

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

WRIT PETITION (CRL.) NO.296 OF 2005

IN RE.:

ILLEGAL DETENTION OF MACHAL LALUNG

Date: 09/01/2006 This Petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C.K. THAKKER

HON'BLE MR. JUSTICE R.V. RAVEENDRAN

For Petitioner(s)

By Post

For Respondent(s)

Mr. K.K. Venugopal, Sr. Adv.

Mr. J.R. Luwang, Adv.

Mr. V.K. Sidharthan, Adv.

for M/s. Corporate Law Group, Adv.

Mr. Vijay Hansaria, Sr. Adv.

Mr. P.I. Jose, Adv.

UPON hearing counsel the Court made the following

O R D E R

We have perused the affidavit of the Registrar General of the Gauhati High Court and the Chief Secretary, Government of Assam. It seems from these affidavits that, in respect of Machal Lalung, who remained in custody for about fifty four years, there is no trace of record either in the office of the Chief Judicial Magistrate or in the office of the Superintendent, Central Jail, Gauhati. According to the affidavit of the Registrar General, the matter was

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- 2 -

not communicated either to the District Judge, Kamrup, or to the Chief Judicial Magistrate, Kamrup or to the District Judge, Tezpur, or Chief Judicial Magistrate, Tezpur. The Gauhati High Court was also not informed at any point of time about the long detention of this person. The affidavit of the Chief Secretary states that the Government has no objection to any proper inquiry which may be directed by this Court since the matter involves the Executive and the Judiciary and also that it is an extreme case which got further compounded by the factors, like utter confusion that may have been created on account of separation of the Executive and Judiciary in 1974, improper maintenance of records by the officials of the L.G.B. Regional Institute of Mental Health, Tezpur, the Central Jail, Gauhati, the judicial and executive officials of Kamrup District, Gauhati and the old nature of the matter.

We are of the view that with the assistance of all concerned, it is necessary to lay down appropriate guidelines so as to avoid any future recurrence of such type of unfortunate incident. It is also necessary to apply the principles of accountability for future as well as for the present case. To assist this Court on behalf of Mr. Machal Lalung, we request Mr. P.K. Goswami, learned senior advocate, to act as an amicus curiae. All the papers shall be sent to Mr. P.K. Goswami.

Mr. K.K. Venugopal, learned senior counsel appearing for the

State Government, states that the Government has decided to pay to Mr. Machal Lalung a sum of Rupees three lakhs, besides free medical facilities, including medicines and treatment during his lifetime. From the affidavits, it appears that Mr. Machal Lalung is living with his nephew and grand-nephew. At this stage, as an interim measure, we feel it would be appropriate that, apart from this amount, he should also be paid some monthly payment. The sum

...3/-

- 3 -

of Rupees three lakhs be paid to him within one week by assisting him in opening an account in Post Office or a Bank. Out of Rupees three lakhs deposited in the Post Office or Bank, for the present, more than Rupees one lakh will not be withdrawn by him. Rupees two lakhs shall always remain in the bank. It would, however, be permissible to him to withdraw the interest. Further, he should be paid a sum of Rupees one thousand per month until further orders. Final directions would be issued after hearing the learned counsel for the State, High Court and the learned amicus curiae. The Registrar General or such other officer, as the Chief Justice may nominate, and an officer of the rank of Secretary to be nominated by the Government of Assam, should jointly hold a preliminary inquiry and file report in this Court within two months on the aspect of the person(s) responsible for the long detention of Mr. Machal Lalung. They may also give suggestions on the aspect of guidelines that may be issued, as noticed above.

From the affidavits, it appears that Mr. Machal Lalung has been released on a token personal bond of Rupee one in terms of order dated 1st July, 2005. Copy of the order passed by the Chief Judicial Magistrate, Kamrup, Gauhati, has been placed on record (Annexure R-1/24). The case against him from the record gathered is said to be under Section 326 of the Indian Penal Code, 1860, when he was admitted as an under-trial prisoner on 14th April, 1951. Assuming it to be so, there is no question of again securing his custody after expiry of fifty five years, assuming that he was to undergo the maximum sentence awarded for the offence under Section 326 of the Indian Penal Code, 1860. In the light of these facts, we direct

discharge of the Bond. Thus, there will be no obligation to surrender
to

custody in terms of the Bond.

List the petition after two months.

[T.I. Rajput]

A.R.-cum-P.S.

[V.P. Tyagi]

Court Master