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SUJATHA RAVI KIRAN @ SUJATASAHU

v.

STATE OF KERALA & ORS.

[Transfer Petition (Criminal) No. 351 of 2013]

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MAY 12, 2016

[T.S. THAKUR, CJI, R. BANUMATHI AND UDAY UMESH LALIT, JJ.]

- Code of Criminal Procedure, 1973: s.406 – Transfer of s.482 petition – Complaint filed by petitioner-wife against husband, in-laws and also against 5 naval officers and wife of one of them alleging physical and mental cruelty and wife swapping – Investigation pending with Harbour Police Station, Kochi, Kerala – While rejecting anticipatory bail of husband, High Court of Kerala directed thorough investigation by special team of state police officers – Naval officers filed petitions before High Court of Kerala for quashing the proceedings – Petitioner filed instant transfer petitions seeking transfer of said petitions on the ground of threat to her life and no means to pursue case at Kerala and also filed writ petition seeking investigation by independent agency – Held: Since the investigation is pending in the State of Kerala, it is desirable that the petitions filed u/s.482 are heard in the High Court of Kerala, as the High Court of Kerala will be in a better position to take note of further progress in the investigation and also consider the evidence recorded – Plea of the petitioner that the accused are naval officers and are influential is not sufficient to transfer the case – As regards the issue of transfer of investigation to independent agency, the extraordinary power of the constitutional courts in directing independent agency to conduct investigation in a case must be exercised rarely in exceptional circumstances, especially, when there is lack of confidence in the investigating agency or in the national interest and for doing complete justice in the matter – The case in hand did not entail a direction for transferring the investigation from the state police/special team of State Police Officers to C.B.I. – The facts and circumstances in which the offence is alleged to have been committed can be better investigated into by the state police – However, it is deemed appropriate to direct the State of Kerala to constitute a special team*

*of police officers headed by an officer not below the rank of Deputy
Inspector General of Police to investigate the matter – The Director
General of Police, Kerala is directed to constitute a special
investigation team to take up further investigation in FIR.* A

**Disposing of the Writ petition and dismissing the Transfer
petitions, the Court** B

**HELD: 1. When the investigation is pending in the State
of Kerala, it is desirable that the quash petitions filed under
Section 482, Cr.P.C. are heard in the High Court of Kerala, as
the High Court will be in a better position to take note of further
progress in the investigation and also consider the evidence
recorded. The Supreme Court will transfer a case from one State
to another State only if there is a reasonable apprehension on the
part of a party to a case that justice will not be done. The petitioner
has pleaded that “the atmosphere in Kerala is not conducive for
the case to progress and reach its judicious end”. The petitioner
has only alleged that the accused are naval officers and are
influential. Mere apprehension that the accused are influential
may not be sufficient to transfer the case. As the petitioner has
expressed difficulties in travelling to Kerala and pursuing the
matter, the Kerala State Legal Services Authority is requested
to nominate a senior counsel to represent the petitioner in the
matters before the High Court. [Para 6] [496-B-D]** C
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**2. It is well settled that the extraordinary power of the
constitutional courts in directing C.B.I. to conduct investigation
in a case must be exercised rarely in exceptional circumstances,
especially, when there is lack of confidence in the investigating
agency or in the national interest and for doing complete justice
in the matter. Considering the facts and circumstances of the
case in hand, in the light of the principles, the case in hand does
not entail a direction for transferring the investigation from the
state police/special team of State Police Officers to C.B.I. The
facts and circumstances in which the offence is alleged to have
been committed can be better investigated into by the state police.
However, having regard to the nature of allegations levelled by
the petitioner, it is deemed appropriate to direct the State of Kerala
to constitute a special team of police officers headed by an officer
not below the rank of Deputy Inspector General of Police to** F
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A investigate the matter. The Director General of Police, Kerala is directed to constitute a special investigation team headed by a police officer not below the rank of Deputy Inspector General of Police to take up further investigation in FIR. [Paras 9, 11, 12] [497-C-D; 498-G-H; 499-A-B]

B *K. Saravanan Karuppasamy & Anr. v. State of Tamil Nadu & Ors.* (2014) 10 SCC 406 : 2014 (7) SCR 1149; *Sudipta Lenka v. State of Odisha & Ors.* 2014 (11) SCC 527 : 2014 (3) SCR 693 – referred to.

Case Law Reference

C	2014 (7) SCR 1149	referred to	Para 10
	2014 (3) SCR 693	referred to	Para 10

CRIMINAL ORIGINAL JURISDICTION : Transfer Petition (Criminal) No. 351 of 2013.

