State of Bihar and Another

Vs

J. A. C. Saldanha and Others

Criminal Appeal No. 301 of 1979

R. P. Singh

Vs

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(R.S. Sarkaria, D.A. Desai, O. Chinnappa Reddy JJ)

13.11.1979

JUDGMENT

DESAI, J. –

1. Reverence and anxiety to the same degree, if not more, to shoot at sight even a remote intrusion into the field preserved for judiciary must inform the judicial approach whenever assistance of the judicial machinery is sought for an unwarranted encroachment into the field of activity reserved for the other branch of government, more so, when extraordinary power conferred on the High Court to issue prerogative writ in aid of justice is invoked to thwart a possible detection of a suspected offence. How dangerous it is to rush in where one should be wary to tread is amply demonstrated by the facts revealed in these two appeals.

2. Factual matrix will highlight the situation. Though the point canvassed centres round the limit of jurisdiction to interfere with the investigation of an offence registered at a police station, to pin-point the contention, relevant facts may be stated with circumspection, as the case is sub judice because any overt or covert expression of opinion on the facts in controversy awaiting adjudication may be censured as judicial impropriety.

3. Tata Iron & Steel Co. Ltd., ('TISCO' for short), has a railway siding at Adityapur in Tatanagar. A ferro-manganese plant has been set up by TISCO at Joda, for which the nearest railway head is Banaspani in Orissa. TISCO has its iron ore and manganese mines at Naomundi. Ore is being transported from Banaspani and Naomundi to Tatanagar, delivery point being railway yard at Adityapur. The allegation is that some of the empty wagons after ore was delivered at Adityapur Railway Station Yard on the return journey, to Banaspani/Naomundi were loaded with pearl coke without being booked according to railway rules and without the issuance of railway receipts with the connivance of the local railway officials and the railway was defrauded of its legitimate revenue. It was also alleged that some tanks containing furnace oil were diverted without regular booking which also resulted in deprivation of the legitimate revenue to the railway. Adityapur railway yard

was not, according to the railway administration, a booking station and hence no booking staff was posted there and, therefore, wagons could not have been booked from Adityapur railway yard and there was considerable variation in the number of wagons booked from Tatanagar and received at Banaspani as set out in first information report. On these allegations a first information report was lodged on March 11, 1977, consequent upon which an offence was registered at Tatanagar G.R.P.S. under Sections 420/120-B, 418 and 368, Indian Penal Code, and Sections 105/106 of the Indian Railways Act against 9 persons. One S. R. I. Rizvi, Inspector Railway Police, S.E. Railway, Tatanagar, commenced investigation into the offence under the general supervision of R. P. Singh, Superintendent, Railway Police, respondent 6 in Criminal Appeal No. 301 of 1979 (appellant in Criminal Appeal No. 300 of 1979). Ordinarily, the investigation would proceed in a traditionally routine manner by the police machinery but it has taken none too-commendable zig-zag course because of the personalities involved in the case and which should have been the most irrelevant factor to influence the decisions of various persons involved in these appeals. It appears that the D.I.G., Railway Police who was the immediate superior of respondent 6, wrote a letter to the then D.I.G., C.I.D., Bihar, on May 11, 1977 requesting him to entrust the investigation of the aforementioned offences to Central Bureau of Investigation but the Inspector General of Police, Bihar, as per his letter dated June 24, 1977, declined the request. In the meantime one Shri Rusi Modi, resident representative of TISCO at Patna appears to have written a personal letter to Shri Saran Singh, the then Chief Secretary of Bihar, complaining about the harassment suffered by the officers of TISCO pursuant to the investigation carried on by railway police under the supervision of respondent 6 and requesting him to take whatever steps the Chief Secretary considered appropriate to curb the enthusiasm of respondent 6 in carrying on the investigation of the offences. It appears from the reply affidavit filed by M. J. Basha, an officer of TISCO, that on June 16, 1977, the very day the resident representative handed over his letter to the Chief Secretary, Cabinet took the decision to transfer respondent 6. It is necessary to refer to this fact to evaluate a submission that even though respondent 6 was transferred he directed a charge-sheet to be submitted despite the fact that the investigation was incomplete and that this conduct would provide demonstrable proof of his malice and mala fides. It appears that one Shri R. H. Modi who was required by the investigating officer to appear to before him made some enquiry by his letter dated November 4, 1977, which appear to have been copied to some higher police officers and in the margin of this letter there is an endorsement by respondent 2, Inspector General of Police, Bihar, requesting respondent 3, Addl. I.G., C.I.D., to look into the complaint made by Mr. Modi. Immediately thereupon respondent 3 sent a telegraphic communication to respondent 6 informing him that the investigation of the aforementioned offence has been taken over by the C.I.D. It appears that on a request made by the Secretary to Government of Bihar (Home) Police Department, the Commissioner, South Chhota Nagpur Division, Ranchi enquired into allegations made by Officers of TISCO against respondent 6 and after consultations with D.I.G. Railway, the immediate superior of respondent 6 submitted his report dated December 27, 1977, in which it is stated that there was no ulterior motive on the part of respondent 6 in instituting a case and there was "material strong enough to institute a case and taking up the investigation and that it could not be said that the case was instituted in order to harass the TISCO management". The Government of Bihar appears to have received an application signed by MLAs and MLCs, 7 in all, addressed to the Inspector General of Police. Vigilance, Bihar, making serious allegations against the investigation done under the supervision of respondent 3 and suspecting a foul play possibly with a view to covering of the case and requested to the government to get the investigation done through I.G. Vigilance. Such a complaint appears to have been made to then Prime Minister of India as also some question appears to have been asked in Parliament. The then Chief Secretary submitted a note to the Chief Minister on August 28, 1978, with reference to the letter of the MLAs/MLCs suggesting that the case involved in the matter handed over to the

