

(2000) 02 KL CK 0066
In the High Court Of Kerala
Case No : W.A. 2708 of 1999

State of Kerala and Others

APPELLANT

Vs

T.T. Antony and Others

RESPONDENT

Date of Decision : 29-02-2000

Acts Referred:

Commissions of Inquiry Act, 1952 — Section 8B
Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 129, 132, 164, 482
Penal Code, 1860 (IPC) — Section 201, 302, 34

Citation : (2000) 1 KLJ 519

Hon'ble Judges : S. Sankarasubban, J;AR. Lakshmanan, J

Bench : Division Bench

Advocate : M.K. Damodharan A.G., K. Jayakumar Sr. Govt. Pleader and Alexander Thomas Govt. Pleader, for the Appellant; T.V. Prabhakaran, T.P. Kelu Nambiar, P.K. Suresh Kumar, V.C. James, K.P. Satheesan, M.N. Sukumaran Nayar, B. Raman Pillai, T. Ravikumar, M.A. Firoz and George Mecheril, for the Respondent

Judgement

Dr. AR. Lakshmanan, J.

(Factual discussion - Para 1 to 37 omitted).

38. Mr. Revada A. Chandrasekhar hails from Andhra. He is a member of the Indian Police Service. He was selected by the Union Public Service Commission for appointment to the IPS cadre. After completing his training course, he was allotted to the IPS cadre of Kerala State. He got his first posting as Asst. Superintendent of Police on 23-11 -94 at Thalassery, Kannur. He assumed charge in the afternoon of 23-11-1994. Before joining duty he hardly got any time to familiarise himself with his official duties or with the local language. He was informed that the then Minister for co-operation would be making an official visit to Kuthuparamba on 25-11-94 and that there was a likelihood of a serious law and order situation developing in the above place. He was advised to attend the meeting of the police officers to be held on the next day to discuss the ways and means for containing the apprehended law and order situation. He was further

told that police force had strict instructions from the Headquarters to make arrangements for providing adequate and effective protection to the Minister for * all his official visits especially to Kannur District, where the threat against his life was real and grave. The discussion took place in the office of the Supdt. of Police, Shri. K. Padma kumar on 25-11 -94. A final decision regarding various steps to be taken by the police to maintain law and order was arrived at. When the decision, as evidenced by Ext.PI was taken in the meeting of the Police Officers, sufficient information was gathered by the police from various intelligence sources regarding the nature and gravity of the law and order situation which was likely to develop on the occasion of the visit of the then Minister, Shri.M.V. Raghavan. In this background the presence of an Executive Magistrate was requisitioned by the Supdt. of Police, Kannur and the District Collector, Kannur, directed Shri.T.T. Antony, Deputy Collector and Executive Magistrate to remain on duty at Kuthuparamba Town Hall when the Minister for Co-operation was to attend the function on 25-11-1994. The entire area was divided into five sectors and details regarding the duties to be performed by the police led by senior officers were mentioned in Ext.P1. Sector 5 specified in Ext.PI was put in charge of the petitioner, who had to perform his duties with the assistance of senior officers like Philip Joseph and several other Assistant Officers. The officers were given specific instructions to ensure smooth entry of the Minister into the Town Hall and that no obstructions are made on the road leading to the town hall. As already noticed, the petitioner was totally unfamiliar with the local situation, made an assessment of the duties to be performed by him and discharged the same to the best of his ability with the assistance received from the senior police officials placed under his charge. The Minister was to arrive at 10.00 am. on 25-11 -1994. In the meanwhile thousands of persons belonging to the militant groups and other ranked and file of the Marxist Communist Party collected at various places covered by the five sectors mentioned in Ext.PI. I may be noticed that all these groups of persons belonged to the then opposition party righting the then ruling party in the State viz., UDF and the Minister Shri.M.V. Raghavan was a member of the UDF Government. The Minister's motorcade arrived near the town hall at 11.45 a.m. By that time the crowd began to surge forward shouting slogans crashing through the blockade made by the police. They pelted stones against the police and they were hit by stones. By that time the Executive Magistrate Shri.T.T. Antony, was present at the spot, took over control of the situation and declared the crowd an unlawful assembly and ordered the police to disperse them. It became very difficult for the police to disperse the crowd as the crowd of people turned out to be uncontrollable. The Executive Magistrate ordered police to have recourse to bursting tear gas shells against the crowd. But it turned out to be of no effect. Thereafter, the Executive Magistrate ordered to commence lathi-charge, which went on for a few minutes and and in the meanwhile, the militant crowd retaliated by pelting stones against the police. Several policemen were hit by stones, resulting in serious injuries to them. The crowd grew more violent and the whole situation prevailing was getting out of control. By that time the

Minister entered the town hall and protection was given to him at the risk of injuries to policemen. The crowd began to move forward towards the town hall not only shouting slogans but also pelting stones and other weapons against the police. The whole crowd went out of control. The police apprehended real threat and danger to the life of Shri M.V.Raghavan and the Executive Magistrate who was present at the spot ordered the police finally to open fire to disperse the unruly crowd. The police thereupon, after giving due warning to the crowd and in due compliance with the procedure prescribed by law opened a few rounds of fire into the air. This warning did not produce any result and the crowd became more violent. Then the rifle party opened a few rounds of fire into the violent crowd and the crowd began to disperse slowly. Thus the whole situation was brought into control and the Minister was given protection to return from the place. A report was submitted by the Executive Magistrate to the District Collector explaining the circumstances under which he had to give the order to open fire against the violent mob. The District Collector also submitted a report to the Government under Ext.P3. The Supdt. of Police submitted his report to the Director General of Police under ExtP4. We have already referred to these exhibits in paragraphs supra. The Government ordered a judicial enquiry to be held by the District and Sessions Judge, Shri.Padmanabhan Nair was appointed in that behalf. We have already referred to the terms of reference and the findings rendered by the Commission of Inquiry in extenso in paragraphs supra. In so far as this case is concerned, it is pertinent to note that item No. 3 in the terms of reference is definite and conclusive. The conclusion has been arrived at after a detailed enquiry and appraisal of evidence. The Commission of Enquiry has discussed about the involvement of ASP, Mr.Revada Chandrasekhar in a separate heading: "The ASP - how far responsible". It is beneficial to extract the same:-

