

(2001) 03 KL CK 0006

In the High Court Of Kerala

Case No : O.P. No's. 7068, 7213, 7829 and 7962 of 2001

Indira Priyadarshini Forum and

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 30-03-2001

Acts Referred:

Constitution of India, 1950 — Article 20(3)

Citation : (2001) CriLJ 2652 : (2001) 2 ILR (Ker) 309

Hon'ble Judges : K.K. Usha, C.J.;Kurian Joseph, J

Bench : Division Bench

Advocate : Georgekutty Mathew, K. Ramakumar, P. Balagangadhara Menon, K. Jaju, for the Appellant; Babu, B.S. Swathy Kumar, K.P. Satheesan, S.C. (for C.B.I.), K. Gopalakrishna Kurup, State Public Prosecutor and K. Jayakumar, Sr. Govt. Pleader, for the Respondent

Judgement

Kurian Joseph, J.—Dissatisfied with the investigation conducted by the local police in Crime No. 15of2001 of Aluva Police Station, the petitioners have sought the intervention of this Court for an appropriate direction for entrusting the investigation to some other agency. The case relates to the gruesome murder of all the six members of a family, allegedly on 6-1 -2001. According to the petitioners, the investigation now conducted by a team headed by the Deputy Superintendent of Police, Aluva is not at all satisfactory.

2. O.P. 7213 of 2001 is filed by the President and Secretary of the Bar Association of Aluva, after adopting a resolution to move this Court in public interest for an appropriate direction in the matter of investigation of the case. It is the case of the petitioners that the investigation is misdirected and is not conducted in a fair, proper and impartial manner. There is a further allegation of gross violation of basic human rights in conducting the investigation and hence they have sought for a direction to entrust the investigation of the case "to an independent agency like the Central Bureau of Investigation.

3. O.P. No. 7962 of 2001 is also filed in public interest. The petitioner claims to

be a social worker. He is the Secretary of the Taxi Drivers Union, Aluva. He is also one of the close neighbours of the ill-fated family. According to the petitioner, the version of the local police that the sole perpetrator of the horrendous act is one Antony is unbelievable. Alleging the investigation so far conducted as unfair and improper, he prays for a direction to the 2nd respondent, Additional Director General of Police (Crimes) "to constitute an expert team and conduct the investigation.

4. Petitioner in O.P. 7068 of 2001 is a society registered under the Travancore Cochin Literary, Scientific and Charitable Societies Registration Act, 1955. It is stated that "the Society is formed by a group of public interested citizens, with a view of uplifting social morality by assuring effective "Rule of Law" in the country. Public interest litigations against miscarriage of justice is only one among the objects of the Society." According to the petitioner, the result of the investigation, i.e. detecting one Antony as the sole perpetrator of the brutal murder of six members of the family, is unbelievable. They have a case that the investigation has not been properly conducted and hence they also pray for a direction to entrust the investigation of the case with the Central Bureau of Investigation.

5. The father and brother of Smt. Baby, one of the victims and wife of another victim Augustine, are the petitioners in O.P. 7829 of 2001. It is the case of the petitioners that the investigation so far conducted has not been effective. As can be seen from Ext. P-28, the 1st petitioner, father of deceased Baby had already approached the Chief Minister praying for appropriate orders entrusting investigation of the case to the Central Bureau of Investigation since the investigation conducted by the local police had not yielded any result. It is their further case that the version of the police that one Antony is the sole perpetrator of the murder of all the six persons is not at all probable. Petitioners have referred to the areas where the police have not so far investigated. They also pray for a direction by this Court for the investigation of the case by the C.B.I.

6. Apart from alleging that the investigation by the present investigating agency is improper, ineffective and unfair, learned Senior Counsel Sri. P. Balagangadhara Menon and Sri. K. Ramakumar also invited our attention to the unusual mode of investigation, i.e. taking the videograph of the scene and reconstruction of the incident in the presence of the public and also the conduct of the local police in convening a Press Conference and briefing the Press regarding the investigation. According to the learned counsel, in the process there is violation of Article 20(3) of the Constitution of India and violation of the human rights of the accused and the same has the effect of causing prejudice to the trial. There is also a submission that such unprecedented measures are adopted to cover up the inefficient mode of investigation. Counsel assert that the investigation conducted by the police is desultory, perfunctory and lackadaisical.

7. Sri. K. Gopalakrishna Kurup, learned Public Prosecutor vehemently contended that the investigation conducted by the local police in the instant case has been

foolproof and they really deserve to be complimented for having done the investigation remarkably well, yielding result in the shortest time possible. It was brought to our notice that more than 300 witnesses were questioned and their statements were recorded. The investigating team also verified complicity of more than 250 persons including notorious criminals, anti-social elements, hired goondas and Ors. rowdy elements and finally they were able to detect that the sole perpetrator of the crime was one Antony alias Antappan, a relative of the deceased Augustine and a frequent visitor of the family of the deceased. It is submitted that the accused has confessed the commission of the crime and for confirming the same the local police took the reconstruction of the incident on the video. The learned Public Prosecutor submitted that the Press Conference held at Aluva was upon proper instruction from higher authorities and was conducted only in the wake of conflicting reports that appeared in the Press and also with a view to averting further speculation by the public. Videograph of reconstruction of the incident was permissible under the provisions of the Information Technology Act, 2000 according to the learned Public Prosecutor. The entire case diary as also the travel documents including the video tape and photographs taken from the scene of occurrence were made available to us.