C.B.I. for enquiry. Approving this note and suggestion, the then Chief Minister signed the note on the same day. In the meantime Chief Secretary on September 2, 1978, directed respondent 3 to send all papers of the case with a note indicating the stage of investigation to him and in compliance therewith respondent 3 sent all papers of investigation till then done to the Chief Secretary under his covering letter dated September 11, 1978. C.B.I. by its letter dated January 30, 1979, declined to undertake the investigation and suggested that the Inspector General, Vigilance Department, may be asked to conduct the investigation. The Chief Secretary thereafter submitted further note to the Chief Minister on February 8, 1979, stating therein that the C.B.I. is not in a position to take up the investigation and that the I.G., Vigilance, is recommended for investigation and, therefore, the Chief Minister was requested to pass an appropriate order directing I.G., Vigilance to get the case investigated by the Vigilance Department under his personal control. This recommendation was accepted by the Chief Minister on February 27, 1979. In between, on January 18, 1979, even though the papers were still with the Chief Secretary, respondent 3 directed the investigation officer respondent 4 to submit the final report. When the Chief Secretary came to know about it he wrote to respondent 2 (sic 4) deprecating the conduct of respondent 3 in pushing through the matter though the papers were not with him and he was orally instructed not to submit the final report. As under the direction and orders of respondent 3, respondent 4, had already submitted the final report on February 6, 1979, a communication was addressed to respondent 5, Superintendent, Railway Police, one Mr. Mohammad Sulaiman, who had taken over in the meantime from respondent 6 who was transferred, to move the Court not to accept the final report and await report of the police after completion of the further investigation which was directed by the government in the case. The matter was placed before the Additional Chief Judicial Magistrate on February 24, 1979, along with report of the Assistant Public Prosecutor not to accept the final report as hereinabove stated whereupon the learned Magistrate passed the following order :

> After hearing both the parties, I consider it proper to await report on further investigation. Therefore, put up on March 23. 1979 for further orders awaiting report on further investigation.

4. On March 5, 1979, J. A. C. Saldanha, original petitioner (respondent 1) filed a petition in the High Court questioning the validity, legality and correctness of the order of the Additional Chief Judicial Magistrate.

5. A full bench of the High Court by its judgment dated May 14, 1979 quashed the order, inter alia, holding that the direction given by the Chief Secretary with the concurrence of the Chief Minister for taking over investigation of the case by the Inspector General, Vigilance was illegal inasmuch as the I.G., Vigilance could not be entrusted in law with the investigation of the case registered with the railway police and consequently the learned Additional Chief Judicial Magistrate was in error in postponing consideration of the final report already submitted by the fourth respondent till such unauthourisd investigation was completed. The High Court gave various directions to the learned Additional Chief Judicial Magistrate how to dispose of the case. Two appeals have been preferred by special leave, one by the State of Bihar, and the other by original respondent 7 (respondent 6 herein), the then Superintendent of Police, Railway.

6. Two substantial questions arise in these appeals : (1a) Whether the State Government was competent to direct further investigation in a criminal case in which a report was submitted by the investigating agency under Section 173(2) of the Code of Criminal Procedure, 1973 ('Code for short) to the Magistrate having jurisdiction to try the case ? (1b) Whether the Magistrate having jurisdiction to try the case committed an illegality in postponing consideration of the report

submitted to him upon a request made by Assistant Public Prosecutor in charge of the case till report on completion of further investigation directed by the State Government was submitted to him ?; and (2) Whether, when the investigation was in progress the High Court was justified in interfering with the investigation and prohibiting or precluding investigation in exercise of its extraordinary jurisdiction under Article 226 of the Constitution ?

