

(1997) 06 KL CK 0020
In the High Court Of Kerala
Case No : O.P. No. 543 of 1997-M

R. Ramachandran Nair

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 02-06-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 35A
Constitution of India, 1950 — Article 14, 226

Citation : AIR 1997 Ker 322

Hon'ble Judges : C.S. Rajan, J

Bench : Single Bench

Advocate : M.P.R. Nair and Devan Ramachandran, for the Appellant; M.K. Damodaran, General and K. Jayakumar, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Rajan, J.—The petitioner is the former Chief Secretary of the State. According to the petitioner, he was the seniormost officer in the Indian Administrative Services in the whole of India. The present Cabinet Secretary is junior to the petitioner in service. He functioned as Chief Secretary from 1-3-1994 to 15-6-1996 on which day he proceeded on leave. While he was functioning as the Commissioner and Secretary to the Government of Kerala (Forests and Wildlife), he was appointed as Special Officer to establish a Sanskrit University in July, 1991. Later, he was appointed as the first Vice-Chancellor of the University with effect from 1-1-1994. He continued in the post of Vice-Chancellor for 30 months. According to the petitioner, he has an unblemished record of 35 years service in the Indian Administrative Service. There were allegations against the petitioner regarding various acts of commissions and omissions on his part while functioning as the Vice-Chancellor of the Sree Sankaracharya University of Sanskrit. On the basis of a preliminary enquiry conducted by the Police Officers, Exhibits P-1 and P-5 First Information Reports" have been lodged before the Enquiry Commissioner-cum-Special Judge. This Original Petition has been filed by the petitioner for the issuance of a writ of

prohibition or any other appropriate writ, direction or order prohibiting respondents 2 and 3 from conducting or concerning themselves with the conduct of the investigation in pursuance of Exhibits P-1 and P-5 First Information Reports. The second respondent is Shri C. P. Nair, the present Chief Secretary and the third respondent is Shri K. J. Joseph, Director of Vigilance Investigation. The petitioner has also prayed for a direction to the first respondent to appoint an impartial investigating agency without in any manner being influenced by respondents 2 and 3 to conduct a fair and proper investigation into the charges now levelled against the petitioner.

2. The petitioner has levelled serious allegations of mala fide on the part of respondents 2 and 3, which, according to him, vitiate the whole investigation now being conducted against him. Therefore, the petitioner seeks the intervention of this Court by way of preventing the investigation on the ground that the present investigation is illegal, unfounded and motivated by mala fide intentions on the part of respondents 2 and 3. Therefore, this Court has to decide to the paramount the question as to whether this Court will be justified in intercepting the investigation of the cases against the petitioner at this initial stage under Article 226 of the Constitution of India. Shri M.P.R. Nair, learned counsel for the petitioner, submits that this Court would be perfectly justified in giving suitable direction to change the investigating officers on the ground of proved mala fide. In order to drive home the above point the learned counsel relied on the Supreme Court decision reported in S.N. Sharma Vs. Bipen Kumar Tiwari and Others, . In the above ruling the Supreme Court held as follows :

"7. Counsel appearing on behalf of the appellant urged that such an interpretation is likely to be very prejudicial particularly to Officers of the judiciary who have to deal with cases brought up by the police and frequently give decisions which the police dislike. In such cases, the police may engineer a false report of a cognizable offence against the judicial officer and may then harass him by carrying on a prolonged investigation of the offence made out by the report. It appears to us that, though the Code of Criminal Procedure gives to the police unfettered power to investigate all cases where they suspect that a cognizable offence has been committed, in appropriate cases an aggrieved person can always seek a remedy by invoking the power of the High Court under Article 226 of the Constitution under which, if the High Court could be convinced that the power of investigation has been exercised by a police officer mala fide, the High Court can always issue a writ of mandamus restraining the police officer from misusing his legal powers. The fact that the Code does not contain any other provision giving power to a Magistrate to stop investigation by the Police cannot be a ground for holding that such a power must be read in Section 159 of the Code."