Sri.R.A. Chandrasekhar, A.S.P was the officer who carried out the order of the Executive Magistrate to fire. As I have pointed out earlier, along with M/s.M.V. Raghavan, T.T.Antony and Abdul Hakkim Bathery, status under Sec. 8B of the Commissions of Inquiry Act was conferred on him also. A junior IPS Officer from the ASP, Sri.R.A.Chandrasekhar came to Thalassery for the first time on the evening of 23-11-1994 and took charge as A.S.P. He has got no idea about the topography of Kuthuparamba, much less the political equations or situations at Kuthuparamba. I have found that there was no evidence on record to prove the alleged conspiracy with Sri.M.V. Raghavan, Deputy S.P. Abdul Hakim Bathery, Deputy Collector T.T. Antony and A.S.P. R.A. Chandrasekhar. Moreover, the A party has no case that Sri.R.A. Chandrasekhar has met or even seen Sri.M.V. Raghavan before that incident. There is nothing on record to show that he was known to Sri. M.V. Raghavan previously. I has come out in evidence that Deputy S.P. Hakkim Bathery and Deputy Collector T.T. Antony are responsible for opening lathi charge and firing at the demonstrators. Of course, the A.S.P. also ought to have exercised the discretion vested with him more carefully. But the evidence adduced in this proceedings shows that it was not the police party under the

control of the A.S.P. who started the lathi charge first and it was started by the Deputy S.P. who was escorting the minister. Then the situation went out of control and there was heavy stone pelting from the side of the demonstrators. The A.S.P. had no other option but to join the escort party. In the matter of firing it is the duty of the Executive Magistrate to take decision whether firing is to be resorted to or not. In this case, the Executive Magistrate was present at the spot and he gave the necessary orders. The A.S.P. carried out the order of the Executive Magistrate. The evidence of CW.14 shows that originally the firing squad was standing near the Town Hall gate on the Kannur-Kuthuparamba road and they fired from that place. Subsequently, firing took place from other places also. The evidence shows that firing was made from spots in front of the Co-operative Urban Bank on the Kuthuparamba-Thalassery road, a place more than 144 metres on south -west of the traffic island junction. There is no evidence as to who fired those shots. There is also no evidence to hold that any member of the firing party under the control of the A.S.P. went there and fired those shots. Since the A.S.P. is only an inexperienced junior I.P.S. officer who took charge only 2 days prior to the incident, I am of the view that even if there is minor lapses on his part, the same can be condoned. Hence I do not find any reason to place any liability on his shoulders.

39. It is thus seen from the findings and evidence let in before the Commission that Mr.Revada Chandrasekhar has been totally exonerated from any liability by the Commission, which further found that the said officer had only performed duties in strict compliance of the orders of the Executive Magistrate. The Commission found that there is total absence of evidence, even suggestive of the fact that any member of the police party led by him opened fire, which resulted in the death of victims. It is pertinent to note that report of commission was placed before the Government and that the said report has been accepted by the State Government and on accepting the same directed the Director General of Police, to take jieceessary action on the basis of the findings of the Enquiry Commission Report. On 2-7-1997, the D.G.P. ordered Mr. Jacob Punnose to register a crime against persons who are found to be responsible for the incident. Accordingly the said IPS officer was issued proceedings dated 4-7-97 directing the Station House Officer, Kuthuparamba to register a crime case against persons who are held to be responsible for the police firing on 25-11-94 by the Enquiry Commission. As per the above direction, the Sub Inspector of Police registered Crime No. 268/97 of Kuthuparamba Police Station against Mr.M.V. Raghavan, former Minister of Co-operation and Ports, Mr. Abdul Hakim Dy.S.P. Kannur for offence punishable u/s 302 IPC and forwarded the investigation copy of the FIR to the DIG of Police for further investigation. It can be seen from Ext.P6 FIR that a case has been registered as directed by the third respondent on the basis of the findings of Shri Padmanabhan Nair Commission of Enquiry. It is also seen that the findings of the Commission on each of the terms are also referred to in Ext.P6. The FIR thus filed before the Judicial First Class Magistrate; Kuthuparamba does not contain the name of Mr.Revada Chandrasekhar as there

