

(1995) 03 MAD CK 0047

In the Madras High Court

Case No : Writ Appeal No. 249 of 1995 and C.M.P. No. 4596 of 1995

State of Tamil Nadu and others

APPELLANT

Vs

A. Nallasivan

RESPONDENT

Date of Decision : 23-03-1995

Acts Referred:

Citation : (1995) CriLJ 4237

Hon'ble Judges : K.A. Swami, J; Doraiswamy Raju, J

Bench : Division Bench

Advocate : R. Krishnamoorthy, General, Assisted by, R.M. Kannappa Rajendran, Addl. Govt. Pleader, for the Appellant; Miss. R. Vaigai for M/s. K. Elango, G. Chankiraj and P. Mohan, for the Respondent

Judgement

K.A. Swami

1. Pending disposal of the writ petition, having regard to the averments made in the writ petition and also in the counter-affidavit, the learned single

Judge has thought it just and appropriate to direct the Central Bureau of Investigation (CBI) to investigate into the matter and submit a report in the

following terms :-

In the light of all the features, I direct the Central Bureau of Investigation to hold investigation on (1) the complaint given by the abovesaid 18

women of Vachathi village to the Sub-Inspector of Police, Harur, referred to in the abovesaid letter dated 12-3-1993 of the Deputy

Superintendent of Police, Harur to the District Forest Officer, Harur and (2) the abovesaid detention in the forest range office, Harur on 20-6-

1992 of the abovesaid 90 women and 28 children of Vachathi Village. In such investigation, the Central Bureau of Investigation has to find out all

those involved in the relevant crimes and place them before the Judicial Authority for trial. The Central Bureau of Investigation is also directed to

submit a report to this Court as to what it has done in the matter, within two months from the date of receipt of copy of this order. Post this writ

petition on the reopening date after summer vacation".

2. It is pointed out by learned Advocate General that there is a special department known as "CB-CID" of the State, specialised in investigation,

and at the same time it is an independent and impartial agency and its integrity and honesty has never been doubted, therefore instead of directing

the CBI the CB-CID of the State may be directed to investigate. It is further submitted that normally it is the State Police which is directed to

investigate and submit a report and in the instant case, there is no such special circumstance which can persuade the court to depart from the

normal rule of directing the State Police to investigate. The contention that CB-CID should be entrusted with the investigation has not been put

forth before the learned single Judge. However, it does not come in our way to consider this submission. As submitted by the learned Advocate

General, we would not have had any difficulty in acceding to his submission had there not been a stand taken by the State Government itself to the

effect that no such events have taken place in the said village. In the affidavit filed in support of the writ petition, the petitioner has specially averred

several criminal acts. With reference to those averments, a counter-affidavit has been filed by the Deputy Secretary to the State Government,

Home Department, on behalf of all the respondents, in which the allegations made in the affidavit filed in support of the writ petition have been

denied. The relevant averments relating to the alleged gang-raping and other offences are contained in paragraphs 13 and 14 of the counter-

affidavit, which read as follows :

It is further submitted that these respondents deny allegation made by the petitioner in paras 6 and 7 of the affidavit. It is false to state that terror

was let loose on 20-6-1992 and the villagers were attacked by the Forest and Police personnel. It is also denied that a villager by name Perumal

was attacked by the Forest personnel. These respondents also deny the allegation made by the petitioner in para 9 of the affidavit that the houses

were ransacked and women were sexually assaulted.

It is further denied by these respondents with regard to allegation made by the petitioner in para 10 of the affidavit that all the women were illegally detained in the forest office, and some of them were stripped molested and raped. These allegations are imaginary, false and baseless and are made to get publicity by a groups of political persons to confuse the people. The allegations in paras 11 and 12 of the affidavit are also false and made without any substance. In view of the allegations made in paras 11, 12 and 13 of the affidavit, as per the orders of this Hon"ble Court, the Collector of Dharmapuri had visited the spopt to ascertain the facts regarding the basic amenities and condition of life prevailing in Vachathi village with regard to the allegations that the basic amenities were paralysed"".

3. In the light of such a stand taken by the State Government, it becomes very difficult even for the CB-CID to independently investigate the matter, therefore, we are of the view that the stand taken by the learned single Judge that, in the facts and circumstances of the case, the investigation should be entrusted to CBI is well founded and is also supported by a decision of the Supreme Court in R.S. Sodhi Vs. State of U.P. and others, . In that case also, police officials were involved. The case was directed to be entrusted to CBI and the Supreme Court observed that, it would be desirable to entrust the investigation to an independent agency like the Central Bureau of Investigation so that all concerned including the relatives of the deceased may fell assured that an independent agency is looking into the matter and that would lend the final outcome of the investigation credibility"". However, learned Advocate General placed reliance on a decision of the Supreme Court in State of West Bengal and Others Vs. Sampat Lal and Others, and the emphasis was laid on the observations contained in paragraph 33 of the judgment, which is as follows

:-

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.

We would, however, suggest that the Director General of Police, West Bengal, will appoint a competent supervisory officer from the higher ranks

of the State police with expertise in investigation to supervise the investigation in the present case. The police authorities will, we hope, avail of any

credible material collected by Secret Eye, if such material is made available to

the police authorities. We hope and trust that a determined effort would be made by the State 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 police authorities would take it as a matter of challenge rise to the occasion and by their performance, justify their stand in these proceedings that they were competent to investigate and there was no necessity of the CBI being called in, as was done by the High Court"".

4. Normally, as stated in the earlier paragraph, it is the State Police that is to be entrusted with the investigation, but in the facts and circumstances of the case and having regard to the stand taken by the State Government, we feel that it would be just and necessary to entrust the matter to an agency, who will be unconnected with the State and the State Police. By this we shall not be taken to have expressed any opinion or doubted about the honesty and integrity and efficiency of the CB-CID of the State Police or a regular police force of the State and also about the State itself. It is necessary to ensure all concerned that an investigation is going to conduct by the disinterested agency. Accordingly, the writ appeal is dismissed. The connected C.M.Ps. are also rejected.

5. Appeal dismissed.