3. Strong reliance was also placed by the learned counsel on the observation of the Supreme Court by Mitter, J. in P. Sirajuddin, etc. Vs. State of Madras, etc., which is as follows (At p. 526, para 17 of AIR):

"Before a public servant, whatever be his status, is publicly charged with acts of dishonesty which amount to serious misdemeanour or misconduct of the type alleged in this case and a first information is lodged against him, there must be some suitable preliminary enquiry into the allegations by a responsible officer. The lodging of such a report against a person specially one who like the appellant occupied the top position in a department, even if baseless, would do incalculable harm not only to the officer in particular but to the department he belonged to, in general..... The means adopted no less than the end to be achieved must be impeccable."

The learned counsel also relied on another decision of the Supreme Court reported in *State of West Bengal and Others Vs. Swapan Kumar Guha and Others*, in which the Supreme Court observed as follows :

"If an offence is disclosed, the High Court under Article 226 of the Constitution will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed; if, however, the materials do not disclose an offence, no investigation should normally be permitted. Justice requires that a person who commits an offence has to be brought to book and must be punished for the same. If the Court interferes with the proper investigation in a case where, an offence has been disclosed, the offence will go unpunished to the serious detriment of the welfare of the society and the cause of the justice suffers. It is on the basis of this principle that the Court normally does not interfere with the investigation of a case where an offence has been disclosed. But it cannot be said that an investigation must necessarily be permitted to continue and will not be prevented by the Court at the stage of investigation.

XX XX XX XX XX Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case. If on a consideration of the relevant materials, the Court is satisfied that an offence is disclosed, the Court will normally not interfere with the investigation into the offence and will generally allow the investigation in the offence to be completed for collecting materials for proving the offence. If, on the other hand, the Court on a consideration of the relevant materials is satisfied that no offence is disclosed, it will be the duty of the Court to interfere with any investigation and to stop the same to prevent any kind of uncalled for and unnecessary harassment to an individual."

4. On the other hand, Shri M. K. Damodaran, the learned Advocate General cautioned this Court about any attempt on the part of the petitioner to prevent the investigation into the cases now taken against the petitioner. The learned Advocate General relied on the following observation of the Privy Council (quoted almost in all the Supreme Court rulings on the subject) reported in AIR 1945 18 (Privy Council) .

"In their Lordships" opinion however, the more serious aspect of the case is to be

found in the resultant interference by the Court with the duties of the police. Just as it is essential that every one accused of a crime should have free access to a Court of Justice so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes upon them the duty of enquiry. In India as has been shown there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the Court to intervene in an appropriate case when moved u/s 491, Criminal P. C. to give directions in the nature of habeas corpus. In such a case as the present, however, the Court's functions begin when a charge is preferred before it and not until then. It has sometimes been thought that Section 561A has given increased powers to the Court which it did not possess before that section was enacted. But this is not so. The section gives no new powers, it only provides that those which the Court already inherently possess shall be preserved and is inserted, as their Lordships think, lest it should be considered that the only powers possessed by the Court are those expressly conferred by the Criminal Procedure Code, and that no inherent power had survived the passing of that Act. No doubt, if no cognizable offence is disclosed, and still more if no offence of any kind is disclosed, the police would have no authority to undertake an investigation and for this reason Newsam J. may well have decided rightly in AIR 1938 Mad 129. But that is not this case."

The Supreme Court has also dealt with the powers of investigation of a police officer under the Code of Criminal Procedure in the ruling reported in *State of Bihar and Another Vs. J.A.C. Saldanha and Others*, in the following words (at Pp. 337-38 of AIR):

"There is a clear-cut and well demarcated sphere of activity in the field of crime detection and crime punishment. 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. The executive which is charged with a duty to keep vigilance over law and order situation is obliged to prevent crime and if an offence is alleged to have been committed it is its bounden duty to investigate into the offence and bring the offender to book. Once it investigates and finds an offence having been committed it is its duty to collect evidence for the purpose of proving the offence. Once that is completed and the investigating officer submits report to the Court requesting the Court to take cognizance of the offence u/s 190 of the Code its duty comes to an end."