is definite findings in the Commission Report wherein the petitioner has been fully exonerated. While so, on 9-6-98, after one year and two months, for the registration of crime, the investigating officer filed a report before the court below implicating as accused in the case several police officials, including Mr. Revada Chandrasekhar. Since the petitioner suspected some foul play in the investigation by the present team, he approached this court. According to the petitioner, if the present investigating agency is permitted to continue it will certainly lead to miscarriage of justice. Now the question is whether the petitioner, Mr.Revada Chandrasekhar can now be included as one of the accused and proceed before a criminal court, who was completely exonerated of all the blame and liability by the Padmanabhan Nair Enquiry Commission. It is also a matter of record that the Commission's report was accepted in full and the Chief Secretary has instructed the DGP by his letter dated 30-6-1997 to initiate criminal action against the police officials and register a case on the basis of the findings. In our opinion no case can be registered against Mr.Revada Chandrasekhar since the Commission of Enquiry has exonerated him completely. Ext.P6 is signed by Mr. Jacob Punnose, which is the FIR file. The letter sent by Mr. Jacob Punnose to the Station House Officer, Kuthuparamba Police Station dated 4-7-97 is very specific and restricted the offence only to three persons viz., Mr.M.V. Raghavan, former Minister of Co-operation and Ports, Mr. Abdul Hakim Bathery, Dy.S.R, Kannur and Mr.T.T. Antony, Deputy Collector and Executive Magistrate. The findings in the Enquiry Commission's Report are also incorporated in Ext.P6 proceedings. In the meanwhile, petitioner was promoted and posted as Supdt. of Police. It was only one year and two months thereafter, Ext.P8 report was filed by the third respondent, Mr. Jacob Punnose, implicating the petitioner as accused No. 10 on the allegation that he had committed an offence punishable under Sec.302 IPC. There is every reason to believe that the petitioner was implicated as accused in the case and sought to be made as a scapegoat. Ext.P8 has completely ignored the fact that the commission has entered a definite finding that the petitioner is in no way responsible for the incidence which took place on 25-11 -1994. In fact the Executive Magistrate was in control of the entire situation and the other police officers including the petitioner have acted on the orders issued by the Executive Magistrate from time to time. As per Ext.P8 proceedings the petitioner and other police officers are implicated as accused in the above crime case accusing them of having committed various offences including the offence of murder and by ignoring Ext.P2 report submitted by Mr.T.T. Antony stating that he became convinced that the mob could not be dispersed without resorting to firing and that the A.S.P. has given orders to disperse the mob by resorting to firing. After giving warning to the mob, the police started firing into the air to scare the mob. Even after firing about 40 or 50 shots into the air, the mob were not in a mood to disperse. Ultimately the police fired into the mob after giving proper warning. Ext.P8 proceedings in so far as it seeks to implicate the petitioner Shri.Revada Chandrasekhar as an accused in the above crime case is vitiated by legal and factual malafides. There is yet another reason to quash the FIR in so far as the

petitioner is concerned. A case of conspiracy was introduced for the first time in Ext.P8 report.

40. Ext.P8 report was prepared by the Supdt. of Police based on the information personally known to him and of the informations gathered from various other sources including police officers. Now the very same Supdt. of Police has repudiated the truth of many facts contained in Ext.P4 report and has gone to the extent of appearing before the local judicial magistrate and giving a confessional statement under Sec. 164 of the Code of Criminal Procedure. The statement was given by him before the Magistrate on 1 -1 -1999. The english translation of the said statement has been marked as Ext.P13. It is pertinent to notice in this context that the same officer has given an affidavit in writing before the Judicial Commission swearing to the facts within his knowledge regarding the Kuthuparamba incident. A combined reading of Exts.P4, 13 and 14 would unmistakably reveal as to what extent the Supdt. of Police has changed the version from stage to stage and ultimately given a confessional statement before the Judicial Magistrate.

41. We have reason to believe that the statement was given under extraneous circumstances. It is incredible to suggest that truth was discovered by the Investigating Officer, after more than four years, after he submitted Ext.P4 report. Ext.P15 is the order passed by the Government of India, Ministry of Home Affairs, New Delhi dated 20-4-1999. The petitioner Shri Revada Chandrasekhar was placed under suspension by the Government of Kerala vide order dated 3-11-1998 for being accused in Crime No. 268/97. He preferred an appeal against the suspension order to the Government of India. The Government of India passed the following order:-

Whereas, Shri Revada A. Chandrasekhar, IPS (KL:91) was placed under suspension by the Government of Kerala vide their order dated 3-11-1998, for being accused in Crime No. 268/97 of Koothuparamba Police Station and charged under Sec.302 IPC in connection with police firing on 25-11-98 at Koothuparamba.

2. Whereas, Shri. Revada A. Chandrasekhar, IPS, has preferred an appeal dated 18-11 -98 against the above suspension.

3. And whereas, it is observed that the Commission of Inquiry appointed by the Government of Kerala to inquire into the circumstances leading to the aforesaid firing incident, fully exonerated Shri Revada A. Chandrasekhar, IPS, the then ASP of the district, saying that he was an inexperienced junior IPS officer who had taken charge only 2 days back to the incident and, in view of this, even if there was a minor lapse on his part, the same may be condoned.

4. And now, therefore, from examination of the appeal in the light of the comments offered by the State Government and other relevant facts and material of the case, the Central Government in exercise of the powers conferred under rule 19(2) of the AIS (D&A) Rules, 1969, have decided that the order of

suspension may be set aside without prejudice to the ongoing inquiry/court case instituted by the State Government against Shri.Revada A. Chandrasekhar, IPS, and orders accordingly.

