

K.V. Rajendran vs Superintendent Of Police, Cbcid South on 21 August, 2013

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Bench: B.S. Chauhan, Sudhansu Jyoti Mukhopadhaya, Kurian Joseph

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1167 of 2013

Prof. K.V. Rajendran
...Appellant

Versus

Superintendent of Police, CBCID South
Zone, Chennai & Ors.

...Respondents

J U D G M E N T

Dr. B.S. CHAUHAN, J.

1. This appeal has been preferred against the judgment and order dated 8.12.2011 passed by the High Court of Judicature at Madras in CrI.O.P. No. 9639 of 2011, by way of which the High Court has rejected the prayer of the appellant to transfer the investigation of his case/complaint to Central Bureau of Investigation (hereinafter referred to as the 'CBI').

2. The case has a chequered history as the matter has moved from the court of the Magistrate to this Court time and again. Facts and circumstances necessary to adjudicate upon the controversy involved herein are that:

A. The appellant, who is an Associate Professor in Physics in the Presidency College, Chennai, went to his village on 26.8.1998. At about 11.00 P.M., approximately ten people headed by the then Revenue Divisional Officer (hereinafter referred to as the 'RDO'), forcibly took him in a government jeep and brought him to the Taluk office

and enquired about why he had given a false complaint regarding the smuggling of teakwood in that area. The then RDO and other officials treated him with utmost cruelty and caused severe injuries all over his body and then obtained his signatures on blank papers which were filled up as directed by the then RDO. On the next day, he was handed over to the local Police Inspector along with the statement purported to have been written by the officials concerned.

B. The appellant was produced before the Magistrate on 27.8.1998 at 10.30 A.M. and he was remanded to judicial custody. His request to the Judicial Magistrate in regard to medical examination of the injuries which had been caused to him was rejected. The appellant was kept in Sub Jail, Poraiyar, wherein he was treated by the jail doctor on 28.8.1998. On being released on bail, the appellant got treatment of his injuries in a private hospital.

C. The appellant filed a complaint against the said RDO and other officials. The said complaint was also sent to the office of Hon'ble Chief Minister of the State, the Director General of Police and other officials, alleging the brutal torture caused to him by the then RDO. The case was entrusted for investigation to Deputy Superintendent of Police, SBCID, Nagapattinam. A confidential report was forwarded to higher officials by the said DSP in this regard. However, no progress could be made in the investigation and no case was registered in respect of the complaint of the appellant.

D. The appellant approached the High Court of Madras by filing Crl. O.P. No. 19352/1998 with the prayer to direct the registration of First Information Report (FIR) based on his complaint. In view of the fact that a confidential report of Deputy Superintendent of Police, SBCID revealed that the preliminary enquiry was conducted in a proper manner, the High Court did not transfer the investigation to CBI, however, the petition was allowed vide order dated 1.3.2001 issuing the direction to register a case.

E. The DSP, SBCID filed an application i.e. Crl.M.P. No. 3713/2001 before the High Court in the disposed of case i.e. Crl.O.P. No. 19352/1998 stating that there was no post of DSP, SBCID on the date of the order as the same had been abolished, so proper directions needed to be issued. In the meanwhile, the appellant also filed another petition to transfer the case to CBI. Both the said applications were heard together and the order dated 1.10.2004 was passed modifying the earlier order dated 1.3.2001 for transferring the investigation to CBI.

F. Aggrieved, the DSP, SBCID, preferred Criminal Appeal No. 1389 of 2008 before this Court. The said criminal appeal was disposed of by this Court vide a detailed judgment and order dated 2.9.2008. It was observed that by the first order dated 1.3.2001, the High Court had declined to handover the investigation to CBI, therefore, it was not proper for the High Court to pass a fresh order in a petition that had been disposed of, directing again the investigation to be made by the CBI. This view was taken in view of the provisions of Section 362 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C.'). This Court also took note of the fact that it was not the application by the appellant to transfer the case to CBI. Thus, the said order dated 1.10.2004 transferring the investigation to CBI by the High Court was set aside. However, this Court kept it

open that the appellant could prefer a fresh criminal petition under Section 482 Cr.P.C. for transferring the investigation from the State police authorities to CBI, depending upon subsequent events. In such an eventuality, it would be open to High Court to entertain such application and decide the same in accordance with law.

G. The appellant was summoned by the DSP, SBCID on 7.7.2010 and again on 25.10.2010 and his statements were recorded. Being un- satisfied with the investigation conducted by the SBCID, the appellant filed Crl. O.P. No. 9639 of 2011 in April 2011 before the High Court, seeking transfer of the investigation to CBI. The said application has been dismissed vide impugned judgment and order dated 8.12.2011.