5. There is an elaborate discussion on the powers of the High Court to quash a criminal proceedings in exercise of powers u/s 482 of the Criminal Procedure Code or under Article 226 of the Constitution in the ruling reported in State of Haryana and others Vs. Ch. Bhajan Lal and others, . The following observation of the Supreme Court in the above ruling is relevant for appreciating the arguments advanced by the petitioner and the respondents.

"60. The sum and substance of the above deliberation results in a conclusion that the investigation of an offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offences is legitimately exercised in strict compliance with the provisions falling under Chapter XII of the Code and the Courts are not justified in obliterating the track of investigation when the investigating agencies are well within their legal bounds as aforementioned. Indeed, a noticeable feature of the scheme under Chapter XIV of the Code is that a Magistrate is kept in the picture at all stages of the police investigation but he is not authorised to interfere with the actual investigation or to direct the police how that investigation is to be conducted. But if a police officer transgresses the circumscribed limits and improperly and illegally exercises his investigatory powers in breach of any statutory provision causing serious prejudice to the personal liberty and also property of a citizen, then the Court on being approached by the person aggrieved for the redress of any grievance, has to consider the nature and extent of the breach and pass appropriate orders as may be called for without leaving the citizens to the mercy of police echelons since human dignity is a dear value of our Constitution. It needs no emphasis that no one can demand absolute immunity even if he is wrong and claim unquestionable right and unlimited powers exercisable up to unfathomable cosmos. Any recognition of such power will be tantamount to recognition of "Divine Power" which no authority on earth can enjoy,"

After considering the "nagging question" in the back-drop a catena of decisions the Supreme Court in Bhajanlal's case formulated the following guidelines in the matter of exercising the powers u/s 482 and under Article 226.

"102. In the backdrop of the investigation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers u/s 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not

prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act; providing efficacious redress for the grievance of the aggrieved party.

(7) 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."

6. With regard to the vitiating circumstances of existence of mala fide in a criminal prosecution Bhagwati, C. J. held as follows in the ruling reported in Sheonandan Paswan Vs. State of Bihar and Others, ; Sheonandan Paswan Vs. State of Bihar and Others, at p. 891):

"It is a well established proposition of law that a criminal prosecution, if otherwise justifiable and based upon adequate evidence does not become vitiated on account of mala fides or political vendetta of the first informant or the complainant."

7. In the ruling reported in M/s. Jayant Vitamins Ltd. Vs. Chaitanyakumar and another, the Supreme Court reiterated the earlier stand that the investigation into an offence is a statutory function of the police and the superintendence thereof is vested in the State Government and the Court is not justified without any compelling and justifiable reason to interfere with the investigation. The Supreme Court had occasion to consider this aspect in the ruling reported in Union of India and another Vs. W.N. Chadha, (popularly known as "Bofors Case"). All the previous precedents on the matter including State of Haryana and others Vs. Ch. Bhajan Lal and others, and Sheonandan Paswan Vs. State of Bihar

and Others, : Sheonandan Paswan Vs. State of Bihar and Others, were considered and the Supreme Court rejected the right of the accused to question the legality of the investigation at the stage of collection of evidence :

"120. For all the aforesaid reasons we unhesitatingly set aside the order of the High Court quashing the letter rogatory dated 5/7th February, 1990 and the rectified letter rogatory dated 21st/22nd August, 1990 issued in pursuance of the orders passed by the Special Judge. The respondent who is a named accused in the FIR has no locus standi at this stage to question the manner in which the evidence is to be collected. However, it is open for the respondent to challenge the admissibility and reliability of the evidence only at the stage of trial in case the investigation ends up in filing a final report u/s 173 of the Code indicating that an offence appears to have been committed."