41 (a). Learned Advocate General argued that the report of the Commission of Inquiry is only recommendatory in nature and that neither the report nor any evidence adduced in the proceedings before the Inquiry Commission is binding on in any judicial proceedings. He further contended that independent evidence can be adduced in judicial proceedings to prove the guilt of the accused. He also referred to certain decisions of the Supreme Court including the decision in *State of Haryana and others v. Bhajan Lal and others* 1992 Supp. (1) SCC 355, wherein it is observed that the mere fact that the respondents were acquitted by the Commission of Inquiry does not prevent the investigation to be conducted when the Criminal Law is set in motion. There is no dispute for the proposition that the finding of the Commission of Inquiry or any statement given is not binding on any subsequent judicial proceedings and then independent proof is to be adduced in the proceedings. But so far as the case before us is concerned, the Government accepted the findings of the report of the commission and then ordered a crime to be registered on the basis of the findings of the Commission of Inquiry. Hence, the question is not the binding nature of the report of the Commission, but the question is how far the Government can deviate from the findings of the report of the Commission, once it has accepted the findings. The Government could have very well rejected the findings of the report of the Commission and started a fresh investigation. But, on the other hand, what the Government did was that it accepted the report of the Commission. Once it has accepted the report of the Commission, investigation has to proceed on the basis of the findings. Ravada A. Chandrasekhar filed a statement before the Commission of Inquiry. The Commission went into the question of its complicity in the firing and then came to the conclusion that the above persons were not responsible for the firing. When this finding is accepted by the Government, it cannot again conduct investigation to prove that the findings rendered by the Commission is not correct. Hence, we are of the view that the arguments advanced by the Advocate General on this aspect cannot be accepted.

42. Ext. PI 5, in our opinion, is yet another supporting document in favour of the petitioner Shri. Revada Chandrasekhar to countenance his prayer for quashing the proceedings. This apart, not a single person sustained injuries as a result of firing a few rounds by the police under the command of the petitioner, under the orders of the Executive Magistrate. In our view the petitioner has carried out the orders faithfully issued by the Executive Magistrate in good faith.

43. Another important feature in this case is the registration of Crime Nos. 353 & 354/94, which was registered on the date of occurrence. Crime No. 353/94 was registered by Shri.Revada Chandrasekhar against 8 named persons and several other unidentified persons. It is submitted that all these named persons are highly influential leaders of the major ruling party in the State. So also Crime No.

354/94 was registered by the Supdt. of Police against unidentified persons belonging to the same party for the attack made on the police station, which also resulted in firing by the rifle party under him. It appears from the pleading that the I.G. and D.I.G. of Police took steps to scuttle the investigation of two crimes and finally Crime No. 353/94 was referred as false and Crime No. 354/94 was referred as undetected. Copies of the said reports were produced as Annexures I and II along with W.A.8/2000. A reading of the said report would reveal that an attempt was made to save the culprits in the above two cases. It is stated therein that they have not committed any offence and had not indulged in any act of violence to justify the police-firing.

44. It may be noted in this context that on the date of occurrence itself, ie. 25-11-1994, Crime No. 353/1994 was registered by the appellant - Ravada A. Chandrasekhar - against 8 named persons and several other unidentified persons. So also Crime No. 354/1994 was registered by the Superintendent of Police, Kannur against unidentified persons belonging to the major ruling party for the attack made on the police station, which also resulted in firing by the rifle party under him. True English translation of the Refer Report in Crime Nos. 353/1994 and 354/1994 have been filed as Annexures I and II along with the Writ Appeal. A reading of these two Annexures would reveal that a conscious attempt was made by the police officers to save the culprits in the said two cases.

45. We have already referred to Ext.P8 in paragraph supra. Even if the entire allegations contained in Ext.P8 are accepted as true, the said allegations, in our opinion, do not spell out the charge of murder against Ravada A. Chandrasekhar. It is an admitted fact that he had no personal acquaintance either with the former Minister M.V. Raghavan nor with the Executive Magistrate T.T. Antony, nor with any of the police personnel present at Kuthuparamba on 25-11-1994. He joined duty at Thalassery only 48 hours before the alleged occurrence. He had no time to meet any police officer except the Superintendent of police. He was totally unacquainted with the local situation. These facts are not disputed. As already noticed, not a single person died or sustained injuries as a result of firing a few rounds by the men under his command under the orders of the Executive Magistrate. Ext.P8 report contains arguments advanced by the investigating officer to substantiate the charge of murder and also to make out that the allegations contained in Crime Nos. 353/1994 and 354/1994 are false. A new case of conspiracy was also introduced for the first time in Ext.P8 report. Ext.P8 begins with an assertion that a police firing at Kuthuparamba on 25-11-1994 was not a case of police firing under Sec. 129 Cr.P.C. as falsely claimed in Crime No. 353/ 1994 of Kuthuparamba Police Station. This was exactly the case set up by A party before the Commission. It is further stated in Ext.P8 that there was no unlawful assembly and that there was only a peaceful gathering of hardly 500 persons who stood by the side of the road in front of the Town Hall solely for the purpose of making a peaceful demonstration. It is further-stated that as a result of the lathi-charge, some of the victims fell down and the remaining persons ran away from the place. The above version about the occurrence projected in Ext.P8

was adopted by the investigating officers by completely distorting truth which could be seen from Annexure-II Refer Report, which relates to Crime No. 354/1994. Finally the case was referred as undetectable. This case was investigated by different sets of investigating officers. To disprove the version in the report Ext.P8, the appellant-petitioner had also produced photostate copies of 32 medical certificates relating to the injuries sustained by police personnel as Ext.P12 series along with his reply affidavit in O.P.24401/1998, which would clearly show that Ext.P8 version does not reflect the true state of affairs which prevailed at Kuthuparamba at the time of police firing. In Ext.P8 the A.S.P. Ravada A. Chandrasekhar was implicated as accused No. 10 charged with offences punishable under Sees. 324, 326, 307, 302 read with Sees. 114, 201 read with Sec.34 I.P.C. There is no mention anywhere in Ext.P8 that A.S.P. either instigated anybody to shoot and kill any of the victims in this case, or shared a common intention with any such persons to commit the offence of murder. This would show that the entire investigation to the extent to which it is evidenced by Ext.P8 is unfair and unjust and totally devoid of any bona fides in so far as the appellant-Ravada A.Chandrasekhar is concerned. It is also very interesting to note that in Ext.P8 it is mentioned that the A.S.P. created a false record by registering F.I.R, in Crime No. 353/1994 concealing the truth and intending to save the guilty from legal punishment. It may be noted that Ext.P8 report was filed on 28-9-1998, whereas Crime No:353/1994 was under investigation by various senior police officers till 15-11-1998 and till that date, no one among the investigating officers found that the FIR in Crime No. 353/1994 was a false record.

