections 147/148/341/353/342 I.P.C.

Charge-sheet

For Evidence

25.

G.R. No. 1782/06

Baghmara(Baror a) P.S. Case No. 133/06 Dated 06.06.06 Sections 143/144/341/353/504/290 I.P.C.

Charge-sheet

For Evidence

26.

G.R. No. 3183/10

Baghmara P.S. Case No.207/10 Dated 15.09.10 Sections 147/148/149/323/341/342/363/283/186/504/506 I.P.C. & Section 3 of the Prevention of Damage Public Properties Act, 1984

Charge-sheet

For Evidence

27.

G.R. No. 2023/13

Katras P.S. Case No. 120/13 Dated 12.05.13 Sections 147/148/149/341/342/363/332/290/427/283/224/225/504 I.P.C.

Charge-sheet

Evidence closed

28.

S.T. 422/14

Baghmara(Dharmabandh) P.S. Case No. 220/06 Dated 04.09.06 Sections 147/148/149/341/323/332/383/337/338/353/307/427/290 I.P.C.

Charge-sheet

For Evidence

Counsel appearing for the State submitted that in four out of aforesaid 28 cases, accused been acquitted and in the rest he is on bail.

In this context it would be pertinent to mention here that it been held by the Hon"ble Supreme Court in the State of Gujarat v. Kishanbhai on 7th January, 2014, reported in 2014(1) JLJR 428 etc. in Para Numbers 15, 20 and 21 as under:

"15. The investigating officials and the prosecutors involved in presenting this case, have miserably failed in discharging their duties. They have been instrumental in denying to serve the cause of justice. The misery of the family of the victim Gomi remained unredressed. The perpetrators of a horrendous crime, involving extremely ruthless and savage treatment to the victim, have remained unpunished. A heartless and merciless criminal, who committed an extremely heinous crime, gone scot free. He must be walking around in Ahmedabad, or some other city/town in India, with his head held high. A criminal on the move. Fearless and fearsome. Fearless now, because he could not be administered the punishment, he ought have suffered. And fearsome, on account of his have remained unaffected by the brutal crime committed by him. His actions now, know of no barriers. He could be expected to act in an unfathomable savage manner, uncomprehendable to a sane mind

20. Every acquittal should be understood as a failure of the justice delivery system, in serving the cause of justice. Likewise, every acquittal should ordinarily lead to the inference, that an innocent person was wrongfully prosecuted. It is therefore, essential that every State should put in place a procedural mechanism, which would ensure that the cause of justice is served, which would simultaneously ensure the safeguard of interest of those who are innocent. In furtherance of the above purpose, it is considered essential to direct the Home Department of every State, to examine all orders of acquittal and to record reasons for the failure of each prosecution case. A standing committee of senior officers of the police and prosecution departments, should be vested with

aforesaid responsibility. The consideration at the hands of the above committee, should be utilised for crystalizing mistakes committed during investigation, and/or prosecution, or both. The Home Department of every State Government will incorporate in its existing training programmes for junior investigation/prosecution officials course content drawn from the above consideration. The same should also constitute course content of refresher training programmes, for senior investigating/prosecuting officials. The above responsibility for preparing training programmes for officials, should be vested in the same committee of senior officers referred to above. Judgments like the one in hand (depicting more than 10 glaring lapses in the investigation/prosecution of the case), and similar 7 other judgments, may also be added to the training programmes. The course content will be reviewed by the above committee annually, on the basis of fresh inputs, including emerging scientific tools of investigation, judgments of Courts, and on the basis of experiences gained by the standing committee while examining failures, in unsuccessful prosecution of the cases. We further direct, that the above training programme be put in place within 6 months. This would ensure that those persons who handle sensitive matters concerning investigation/prosecution are fully trained to handle the same. Thereupon, if any lapses are committed by them, they would not be able to feign innocence, when they are made liable to suffer departmental action, for their lapses.