8. Thus, it can be seen that the area of interference at the hands of this Court in these matters is well-defined and delineated by the Supreme Court. Though the allegation of mala fides against the investigating officers may provide a ground for an accused to challenge the illegality of the criminal proceedings, the Court must be convinced by strong reliable and legal grounds that the allegations of mala fide are correct and well founded. It is for the petitioner to allege and prove that the proceedings are mainly instituted with an ulterior motive to wreak vengeance and with a view to spite him due to private and personal grudge. While dealing with the above aspect the Court also must bear in mind that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. Embarking upon the enquiry into the allegations contained in the F.I.R. should not lead to an arbitrary exercise of power on the part of the Court. The Court also must bear in mind that an accused against whom false and vexatious charges of corruption are made has an effective remedy of requesting the Court to proceed against the complainants or the investigating officer under the relevant provisions of the Indian Penal Code. The very established principle that a criminal prosecution, if otherwise justifiable and based upon proper evidence is not vitiated on account of mala fides or political vendetta on the part of the complainant or investigating officer is also a safe guideline to decide these cases. In the above legal background, we have to see whether the facts of this case would justify the interference with the investigation now going on against the petitioner.

9. It is now too early to say by examining thread-bare the allegations in Exhibits P-2 and P-5 and come to the conclusion that no offence has been made out against the petitioner. At the same time, Shri M. P. R. Nair, learned counsel for the petitioner strongly contended that there exist enough materials before this Court to come to the conclusion that the whole investigation is tainted with mala fide and personal vendetta.

10. The gist of the allegations against the second respondent, who is the present Chief Secretary is as follows :

The second respondent was always inimical towards the petitioner and entertained deep personal grudge and hatred towards the petitioner for reasons best known to himself. The second respondent was trying to become the Chief Secretary even in 1992 by bypassing the petitioner's claim. By making use of the position of Chief Secretary the second respondent misguided and misinformed the Council of Ministers as a result of which several news paper reports appeared containing various unfounded allegations against the petitioner. Utilising his influence over the Secretary (Revenue) to the Government of India, who is the batchmate and friend, the second respondent got an Income Tax raid conducted in the residence of the petitioners. To ruin the career of the petitioner and to defeat the claim of the petitioner to get a suitable posting under the Central Government the second respondent organised and devised a scheme to get the petitioner involved in criminal cases. For the above purpose the second respondent got the third respondent, a junior officer posted as Director of Vigilance Investigation.

11. The second respondent in his counter-affidavit has strongly denied the above allegations. The allegation of the petitioner that the second respondent was always inimical towards him and entertained deep personal grudge and hatred was denied as untrue. On the other hand, the second respondent has a grievance that it is the petitioner, who started a kind of campaign through news media against the second respondent after he relinquished his charge as Chief Secretary. The second respondent also asserts in the counter-affidavit that he had never misused his position to malign the petitioner. He has also stated that he had always endeavoured to keep up the highest standards of personal rectitude and integrity in keeping with the traditions of his service. The allegation that the second respondent misguided and misinformed the Council of Ministers was also denied as totally unfounded. It was further averred in the counter-affidavit that the Council of Ministers consists of very senior political leaders, who are in their own right, very intelligent and well-informed persons with a sense of fairplay and justice. The counter-affidavit also proceeds to state that the Secretary, Department of Revenue, Ministry of Finance, Government of India is not even an acquaintance of the second respondent. The alleged involvement of the second respondent in the Income Tax raid has been totally denied. It was further averred that the second respondent can never imagine to influence the Government of India in the matter of appointment of the petitioner in the Central Government service. The second respondent also denies his alleged role in the matter of appointment of the third respondent as Director of Vigilance Investigation. Thus, when the allegations of mala fide are seriously disputed and denied by the second respondent, it is not possible at all for for this Court to come to the conclusion that the cases now taken against the petitioner are tainted with mala fide. I do not find any basis for any such allegations against the second respondent.