46. As per the order issued by the I.G. of Police, Northern Range, the present S.P., Kannur took over the investigation on 15-11-1998. Thus, he commenced the investigation long after Ext.P8 report was filed before the Court below by the 4th respondent-DIG, Northern Range. The S.P., Kannur continued the investigation upto June, 1999 and it was only thereafter that he filed Annexure-I Refer Report with the finding that the FIR in Crime No. 353/1994 is false. Thus, in our opinion, it would clearly show that respondents 3 and 4 commenced investigation with a pre-judged decision to treat the Crime case registered by the A.S.P.-Crime No. 353/1994 - as false. This is yet another vitiating factor.

47. Yet another vitiating factor is this: Superintendent of Police K.Padmakumar was implicated as accused No. 19, charged with offence punishable under Sec.201 IPC. Ext.P8 report mainly charged with the offence of murder. S.P. Padmakumar on 1-1-1999 appeared before the learned Magistrate of Kuthuparamba and gave a statement under Sec.164 of the Code of Criminal Procedure making substantial alterations in the version given by him in Crime No. 354/1994 in Ext.P4 report to the D.G.P. and even in the affidavit filed by him before the Judicial Commission.

48. We have given our anxious consideration. We have carefully went through the entire materials very scrupulously and we are of the opinion that there are

adequate and compelling circumstances placed on record in the case to quash the entire proceedings in Crime No. 268/1997 of Kuthuparamba Police Station in so far as the appellant-petitioner Ravada A. Chandrasekhar is concerned. The judgment under appeal clearly shows that the learned Single Judge had adverted"to the various grounds raised by the appellant and arguments addressed by the counsel in support of his plea for quashing the entire proceedings in the above crime case in so far as it relates to him. It is clear from the said judgment that the learned single Judge was apparently satisfied that the proceedings initiated against the appellant accusing him of having committed the offence of murder punishable under Sec.302 IPC are vitiated by mala fides and that even assuming that the allegations made against the appellant are taken as true at the face value, the said allegations do not spell out the offence of murder. But, the learned single Judge declined to quash the proceedings as against the appellant obviously for the reason that the alternative relief granted by him is sufficient to meet the ends of justice and safeguard the interest of both the parties.

49. The Supreme Court in the decision reported in *State of Kerala and Others Vs. O.C. Kuttan and Others*, , held that there cannot be any dispute with the proposition that when allegations in the FIR do not disclose prima facie commission of a cognizable offence then the High Court would be justified in interfering with the investigation and quashing the same as has been held by the Supreme Court in *State of West Bengal and Others Vs. Swapan Kumar Guha and Others*, . In *State of Haryana v. Bhajan Lai*, 1992 Supp. (1) SCC 335 = 1992 SCC (Cri.) 426, the Supreme Court held that such powers 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 powers should be exercised. Citing the case of *State of U.P. Vs. O.P. Sharma*, , the learned Advocate General submitted that this court should be loath to interfere at the threshold to thwart the prosecution exercising its inherent power under Sec.482 of the Code of Criminal Procedure or under Arts.226 and 227 of the Constitution of India, as the case may be, and allow the law to take its own course. The same view was reiterated by the Supreme Court in the decision reported in *Rashmi Kumar (Smt) Vs. Mahesh Kumar Bhada*, , wherein the Supreme Court sounded a word of caution and stated that such power should be sparingly and cautiously exercised only when the court is of the opinion that otherwise there will be gross miscarriage of justice.

50. In *Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others*, , the Supreme Court held that the High Court can exercise its power of judicial review in criminal matters and that under Art.227 the power of superintendence by the High Court is not only of administrative nature but is also of judicial nature and that the said Article confers vast powers on the High Court to prevent the abuse of the process of law by the inferior courts and to see that the stream

of administration of justice remains clean and pure. The power conferred on the High Court under Arts.226 and 227 of the Constitution and under Sec.482 of the Code of Criminal Procedure have no, limits, but more the power more due care and caution is to be exercised while invoking these powers,

51. In the case on hand, the investigating officers, in order to show their loyalty, have over-stepped their permissible limits in taking a decision to register the FIR against the appellant-Ravada A. Chandrasekhar. We have elaborately discussed in paragraph supra about the investigation made by the investigation team on the report submitted on different occasions. In our considered view, the FIR does not disclose commission of any cognizable offence by the appellant -Ravada A. Chandrasekhar. Where such offence is not disclosed, we are of the opinion that the court will be justified in interfering with the investigation and quashing the same.