D Petition under Section 406 Code of Criminal Procedure, 1973
WITH
W. P. (Crl.) Nos. 164 of 2013; and T. P. (Crl.) No. 384 of 2013.
Ms. Kamini Jaiswal, Advocate for the Petitioner.

E Ms. Pinki Anand, ASG, Ms. Arunima Dwivedi, Atulesh Kumar, B. V. Balram Das, S. N. Terdal, A. Raghunath, Ramesh Babu M. R., Sanjay Kumar and Sunil Kumar Agarwal, Advocates for the Respondents.

The Judgment of the Court was delivered by

F **R. BANUMATHI, J.** 1. Transfer Petition (Crl.) Nos. 351 of 2013, 384 of 2013 have been filed to transfer the petitions filed under Section 482 of the Cr.P.C. being Criminal M.C. No.2551 of 2013 and Criminal M.C. No.2424 of 2013 pending before the High Court of Kerala at Ernakulam to the High Court of Delhi.

G 2. The petitioner got married to Lt. Ravi Kiran Kabdula on 09.03.2012 as per Hindu rites and customs. Petitioner's husband Lt. Ravi Kiran Kabdula is a naval officer who was then posted at Kochi, Kerala. After marriage, the petitioner was residing with her husband at Kochi. As brought on record, the relationship between the petitioner and her husband was not very cordial. On 22.02.2013, the petitioner gave an oral complaint that her husband was withholding her identity card, laptop,

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mobile phone, original marriage certificate etc. The respondent was called to the police station and directed to handover the belongings to the petitioner. On 04.04.2013, the petitioner lodged a complaint against her husband, her parents-in-law and sister-in-law alleging that they have subjected her to physical and mental cruelty. The petitioner had also levelled charge of sexual abuse against five naval officers and wife of one of the naval officers. Based on her complaint, a case was registered in FIR No.260 of 2013 for the offences punishable under Sections 498-A, 354, 506 (Part-I) IPC read with Section 34 IPC against the petitioner's husband Lt. Ravi Kiran Kabdula, her parents-in-law, sister-in-law and the said five naval officers and wife of one of them. In the complaint lodged subsequently, the petitioner had made allegations of wife-swapping and also implicated new names. Investigation in the said case is pending with Harbour Police Station, Kochi, Kerala.

3. Petitioner's husband had moved an anticipatory bail application before the High Court of Kerala, which was rejected vide order dated 10.06.2013. While declining anticipatory bail, the High Court has directed that a thorough investigation must be conducted by the police. Pursuant to the said order of the court, Deputy Commissioner of Police vide order dated 12.06.2013 constituted a special team headed by the Assistant Commissioner of Police, Kochi.

4. Navy officers shown as accused in FIR No.260 of 2013 and private respondents in these transfer petitions namely, Capt. Ashok K Aukta, Preena Aukta, Lt. Ishwar Chand Vidyasagar, Anand Balakrishnan and Ajay Jaykrishnan have filed petitions under Section 482 Cr.P.C. in Criminal M.C. No. 2551 of 2013, and Criminal M.C. No.2424 of 2013 before the High Court of Kerala, which the petitioner now seeks to transfer. The petitioner claims transfer of the said two petitions contending that she has no means or a male member in her family to support her to pursue the case at Kerala. The petitioner also alleges that she faces threat to her life on account of the private respondents. When these transfer petitions came up for hearing, by an order dated 16.09.2013, this Court granted interim stay of further proceedings in the said quash petitions.

5. We have heard the counsel appearing for the parties at considerable length and perused the impugned order and material on record.

A 6. As noticed earlier, investigation in FIR No. 260 of 2013
registered at Harbour Police Station, Kochi, is pending in the State of
Kerala and stated *infra*, we have directed further investigation in the
said case by a special team of state police officers. When the investigation
is pending in the State of Kerala, it is desirable that the quash petitions
B filed under Section 482, Cr.P.C. are heard in the High Court of Kerala,
as the High Court will be in a better position to take note of further
progress in the investigation and also consider the evidence recorded.
The Supreme Court will transfer a case from one State to another State
only if there is a reasonable apprehension on the part of a party to a case
that justice will not be done. The petitioner has pleaded that “*the*
C *atmosphere in Kerala is not conducive for the case to progress and*
reach its judicious end”. The petitioner has only alleged that the accused
are naval officers and are influential. Mere apprehension that the accused
are influential may not be sufficient to transfer the case. Since a special
team of state police officers is constituted for further investigation, we
D are not inclined to order the transfer of the criminal miscellaneous petitions
from the High Court of Kerala to the High Court of Delhi. As the
petitioner has expressed difficulties in travelling Kerala and pursuing the
matter, we request the Kerala State Legal Services Authority to nominate
a senior counsel to represent the petitioner in the matters before the
High Court.

