

T. C. THANGARAJ

v.

V. ENGAMMAL & ORS.

(Criminal Appeal No.1504 of 2011)

JULY 29, 2011.

[R.V. RAVEENDRAN AND A.K. PATNAIK, JJ.]

CODE OF CRIMINAL PROCEDURE, 1973:

Section 482 r/w ss. 154(3) and 156 (3) – Petition u/s 482 by complainant seeking direction to entrust the investigation to CBI stating that one of the accused was a Police Inspector in the local police – Allowed by High Court – Propriety of Held: It was not one of the exceptional situations calling for exercise of extra-ordinary power of the High Court to direct investigation by CBI – Order of High Court quashed and District Superintendent of Police directed to entrust the investigation to an officer senior in rank to accused-Inspector of Police .

The respondent in both the appeals, filed a complaint against an Inspector of Police and his wife (appellants no. 2 and 1 in CrI. Appeal no. 1505 of 2011) and their associate, namely, 'CT' (appellant in CrI. Appeal 1504 of 2011) alleging that appellant no. 2 (accused-1) asked the complainant and her husband for a loan of Rs. 3 lac and they handed over the said amount to appellant no. 1, and when the complainants' husband approached appellant no. 2 for refund of the said amount, the latter referred him to 'CT,' who issued two cheques of Rs. 50,000/- each, which were dishonoured. The complaint was registered as Crime No. 14 of 2006 for offences punishable u/s 409, 420, 471 read with s. 34 IPC. In the petition u/s 482 Cr.P.C. filed by the complainant reiterating her prayer to entrust the case to CBI for proper investigation, the High Court noticed that though some witnesses had been examined,

A but the investigation was stopped suddenly on the
ground that the complainant had received back the sum
of Rs. 3 lac. The High Court held that the investigating
agency ought to have conducted proper investigation
and filed a final report in accordance with law, but as
B accused no. 1 was an Inspector of Police, the
investigating agency did not do its duty properly. It,
therefore, ordered that Crime No. 14 of 2006 be entrusted
to the CBI for investigation. Aggrieved, the accused filed
the appeals.

C Allowing the appeals, the Court

HELD: 1.1 In *State of West Bengal and Ors.** the
Constitution Bench of this Court has held that the power
of the High Court under Article 226 of the Constitution to
D direct investigation by the CBI is to be exercised only
sparingly, cautiously and in exceptional situations and
such an order is not to be passed as a matter of routine
or merely because a party has levelled some allegations
against the local police. In the impugned order, the High
E Court has not exercised its constitutional powers under
Article 226 to direct the CBI to investigate into the
complaint with a view to protect the complainant's
personal liberty under Article 21 or to enforce her
fundamental right guaranteed by Part-III of the
F Constitution. The High Court has exercised its power u/
s 482 Cr.P.C. on a grievance made by the complainant
that her complaint that she was cheated in a loan
transaction of Rs.3 lakh by the three accused persons,
was not being investigated properly because one of the
G accused persons is an Inspector of Police. This was not
one of those exceptional situations calling for exercise
of extra-ordinary power of the High Court to direct
investigation into the complaint by the CBI. If the High
Court found that the investigation was not being
completed as an Inspector of Police was one of the
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accused persons, it should have directed the Superintendent of Police to entrust the investigation to an officer senior in rank to the accused-Inspector of Police u/s 154(3) Cr.P.C. and not to the CBI. It should also be noted that s.156(3) Cr.P.C. provides for a check by the Magistrate on the police performing their duties and where the Magistrate finds that the police have not done their duty or not investigated satisfactorily, he can direct the Police to carry out the investigation properly, and can monitor the same. [para 10] [654-F-H; 655-A-C]

**State of West Bengal & Ors. vs. Committee for Protection of Democratic Rights, West Bengal & Ors. 2010 (2) SCR 979 = (2010) 3 SCC 571 – followed.*

Sakiri Vasu vs. State of U.P. & Ors. - 2007 (12) SCR 1100 = (2008) 2 SCC 409 – relied on

Ramesh Kumari vs. State (N.C.T. of Delhi) & Ors. 2006 (2) SCR 403 = (2006) 2 SCC 677, referred to.

1.2 In the result, the impugned order of the High Court is quashed and the Superintendent of Police of the District is directed to entrust the investigation of Crime No. 14 of 2006 to a police officer senior in rank to accused no. 1. [para 11] [655-D]

Case Law Reference:

2010 (2) SCR 979	followed	para 7
2006 (2) SCR 403	referred to	para 8
2007 (12) SCR 1100	relied on	para 10

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1504 of 2011.