Hence, this appeal.

3. Ms. Kamini Jaiswal, learned counsel appearing on behalf of the appellant, has submitted that there was no justification for the High Court to reject the application seeking transfer of the investigation from the State investigating agency to CBI as the State investigating agency did not conduct the investigation properly as its investigation has been tainted and biased, favouring the then RDO. The SBCID threatened the witnesses and recorded their version under coercion. Moreover, inordinate delay had been there in concluding the investigation. The High Court could not be justified in making such an observation that even if a shabby investigation had been made, it could not be a ground to change the investigating agency. Further, there was no material to show as observed by the High Court, that the appellant had improved his case stage by stage. Even if the investigation was at the verge of conclusion or already stood concluded, it is permissible in law to change the investigating agency. Thus, the appeal deserves to be allowed.

4. On the contrary, Shri K. Ramamurthy and Shri Nagendra Rai learned senior counsel appearing on behalf of the State and respondent no. 3, the then RDO, have opposed the appeal contending that there was no subsequent development on the basis of which the transfer of investigation could be sought to CBI. Moreover, it is not a fit case to transfer to CBI. The appellant is pursuing a trivial issue since 1998 and had been moving from one court to another for the last 15 years. The liberty was given to the appellant by this Court vide order dated 2.9.2008 to move the High Court for transfer of investigation to CBI only on the basis of subsequent events, if any. In fact there has been no such subsequent event, which could warrant such a course of action. This Court has laid down certain parameters for transferring the case to CBI and the present case does not fall within the ambit thereof. The State police has already investigated the matter and filed the final report under Section 173(2) Cr.P.C. before the court concerned. The appellant has already filed the protest petition and it is for the learned Magistrate to decide the case in accordance with law. The Magistrate is not bound to accept the report so submitted by the investigating agency, he may take cognizance and also direct further investigation under Section 173(8) Cr.P.C. Thus, there is no justification to transfer the case to CBI and the appeal is liable to be rejected.

Shri Mukul Gupta, learned senior counsel appearing on behalf of the CBI, supported the case of the respondents and further submitted that the CBI has a shortage of manpower and is already overburdened. More so, the present case does not present special features warranting transfer to

CBI for investigation.

5. We have considered the rival submissions made by the learned counsel for the parties and perused the records.

6. The issue involved herein, is no more *res integra*. This Court has time and again dealt with the issue under what circumstances the investigation can be transferred from the State investigating agency to any other independent investigating agency like CBI. It has been held that the power of transferring such investigation must be in rare and exceptional cases where the court finds it necessary in order to do justice between the parties and to instil confidence in the public mind, or where investigation by the State police lacks credibility and it is necessary for having “a fair, honest and complete investigation”, and particularly, when it is imperative to retain public confidence in the impartial working of the State agencies. Where the investigation has already been completed and charge sheet has been filed, ordinarily superior courts should not reopen the investigation and it should be left open to the court, where the charge sheet has been filed, to proceed with the matter in accordance with law. Under no circumstances, should the court make any expression of its opinion on merit relating to any accusation against any individual. (Vide: *Gudalure M.J. Cherian & Ors. v. Union of India & Ors.*, (1992) 1 SCC 397; *R.S. Sodhi v. State of U.P. & Ors.*, AIR 1994 SC 38; *Punjab and Haryana Bar Association, Chandigarh through its Secretary v. State of Punjab & Ors.*, AIR 1994 SC 1023; *Vineet Narain & Ors. v. Union of India & Anr.*, AIR 1996 SC 3386; *Union of India & Ors. v. Sushil Kumar Modi & Ors.*, AIR 1997 SC 314; *Disha v. State of Gujarat & Ors.*, AIR 2011 SC 3168; *Rajender Singh Pathania & Ors. v. State (NCT of Delhi) & Ors.*, (2011) 13 SCC 329; and *State of Punjab v. Davinder Pal Singh Bhullar & Ors. etc.*, AIR 2012 SC 364).

7. In *Rubabbuddin Sheikh v. State of Gujarat & Ors.*, (2010) 2 SCC 200, this Court dealt with a case where the accusation had been against high officials of the police department of the State of Gujarat in respect of killing of persons in a fake encounter and the Gujarat police after the conclusion of the investigation, submitted a charge sheet before the competent criminal court. The Court came to the conclusion that as the allegations of committing murder under the garb of an encounter are not against any third party but against the top police personnel of the State of Gujarat, the investigation concluded by the State investigating agency may not be satisfactorily held. Thus, in order to do justice and instil confidence in the minds of the victims as well of the public, the State police authority could not be allowed to continue with the investigation when allegations and offences were mostly against top officials. Thus, the Court held that even if a chargesheet has been filed by the State investigating agency there is no prohibition for transferring the investigation to any other independent investigating agency.