52. In the instant case,

- the incident in question occurred during the regime of the previous Government, in which M.V. Raghavan was a Minister.
- The earlier Crime was registered at the instance of the then Government.
- K. Padmanabhan Nair, Judicial Commission was appointed by the previous Government.
- K.Padmanabhan Nair submitted his report, which was accepted by the Government in toto.
- The Additional Chief Secretary to Government directed the Director General of Police "to take immediate legal action against those responsible for the incidents, on the basis of the findings of the Commission of Inquiry".
- Crime Nos. 353/1994 and 354/1994 registered by the appellant and another police officer were referred. Crime No. 353/1994 was referred as "false" and Crime No. 354/1994 was referred as "undetectable" and the findings finally arrived at by different sets of investigating officers after conducting investigation over a period of four years would clearly show an entirely different version.
- After 15 months, the D.I.G. of Police, Northern Range filed Exhibit P8 report on 28-9-1998 involving 19 persons in the commission of the offence in Crime No. 268/97 and by introducing a case of conspiracy for the first time in the said report.

53. Thus, the allegations in the First Information Report even if they are taken at their face value and accepted in its entirety, do not constitute the offences alleged; From the facts stated above, it is abundantly clear that-the investigation in Crime No. 268/1997 of the Kuthuparamba Police Station in so far as the appellant - Ravada a.Chandrasekhar is concerned is vitiated from its very inception for the various reasons recorded in the paragraphs supra. In the result, W.A.8/2000 filed by Ravada A. Chandrasekhar is allowed and W.A.2709/1999

filed by the State is dismissed. The F.I.R, in Crime No. 268/97 of Kuthuparamba Police Station is quashed in so far as Ravada A. Chandrasekhar, the appellant in W.A.8/2000 is concerned.

54. W.A. Nos. 2708/1999 and 2710/1999 filed by the State of Kerala against T.T.Antony, the appellant in W.A.52/2000 and against P.Damodaran and others, the appellants in W.A.200/2000 can be considered and decided together, these two cases stand on a different footing than the other case filed by Ravada A. Chandrasekhar, both factually and legally.

55. We have already noticed that the report submitted by K.Padmanabhan Nair, Commission of Inquiry on the police firing at Kuthuparamba on 25-11-1994 is the basis for registering a case on the basis of the findings in the enquiry report. The Government of Kerala accepted the findings of the Commission of Inquiry, which could be seen from the communication of the Additional Chief Secretary to Government to the Director General of Police dated 30-6-1997 informing him that the Report of the Commission of Inquiry has been accepted by the Government. The D.G.P. was directed to take immediate legal action against those responsible for the incidents on the basis of the findings of the Commission of Inquiry and the D.G.P. in turn directed the I.G. of Police, North Zone to register a case and the I.G. of Police on the basis of the findings in the enquiry report registered a case against M.V. Raghavan, Abdul Hakkim Bathery and T.T. Antony only.

56. While considering W.AJSTos.8/2000 and 2709/1999, we have also discussed in detail the investigation conducted by the police officers subsequent to the filing of the first F.I.R, and the other developments taken place in this regard and also withdrawal of the two F.I.Rs, filed earlier in Crime Nos. 353/1994 and 354/1994 and the submission of another report by the present investigating officer under Exhibit P8 and also voluntary statement made by K.Padmakumar, S.P. of Kannur before the Judicial First Class Magistrate, Kuthuparamba. The F.I.R, filed against Ravada A. Chandrasekhar was quashed solely on the ground that no cognizable offence has been made out against the said officer and that he was also completely given a clean chit by the Commission of Inquiry, whereas the Commission of Inquiry in its report has clearly indicted M.V. Raghavan and his belligerent attitude of attending the function; In so far as Dy. S.RAbdul Hakkim-Bathery is concerned, the commission has found that Abdul Hakkim Bathery was responsible for the instantaneous lathi-charge at the demonstrators without any reasonable or sufficient grounds, which ignited the fuel to the further developments resulting in the police firing in which five persons were killed and many others injured. The said Abdul Hakkim Bathery has not challenged the said finding or the filing of an FIR before the magistrate in this court, whereas T.T.Antony, the Executive Magistrate, filed a writ petition and the present Writ Appeal -W. A. No. 52/2000 - for quashing the FIR. The commission in its report says that it has no hesitation to hold that T.T. Antony, former Deputy Collector (Housing), Kannur, who exercised the powers of the Executive Magistrate at

Kuthuparamba on 25-11-1994 was having no jurisdiction, authority or assignment at Kuthuparamba on the forenoon of 25-11-1994, whereas he exercised jurisdiction of the Executive Magistrate at Kuthuparamba from 11.00 a.m. on that day, that he miserably failed to assess the situations before ordering fire and that at the time of ordering fire, there was no sufficient ground for resorting to fire. In page 38 of the printed report submitted, it is stated thus:-

Here, it is worthy to note that the so-called crowd did not consist of D.Y.F.I./C.P.I. (M) workers only, but it also consisted of invitees, by standers, passers-by and other public. Bullet marks are found at the various shops on the side of Kuthuparamba - Mananthpdy road. Such a reckless and indiscriminate firing is liable to undermine the faith of the common people in the rule of law. The irresistible conclusion possible is that the Executive Magistrate did not care to evaluate the situations and the possible and dreadful consequences of such a firing in the public street and that too from a tri-junction.

There is also a finding that the Executive Magistrate should have shown much more restraint before ordering to shoot.