7. 'Investigation' is defined in Section 2(h) of the Code to include all the proceedings under the Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf. 'Police report' is defined in Section 2(r) to mean a report forwarded by a police officer to a Magistrate under sub-section (2) of Section 173. Chapter XII deals with investigation of a cognizable case. Section 156(1) and (2) are relevant and may be extracted :

> 156(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 XII.
>
> (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.

8. Section 36 confers power of an officer in charge of a police station on all police officers superior in rank to an officer in charge of a police station. It reads as under :

> 36. Police officers superior in rank to an officer in charge of a police station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station.

9. Section 173 provides for submission of a report by an officer in charge of a police station on completion of the investigation to the Magistrate empowered to take cognizance of the offence. Sub-section (8) of Section 173 is material. It reads as under :

> 173(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).

10. The first question is whether the State Government was precluded from directing further investigation in the case in which one investigating officer had submitted a report under Section 173(2) of the Code but on which the Court had not passed any order ?

11. Section 156 enables the officer in charge of a police station to investigate without the order of a Magistrate into a cognizable case committed within the area of the police station.

12. The officer directed by the State Government to carry on the investigation is Inspector General,

Vigilance. He is undoubtedly an officer superior in rank, if not in departmentwise administrative hierarchy, to an officer incharge of a police station. Inter se departmental division such as Inspector General of Police or Inspector General, Vigilance, or Additional Inspector General, C.I.D., may be merely a division of work for administrative efficiency, but the Inspector General of Police could not by any stretch of imagination be said not to be an officer superior in rank to an officer in charge of a police station. While interpreting Section 551 of the Code of Criminal Procedure, 1898 ('1898 Code' for short), which was in pari materia with Section 36 of the Code, this Court in R. P. Kapoor v. Sardar Partap Singh Kairon ((1961) 2 SCR 143, 153-154 : AIR 1961 SC 1117 : (1961) 2 Cri LJ 161) observed that the Additional Inspector General of Police was, without doubt, a police officer superior in rank to an officer in charge of a police station. Rule 7(a) of the Bihar Police Manual provides that the police force of the entire State is under the overall charge of Inspector General of Police and for the help of Inspector General and for the convenience of carrying out the work connected with the different branches of police administration. Deputy Inspector General and Assistant Inspectors General of the rank of Superintendent are posted at headquarters. The use of the word 'rank' in Section 36 of the Code comprehends the hierarchy of police officers. It is equally clear that Inspector General of Police will have jurisdiction over the whole of the State. Division of work, but not demarcating any local area indicates that Inspector General. Vigilance, will have jurisdiction extending over the whole of the State and this equally becomes clear from the Notification dated June 6, 1973 issued by the State Government in exercise of the power under clause (s) of sub-section (1) of Section 4 of the 1898 Code declaring that in respect of certain offences the Vigilance Department shall be deemed to be a police station having its jurisdiction throughout the whole State of Bihar. Even apart from this, Inspector General appointed by the State Government has jurisdiction over the whole of the State unless the contrary is indicated. If he is thus an officer superior in rank to an officer in charge of a police station he could in view of Section 36 exercise the powers of an officer in charge of a police station throughout the local area to which he was appointed meaning thereby the whole of Bihar State as might be exercised by an officer in charge of a police station within the limits of his police station. It was to him that the investigation of the case ordered to be handed over by the State Government.

13. It was, however, contended that State Government has no power to direct further investigation, that being the power of the officer in charge of a police station under sub-section (8) of Section 173 of the Code, or the power of the Magistrate to direct further investigation under sub-section (3) of Section 156, and, therefore, the State Government under orders of the Chief Minister was not competent to direct further investigation in the case.

14. The State of Bihar is governed by the Indian Police Act, 1861, ('Act' for short), because it has not enacted any Police Act of its own. In Section 1 of the Act the word 'Police' is defined to include all persons who shall be enrolled under the Act and the words 'general police district' are defined to embrace any presidency, State or place, or any part of any presidency, State or place, in which the Act shall be ordered to take effect. Section 3 of the Indian Police Act provides as under :

> 3. The superintendence of the police throughout a general police-district shall vest in and, shall be exercised by the State Government to which such district is subordinate; and except as authorised under the provisions of this Act, no person, officer or Court shall be empowered by the State Government to supersede or control any police functionary.