8. In *State of West Bengal v. Committee for Protection of Democratic Rights*, AIR 2010 SC 1476, a Constitution Bench of this Court has clarified that extraordinary power to transfer the investigation from State investigating agency to any other investigating agency must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigation 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.

(See also: Ashok Kumar Todi v. Kishwar Jahan & Ors., AIR 2011 SC 1254).

9. This Court in the case of Sakiri Vasu v. State of UP, AIR 2008 SC 907 held:

“This Court or the High Court has power under Article 136 or Article 226 to order investigation by the CBI. That, however should be done only in some rare and exceptional case, otherwise, the CBI would be flooded with a large number of cases and would find it impossible to properly investigate all of them.” (Emphasis added)

10. In view of the above, the law can be summarised to the effect that the Court could exercise its Constitutional powers for transferring an investigation from the State investigating agency to any other independent investigating agency like CBI only in rare and exceptional cases. Such as where high officials of State authorities are involved, or the accusation itself is against the top officials of the investigating agency thereby allowing them to influence the investigation, and further that it is so necessary to do justice and to instil confidence in the investigation or where the investigation is prima facie found to be tainted/biased.

11. The case is required to be examined in view of aforesaid settled legal propositions.

The matter originated in September 1998 and a period of 15 years has already been lapsed. During this period, respondent no. 3, the then RDO, against whom the allegations are made, might have been transferred to various districts of the State. The allegations of malafide had been made against the police in general without impleading any person by name. During the period of 15 years, investigation could have been carried out by many police officers. It cannot be presumed that each of them could be influenced by the respondent no. 3. This Court had also given the liberty to the appellant to approach the High Court for transferring the investigation to CBI provided there is sufficient material available subsequent to the earlier orders passed by the High Court. Even if the investigating agency did not proceed promptly and was in deep slumber for a long time, the appellant also did not make any attempt to move the court for issuance of appropriate direction to transfer the case to the CBI. It was at a belated stage when the High Court was approached. In the meanwhile, the High Court came to the conclusion that the investigation of the case has already been concluded and, therefore, did not transfer the case to CBI. Admittedly, the final report has already been filed and the appellant is fully aware of those facts. If he has not already taken the appropriate steps to meet the present situation, he can still do so as the learned Magistrate concerned, as we are informed, has not yet passed any final order. It is always open to the Magistrate to accept the final report or reject the same and has the power to direct further investigation under Section 173(8) Cr.P.C.

12. The High Court while passing the impugned judgment and order had, in fact, taken note of the earlier judgment of this Court dated 2.9.2008 and rejected the application observing that the subsequent development would not warrant the transfer of investigation. The High Court has further taken note of the fact that the investigation had been properly conducted by the State investigating agency, 46 witnesses had been examined and a large number of documents had been filed and the investigating agency had concluded the investigation in respect of allegations labelled

by the appellant against the alleged accused.

13. The High Court has further taken note of the earlier judgment of this Court dated 2.9.2008 wherein this Court had given liberty to the appellant to move a fresh application under Section 482 Cr.P.C., if it is so required in view of the “subsequent events having been taken place”. The relevant part of the order of this Court reads as under:

“We make it clear once again that if a fresh criminal petition under Section 482 of the Code is filed by the respondent for transferring the investigation from State Police authorities to CBI after bringing certain subsequent events that had taken place after the disposal of the original criminal petition if there be any, it would be open for the High Court to entertain such application if it is warranted and decide the same in accordance with law for which we express no opinion on merit.” (Emphasis added)

14. In sum and substance, firstly, the facts and circumstances of the instant case do not present special features warranting transfer of investigation to CBI, and that too, at such a belated stage where the final report under Section 173(2) Cr.P.C. has already been submitted before the competent criminal court. The allegations are only against the then RDO who might have been transferred to various districts during these past 15 years. Similarly various other police officials might have investigated the case and it is difficult to assume that every police official was under his influence and all of them acted with malafide intention. In view of the earlier order of this Court dated 2.9.2008, no subsequent development has been brought to the notice of the court which could warrant interference by superior courts and transfer the investigation to CBI.

15. In view of the above, we do not see any cogent reason to interfere with the impugned judgment and order of the High Court. The appeal lacks merit and is, accordingly, dismissed.

.....J.
CHAUHAN)

(DR. B.S.

.....J. (SUDHANSU JYOTI MUKHOPADHAYA)
.....J. (KURIAN JOSEPH) NEW DELHI;

August 21, 2013