57. Likewise, the Commission of Inquiry has indicted K. Padmakumar, S.P. of Kannur and C.G. Nambiar, A.D.M. The Commission has also held that there is no clear and convincing evidence before the Commission to show that there was lawful and proper warning before the lathi-charge and firing and apart from the interested testimonies of the police officials, there is no other evidence to show that the police used the public address loud speaker or megaphone or riot flag to warn the demonstrators as required in the Kerala Police Manual and that the genuineness of the many of the records produced from the side of the police in this regard like the Government Property Register, Issue Register, G.D., Sentry Relief Book, etc. is in dispute and that there is sufficient evidence to show that the teargas used was also not sufficient and firing of more teargas was felt to be necessary by the Executive Magistrate himself. The Commission has also found that the police did not care to follow the instructions contained in the Police Manual or Criminal Procedure Code in dealing with unlawful assembly or in dispersing mobs and mob firing for public security and they are seen observed in its violation by the police at Kuthuparamba.

58. In regard to the firing, the Commission held that there is no cogent and consistent evidence to show as to who actually fired at the deceased and other injured and no clear and clinching evidence has been adduced by either party in this regard and as such it is not easy to arrive at a conclusion as to whether the shots were made by the firing squad themselves or any one out of the firing squad. In conclusion, it is said that since the departmental enquiry as well as criminal case is pending in the matter, it will not be fair on the part of the Commission to form any opinion or pass any comment on the matter at this juncture.

59. We have already referred to the arguments advanced by Sri.T.V. Prabhakaran

for the Executive Magistrate and Sri.V.C. James for the Constables. According to Mr.Prabhakaran, the learned Single Judge should have noticed the express legal bar engrafted in Sec.132 Cr.P.C. against the institution of criminal proceedings against the appellant-T.T.Antony, who was detailed to act and was acting in good faith as an Executive Magistrate under Sec. 129,of the Code of Criminal Procedure and that the assessment of the situation by the appellant cannot be questioned by anybody because it is his subjective satisfaction which is contemplated by law. He also relied on Sec. 132, which states expressly that no Executive Magistrate acting in good faith under Sec. 129 shall be deemed to have thereby committed any offence, and such being the mandate of the law, the learned Single Judge ought to have held that the prosecution sought to be initiated against the appellant under the FIR in question is baseless and unsustainable in law. We are not able to accept this argument. Here we are only concerned with the question whether the FIR registered relates to any cognizable offence. So far as Antony is concerned, the report of the Commission clearly shows that he did not properly evaluate the situation and that police firing was not justified. It is on this finding that the police has now investigated. Of course, this finding of the Commission will not be binding on the aforesaid Antony in the Criminal proceedings and prosecution has to prove by cogent and acceptable evidence. Antony can also rely on Sec. 132 of the Code of Criminal Procedure for showing that the evidence adduced will not show any absence of good faith on his part. According to us, the benefit of Sec.132 can be availed of only during the trial of the proceedings, if a charge is filed. With regard to the police constables, there is no finding in the report of the Commission either way. As a matter of fact, the report states that no evidence has been adduced to show where the firing took place or who fired. The question whether these constables are also entitled to the benefit of Sec.132 can. only be decided during trial, if the charge-sheet is filed.

60. The learned Advocate General submitted that no "fresh investigation" or "re-investigation" is permissible wiping out the earlier investigation altogether as held by the Supreme Court in the decision reported in K. Chandrasekhar Vs. The State of Kerala and Others, , and that only "further investigation" is permissible in law and that too, by the agency which had investigated the case already. He would submit that the impugned judgment has the effect of wiping out the entire investigation into the case conducted by very senior police officers questioning hundreds of witnesses over a period of two years. Thus, he submitted that the fresh investigation by the C.B.I, is impermissible in law as held by the Supreme Court.

61. We have already referred to the arguments of Sri.V.C. James, who appeared on behalf of the 14 police constables, in the previous paragraphs. According to him, the Constables have obeyed the instructions of their superior officers and that they were not implicated as accused while registering the F.I.R. in Crime No. 268/97 originally and that they were implicated in this Crime as accused persons only after.28-9-1998 when the investigating officer - the 4th respondent in W. A.

No. 200/2000 - manipulated the case and made the appellants accused persons, even though they have acted only under the lawful orders of the superiors who were present at the time of incident at Kuthuparamba on 25-11-1994. When it is specifically alleged in the F.I.R, itself that the appellants opened fire only as per the directions of their superiors, the learned single Judge ought to have found that by no stretch of imagination the offence now charged against the appellants could stand.

62. But, the findings of the Commission of Inquiry is that the police firing at Kuthuparamba on 25-11 -1994 was not justified. It is also seen from the finding of the Commission that there is no clear and clinching evidence to show as to who actually fired at the deceased and other injured and no clear and clinching evidence has been adduced by either party in this regard and as such it is not easy to arrive at a conclusion as to whether the shots were made by the firing squad themselves or any one out of the firing squad. In view of the above finding, we are of the opinion that the case put forward by the police constables that they fired at the mob only as per the lawful directions of the superior officers cannot be accepted at this stage, which can be accepted or rejected only after trial.

63. Though some mala fides have been alleged by Ravada A. Chandrasekhar in paragraphs 18, 19 and 20 of O.P. No. 24401/1998, they have been denied by Sri. Jacob Punnoose by filing a separate counter affidavit. According to the learned Advocate General, the issue of Ext.P10 paper publication is not a mala fide act and that the circumstances under which Ext.P10 was issued has also been explained in the counter affidavit.

64. The other writ petitioners/appellants have also expressed their total dis-satisfaction in regard to the manner in which the entire case was investigated by Jacob Punnoose and his subordinate officers. In view of the subsequent development in this case at the time of hearing, we are of the opinion that the question of mala fides alleged and countered by the police officer need not be adverted to in this context and in our opinion it would only further complicate the issues involved in this case.