E 7. In Writ Petition (Crl.) No. 164 of 2013, the petitioner has prayed
for issuance of writ, directing investigation of FIR No. 260 of 2013, to be
entrusted to an independent investigating agency or Central Bureau of
Investigation (CBI) to ensure fair and impartial investigation. The petitioner
has alleged lackadaisical approach by the state police to defeat
F petitioner’s case. In the writ petition on 20.09.2013, this Court passed an
interim order staying of the investigation in connection with FIR No. 260
of 2013 and also proceedings before the Board of Enquiry, INS Vendurthy,
Naval Base, Kochi.

G 8. The State of Kerala has filed counter affidavit denying
petitioner’s allegation of inaction and lackadaisical approach by the state
police. In the counter affidavit filed by the State, it is stated that after
taking over the investigation by the special team on 14.06.2013, the
petitioner was examined on 10.07.2013 and subjected to medical
examination at Safdarjung Hospital, New Delhi on 11.07.2013. It is further
stated that as many as seventy one witnesses, including the petitioner,
H friends of the petitioner, doctors and other witnesses have been examined

and investigation is continuing. It is further stated that in the anticipatory bail application filed by the husband in B.A. No. 2719 of 2013, the High Court of Kerala on 10.06.2013 passed certain remarks about the investigation of the case and directed a thorough investigation by police. Pursuant to that, vide order dated 12.06.2013, Deputy Commissioner of Police, Kochi City had constituted a special team headed by Assistant Commissioner of Police, Crime Detachment, Kochi City and investigation of the case was taken over by them on 14.06.2013. Pursuant to the order of the High Court, the state police did proceed with the further investigation.

9. It is well settled that the extraordinary power of the constitutional courts in directing C.B.I. to conduct investigation in a case must be exercised rarely in exceptional circumstances, especially, when there is lack of confidence in the investigating agency or in the national interest and for doing complete justice in the matter. A Constitution Bench of this Court in *State of West Bengal & Ors. vs. Committee for Protection of Democratic Rights, West Bengal & Ors.* (2010) 3 SCC 571 held as under:

“69. In the final analysis, our answer to the question referred is that a direction by the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, to CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of that State will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of power and shall be valid in law. Being the protectors of civil liberties of the citizens, this Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly.

70. 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

A direction to CBI to conduct investigation in a case is concerned, although no inflexible 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 merley because a party has levelled some allegations against the local police.

B This 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 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.

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71. In *Minor Irrigation & Rural Engg. Services, U.P. v. Sahngoo Ram Arya* (2002) 5 SCC 521, this Court had said that an order directing an enquiry by CBI should be passed only when the High Court, after considering the material on record, comes to a conclusion that such material does disclose a prima facie case calling for an investigation by CBI or any other similar agency. We respectfully concur with these observations.”

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10. Taking into account the law laid down by this Court in *Committee for Protection of Democratic Rights* (supra), direction for investigation by C.B.I. was declined by this Court in the case of *K. Saravanan Karuppasamy & Anr. v. State of Tamil Nadu & Ors.* (2014) 10 SCC 406 and *Sudipta Lenka v. State of Odisha & Ors.* 2014 (11) SCC 527.

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11. Considering the facts and circumstances of the case in hand, in the light of the above principles, we are of the view that the case in hand does not entail a direction for transferring the investigation from the state police/special team of State Police Officers to C.B.I. The facts and circumstances in which the offence is alleged to have been committed can be better investigated into by the state police. However, having regard to the nature of allegations levelled by the petitioner, we deem it

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appropriate to direct the State of Kerala to constitute a special team of police officers headed by an officer not below the rank of Deputy Inspector General of Police to investigate the matter. A

12. In the result, the Writ Petition (Criminal) No. 164 of 2013 is disposed of with direction to the Director General of Police, Kerala to constitute a special investigation team headed by a police officer not below the rank of Deputy Inspector General of Police to take up further investigation in FIR No.260 of 2013. The special investigation team shall take up further investigation in accordance with law and complete the investigation at an early date preferably within a period of three months from today. We request the High Court to take up the Criminal M.C. Nos.2551 of 2013 and 2424 of 2013 after the special investigation team completes the investigation. B C

13. The Transfer Petitions (Criminal) Nos. 351 of 2013 and 384 of 2013 are dismissed. This order, however, shall not prevent the petitioner from seeking transfer of Divorce Petition filed by the husband if she is so advised. We make it clear that we have not expressed any opinion on the merits of the matter. D

Devika Gujral

Writ petition disposed of and Transfer petitions dismissed.