

T.C.Thangaraj vs V.Engammal & Ors on 29 July, 2011

Equivalent citations: AIR 2011 SUPREME COURT 3010, 2011 (12) SCC 328, 2011 AIR SCW 4513, 2011 (4) AIR JHAR R 787, (2011) 2 CRILR(RAJ) 744, (2011) 3 CHANDCRIC 284, (2011) 75 ALLCRIC 965, (2011) 3 ALLCRIR 3373, (2011) 3 CURCRIR 295, (2011) 4 JCR 76 (SC), (2011) 108 ALLINDCAS 134 (SC), 2011 (8) SCALE 120, (2011) 3 CGLJ 385, (2012) 1 MADLW(CRI) 120, 2012 (1) SCC (CRI) 568, AIR 2011 SC (CIVIL) 1988, (2011) 104 ALLINDCAS 744 (CHH), (2011) 8 SCALE 120, (2011) 3 CAL LJ 120, 2011 CRILR(SC MAH GUJ) 744, (2011) 50 OCR 124, (2011) 2 UC 1454, (2011) 3 RECCRIR 751, (2011) 3 DLT(CRL) 674, (2011) 3 ALLCRILR 683, 2011 (3) CRIMES 157 SN

Author: A. K. Patnaik

Bench: R.V. Raveendran, A.K. Patnaik

Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No.1504 of 2011

(Arising out of S.L.P. (Crl.) No. 1585 of 2008)

T. C. Thangaraj

..... Appellant

Versus

V. Engammal & Ors.

.....

Respondents

WITH

CRIMINAL APPEAL No.1505 of 2011

(Arising out of S.L.P. (Crl.) No. 1589 of 2008)

P. Suganthi & Anr.

..... Appellants

Versus

V. Engammal & Ors.

.....

Respondents

J U D G M E N T

A. K. PATNAIK, J.

Delay condoned in S.L.P. (Crl.) No.1589 of 2008.

2. Leave granted.

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').

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 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 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.

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 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 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 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 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.

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 West Bengal & Ors. v. Committee for Protection of Democratic Rights, West Bengal & Ors.* [(2010) 3 SCC 571].

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.

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 :

"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 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 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."

[Emphasis supplied]

10. It will be clear from the opinion of the Constitution Bench quoted above that the power of the High Court under 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 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 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 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 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 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 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 Superintendent of Police, 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.

Raveendran)

.....
(R.V.

.....
(A.

K.

Patnaik)

New Delhi,

July 29, 2011.