
(1998) 07 KL CK 0001

In the High Court Of Kerala

Case No : O.P. No"s. 18484 of 1997-A, 18520 of 1997-D and 19439 of 1997-L

Anweshi Women"s Counselling Centre and

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 30-07-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Immoral Traffic (Prevention) Act, 1956 — Section 3(1), 3(6)
Penal Code, 1860 (IPC) — Section 120B, 193, 199, 201, 361
Prevention of Corruption Act, 1988 — Section 13, 13(1)

Citation : (1999) CriLJ 787 : (1998) 3 ILR (Ker) 875 : (1998) 4 RCR(Criminal) 649

Hon'ble Judges : K. Narayana Kurup, J

Bench : Single Bench

Advocate : A.X. Varghese, M.K. Aboobacker, P.M. Ziraj and P.K. Aboobacker, for the Appellant; M.K. Damodaran, General, Noble Mathew, Govt. Pleader and K.P. Satheesan, for the Respondent

Final Decision : Dismissed

Judgement

K. Narayana Kurup, J

1. The prayer in all these Original Petitions which are filed in the nature of Public Interest Litigation (PIL) under Article 226 of the Constitution of India is for the issuance of a writ of mandamus directing the State of Kerala and the Director General of Police to entrust the investigation of Crime No. 282/1997 of the Nadakkavu Police Station, Kozhikode to the Central Bureau of Investigation and for other reliefs. Since the facts and reliefs in all these Original Petitions are the same, they are being disposed of by a common judgment treating O.P. 18484 of 1997 as the main petition, so that the fate of other petitions will depend upon the decision in O.P. 18484 of 1997. If O.P. 18484 of 1997 is dismissed, other petitions will also stand dismissed and vice-versa.

2. O.P. 18484 of 1997-A. The petitioner herein alleges the occurrence of a sex

scandal in which a lady by name Sreedevi, owner of an Ice Cream Parlour procured girls for important politicians, bureaucrats and many others. The allegations are set out in details in the Original Petition itself. The substance of the allegation is that those involved in the scandal consist of the cream of the society including an Ex-Minister, Politicians, I.A.S. and I.P.S. Officers etc. While the Inspector General of Police, North Zone is in charge of the investigation, the same is moving at a snail's pace thereby allowing the culprits to escape. Since high and influential persons are involved, the State Police are not likely to investigate the scandal freely, impartially and in an unbiased manner is the complaint projected.

3. Counter affidavits have been filed on behalf of the 2nd respondent, viz. the Director General of Police, Trivandrum traversing the allegation contained in the Original Petition.

4. Having heard learned counsel for the petitioners, the learned Advocate General Mr. M. K. Damodaran and learned Govt. Pleader Mr. Noble Mathew for the State and Mr. Satheesan, learned counsel for the C.B.I, at length and having perused the pleadings, I am not satisfied that a case has been made out for issuing a direction as prayed for to the Central Bureau of Investigation to investigate the sex scandal alleged in this original petition.

5. About the quality of investigation, a final verdict is not possible at this stage. The petitioner herself states that Sreedevi was arrested in connection with the sex scandal, her diary was seized and taken into custody, enquiry into the tampering with the diary ordered, a special team was constituted by the State to investigate into the alleged scandal, two customs officers were interrogated by the investigating team, on the basis of the information obtained by the enquiry team from the diary of Sreedevi raids were conducted in Kozhikode as well as in Tellicherry, a Deputy Superintendent of Police was questioned, an audio cassette was seized from a youth by name Johnson and about 100 persons in connection with the alleged scandal have already been interrogated which should dispel any lingering doubt lurking in the minds of anybody regarding the sincerity of the police in conducting the investigation. That apart, the allegation of the petitioner, even if taken as true, do not suggest any ulterior motive on the part of the investigators. The use of epithets like "brain behind the racket", "mafias", "backhands", "Ex-Minister", "influential persons" and "use of influence" are too vague to activate this Court to exercise its extra-ordinary jurisdiction under Article 226 of the Constitution to order a probe of a comparatively trivial offence by the premier investigating agency of the country whose object is to investigate into cases of high misdemeanors, crime and corruption at high places, cases relating to the breach of central fiscal laws, frauds in Government departments and PSUS and other serious crimes that threaten the integrity, security and economy of the nation. Sex and sensation of the crime and the high profile of the offenders with the attendant media glare that accompanies it may not be the proper yardstick to decide the question as to whether in a given case an