Section 12 confers power on the Inspector General of Police, subject to the approval of the State Government, to make rules and it was stated that the Bihar Police Manual, 1978, has been issued in

exercise of the power conferred by Section 12. Section 22 provides that every police officer shall, for all purposes in the Act contained, be considered to be always on duty, and may at any time be employed as a police officer in any part of the general police district. The Act, as its long title shows, was enacted to reorganise the police and to make it a more efficient instrument for the prevention and detection of crime. Investigation comprehends detection of the crime. General police district covers the entire State. Inspector General, Vigilance, being appointed for the whole of the State, is a police officer considered to be on duty for all purposes of the Act in the whole of the State and it is open to the State Government to employ him as police officer in any part of the general district. This would effectively answer the contention of respondent 1 that Inspector General, Vigilance, being only in charge of bribery and corruption cases, could not directed by the State Government in exercise of its executive administrative function to take over investigation of a cognisable offence registered at railway police station because when he was directed to take over the investigation it would mean that he was employed as a police officer in that police station for the detection of the crime.

15. However, even apart from this, what is the scope, content and ambit of the power of general superintendence conferred on the State Government over the police throughout the general police district meaning thereby the whole State ?

16. The general power of superintendence as conferred by Section 3 would comprehend the power to exercise effective control over the actions, performance and discharge of duties by the members of the police force throughout the general district. The word 'superintendence' would imply administrative control enabling the authority enjoying such power to give directions to the subordinate to discharge its administrative duties and functions in the manner indicated in the order. It is only when a subordinate authority subject to superintendence is discharging duties and functions of a quasi-judicial character under a statute that the inhibition of abdication of such power can be invoked. But where the subordinate subject to such power of superintendence of superior is discharging administrative and executive functions, obligations and duties, the power of superintendence would comprehend the authority to give directions to perform the duty in a certain manner, to refrain from performing one or the other duty, to direct some one else to perform the duty and no inhibition or limitation can be read in this power unless the section conferring such power prescribes one. Such is the scope and ambit of power conferred by Section 3 on the State Government of superintendence over the entire police force of the State. This is borne out by a decision of this Court in Makeshwar Nath Srivastava v. State of Bihar ((1971) 3 SCR 863 : (1971) 1 SCC 662) . In that case upon a disciplinary inquiry an Inspector of Police was served a notice by the Inspector General of Police, Bihar, to show cause why he should not be dismissed. After taking into consideration the representation of the delinquent, the I.G., Police, Bihar, passed order dated September 30, 1958, exonerating the delinquent of all the charges held proved against him by the inquiry officer. But on an entirely untenable extraneous ground he directed reversion on the delinquent from the post of Inspector of Police to the post of Sub-Inspector of Police. The delinquent preferred an appeal to the government which was dismissed and the delinquent filed a writ petition in the High Court, Patna, which was allowed with a direction that the appeal of the delinquent be heard by the government over again. The State Government thereupon issued notice under Rules 851(b) and 853-A of the Bihar and Orissa Police Manual, 1930, to the delinquent calling upon him to show cause why he should not be dismissed from service and ultimately the delinquent was dismissed by the State Government. The writ petition filed by him was dismissed in limine by the High Court. In appeal to this Court by the delinquent, the order of the State Government was sought to be sustained on behalf of the State Government by contending that under its general power of superintendence conferred by Section 3 of the Police Act it would be open to

pass an order of dismissal even in an appeal preferred by the delinquent against his reversion the subordinate post by the I.G., Police. Setting aside this order of dismissal by the State Government this Court held that as Rule 851(b) provides for appeal and disciplinary proceedings, presumably both, at the instance of the officer punished or the Department and the rule being statutory having been framed in exercise of powers conferred by Section 46(2) of the Police Act, there would be no question of State Government exercising general power of superintendence under Section 3 of the Act. It was further observed that the exercise of such power is ordinarily possible when there is no provision for an appeal unless there are other provisions providing for it. It would thus transpire that where the power is limited or fettered or taken away by some specific provision to the contrary, the general power of superintendence would comprehend power to issue directions, orders for performance of duty in a certain manner, directing some one else to discharge certain function, refrain from performing certain duty, etc. Superintendence connotes supervision which implies a hierarchy, viz., supervisor and the one supervised. It would, therefore, mean keeping a check, watch over the work of another who may be a subordinate in a hierarchy of authority. It would also comprehend that supervision is not merely a negative thing so as to keep a watch but it would imply giving of direction, guidance, even instructions, and in a given case and in a given situation asking one who is being supervised to forbear from doing a thing and directing some one else to do that thing. In 'Words and Phrases', Permanent Edition, Vol. 40-A, the word 'superintendence' has been generally stated to mean the act of superintending, care and oversight for the purpose of direction and with authority to direct. To take an analogy, Article 227 of the Constitution prior to its amendment by 42nd Amendment conferred on every High Court the power of superintendence over all courts and tribunals throughout the territory in relation to which it exercises jurisdiction and this power was held to embrace within its width, inter alia, the power to direct subordinate courts and tribunals to carry out its orders, to direct inquiry with a view to taking disciplinary action for cases of flagrant maladministration of justice (see Rajkumar v. Ram Sundar).

