

(1993) 08 KL CK 0032
In the High Court Of Kerala
Case No : Criminal M.C. No. 728/92

State of Kerala

APPELLANT

Vs

Kolakkacan Moosa Haji and Others

RESPONDENT

Date of Decision : 17-08-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 154, 155, 156, 157, 173(8)

Citation : (1993) 2 ALT(Cri) 567 : (1994) CriLJ 1288 : (1994) 2 ILR (Ker) 177

Hon'ble Judges : K.T. Thomas, J

Bench : Single Bench

Advocate : K.C. Peter, Public Prosecutor Addl. DGP, for the Appellant; M.K. Damodaran, for Respondent No. 1, M.N. Sukumaran Nayar, B. Raman Pillai and S. Vijayakumar for Respondent Nos. 2 to 9, for the Respondent

Judgement

K.T. Thomas, J.—Can a magistrate, while ordering u/s 156(3) of the Code of Criminal Procedure (for short "the Code"), direct the Inspector General of Police to conduct the investigation? Answer to this question would resolve the dispute now raised by the State in the Criminal Miscellaneous case. A judicial magistrate of first class has forwarded a complaint filed before him to the Inspector General of Police (Crimes) and ordered him to conduct investigation into the complaint. State of Kerala now challenges the said order in this Crl. Miscellaneous case u/s 482 of the Code.

2. The complaint was filed by the first respondent against eight police personnel, among whom are included a DIG of Police, an Assistant Superintendent of Police, a Dy. Superintendent of Police, a Circle Inspector, two Sub Inspectors and two Constables. The complaint makes mention of an incident which happened at about 3 p.m. on 15-12-1991 in which a teenaged girl "Sirajunneesa" sustained bullet injuries in police firing and died. Complainant alleged that the firing was deliberately ordered by the DIG without any justification and the said illegal order was carried out by the other police officers arraigned in the complaint. Offences alleged against them included murder.

3. On receipt of the complaint, learned magistrate passed an order the operative portion of which reads thus :

"On a perusal of the complaint I am satisfied that the averments in the complaint constitute cognizable offences. The allegation made in the complaint, if true, requires a probe because it reveals high handed acts of police officers as they have indulged in gross abuse of the vast powers vested in them. A detailed investigation is required in this matter. The persons described as accused in the complaint includes high ranking officials in the police department including DIG of police. Hence it may not be proper to direct the local station house officer or superintendent of police to conduct an investigation in this matter. The complaint is therefore forwarded to the Inspector General of Police (Crimes) for investigation u/s 156(3) of the Code".

4. Shri K.C. Peter, learned Public Prosecutor (who is also the Addl. Director General of Prosecutions), contended that no magistrate can u/s 156(3) of the Code, direct a police officer, other than a station house officer of the police station concerned, to investigate a case. As such, the order is without the sanction of law and is liable to be quashed, according to the learned Public Prosecutor. On the other hand learned counsel appearing for the complainant (first respondent) contended that since higher police officers can also exercise the powers of a station house officer in view of Section 36 of the Code learned magistrate has exercised his power quite properly, particularly because the station house officer of the local police station is far inferior in rank to the main accused arraigned in the complaint.

5. All the accused in the complaint are arrayed as respondents in this Criminal Miscellaneous case. Shri M.N. Sukumaran Nayar, senior counsel addressed arguments for some of them. He fully supported the stand adopted by the learned Public Prosecutor.

6. Section 156 of the Code reads thus :

"Police Officer"s power to investigate cognizable case.- (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered u/s 190 may order such an investigation as above-mentioned."

7. An officer in charge of a police station is defined in Section 2(o) of the Code. It is the following:

"officer in charge of a police station includes, when the officer in charge of the police station is absent from the station-house or unable from illness or other cause to perform his duties, the police officer present at the station house who is next in rank to such officer and is above the rank of constable or, when the State Government so directs, any other police officer so present."

8. A police station is defined in Section 2(5) of the Code as follows :

"Police station means any post or place declared generally or specially by the State Government, to be a police station, and includes any local area specified by the State Government in this behalf".

9. What emerges from a combined reading of the above definitions is this : A place or post declared by Government as police station must have a police officer in charge of it and if he, for any reason, is absent in the station house, the officer who is next junior in rank present in the police station shall perform the function as officer in charge of that police station. The primary responsibility for investigation of a cognizable case reported in that station vests with such police officer. Section 156(3) of the Code empowers a magistrate to direct such officer in charge of the police station to investigate any cognizable case over which such magistrate has jurisdiction.

10. On the face of the above principle, a magistrate cannot order any police officer, other than one who is in charge of the police station, to conduct the investigation. But the difficulty does not end with that. u/s 36 of the Code "police officers superior in rank to an officer in charge of a police station may exercise the same powers as may be exercised by such officer within the limits of his station". Learned counsel for the first respondent has heavily banked on the said provision and contended that since any superior police officer in the police hierarchy is also empowered to exercise the powers of an officer in charge of a police station, the magistrate passing the order u/s 156(3) of the Code can direct any such higher officer to investigate. In support of the contention, learned counsel invited my attention to the decision in *R.P. Kapur and Others Vs. Sardar Pratap Singh Kairon and Others*, and *State of Bihar and Another Vs. J.A.C. Saldanha and Others*, .

11. In *R.P. Kapur's* case, petitioners complained that the then Chief Minister of Punjab, in order to wreak vengeance towards some officers had directed a team of police officers of superior rank to conduct investigation into four criminal cases registered against the petitioners therein. The said procedure was assailed as violation of Sections 154 - 157 of the Code. A Constitution Bench of the Supreme Court, which heard the case, did not find anything wrong in Government directing higher police officials to investigate as u/s 551 of the old Code (which corresponds to Section 36 of the present Code since such officers had the authority under law. In *J.A.C. Saldanna's* case the Supreme Court was concerned with the question whether Section 156(3) of the Code is a bar against a magistrate ordering further investigation u/s 173(8) of the Code. Their

Lordships held it in the negative. Neither of the decisions has any bearing on the question raised here i.e., whether a magistrate can direct a police officer, other than an officer in charge of a police station, to conduct investigation.

12. Learned counsel cited a decision of the learned single Judge of the Karnataka High Court in C.M. Iqbal v. Vijaya 1990 (3) Crimes 94 in which a magisterial order referring a case to the C.B.I. was challenged and the learned single Judge said that the magistrate has no jurisdiction to order C.B.I. to take up investigation. I did not find anything in the said decision which is of any use to the present question raised.

13. Government in exercise of their executive powers can authorise any superior police officer to investigate a case, and such directions can be issued by the higher officer to his subordinate officer in the police department. When any police officer referred to in Section 36 of the Code conducts the investigation, that cannot be called in question as without authority. In appropriate cases the High Court can issue directions under Article 226 of the Constitution for causing investigation to be made by such officers because such officers have the power to investigate. But such power of the Government or the higher officer in the department is quite different from the scope contained in Section 156(3) of the Code. There is no provision in the Code or in any other statute which confers power on a magistrate to direct any officer other than an officer in charge of a police station to conduct investigation.

14. Therefore, my conclusion is that the learned magistrate has gone wrong in directing the Inspector General of Police to conduct the investigation. Hence I quash the impugned order. I direct the learned magistrate to take up the complaint again and adopt such steps as he deems necessary according to law in the light of the observations made above.

15. Crl. Miscellaneous Case is disposed of in the above terms.