

(2012) 08 KL CK 0118

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 20061 of 2011 (G)

Muhammed Haneef K.A.

APPELLANT

Vs

The State of Kerala and Others

RESPONDENT

Date of Decision : 01-08-2012

Acts Referred:

Citation : (2012) 08 KL CK 0118

Hon'ble Judges : S.S. Satheesachandran, J

Bench : Single Bench

Advocate : Babu S. Nair, for the Appellant; K.A. Jaleel, A.A.G., Sri. T.P. Sajid, R1, R2 and R5 Government Pleader and Sri. P. Chandrasekhara Pillai, SC, C.B.I. R3 and R4, for the Respondent

Final Decision : Dismissed

Judgement

Justice S.S. Satheesachandran

APPENDIX

PETITIONER'S EXHIBITS:

EXT P1

Copy of the postmortem certificate issued from the academy of medical science, pariyaram dated 27/9/2002

EXT P2

Copy of the report of the forensic science laboratory, trivandrum 29/11/2008

EXT P3

Copy of the judgment dated 22/2/2011 in w.p.(c) 3737/2011 of this hon'ble court

EXT P4

Copy of the notification as no.g.o.(ms) no.72/2011/home dated 28/2/2011

EXT P5

Copy of the communication issued by the joint director, cbi, chennai dated 22/3/2011

1. Over the death of one Abdul Rahman, who met with an unnatural death in his residence, the petitioner is coming before this court the second time, seeking the exercise of its extraordinary jurisdiction, on both occasions, to direct the State Government to hand over the investigation of the crime registered on his death to the Central Bureau of Investigation. His previous writ petition complaining laches and default on the investigating agency, State Police, to seek direction as aforesaid, after being considered on its merits with reference to the materials placed and also the stand taken by the State Government, was disposed by Ext.P3 judgment dated 22.02.2011. This court held that this is not a fit case to be handed over to the Central Bureau of Investigation for investigation having regard to the fact that the case "does not involve any national or international ramifications, and also that there is no reason to hold that the present investigating agency has not done their job in the proper manner so that the confidence of public in the investigation by the state police is eroded". While disposing that previous writ petition this court has given some directions for the constitution of a Special Police team for proper conducting of investigation of the crime with specific orders that the Additional Director General of Police (Crimes), Thiruvananthapuram, has to monitor such investigation. Within a week the State Government issued Ext.P4 notification handing over the investigation of the crime to the Central Bureau of Investigation, evidently, either ignoring Ext.P3 judgment or on the premise that it has no binding force on the State Government Ext.P4 notification was issued to entrust the investigation of the crime to the C.B.I. Immediately on issuing of Ext.P4 notification the C.B.I. responded with Ext.P5 reply stating that since it is understaffed and not having the resources to take up investigation of crimes of this nature it is unable to comply with the order of the State Government. Petitioner has thereupon filed the present writ petition for issuing a writ of mandamus or any other appropriate writ/direction/order to command the State Government to hand over the investigation of the crime to the C.B.I., and that agency to take up such investigation in compliance of Ext.P4 notification.

2. A detailed counter affidavit has been filed by the Additional Director General of Police (Crimes), narrating the steps taken and also the conclusion hitherto formed over the investigation conducted in the crime. In the affidavit it is affirmed that the CBCID is continuing the investigation of the case in right earnestness and it will do so with the object of unravelling the truth in the case. The Additional D.G.P. has also stated that he is supervising and monitoring the investigation giving necessary directions from time to time. The writ petition is one without any merit and it is liable to be dismissed is the stand taken in the counter affidavit, which has been filed on behalf of the respondents 1 and 2.

Learned Standing Counsel for the C.B.I. advertent to issue of Ext.P4 notification hardly within six days after Ext.P3 judgment rendered by this court submits that what has been done by issuing such a notification is bypassing of the orders of this court with respect to the investigating agency which has to continue with the investigation of the crime. Learned counsel for the petitioner inviting my attention to the various circumstances involved in the case and also that despite long drawn out investigation conducted by several agencies of the State Police nothing worthwhile could be unearthed nor even to show who are the actual culprits involved in the death of Abdul Rahman, which on the materials gathered unerringly point out that it was a homicide, emphasized the need for implementing Ext.P4 notification issued by the Government to have an effective and meaningful investigation, by entrusting such investigation to the C.B.I.

3. Ext.P3 judgment was rendered by this court after taking note of the stand of the State Government as well is not a matter in dispute. Within a few days after passing of Ext.P3 judgment what prompted the Government to take a different stand causes much doubt over the issue of Ext.P4 notification. The State Government has the power to entrust investigation of the crime to the Central Agency, C.B.I., as and when it desires to do so cannot be countenanced nor be accepted when this court after examining the relevant materials and also taking note of the State Government has concluded that this is not a fit case to be handed over for investigation by the C.B.I. The decision rendered by this court in Ext.P3 judgment remains unimpeached by the State Government. When that be so, Ext.P4 notification issued by the State Government within six days after passing of that judgment to hand over the investigation to the C.B.I. cannot be appreciated, and evidently it was issued as being influenced by extraneous influence. Petitioner has moved the previous writ petition leading to Ext.P3 judgment with direction given for investigation by a special team of Police and monitoring it by a Senior Police Officer, Additional Director General of Police. If at all that investigating agency, the special team directed to be constituted by this court, for smooth and meaningful investigation of the crime, is not doing their job effectively and properly, then, that could be canvassed as a ground for changing that investigating agency or even to hand over the investigation of the crime to the Central Bureau of Investigation, but, after passing of Ext.P3 judgment simply because the Government has shifted its stand passing Ext.P4 notification, exercise of the extraordinary jurisdiction of this court to implement such, order as canvassed by the petitioner, at any rate, cannot be entertained. I make it clear that if the special team which is now conducting the investigation of the crime, monitored by the Additional Director General of Police (Crimes), is not doing its job, and if circumstances are present sufficient enough to indicate that there is laxity in investigation, it is open to the petitioner to seek for appropriate directions/orders at the appropriate time.

Subject to the reservation made above, the petition is dismissed.