17. The High Court construed the expression 'superintendence' in Section 3 of the Act to mean 'general supervision of the management of police department and does not vest the State Government with authority to decide what the police alone is authorised to decide'. There is nothing in the Act to indicate such a narrow construction of the word 'superintendence'. Nothing was pointed out to us to put a narrow construction on this general power of superintendence conferred under the Act on the State Government and there is no justification for limiting the broad spectrum of power comprehended in power of superintendence. Accordingly superintendence would comprehend the power to direct further investigation if the circumstances so warrant and there is nothing in the Code providing to the contrary so as to limit or fetter this power. Sub-section (8) of Section 173 was pressed into service to show that the power of further investigation after the submission of a report under Section 173(2) would be with the officer in charge of a police station. Sub-section (8) of Section 173 is not the source of power of the State Government to direct further investigation. Section 173(8) enables an officer in charge of a police station to carry on further investigation even after a report under Section 173(2) is submitted to court. But if State Government has otherwise power to direct further investigation it is neither curtailed, limited nor denied by Section 173(8), more so, when the State Government directs an officer superior in rank to an officer in charge of police station thereby enjoying all powers of an officer in charge of a police station to further investigate the case. Such a situation would be covered by the combined reading of Section 173(8) with Section 36 of the Code. Such power is claimed as flowing from the power of superintendence over police to direct a police officer to do or not to do a certain thing because at the stage of investigation the power is enjoyed as executive power untrammelled by the judiciary. It was incidentally submitted that it is an undisputed dictum of law that when a statute requires a thing to

be done in a certain manner it shall be done in that manner alone and the Court would not expect its being done in some other manner (see State of Gujarat v. Shantilal Mangaldas ((1969) 3 SCR 341, 372 : (1969) 1 SCC 509). Expounding the submission it was stated that sub-section (8) of Section 173 clearly indicates the power of further investigation after submission of a report and that power is conferred on the officer in charge of a police station only and, therefore, the State Government was incompetent to direct further investigation. It was further contended that in view of the provision contained in Section 173(8) it would not be open to the Court to so interpret the word 'superintendence' in Section 3 of the Police Act as to empower the State Government to direct investigation being done by some one other than the statutory authority envisaged by Section 173(8) because such an interpretation would derogate from the principle that where a thing is required by a statute to be done in a particular way it shall be deemed to have prohibited that thing being done in any other way. In Ex parte Stephen ((1876) 3 Ch D 659), the principle is stated that if a statute directs a thing to be done in a certain way that thing shall not, even if there be no negative words, be done in any other way. Subba Rao, J. in Patna Improvement Trust v. Smt. Lakshmi Devi ((1963) Supp 2 SCR 812, 823 : AIR 1963 SC 1077 : (1965) 1 SCJ 1 9), Spelt out the combined effect of the aforementioned principles thus :

> A general Act must yield to a special Act dealing with a specific subject-matter and that if an Act directs a thing to be done in a particular way, it shall be deemed to have prohibited the doing of that thing in any other way.

18. There is no warrant for invoking this principle because Section 5 of the Code provides that nothing in the Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force. Section 3 of the Act does not prescribe any special procedure for investigation contrary to one prescribed in the Code. It merely provides for conferment of certain power which, when exercised, would project into the provisions of the Code which confers power on the officer in charge of a police station to carry on further investigation under Section 173(8) after submission of a report and that too without any permission of the Magistrate. There is no conflict between the two provisions. Power to direct investigation or further investigation is entirely different from the method and procedure of investigation and the competence of the person to investigate. Section 3 of the Act as interpreted by us deals with the powers of the State Government to direct further investigation into the case. Undoubtedly, such direction will be given to a person competent to investigate the offence and as has been pointed out, the police officer in rank superior to the police officer in charge of the police station, to wit, Inspector General, Vigilance, has been directed to carry on further investigation. An officer superior in rank to an officer in charge of a police station could as well exercise the power of further investigation under Section 173(8) in view of the provision embodied in Section 36 of the Code. If that be so, such superior officer could as well undertake further investigation on his own and it is immaterial and irrelevant that he does it at the instance or on the direction of the State Government. Such a direction in no way corrodes his power to further investigate on his own.