8. Before we proceed to comment anything on the merits of the case, it is necessary to consider as to whether this Court is within its jurisdiction to entertain a writ petition at this stage of investigation. How-ever, as a prelude to such enquiry, we may state that it is the case of the local police that investigation has almost been completed, that there is only one accused in the case and that he has been identified and is now in custody. What remains in the present scheme of investigation is only completion of some more formalities. This factual position we have addressed ourselves conscientiously, since any observation though made with utmost dexterity, may not have the remotest impact of affecting the investigation or the trial.

9. Investigation of an offence is the field exclusively reserved for the executive through the Police Department, the superintendence over which vests in the State Government. If an offence is alleged to have been committed, it is the bounden duty of the executive to investigate into the offence and bring the offenders to book. The executive discharges this duty through the police. However, in circumstances where the High Court or the Supreme Court is satisfied that the statutory duty cast on the authorities has not been discharged in an effective way and that consequently the investigation had not been conducted fairly, properly, impartially and fully, in such situations the Court is justified in issuing appropriate directions in the interests of justice and for securing the ends of justice in the matter of investigation of a case. Occasions would also demand such intervention of Court to prevent any impression of erosion in the credibility of judicial process. It is that faith which is reposed on the judiciary that has impelled public spirited petitioners to approach this Court seeking appropriate directions. And in such circumstances, this Court has certainly a duty to consider whether the facts and circumstances of the case

warrant interference on the principles aforementioned.

10. The Apex Court had occasion to consider the issue in the decision in *State of West Bengal and Others Vs. Sampat Lal and Others*, . At paragraph 16 of the said decision it is held as follows :

The procedure laid down in the Code is clear and definite. It may be that in a given case the Court on being prima facie satisfied from circumstances appearing from the record that the statutory agency has not worked in an effective way or the circumstances are such that it may reasonably be presumed or inferred that the statutory agency may not be able to discharge its function of investigation fairly and impartially might reasonably consider supplementing the procedure.

However, in that case the Court on examination of the records of the case was satisfied that it was not a case warranting interference of the Court for substituting the machinery for investigation and at paragraph 25 it was held as follows :-

We have, therefore, thought it proper exercise of discretion not to enter into the facts and express any opinion one way or the other so as to prejudice the trial that might take place. It is sufficient to indicate that there is residuary jurisdiction left in the Court to give directions to the investigating agency when it is satisfied that the requirements of the law are not being complied with and investigation is not being conducted properly or with due haste and promptitude.

And yet the Apex Court in the above case observed thus :-

We would, however, suggest that the Director General of Police, West Bengal will appoint a competent supervisory officer from the higher ranks of the State police with expertise in investigation to supervise the investigation in the present case.

11. In *Vineet Narain and others Vs. Union of India* and another, the Supreme Court had again considered this issue and observed as follows at paragraph 4:-

In this proceeding we are not concerned with the merits of the accusations or the individuals alleged to be involved, but only with the performance of the legal duty by the Government agencies to fairly, properly and fully investigate into every such accusation against every person and to take the logical final action in accordance with law.

12. It is under the guidance of the salutary principles as abovementioned laid down by the Apex Court that we propose to consider the contentions put forward by the petitioners. As already observed above, it may not be proper for us at this stage and in these proceedings to go into the merits of the contentions regarding the investigation so far conducted. With that in mind, we have gone through the case diary and Ors. materials made available to us. It may be noted that according to the present Investigating Officer, the accused has been identified and the investigation is almost complete. On going through the records made available to us, we are of the view that the case is not fully investigated in all

respects. We are afraid on the basis of the evidence so far collected and investigation conducted, it will be too early to conclude the investigation. The case certainly needs to be investigated further. According to us, this case would come within the dictum laid down by the Apex Court in Vineet Narain and others Vs. Union of India and another, as the present Investigating Officer has not investigated fully into all aspects of the case. That being our conclusion on going through the records made available to us, we do not propose to make any other comment on the facts of the case or the investigation so far conducted by the present investigating team.