investigation has to be ordered by the C.B.I. I will refer to few comparable cases on point. When President Kennedy was assassinated Earl Warren, the Chief Justice of the U.S. Supreme Court probed into the matter. That was a case where international con-spiracy was suspected. In Britain, one pretty girl Christine Keeler had an affair with John Profumo who was the Secretary of State for War. At the same time she was very friendly with a Russian diplomat Captain Eugene Ivanov. It was said that she might have got confidential information from Profumo and passed it on to Captain Ivanov. The leaders of the Labour Party were at pains to stress the security aspect of the Profumo affair. They said they were not concerned with the moral aspect. The result: Lord Denning Report over the Profumo affair. Back home in India we have the case of the assassination of the former Prime Minister Rajiv Gandhi, the conspiracy angle of which is the subject matter of a high level probe. But in sharp contrast is the case of the President of a super power who is embroiled in sexual scandals in which the ordinary law of the land of that country is allowed to take its course. Therefore it has to be held that it is the nature and severity of the offence with the ramifications and fail-out it may produce that matters in ordering investigation by an "external agency" and not the personality of the individual (s) involved or its moral aspect.

It is important to note that the investigation is at present in the charge of an Officer of the rank of Inspector General of Police. This should inspire confidence in fair investigation. No concrete fact suggesting any attempt to exclude any influential person or persons is stated in the petition. Mere apprehension or abstract un- substantiated fears not based on facts are not sufficient to invoke the extra-ordinary jurisdiction under Article 226 of the Constitution. The alleged interference with the investigation by "influential persons", "police inaction", "lack of fairness" are all too broad and sweeping a statement to merit any cognizance by (his Court. In this context, it is pertinent to note that in (he connected O.P. No. 20633 of 1997 the very same petitioner has appreciated the investigation conducted by the State Police. In paragraph 7 of the said O.P. the petitioner had stated that "it is reliably known to the petitioner association that the perverse attempts of the accused persons in the array to influence and affect the free flow of the investigation which is at present going on in proper lines by the able leadership of the respondents herein". Therefore, it is uncharitable on the part of the petitioner in alleging that the investigation in Crime No. 282/97 of the Nadakkavu Police Station is not going on in a proper way while the petitioner herself has given a clean chit to the investigation conducted by the State Police. The petitioner cannot be permitted to blow hot and cold, approbate and reprobate and affirm and disaffirm in matters like this. On the basis of the facts pleaded in the petition and the counter affidavit, I find no circumstance suggesting undue delay, favouritism, lack of fairness or any fact which indicates lack of confidence in police or its impartiality. Therefore. I am of the opinion that this petition is based on unfounded subjective fear or apprehension. On this ground alone, the petition is liable to be dismissed.

6. Crime No. 282 of 1997 of the Nadakkavu Police Station relates to offences under Sections 361, 366A and 377 of the Indian Penal Code. The reference of the case to the Central Bureau of Investigation (CBI) is sought under the Delhi Special Police Establishment Act, 1946 (Act 25 of 1946) (for short "the Act"). The offences or classes of offences to be investigated by the officers under this Act have been stated in Section 3 of the Act. Only those offences specified by the Central Government by a notification in the official Gazette can be investigated. It is stated by the learned Advocate General appearing for the State of Kerala and which is not disputed, that the offences under Sections 361, 366A and 377 of the IPC have not been notified u/s 3 of the Act. But it is urged on behalf of the petitioner that Sections 3 and 6 of the Act (under which powers and jurisdiction can be exercised by the C.B.I, with the consent of the State Government concerned) do not affect the power of the Court to direct investigation by the C.B.I. In this case, the State Government has not consented u/s 6 of the Act to the investigation being carried out by the C.B.I. Therefore, u/s 6 of the Act such a reference cannot be made. The question, then, is whether this court should in the circumstances of the case direct the C.B.I, to take over the investigation. No doubt, Section 6 of the Act does not apply where the Court/ directs the C.B.I, to investigate. The Court can" direct the C.B.I, to investigate a case only where it is satisfied that the investigation is not proceeding in the right manner.