19. The power of the Magistrate under Section 156(3) to direct further investigation is clearly an independent power and does not stand in conflict with the power of the State Government as spelt out hereinbefore. The power conferred upon the Magistrate under Section 156(3) can be exercised by the Magistrate even after submission of a report by the investigating officer which would mean that it would be open to the Magistrate not to accept the conclusion of the investigating officer and direct further investigation. This provision does not in any way affect the power of the investigating officer to further investigate the case even after submission of the report as provided in Section

173(8). Therefore, the High Court was in error in holding the State Government in exercise of the power of superintendence under section 3 of the Act lacked the power to direct further investigation into the case. In reaching this conclusion we have kept out of consideration the provision contained in Section 156(2) that an investigation by an officer in charge of a police station, which expression includes police officer superior in rank to such officer, cannot be questioned on ground that such investigating officer had no jurisdiction to carry on the investigation; otherwise that provision would have been a short answer to contention raise on behalf of respondent 1.

20. The high Court found circumstances in which investigation was directed to be taken by the Inspector General of Vigilance as peculiar and unconventional. There are some tell-tale facts disclosed in the record which would totally dispel any doubt in this behalf. After respondent 3 took over the investigation in circumstances far more curious and unintelligible than what the High Court found in respect of the direction given by the State Government, respondent 3 directed his subordinate officer respondent 4 to carry on further investigation under his supervision. It would not be out of place to briefly narrate the circumstances in which respondent 3 took over investigation of this case. On a complaint received from one R. H. Modi, Managing Director of TISCO in respect of an intimation calling him to appear at the police station, the Inspector General of Police, Bihar, requested respondent 3; Additional Inspector General, C.I.D., to look into the complaint of Mr. Modi whereupon respondent 3 seized the opportunity to take over the investigation from railway police. It is suggested that this routine direction to look into the complaint of R. H. Modi by Inspector General of Police to Additional Inspector General, C.I.D., purports to be an order transferring the investigation from Railway Police to C.I.D. It is stretching credulity to extreme to interpret the direction to look into the complaint as one ordering transfer of investigation. The High Court was in error in so interpreting such an innocuous endorsement. This is how respondent 3 arrogated to himself the authority to investigate this case and even when papers of investigation were called from him by the Chief Secretary and were lying with him which would indicate that for the time being respondent 3 was not to take any action in the matter, he proceeded to direct that a report exonerating the persons whose names were set out in the first information report be filed in the Court. This would imply that the decision reached by the Superintendent, Railway Police, respondent 6 and his subordinate Inspector Rizvi who had concluded that a charge-sheet had to be filed, was unacceptable to respondents 3 and 4 and in the guise of further investigation, they reopened the investigation to explain away certain peculiar features of the case of which at present no note need be taken. It appears that the manner in which respondent 3 usurped and his subordinate respondent 4 carried on the investigation, attracted the attention of MLAs/MLCs and seven of them submitted a complaint dated August 28, 1978, to the State Government, Inspector General, Vigilance, and others, complaining therein that the officers of TISCO were bringing tremendous pressure to camouflage the issues disclosed in investigation of respondent 6 and that he has been got transferred at the instance of the officers of TISCO which prima facie appeals inasmuch as the day on which the resident representative of TISCO wrote a letter of request to do something in the matter addressed to the then Chief Secretary, the same day Council of Ministers appear to have decided to transfer respondent 6. The coincidence, if not curious, is certainly revealing. MLAs/MLCs made certain allegations against respondent 3 which may be ignored for the time being but two things transpire from this complaint which are of considerable importance. It appears that TISCO has a special preference for retired highly placed State and Union level officers and attracts them on salary which none of them drew throughout his service. Mahabir Singh, the retired Inspector General, Police, Bihar, has been appointed as Chief Security Officer; H. F. Pinto, after his retirement from the post of Secretary to Railway Board, was employed by TISCO. That is equally true of one N. K. Gupta, retired Superintendent of Police, Tatanagar area who got employment with