WITH

CrI. A. No. 1505 of 2011.

A R. Anand Padmanabhan, Prithvi Raj B.N. Naveen, Pramod Dayal for the Appellant.

B P.P. Malhotra, ASG, Guru Krishna Kumar, AAG, A.T.M. Ranga Ramanujam, Rajiv Nanda, S. Siddiqui, A.K. Sharma, Subramaniam Prasad, Anesh Paul, Prasannav, B. Krishna Prasad, S. Ashok Kumar, Gouri Karuna Das Mohanti, Sanjeev Kumar Sharma, Prakhar Sharma, Rani Jethmalani, S. Thananjayan for the Respondents.

C The Judgment of the Court was delivered by

A. K. PATNAIK, J. 1. Delay condoned in S.L.P. (Crl.) No.1589 of 2008.

2. Leave granted.

D 3. These are two appeals against the order dated 26.10.2007 of the Madras High Court, Madurai Bench, in Criminal Original Petition No.10987 of 2007 directing that investigation into the case registered as Crime No.14 of 2006 with the District Crime Branch (DCB), Virudunagar, be entrusted to the Central Bureau of Investigation, Chennai (for short 'the CBI').

F 4. The facts briefly are that on 04.08.2006 a complaint was submitted by V. Engammal, who has been impleaded as a respondent in both the appeals (hereinafter referred to as 'the complainant'), to the Superintendent of Police, Virudunagar District, Tamil Nadu. The complainant made following allegations in the complaint: P. Kalaikathiravan, appellant no.2 in criminal appeal arising out of SLP (Crl.) No. 1589 of 2008, who was the then S.I. of Town Police Station, told her and her husband that he was going to do the business of real estate and that they should become partners in the business but they told him that the business will not work and thereafter he asked them to give a loan of Rs.3 lakh and they handed over Rs.3 lakh to his wife P. Suganthi, appellant no.1 in criminal appeal

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arising out of SLP (Crl.) No. 1589 of 2008. P. Kalaikathiravan then introduced T.C. Thangaraj, the appellant in criminal appeal arising out of SLP (Crl.) No. 1585 of 2008, and one Nagendran who were doing real estate business. When P. Kalaikathiravan was transferred to Sethur Krishnapuram, the complainant and her husband demanded repayment of Rs.3 lakh, but P. Kalaikathiravan asked them to collect the money from T.C. Thangaraj. T.C. Thangaraj accepted the liability and gave two cheques dated 30.01.2004 and 04.02.2004 each of Rs.50,000/-, but the cheques were returned with remarks from the bank that there were no sufficient funds in the accounts. After P. Kalaikathiravan came back to Virudunagar on promotion as Inspector, her husband went to him many times and demanded money but he refused to pay the same and sent him away. In the complaint, the complainant requested the Superintendent of Police to initiate action against the Inspector, P. Kalaikathiravan, his wife P. Suganthi and T.C. Thangaraj, who had cheated the complainant and her husband. The Superintendent of Police sent the complaint to the Office In-charge of DCB, Police Station Virudunagar, on 04.08.2006 and the complaint was registered as Crime No.14 of 2006 under Sections 409, 420, 471 read with Section 34 of the Indian Penal Code, 1860 (for short 'the IPC').

5. When there was no progress in the investigation on the complaint, the complainant filed Crl. O.P. No.8782 of 2006 under Section 482 of the Criminal Procedure Code, 1973 (for short 'the Cr.P.C.') before the Madras High Court, Madurai Bench, with a prayer to entrust the case to the CBI for proper investigation. The High Court in its order dated 13.04.2007 noticed that the case is against a police officer and the grievance of the complainant was that the police department was not taking interest in pursuing the matter. The High Court, however, found that the matter was before the Judicial Magistrate and disposed of the petition giving liberty to the complainant to appear before the Judicial Magistrate concerned and file, if necessary, a protest petition if the case

A has been treated as a mistake of fact. The High Court further directed that the Judicial Magistrate shall consider the protest petition of the respondent keeping in mind the seriousness of the allegations made in the complaint as well as in the affidavit filed before the High Court.

