**(2003) 02 KL CK 0007**

**In the High Court Of Kerala**

**Case No :** C.R.M.C. No. 9257 of 2002

P.K. Lambodaran Nair APPELLANT

Vs

State of Kerala and Others RESPONDENT

**Date of Decision :** 06-02-2003

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 482

**Citation :** (2003) CriLJ 2917

**Hon'ble Judges :** N. Krishnan Nair, J

**Bench :** Single Bench

**Advocate :** Pirappancode V. Sreedharan Nair, S.P. Aravindakshan Pillay, Pirappancode V.S. Sudhir and Suneesh M, for the Appellant; P.M. Habeeb, Public Prosecutor, for the Respondent

**Final Decision :** Allowed

## Judgement

N. Krishnan Nair, J.—This petition is filed u/s 482 of the Code of Criminal Procedure to quash Annexure I, F.I.R. No. VC-3/ 97, dated 27-5-1997 of the Vigilance and Anti-Corruption Bureau, Special Cell, Thiruvananthapuram and all further proceedings pursuant thereto, now pending before the Court of the Enquiry Commissioner and Special Judge, Thiruvananathapuram.

2. The petitioner, Sri P.K. Lambodharan Nair, is a retired Superintendent of Police. He is the accused in V.C. No. 3/97 of the Vigilance and Anti-Corruption Bureau, Special Cell, Thiruvananthapuram registered u/s 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988, on the allegation that while he was holding various posts in the Police Department, he has amassed assets disproportionate to his known sources of income. He is alleged to be in possession of assets worth Rs. 15 lakhs as against his likely savings to the tune of Rs. 7.2 lakhs. Earlier an enquiry was conducted against the petitioner by the Vigilance and Anti-Corruption Bureau for the period from 1994 to 1997 on the basis of a petition forwarded by the Government. In that case also it was alleged that the petitioner acquired assets disproportionate to his known sources of

income. The Vigilance and-Anti-Corruption Bureau conducted an indepth enquiry and forwarded a report to the Government stating that the allegations levelled against the petitioner were unsustainable. The Government accepted the enquiry report and dropped further action against the petitioner.

3. The Superintendent of Police, Special Cell registered Case No. V.C. 3/97 against the petitioner on 27-5-1997 alleging the commission of offences u/s 13(2) read with Section 13(1)(e) of the P.C. Act. The petitioner was suspended from service on 8-7-1997 by the Government on the basis of the report submitted by the Superintendent of Police who registered Annexure-I, F.I.R. The petitioner moved this Court by filing an Original Petition No. 800/98 to revoke the suspension order. This Court by judgment dated 17-11-1998 directed the Government to complete the investigation within six months from 17-11-1998. Annexure-V is the copy of the judgment of the Division Bench of this Court. In spite of Annexure-V order the investigation was not completed and at last the petitioner was reinstated in service on 18-5-1999. The petitioner retired from service on 30-9-2000. Because of the pendency of Annexure-I the petitioner had not been given his full pensionary benefits. According to the petitioner, he is falsely implicated in the case by the then Superintendent of Police, Vigilance and Anti-Corruption Bureau, Sri A. Surendran to wreak vengeance against him. It is alleged that Annexure-I, F.I.R. was registered by extraneous consideration and pressure and it was actuated by mala fides. Hence it is prayed that Annexure-I, F.I.R. and all proceedings pursuant thereto pending before the Court of Enquiry Commission and Special Judge, Thiruvananthapuram may be quashed exercising the powers u/s 482 of the Code of Criminal Procedure.

4. Heard learned Senior Counsel Sri Pirappancode V. Sreedharan Nair for the petitioner and the learned Public Prosecutor for the respondents.

5. The question for consideration is whether Annexure-I, F.I.R. and all proceedings pursuant thereto are liable to be quashed on the grounds urged in the petition. No doubt, the power u/s 482 of the Code of Criminal Procedure is extraordinary and it can be exercised only in exceptional cases. In the normal course the High Court has no power to interfere with the investigation by the police invoking Section 482 of the Code of Criminal Procedure. But, if the investigating agencies do not act according to the statutory provisions or if it is evident that the investigation is launched simply to harass persons in vexatious proceedings, the inherent powers of the Court should be invoked. In State of Haryana and others Vs. Ch. Bhajan Lal and others, the Supreme Court has given seven categories of cases wherein the inherent power could be exercised either to prevent abuse of the process of Court or otherwise to secure the ends of justice. The seventh category of the cases wherein the inherent power could be exercised is "where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge." Keeping in mind the above principles of law, let us see

 

whether Annexure-I, F.I.R. is liable to be quashed invoking the powers u/s 482 of the Code of Criminal Procedure.