TISCO and no one other than the D.I.G, Railway, against whom not a tittle of allegation is made in this case, has complained in his letter dated May 11, 1977, that TISCO authorities appoint retired railway and police officers with a view to influencing railway officers and others. He also complained the TISCO authorities are reported to trying their best to seal all sorts of irregularities and might be manufacturing documents with breakneck speed in defence. This emanates from a person who at least has been spared of any allegation by respondents 1, 3 and 4 and even those supporting them. The complaint made by MLAs/MLCs merely vouchsafes the suspicion voiced by D.I.G., Railway, way back on May 11, 1977. This complaint was made by MLAs/MLCs undoubtedly belonging to the ruling party but that does not detract from its credibility. If on such a complaint made by elected representatives of the people of the State, and in the background of what D.I.G., Railway, had suspected and which was confirmed in the report made by the Commissioner, South Chhota Nagpur Division, an officer not connected with the police establishment and free from any allegation of bias, the Chief Secretary, decided to draw attention of the Chief Minister to take some action in the matter so as to transfer the investigation to the C.B.I., a body free from local political influence, there is hardly any justification for calling the circumstances unconventional or unusual. And this step was taken by the Chief Secretary way back on August 28, 1978. This is a material date. Even at that time the Chief Secretary only prepared a note pointing out what was the situation and why it had become necessary to direct C.B.I. investigation in the case. The last sentence in the note dated August 28, 1978, is that along with the investigation of the case "C.B.I. may also be requested to make enquiries whether any senior police officer concerned with these two cases is involved in corruption or not". That effectively and conclusively answers the futile exercise undertaken by the High Court to come to an utterly unsustainable conclusion that the case did not involve any corruption or bribery and, therefore, I.G., Vigilance was incompetent to undertake investigation of the case. Misappropriation of public funds has been complained in the first information report registered on March 11, 1977. A suspicion of corruption is voiced by the Chief Secretary. This note was approved meaning thereby that the suggestion therein made was accepted by the Chief Minister on the same day, i.e. August 28, 1978. The acceptance of the note by the Chief Minister would tantamount to taking over the investigation from respondent 3 and his subordinates and to transfer it to C.B.I. It is immaterial whether C.B.I. accepted it or not. Pursuant to this decision within 5 days, i.e. on September 2, 1978, the Chief Secretary wrote to respondent 3 asking him to send all the papers of investigation to him in a sealed envelope. Respondent 3 was also directed to submit a brief note with respect to the case under investigation to ascertain the stage of investigation. This direction was received by respondent 3 on September 7, 1978. While complying with the requisition for papers, respondent 3 stated that he was pointed out the present progress of investigation and the need for further action to be taken. It means investigation was not complete even according to respondent 3. He also requested the Chief Secretary to return the papers to him. Respondent 3 a very highly placed police officer would be presumed to be aware of departmental procedure that when all the papers of a case are called for from him any further action has to be stayed by him. In administrative hierarchy one does not go on passing stay orders and it would be too native to accept such a suggestion. There is nothing to show on record that thereafter any further investigation has been done by respondent 3 or his subordinates. Subsequent thereto, on November 20, 1978, respondent 3 requested the Chief Secretary for the return of the records if they were no more required so that further steps could be taken to complete the investigation. Two unassailable conclusions emerge from this note of respondent 3 : (1) that the investigation was not complete; and (2) that the same could not be completed without the records which were then with the Chief Secretary. However, without any rhyme or reason and without the record and without the slightest further investigation with an unseemly hurry respondent 3, with a view to forestalling any action by the higher officer, viz., the Chief Secretary and the Chief Minister, directed a final report

to be submitted saying that no offence is disclosed. The narration of facts are so tell-tale that any further comment is uncalled for. We consider the observation of the High Court that the entrustment of the case for investigation to Vigilance Department is rather peculiar and unconventional, as unwarranted and unsustainable on the facts hereinabove narrated and discussed. Similarly, the aspersion cast on the complaint of MLAs/MLCs, lacks judicial propriety in that they were stigmatised and adversely commented upon at their back without calling for any explanation from them. In parliamentary democracy elected representatives have a duty to perform and their vigilance in performance of duty without anything shown as unbecoming of them cannot be unilaterally chastised. We say no more.

21. It was next contended that the action of the Chief Secretary in suggesting that the investigation be taken over by the C.B.I. and the acceptance of the same by the Chief Minister suffers from legal malice inasmuch as the Chief Secretary and the Chief Minister had no jurisdiction, authority or power to make such an order to transfer investigation or to direct further investigation when a report was already submitted by respondent 4 as investigating officer to the Court competent to take cognizance of the case. It was, therefore, submitted that even though no personal mala fides is attributed to the Chief Secretary, once he lacked jurisdiction to reopen investigation his note would show legal malice. Reference was made to Shearer v. Shields (1914 AC 808, 813), wherein it is observed that :

> Between malice in fact and malice in law there is a broad distinction which is not peculiar to any particular system of jurisprudence. A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with an innocent mind; he is taken to know the law, and he must act within the law. He may, therefore, be guilty of malice in law, although, so far as the state of his mind is concerned, he acts ignorantly, and in that sense innocently.

This was affirmed by this Court in Bhut Nath Mete v. State of W. B. ((1974) 3 SCR 315, 321 : (1974) 1 SCC 645 : 1974 SCC (Cri) 300).