65. In this context, a suggestion was put to the Advocate General as to whether the investigation can be entrusted with some other officer or officers. The learned Advocate General was asked to ascertain from the Government its views on the matter. He was also requested to furnish the names of the members of the present investigation team of Crime No. 268/97 of Kuthuparamba Police Station and also the list of officers who can be entrusted with the supervision of the investigation as suggested during the argument. Accordingly, a list containing the names of the present investigation team and the list of officers who can be entrusted with the supervision of the investigation was placed before us, duly signed by Sri. K.Jayakumar, Senior Government Pleader. The list reads thus:-

"The following are the members of the present Investigation Team of CR. No.

268/97 of Kuthuparamba Police Station:

1. Shri. Shekharan Miniyodan, IPS., DIG Kannur Range.
2. Shri. M. Balakrishnan, Dy. S.P., Thalassery.
3. Shri. Ramadas Pothan, Dy. S.P., Taliparamba.
4. Shri. T.U. Joseph, Dy. S.P., Crime Detachment, Kannur.
5. Shri. RV. Vijayan, C.I., Valapatanam.
6. Shri. P.K. Narayanan, HC 2182 Kannur Town Police Station
7. Shri. K. Govindan, PC 2925 Kannur Town Police Station
8. Shri. V. Narayanan, PC 2970 Kannur Town Police Station
9. Shri. C.P. Ramachandran, PC 2913 Kannur City PS.

List of Officers who can be entrusted with the Supervision of the Investigation as suggested during the argument:

1. Shri. R. Padmanabhan, ADGP State Crime Records Bureau.
2. Shri. Alphones Louis Erayil, IG, A.P. Battalions.
3. Shri. R.K. Madhekar, IG, South Zone.

66. The investigation in the present case, according to the learned Advocate General, is over and that the charge-sheet could not be filed because of the stay granted by the learned single Judge and pendency of the Writ Appeals. We are inclined on the facts of the case as placed before us (the appeal filed by T.T. Antony) and the appeal filed by 14 police constables) that the learned single Judge is not justified in entrusting the investigation to be made by the CBI. It is alleged by the party appellants that the investigation carried out earlier has not been quite satisfactory, and that the facts and circumstances given an impression that the investigation was channelised for collecting materials to support their view for implicating the appellants and others as accused. Public mind appears to have been greatly shaken and agitated on account of the death of five persons. This is an event over which the people of the State are justifiably concerned. People also do reasonably expect the police-authorities to use their expertise at their command to unearth the mystery and proceed on the basis of the truth - the real truth discovered by them. It is, therefore, necessary that greater candour should be exhibited and the investigating agency should, with an open mind, collect all the materials available and then only eliminate that which has to be discarded and retain the rest to be used for their purpose. We do not think, there is any necessity to take away the investigation from the hands of the State police machinery, which is the statutory agency in whom we have full confidence. We would, however suggest in the facts and circumstances of the case that the Government of Kerala will appoint one among the three, viz., Shri.R.

Padmanabhan, ADGP, State Crime Records Bureau, Shri. Alphones Louis Erail, IG, A.P. Battalions, Shri.R.K. Madhekar, IG., South Zone, as an officer to supervise the investigation in the present case. We hope and trust that a determined effort would be made by the State and its police authorities to get at the truth and in the event of this case appearing to be a case of murder, the murderer would be proceeded against and dealt with according to law. We are sure that the State police would rise to the occasion and by their performance act impartially, cautiously and conscientiously justify the Government's stand that they were in no way inferior to the C.B.I. and are also equally very competent to investigate the case further. In view of the facts and circumstances of this case, we direct the State Government to hold further investigation as per the FIR lodged earlier through one of the officers to be entrusted with the supervision of the investigation as suggested during the argument. We make it clear that none of the members in the present investigation team should be involved in the further investigation. It is true that accused cannot have a say as to who should investigate. In the instant case since the State itself has come forward with a list of officers who can be entrusted with the supervision of the investigation as suggested by us during the hearing, there is no need to entrust by us during the hearing, there is no need to entrust the investigation to the Central Bureau of Investigation. We, therefore, direct the Government to select one among the three, viz., Shri.R. Padmanabhan, Shri. Alphones Louis Erayil, Shri.R.K.Madhekar, and entrust with him the entire investigation and supervision. This we direct in order to do justice between parties and to instill confidence in public mind. The new officer entrusted with the duty of investigation will review the investigation already conducted. The officer can also under his supervision investigate further into the matter. We make it clear that the new investigating team should not be obsessed with the statements made in Ext.P10 by Jacob Punnoose. The duty of the investigating team is only to find out the facts relating to commission of offence. Whether on the basis of the facts a person can be convicted is to be left to the court. There should not be any pre-determined mind on the part of the investigating agency. The new investigating team need not file the present report already prepared. It Can file a separate report on the basis of its investigation.

In the result, W.A. No. 2709/1999 filed by the State of Kerala against Ravada A. Chandrasekhar is dismissed and the Writ Appeal No. 8/2000, filed by Ravada A. Chandrasekhar is allowed and FIR in Crime No. 268/1997 of Kuthuparamba Police Station is quashed in so far as the appellant Ravada A. Chandrasekhar is concerned. W.A. Nos. 2708/1999 and 2710/1999 filed by the State and W.A. No. 52/2000 filed by T.T. Antony and W.A. No. 200/2000 filed by P. Damodaran and others/police constables are ordered accordingly. In the facts and circumstances of the case, we make no order as to costs.