6. On going through the materials on record I see considerable force in the contention of the petitioner that the Investigating Officers in this case were biased and prejudiced against him from the very commencement of the investigation. The definite case of the petitioner is that the then Superintendent of Police, who registered the crime was on inimical terms with him and he was falsely implicated in the case at the instance of the Superintendent of Police. In this connection it is relevant to note that immediately after the decision of the Government to drop further action against the petitioner on the ground that the allegations against the petitioner were not substantiated by evidence in the earlier enquiry, the F.I.R. in this case was ordered to be registered on the basis of the source information furnished by the then Superintendent of Police. At the request of the petitioner, I directed the respondents to produce the Government file No. 8872/A1/93/Vig., dated 8-4-1994 and also the report of the Director, Vigilance and Anti-Corruption Bureau, Thiruvananthapuram, dated 22-11-2000 in respect of V.C. 3/97. Accordingly the respondents produced the file and also the report of the Director, Vigilance and Anti-Corruption Bureau. On going through the file No. 8872/A1/93/Vig., dated 8-4-1994, I find that on an earlier occasion a detailed enquiry was conducted into the allegation that the petitioner has amassed wealth disproportionate to his known source of income. The enquiry was conducted as per the orders of the Government. After the enquiry a report was sent to the Government stating that the allegations levelled against the petitioner were not substantiated by evidence and, therefore, no further action was recommended. The Additional Director General of Police, Director of Vigilance Investigation by letter dated 14-3-1997 addressed to the Additional Chief Secretary to Government informed the Government that he had also scrutinised the preliminary enquiry report and the connected records. He says in his letter "I agree with the findings of the Enquiry Officer and recommend no further action as the allegations are not found proved in the enquiry." The Additional Chief Secretary to Government informed the Director, Vigilance and Anti-Corruption Bureau, Thiruvananthapuram, by letter dated 11-4-1997 that further action in the matter had been dropped as recommended. It is surprising to note that on 27-5-1997 V.C. No. 3/97 was registered and the residence of the petitioner was searched on 28-5-1997. I see considerable force in the contention of the learned counsel for the petitioner that Annexure-I, F.I.R. was registered because of personal vendetta of the then Superintendent of Police, Sri A. Surendran against the petitioner. It is seen that the petitioner submitted a representation on 4-7-2001 before the Chief Minister of Kerala requesting him to drop further proceedings pursuant to Annexure-I. Annexure-VI is the true copy of the representation submitted before the Chief Minister. Since no orders had been passed by the Government on Annexure-VI, the petitioner submitted another representation before the Director, Vigilance and Anti-Corruption Bureau, Thiruvananthapuram. Annexure-VII is the copy of the representation. Pursuant

to Annexure-VII representation, the Director, Vigilance and Anti-Corruption Bureau examined the records and found that the Investigating Officer was biased and prejudiced against the petitioner. It is relevant to note the following observations of the Director, Vigilance and Anti-Corruption Bureau, Thiruvananthapuram in his report :

"In the light of the facts exposed from the study of the correspondence file, I have gone through the factual report carefully. It is observed that no sense of fairplay is seen in any part of the factual report. Every witness who supported the version/claim of the accused-officer is seen disbelieved on flimsiest of grounds."

It is also relevant to note the concluding portion of the report dated 22-11-2001 of the Director, Vigilance and Anti-Corruption Bureau, Thiruvananthapuram.

"Thus from an overall reading of the all connected papers, the origin of the case, the conduct of both the Investigating Officers in handling a simple D.A. case for almost 4 years etc. I feel that the investigation as such and the preparation of the factual report by the then Superintendent of Police, Special Cell, Sri A. Surendran has not been based on a fair appreciation of the evidence and materials collected by him. From an overall view of the entire case, certain bias and prejudice in investigation and connected procedures are seen."