B 6. Thereafter, the complainant filed Crl. O.P. No.10987 of 2007 under Section 482 of Cr.P.C. before the Madras High Court, Madurai Bench, reiterating her prayer to entrust Crime No.14 of 2006 to the CBI for proper investigation. The High Court in the impugned order dated 16.10.2007 took note of the
C fact that the complainant had received back the sum of Rs.3 lakh in question and given a receipt dated 05.08.2006 but she had a grievance that her complaint had not been properly investigated and the investigating agency should file a final report in accordance with law. However, the High Court after
D perusing the entire case diary found that some witnesses have been examined but the investigation had been stopped suddenly on the ground that the complainant had received back the sum of Rs.3 lakh on 05.08.2006. The High Court held in the impugned order that even though the amount in question
E had been received back by the complainant, the investigating agency ought to have conducted proper investigation and filed a final report in accordance with law, but the investigating agency had failed to do it. The High Court further held that as the accused No.1 was an Inspector of Police, the investigating
F agency has not done its duty properly and under the circumstances, relief claimed by the complainant should be granted and accordingly ordered that Crime No.14 of 2006 be entrusted to the CBI for investigation.

G 7. Learned counsel for the appellants submitted that the reasons given by the High Court in the impugned order that the accused No.1 was an Inspector of Police and therefore the investigating agency has not done its duty properly, have not been held to be good reasons for entrusting the investigation to the CBI by the Constitution Bench of this Court in *State of*
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West Bengal & Ors. v. Committee for Protection of Democratic Rights, West Bengal & Ors. [(2010) 3 SCC 571]. A

8. Learned counsel for the complainant, on the other hand, cited a decision of two-Judge Bench of this Court in *Ramesh Kumari v. State (N.C.T. of Delhi) & Ors.* reported in (2006) 2 SCC 677, in which this Court directed the CBI to register a case and investigate into the complaint of the appellant because the complaint was against the police officer and the Court was of the view that the interest of justice would be better served if the case is registered and investigated by an independent agency like the CBI. B C

9. The decision of the two-Judge Bench of this Court in *Ramesh Kumari v. State (N.C.T. of Delhi) & Ors.* (supra) will have to be now read in the light of the principles laid down by the Constitution Bench of this Court in *State of West Bengal & Ors. v. Committee for Protection of Democratic Rights, West Bengal & Ors.* (supra). The Constitution Bench has considered at length the power of the High Court to direct investigation by the CBI into a cognizable offence alleged to have been committed within the territorial jurisdiction of a State and while taking the view that the High Court has wide powers under Article 226 of the Constitution cautioned that the Courts must bear in mind certain self-imposed limitations. Para 70 of the opinion of the Constitution Bench in *State of West Bengal & Ors. v. Committee for Protection of Democratic Rights, West Bengal & Ors.* (supra) is extracted hereinbelow : D E F

"Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible G H

- A guidelines can be laid down to decide whether or not such power should be exercised *but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This*
- B extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be
- C necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations."
- D

[Emphasis supplied]

10. It will be clear from the opinion of the Constitution Bench quoted above that the power of the High Court under
- E Article 226 of the Constitution to direct investigation by the CBI is to be exercised only sparingly, cautiously and in exceptional situations and an order directing to CBI is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. In the impugned order, the
- F High Court has not exercised its constitutional powers under Article 226 of the Constitution and directed the CBI to investigate into the complaint with a view to protect her personal liberty under Article 21 of the Constitution or to enforce her fundamental right guaranteed by Part-III of the Constitution. The
- G High Court has exercised its power under Section 482 Cr.P.C. on a grievance made by the complainant that her complaint that she was cheated in a loan transaction of Rs.3 lakh by the three accused persons, was not being investigated properly because one of the accused persons is an Inspector of Police. In our considered view, this was not one of those exceptional
- H situations calling for exercise of extra-ordinary power of the

High Court to direct investigation into the complaint by the CBI. A
If the High Court found that the investigation was not being
completed because P. Kalaikathiravan, an Inspector of Police,
was one of the accused persons, the High Court should have
directed the Superintendent of Police to entrust the
investigation to an officer senior in rank to the Inspector of B
Police under Section 154(3) Cr.P.C. and not to the CBI. It
should also be noted that Section 156(3) of the Code of
Criminal Procedure provides for a check by the Magistrate on
the police performing their duties and where the Magistrate
finds that the police have not done their duty or not investigated C
satisfactorily, he can direct the Police to carry out the
investigation properly, and can monitor the same. (see *Sakiri
Vasu v. State of U.P. & Ors.* - (2008) 2 SCC 409).

11. For these reasons, we quash the impugned order of
the High Court and direct that the Superintend of Police, D
Virudunagar District, Tamil Nadu, will entrust the investigation
of Crime No. 14 of 2006 to a police officer senior in rank to P.
Kalaikathiravan. The appeals are accordingly allowed.

R.P.

Appeals allowed.

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