12. Now let us analyse the more serious allegations against the third respondent who is the Director of Vigilance Investigation. According to the petitioner, the

third respondent was appointed as Director of Vigilance Investigation overlooking the seniority of ten others. The petitioner, as Chief Secretary had occasions to reprimand the third respondent many times and therefore the 3rd respondent naturally became inimical to the petitioner. That is why the third respondent was hand-picked for the post of Director of Vigilance Investigation so as to enable him to oversee and supervise the investigation against the petitioner. The petitioner has also detailed certain allegations against the third respondent that he had collected huge amount by way of bribe from fresh recruits of the Armed Police. A reference has been made to another allegation against the third respondent that on account of the ill-treatment, his first wife died and that he had an illicit relationship with another lady which was the subject-matter of the crime registered in the Museum Police Station, Trivandrum. The third respondent has also filed a detailed counter-affidavit. The third respondent has also denied in categorical terms that he had no reason to be inimical to the petitioner. According to the third respondent, even his acquaintance with the petitioner was a mere formal introduction to the petitioner way back in 1995 while participating in an official conference. Apart from that there had not been any occasion for the third respondent to meet the petitioner personally. With regard to the allegations of collection of bribe it has been stated in the counter-affidavit that there had never been any such allegation raised from any quarters and he was coming across such an allegation for the first time in the Original Petition. With regard to the allegation of the petitioner about alleged ill-treatment of the first wife of the third respondent, the third respondent in his counter-affidavit has stated as follows :

" 10. It is rather unfortunate and painfully cruel that the petitioner has chosen to make an unfounded allegation of such inhuman, cruel and uncharitable nature that it was due to the ill treatment of the petitioner that his first wife died. The pathetic truth is that she passed away in November, 1988 after prolonged illness of cancer. All the best possible treatment available for cancer was given to her. It is in spite of that, the petitioner has made such painful accusation without any regard for the sacred and cherished memory this respondent keeps with him of his departed wife. To say the least, it can never be the expression of a civilised mind. This respondent prays that the action of the petitioner in making this Hon"ble Court a forum for such baseless and maligning remarks against him may be viewed seriously and the petitioner may be proceeded against for such unethical behaviour. This respondent further stoutly denies the allegation that he had an "illicit relationship with another" which led to a crime being registered in the museum Police Station. It was long after the death of his wife that the respondent remarried in February, 1993 at the St. Peter's Church, Thiruvananthapuram, followed by a public reception attended also by most of his service colleagues and friends. Such being the actual state of affairs, it is rather too much on the part of the petitioner to raise unfounded and irresponsible allegations like "illicit relationship with another" etc. against this respondent which may go to adversely affect him and lower his status and prestige among

the general public."

13. In view of these categorical denial on the part of the third respondent regarding the allegations of mala fide raised by the petitioner, this Court cannot countenance the above allegations. The allegations of mala fide remain as mere allegations without any proof or foundation. Therefore, on such a fragile ground this Court cannot quash the investigation now going on against the petitioner on the basis of Exhibits P-1 and P-5 First Information Reports. Since the petitioner was unable to establish the allegations of mala fide against respondents 2 and 3, it will be improper on my part to direct the investigation to be conducted by another officer.

14. The learned counsel appearing for the third respondent submitted that the third respondent must be awarded compensatory costs in view of the reckless and wanton allegations against him, especially in the matter of his personal and private life. In this connection it is also pertinent to point out that the petitioner in his reply affidavit has made another attempt to reiterate the allegation of illicit relationship of the third respondent with another person. Thus, it can be seen that in spite of the stout denial on the part of the third respondent in his counter-affidavit, the petitioner pursues the above allegation without any materials. It is difficult to comprehend the above attitude of the petitioner in pursuing the above personal allegations against the third respondent. Under these circumstances, the request of the third respondent to award him compensatory costs seems to be justifiable. Therefore, the Original Petition is dismissed. The petitioner is directed to pay Rs. 5,000/- as costs to the third respondent.