According to me, the report of the Director, Vigilance and Anti-Corruption Bureau alone is sufficient to hold that Annexure-I, F.I.R. was registered only to harass the petitioner with an ulterior motive for wreaking vengeance on the petitioner and with a view to spite him due to personal grudge.

7. A learned single Judge of this Court had to consider an identical situation in N. V. Madhavan v. State of Kerala (Crl. M.C. No. 5425/02). In that case Sri Madhavan, I.A.S., Principal Secretary to Government, Transport Department (Retired) was the accused. The said crime was registered against him u/s 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988. The allegation against him was that while holding the post of Secretary to Government, Irrigation Department, he amassed wealth disproportionate to his known source of income. In that case the report of the Director of Vigilance revealed that the factual report indicated total bias, prejudice and unfair approach in the investigation. The Public Prosecutor contended before this Court that after the report of the Director of Vigilance, investigation of the crime was conducted and it was found that there is substance in the allegations against the petitioner. But this Court was not inclined to accept the contention of the Public Prosecutor and held that in the light of what has been stated by the Director of Vigilance in the report prepared by him and other circumstances the proceedings against the petitioner are liable to be quashed. In this case also on going through the report of the Director of Vigilance I find that the Investigating Officer was biased and prejudiced against the petitioner.

8. According to me, Annexure-I, F.I.R. calls for interference on the ground of

 

delayed investigation also. No doubt, inordinate delay in completing the investigation cannot always be a ground for quashing the F.I.R. In State of Andhra Pradesh Vs. P.V. Pavithran, , the Supreme Court held that no general and wide proposition of law can be formulated that whenever there is inordinate delay on the part of the investigating agency in completing the investigation, such delay, ipso facto, would provide ground for quashing the First Information Report or the proceedings arising therefrom. In Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, , the Supreme Court held that no procedure which does not ensure a reasonably quick trial can be regarded as fair or just and it would fall foul of Article 21 of the Constitution. The right to a speedy trial is fundamental right guaranteed by Article 21 of the Constitution and this right is exercised not only against the proceedings in Court but also against the police investigation. The question whether delayed investigation can be a ground for quashing the F.I.R. can only be examined with reference to the facts of the case. The conduct of the investigating agency in completing the investigation and thereafter bring the offender before the Court is a circumstance which has to be kept in mind by the Court. In this case the F.I.R. was registered on 27-5-1997. This petition for quashing the F.I.R. was filed before this Court on 1-10-2002. Admittedly on the date of filing the petition, the investigation in the case was not completed and the charge was not laid before the Court. As stated earlier this Court by Annexure-V order directed the Government to complete the investigation within six months from 17-11-1998. In spite of Annexure-V order and the directions from the Government the investigating agency was not prepared to expedite the investigation. The investigation is on for the last nearly five years to the harassment of the petitioner. Immediately after the registration of the crime the petitioner''s house was searched and even the ornaments belonging to his children were seized. He was suspended from service on 8-7-1997 but he was reinstated in service only on 18-5-1999. Though he retired from service on 30-9-2000 he had not been given his full pensionary benefits. The Director of Vigilance was found that the entire investigation so far conducted has vitiated by bias and prejudice. Under these circumstances the unreasonable delay in completing the investigation is also a ground for quashing the F.I.R.

9. In these circumstances it would not be just and proper to allow the proceedings against the petitioner to continue any longer. The mental agony and humiliation that he was suffering all through these years cannot be compensated. A Sword of Damocles had been hanging over his head for a long time. In my opinion the quashing of Annexure-I, F.I.R., would secure only the ends of justice. Keeping in view the peculiar facts and circumstances of this case, I am inclined to exercise the powers u/s 482 of the Code of Criminal Procedure to quash the F.I.R.

10. In the result, I quash Annexure-I, F.I.R. and all further proceedings pursuant thereto pending before the Enquiry Commissioner and Special Judge, Thiruvananthapuram. It is made clear that if the Special Judge has already taken cognizance of any offence under the Prevention of Corruption Act against the

 

petitioner on the basis of the final report filed by the investigating agency pursuant to Annexure-I, the final report and the order taking cognizance of the offence shall stand quashed.

 