13. That takes us to the question as to who should be entrusted with the task of fully investigating the case. Except one, all the petitioners have made a demand for the investigation by the Central Bureau of Investigation. Central Bureau of Investigation is constituted under the Delhi Special Police Establishment Act, 1946. The said statute enables the Central Government to constitute a special police force for investigating the offence or classes of offences notified u/s 3. Going by the organisational set-up, the special police force, C.B.I, operates through the following five Wings: (1) Special Crime Branch having headquarters at Madras; (2) Economic Offences Wing having headquarters at Madras; (3) Anti Corruption Wing having headquarters at Delhi; (4) Special Investigation Cell having headquarters at Delhi; and (5) Interpol having headquarters at Delhi. In Kerala there is only one branch of the Anti-corruption Wing of the Central Bureau of Investigation and that Branch is now headed by a Superintendent of Police. So for investigating criminal cases of the nature referred to in this proceeding, either the Special Crime Branch Wing in Madras or the Special Investigation Cell in Delhi will have to be called in. It is reported that the C.B.I, is already overburdened with work, since owing to directions issued by the Apex Court as well as the various High Courts in the country, they are to take up the investigation of many sensational cases having national as well as international ramifications.

14. In this context it may be seen that the Kerala Police has a special wing constituted particularly for investigation of important cases, viz. the Criminal Investigation Department. Chapter X of the Kerala Police Manual, Vol. III deals with the Administration of the said Department. Rule 696 provides that it has two branches; (1) Special Branch; and (2) Crime Branch. Rules 698 and 699 of the Manual provide as follows :

Crime Branch

698. The Crime Branch controls

- (1) the Crime Investigation staff;
- (2) the Criminal Intelligence Bureau;
- (3) the Finger Print Bureau;
- (4) Photographic Bureau;

(5) Forensic Science Laboratory;

(6) Police Research Centre.

Functions of the Crime Branch, Criminal Investigation Department.

699. (1) The functions of the Crime Branch, CID are:-

(a) The collection, collation, dissemination of intelligence regarding crimes and criminals having an inter-State or inter-District interest.

(b) Study of the general trend of specialised, professional and other grave crimes in the State and initiating measures for their control as found necessary.

(c) Investigating of specialised or professional crime such as:-

(1) those of exceptional difficulty or importance;

(ii) those which from the nature of their ramifications, cannot be dealt with by local officers within their jurisdiction, or without the co-operation of other officers at a distance, working under a common direction; and

(iii) those of an organised nature, extending over two or more districts;

(iv) those types of crime which are ordered to be taken up by the C.I.D. and given in Rule below.

(2) the services of the Criminal Investigation Department will not, except in exceptional circumstances, be requisitioned in cases of ordinary crime confined to one District and having no special importance.

Thus it may be seen that there is a separate wing as such for investigating crimes of special importance and crimes of exceptional difficulty and importance. That separate wing, viz. the Crime Branch does not have the duty of maintenance of law and order. Moreover, the Finger Print Bureau, Photographic Bureau, Forensic Science Laboratory etc. which have to play a vital role in the investigation also come under the administrative control of the Crime Branch. When in this State there is such a specialised branch of the police wing for taking up the investigation of specially important cases, we do not find any reason why they should not be entrusted with the task of investigation of this case. Nobody would dispute that this is a "specially important case" where the entire six members of a family had been wiped off and that too in an inhuman, brutal and barbaric manner. Only if that special wing is not able to fully and effectively investigate the case, the question of transfer of the investigation to the C.B.I, need be considered. We direct the Director General of Police to issue forthwith necessary orders transferring the investigation of Crime No. 15 of 2001 of Aluva Police Station to the Crime Branch.

15. In the peculiar facts and circumstances of the case, we feel it also necessary to issue certain directions to the Crime Branch. Hence we direct the Additional Director General of Police (Crime) who heads the Criminal Investigation

Department to constitute a Special Investigation Team and entrust the investigation of Crime No. 15 of 2001 of Aluva Police Station to them. Needless to say that the investigation will be taken up immediately and completed expeditiously. The present investigating agency will forthwith hand over the entire records and the evidence collected hitherto to the Special Investigation Team constituted by the Additional Director General of Police (Crimes) and would render all necessary assistance as and when required by the team. We also direct the Additional Director General of Police (Crimes) to personally supervise the investigation conducted by the Special Investigation Team constituted by him. If we may borrow the words of Ranganath Misra, J. in *State of West Bengal and Others Vs. Sampat Lal and Others*, .

We are sure that the police authorities would take it as a matter of challenge, rise to the occasion and by their performance justify their stand in these proceedings that they were competent to investigate and there was no necessity of the C.B.I, being called in.

We repose the same confidence the Apex Court had in the State machinery, on the Crime Branch and we do hope that they would justify our trust in them.

16. In the nature of the directions now issued, it is not necessary for this Court at this juncture to consider the other contentions regarding the violation of Article 20(3), violation of the human rights, the alleged prejudice to the trial by the reconstruction of the incident, the presence of strangers at the time of such reconstruction, the photographs thereof that appeared in the Press and the Press Conference that followed to announce the detection of the perpetrator etc. We also make it clear that we have not pronounced anything on the merits of the investigation so far conducted by the present investigating team.

Subject to the above observations and directions, the Original Petitions are disposed of.