7. As I have already observed in the preceding paragraphs of this judgment, investigation by the State Police has proceeded diligently and fairly and no less than an I.G. of Police is in charge of the investigation. All material witnesses have been interrogated, evidence like cassette and documents have been seized and investigation into tampering of documents is being done. The counter-affidavit filed on behalf of the 2nd respondent gives a graphic detail of the method in which investigation is being carried out. The relevant portion of the counter-affidavit is extracted below :

6...In the meanwhile a special investigation team has been constituted by the order No. !9643/97/Camp/IGP.NZ/97 dated 1-9-1997 issued by the Inspector General of Police, North Zone, Kozhikode. The investigation team thus constituted consisted of 2 Asst. Commissioner of Police, 2 Clauses, 2 S. Is. and other subordinate officers. During the investigation conducted by the said team 170 witnesses have been questioned till date. Apart from that various search and raids were conducted and various documents and other materials were seized. 11 accused were brought to the array of the accused in the cast-vide reports dated 4-9-1997, 1-10-97, 17-10-97 and 22-10-97. Out of the above 11 accused A5 was arrested on 1-10-1997 and sent for remand. All other accused except A3 have granted anticipatory bail from the Hon"ble High Court and A3 is absconding and he is reported in Kuwait. Steps have been taken to obtain an arrest warrant against him. A1 and A5 were subsequently released on bail.

7. It is further submitted that by the report date 22-10-97 Section 120B of IPC and Section 3(1) and (6) of ITP Act were incorporated in the case.

8. It is pertinent to note that though serious complaints have been raised in Ext. P1(3) information so far only 5 victims were co-operated with the investigation team and gave their statement. It is also relevant to note that 3 more crimes have been registered incidental to the investigation of Crime No. 282/97 of Nadakkavu Police Station. Crime No. 368/97 was registered under Sections 193, 199, 201, 471 and 511 read with 363, IPC in connection with the case related to the false affidavit of one of the victims in this case. Crime No. 390/97 was registered in the Nadakkavu Police Station u/s 420, IPC on the basis of allegation that the victim namely, Bindu was cheated by a travel agent by promising her assistance of police. In Kasba Police Station, Kozhikode Crime No. 311/97 has been registered u/s 13(1)(d)(ii) and Section 13(1)(d)(iii) and Section 13(e) of Prevention of Corruption Act in connection with the assessment of Wealth and Corruption by certain government officials and others.

From the above facts and circumstances it can be seen that the investigation in Crime No. 282/ 97 of Nadakkavu Police Station is going on very promptly and effectively under the supervision and participation of very experienced senior Police Officials. The supervision of the investigation was done by the Inspector General of Police, North Zone, Dy. Inspector General of Police, Northern Range and City Police Commissioner Kozhikode City are also monitoring investigation and giving guidelines for the proper investigation. In the above circumstances, the prayer of the petitioner for calling for the records of Crime No. 282/97 is totally un-warranted. Therefore, the petitioner is not entitled to get the reliefs sought for. Hence it is prayed that this Hon''ble Court may be pleased to dismiss the above Civil Miscellaneous Petition.

I am therefore satisfied that the investigation is proceeding for the present satisfactorily.

8. The question as to whether in a public interest litigation, this Court will be justified in issuing a writ of mandamus under Article 226 of the Constitution of India to have an enquiry conducted by the C.B.I, came up for consideration before this Court in Kallara Sukumaran v. Raghuchandra Bal (1993) 1 KLT 699 (DB) wherein Jagannatha Rao, C.J., as he then was, speaking for the Bench posed the following query viz: "The question is whether in a public interest litigation the respondents can be directed to have an inquiry conducted by the Central Bureau of Investigation" and went on to discuss the legal position as follows :- "The relevant statute is the Delhi Special Police Establishment Act 1946. u/s 2(1) of the Act, the Central Government may constitute a special police force for an investigation into offences notified u/s 3, in any Union Territory, Section 2(2) states that subject to any orders which the Central Government "may" make in this behalf, the said police establishment shall have powers of investigation and arrest as specified therein. Section 3 enumerates the offences to be investigated. Section 5 states that the Central Government "may", by order extend the Act to any area in a State, etc. as stated therein, (vide para 25), Therefore, the Act confers on the Central Government to have various

investigations made, for the purposes permitted by the Act. The Act confers and these powers are not coupled with any duties towards any persons. Hence no mandamus can be issued directing the Government to exercise its powers or discretions in a particular manner. A Division Bench of the Delhi High Court in Peoples Union for Democraticrights and Another Vs. Ministry of Home Affairs, held so. We are in entire agreement with the ,said decision for the reasons given therein and for reasons given by us under point No. 1, which are equally applicable to point No. 2 under discussion. We hold that it is not open to the High Court to direct the Government to appoint the CBI in respect of any inquiry. (vide para 26). The decision of a learned single Judge of this Court in T. Sarojini Ammal v. Union of India ILR (1992) 3 Kerala 391 : 1992 Cri LJ 3110 states that the Court can give directions to the police if they failed in their statutory duties but that this is not a matter of right for the party. That was a case where a mandamus was sought for directing the C.B.I, to investigate a case. None of the rulings quoted therein directly relates to the issue of a mandamus to the Government to direct the CBI to inquire into a case. If the learned Judge meant that this Court can issue a writ of mandamus in a public interest litigation directing the CBI to inquire into any matter, we respectfully disagree with such a view and hold that:

In our opinion, this Court cannot issue any such mandamus in a public interest litigation to the Government to exercise statutory powers as the powers of the Government are not coupled with any duty towards any person. (vide para 27).

