

CRR 2 of 2020

In the matter of: Sambhu Shaw & Ors.

....petitioners.

Mr. Anand Keshari
Mr. Sekhar Mukherjee

...for the Petitioners.

Mr. Saswata Gopal Mukherjee
Md. Anwar Hossain
Ms. Sreyashee Biswas

... for the State.

Perused the report submitted by learned Chief Judicial Magistrate, Alipore, South 24-Parganas dated March 17, 2020. It appears from the report that the case diary in connection with South Port Station Case No.350/89 dated 22.11.1989 under Sections 324/34 of the Indian Penal Code corresponding to C.G.R. Case No.4024/1989 is missing since long.

The petitioners herein have prayed for a direction upon the court concerned for expeditious disposal and/or quashing the entire proceeding.

Mr. Anand Keshari, learned counsel appearing for the petitioners, has referred a decision in the case of *Babul @ Babul Kar vs. State of West Bengal* passed in CRR 1832 of 2004 dated May 3, 2005 and argued that if the prosecution is thoroughly negligent in the proceeding with the matter, then the proceeding can be quashed.

State is represented.

In view of earlier order passed by this court ld. Chief Judicial Magistrate South 24 Parganas, Alipore, submitted a report and relevant portion of the report is as follows:

"That, on scrutiny of the case record, it seems that the F.I.R. is lying in a torn condition, but the written complaint and the other necessary document/s, like the Charge Sheet along with the list of witnesses, the seizure list are all lying with the case record. Thus if the Case Diary is traced out, a copy of the F.I.R. may be collected from the case diary and the record can be reconstructed without any further hindrance. For this purpose all necessary steps to trace out the Case Diary is being conducted in the G.R.O. Section since the date 28.05.92 and directions in this regard have been given to the staffs of the G.R.O. Section already and is under process. The office of the Ld. J.M. 5th Court is also being further searched for the purpose. All concerned have been intimated in this regard as well.

Therefore, Your Lordship, I humbly pray for further time so that the Case Diary may be traced out ultimately, and I shall take the first opportunity to lay the same for Your Lordship's kind direction.

In view of aforesaid submission made by the Ld. Chief Judicial Magistrate South 24 Parganas, Alipore, and also having regard to facts and circumstances of the case, ld. Judicial Magistrate 5th Court, Alipore is directed to pass appropriate order and also to do the needful so that the lost record can be reconstructed at the earliest, if it remains untraceable for a period of eight weeks more from this order.

In the event the reconstruction is done in respect of concerned record due to non-availability of original record the Magistrate will take every endeavor to dispose of the pending proceeding being south port case no. 350/89 dated 22.11.1989 under section 324/34 of the Indian Penal Code, preferably within a period of one year hence, since the case is pending for a petty long time and the revisionists are suffering a lot for no fault of their own.

CRR 2/2020 is accordingly disposed of with the abovementioned directions.

Let a copy of this order be send to Ld. J.M., 5th Court, Alipore at once.

(Ajoy Kumar Mukherjee, J.)