21. On the culmination of a criminal case in acquittal, the concerned investigating/prosecuting official(s) responsible for such acquittal must necessarily be identified. A finding needs to be recorded in each case, whether the lapse was innocent or blameworthy. Each erring officer must suffer the consequences of his lapse, by appropriate departmental action, whenever called for. Taking into consideration the seriousness of the matter, the concerned official may be withdrawn from investigative responsibilities permanently or temporarily, depending purely on his culpability. We also feel compelled to require the adoption of some indispensable measures, which may reduce the malady suffered by parties on both sides of criminal litigation. Accordingly we direct, the Home Department of every State Government, to formulate a procedure for taking action against all erring investigating/prosecuting officials/officers. All such erring officials/officers identified, as responsible for failure of a prosecution case, on account of sheer negligence or because of culpable lapses, must suffer departmental action. The above mechanism formulated would infuse seriousness in the performance of investigating and prosecuting duties, and would ensure that investigation and prosecution are purposeful and decisive. The instant direction shall also be given effect to within 6 months."

(Empis supplied)

It is, therefore, directed that in the light of the aforesaid judgment of the Hon"ble Apex Court, judgment of the aforesaid acquittals shall also be brought on record by the State because this court wants to verify whether this accused been acquitted for want of evidence or because the prosecution witnesses have

turned hostile or for any benefit of doubt that been given to this accused. To say the least, it is surprising that in not a single case mentioned above the accused is in jail despite the charge-sheet being filed and this very fact itself gives us a clear idea about the situation in the State of Jharkhand which needs an urgent attention.

5. It appears that the doctors in the State of Jharkhand wastes no time in sending a VIP accused to All India Institute of Medical Science, New Delhi. This practise should also be stopped immediately. It is high time that the Chief Secretary of the State should change periodically the doctors of the jails and hospitals where frequently VIP accused are getting themselves admitted so that correct, impartial and honest report about the health of the VIP accused may be brought on record. If the State verifies the data of last five years with respect to the health checkup of the VIP accused, perhaps, it can bring on record enough about the doctors and others, who have given health report of the VIP accused. This case may be considered an eye opener for the State of Jharkhand. The accused, namely Dhullu Mahto was referred to AIIMS, Delhi, where he was never admitted and was merely treated at the Out Patient Department and was seen enjoying and partying and it was also observed by the learned Single Judge in Order dated 13th November, 2013, that there is a collusion between the State authorities, doctors of the State and the accused.

6. It is, therefore, expected from the Chief Secretary of the State of Jharkhand that the Govt. of Jharkhand will take action against its own doctors and see to it that whenever charge-sheet is filed, proper evidence is led before the court and whenever there is acquittal in a case for want of evidence or on account of the fact that the prosecution witnesses have turned hostile or if any benefit of doubt been given to the accused, enquiry will be initiated and if found something adverse, action will be taken against the Investigating Officer as held by Hon"ble the Supreme Court. If action is taken immediately against an Investigating Officer in a case of doubtful acquittal for the above reasons, rate of conviction will be enhanced in this State. Too much friendship with the accused by a Government Official is highly deprecated and in the eye of law this type of friendship is known as collusion or conspiracy.

7. Affidavit shall be filed by the Chief Secretary as to what actions been initiated and against whom for giving false and wrong certificate of health to accused Dhullu Mahto who is an accused in not less than two dozen cases as stated herein above and also been acquitted in four cases.

8. The Chief Secretary shall also point out the policy decision of the State about check-up of health of the VIP accused when they are brought in jail after their arrest immediately because in the State of Jharkhand no sooner arrest is made, immediately they are taken to hospital aided by health certificates issued by some doctors of questionable repute, who are liberally issuing such certificates and hence, the Chief Secretary will point out the policy decision of the State as to how the health of the VIP accused will be checked impartially and honestly

9. The affidavit shall be filed by the Chief Secretary by the next date of hearing.
10. This matter is adjourned to be listed on 13th July, 2016.