However, the Bench struck a word of caution when it said :

What we have said is clearly restricted to cases arising in the context of public interest litigation wherein mandamus is sought for the exercise of powers under the Commissions of Inquiry Act, 1952 and the Delhi Special Police Establishment Act, 1946. Further, we make it clear that we are not concerned here with the jurisdiction of this Court under other statutes or in regard to other types of cases or other situations. (vide para 28).

Viewed in the above backdrop, I have no hesitation in holding that this petition seeking investigation by the C.B.I. is not liable to be granted under the facts and circumstances of the case. No doubt, learned counsel for the petitioner invited my attention to a series of decisions of the Supreme Court wherein the Apex Court after directing the C.B.I, to conduct the investigation into various offences had taken upon itself the power of monitoring the same. But those were cases which disclosed nexus between crime and corruption at high places in public life posing a serious threat to the integrity, security and economy of the nation and in order to ensure probity and purity in public life and to maintain the rule of law and the preservation of democracy it was felt that the Government agencies like C.B.I, be compelled to duly perform their legal obligations and to proceed in accordance with law against every person involved irrespective of where he was placed in the political hierarchy. The facts of the present case do not come anywhere near the factual matrix involved in the cases before the Supreme

Court. Even so, I feel that it is the bounden duty of this court to remind the investigating agency the basic postulate of the concept of equality namely "BE YOU EVER SO HIGH LAW IS ABOVE YOU" as to govern all steps taken by them during the course of investigation. They shall not give the impression that they have developed cold feet in the matter of investigation which will erode the very credibility of the police in the minds of the public. They must bear in mind and, if needed, be reminded of the caution administered by Lord Denning in this behalf in *R. v. Metropolitan Police Commr.* (1968) 1 All ER 763 : 1968 (2) QB 118. Indicating the duty of the Commissioner of Police. Lord Denning stated thus (All ER p. 769).

I have no hesitation, however, in holding that, like every constable in the land, he should be, and is, independent of the executive. He is not subject to the orders of the Secretary of State, ...I hold it to be the duty of the Commissioner of Police, as it is for every chief constable, to enforce the law of the land. He must take steps so to post his men that crimes may be detected; and that honest citizens may go about their affairs in peace. He must decide whether or not suspected persons are to be prosecuted; and, if need be, bring the prosecution or see that it is brought; but in all these things he is not the servant of anyone save of the law itself. No Minister of the Crown can tell him that he must, or must not, keep observation on this place or that; or that he must, or must not prosecute this man or that one. Nor can any police authority tell him so. The responsibility for law enforcement lies on him. He is answerable to the law and to the law alone.

The nature of such a proceeding in a court of law was also indicated by Lord Denning, as under :

A question may be raised as to the machinery by which he could be compelled to do his duty. On principle, it seems to me that once a duty exists, there should be a means of enforcing it. This duty can be enforced, I think, either by action at the suit of the Attorney General : or by the prerogative order of mandamus.

There can hardly be any doubt that the obligation of the police in our constitutional scheme is no less. According to the Code of Criminal Procedure, 1973 the formation of the opinion as to whether or not there is a case to place the accused for trial is that of the police officer making the investigation and the final step in the investigation is to be taken only by the police and by no other authority, see *Abhinandan Jha v. Dinesh Mishra* (1967) 3 SCR 668 : 1968 Cri LJ 97. This must be borne in mind as also that the scope and purpose of a proceeding like the present is to ensure a proper and faithful performance of its duty by the police officer by resort to the prerogative writ of mandamus. I would, therefore, while dismissing this petition, direct the investigating agency concerned to proceed with the investigation with a sincerity of purpose uninfluenced by external dictation rather than making it a mockery as apprehended by the petitioner. The petition is accordingly dismissed.

In view of the dismissal of this O.P. the remaining O.Ps. are also dismissed. However, I make no order as to costs.