22. As pointed out above, if the Chief Secretary as the highest executive officer at the State level exercising power of superintendence over the police of the State posted in general police district would have powers to suggest change of investigating machinery in the circumstances disclosed in the letter dated May 11, 1977, of the D.I.G., Railway. The report of the Commissioner of South Chhota Nagpur Division, and the complaint of MLAs/MLCs, his action could not be said to be without power or authority. In our opinion, if he had acted otherwise, a charge of inaction or failure or default in performance of his duty as the highest chief executive officer would be squarely laid at his door. He acted in the best tradition of the chief executive officer in public interest and for vindication of truth and in an honest and unbiased manner. After all, if he had even the remotest bias against anyone, he could have as well suggested in agreement with the earlier investigation done by respondent 6 and the report submitted by him for submitting the charge-sheet that a charge-sheet should be field. In fact, in the background herein discussed, the Chief Secretary with utmost candour, with a view to vindicating the honour of the administration, proposed ascertainment of truth at the hands of C.B.I., a body beyond reproach as far as local politics is concerned. The High Court was, therefore, in our opinion, clearly in error in casting aspersions on the Chief Secretary and the observation "whether respondent 2 is lying or the Chief Secretary is feeding us with false facts is not for this Court to determine . . ." is an observation belied by the record and unwarranted in the circumstances of the case. The contention is wholly unmerited.

23. A grievance was made that there was serious impropriety in the Superintendent of Railway Police, Mohammad Sulaiman, directly addressing a letter to the learned Additional Chief Judicial Magistrate on February 15, 1979, informing him about the decision of the government to continue the investigation and, therefore, not to accept the final report. It is true that the police officers should refrain from addressing communications to the Court on pending matters required to be determined judicially and we express our disapproval of this conduct. However, it makes no difference in this case because the learned Additional Chief Judicial Magistrate acted not on the letter dated February 15, 1979, but on an application made by the Assistant Public Prosecutor in charge of the case and that is the legally accepted mode of obtaining a judicial order.

24. The next contention is that the High Court was in error in exercising jurisdiction under Article 226 at a stage when the Additional Chief Judicial Magistrate who has jurisdiction to entertain and try the case has not passed upon the issues before him, by taking upon itself the appreciation of evidence involving facts about which there is an acrimonious dispute between the parties and giving a clean bill to the suspects against whom the first information report was filed. By so directing the learned Additional Chief Judicial Magistrate the judgment of the High Court virtually disposed of the case finally. As we are setting aside the judgment of the High Court with the result that the case would go back to the learned Additional Chief Judicial Magistrate, it would be imprudent for us to make any observation on facts involved in the case.

25. 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 under Section 190 of the Code its duty comes to an end. On a cognizance of the offence being taken by the Court the police function of investigation comes to an end subject to the provision contained in Section 173(8), there commences the adjudicatory function of the judiciary to determine whether an offence has been committed and if so, whether by the person or persons charged with the crime by the police in its report to the Court, and to award adequate punishment according to law for the offence proved to the satisfaction of the Court. There is thus a well defined and well demarcated function in the field of crime detection and its subsequent adjudication between the police and the Magistrate. This had been recognised way back in King Emperor v. Khwaja Nazir Ahmad (1944 LR 71 IA 203, 213 : AIR 1944 PC 18), where the Privy Council observed as under :

> 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 under Section 491 of the Criminal Procedure Code 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.

26. This view of the Judicial Committee clearly demarcates the functions of the executive and the judiciary in the field of detection of crime and its subsequent trial and it would appear that the power of the police to investigate into a cognizable offence is ordinarily not to be interfered with by the judiciary.

27. Some attempt was made to impress us with utterly irrelevant factors as to how much freight TISCO is paying to the railways every year and even the amount which may become payable in view of the disputed facts was also paid some time prior to filing of the first information report. We would refrain from making even an implied observation on any facts involved in the dispute. The case is not at a stage where the Court is called upon to quash the proceedings as disclosing no offence but the case is at a stage where further investigation into the offence is sought to be thwarted by interference in exercise of the extraordinary jurisdiction. Apart from reiterating the caution administered way back in Khwaja Nazir Ahmad case (1944 LR 71 IA 203, 213 213 : AIR 1944 PC 18) that unless an extraordinary case of gross abuse of power is made out by those in charge of investigation as noted in S. M. Sharma v. Bipen Kumar Tiwari ((1970) 3 SCR 946 : (1970) 1 SCC 653, 657 : 1970 SCC (Cri) 258), the Court should be quite loath to interfere at the stage of investigation, a field of activity reserved for police and the executive. It would be advantageous to extract what this Court observed in S. M. Sharma case ((1970) 3 SCR 946 : (1970) 1 SCC 653, 657 : 1970 SCC (Cri) 258) : (SCC p. 657, para 11)

> 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.

Not only such a case is not made out but the High Court by an utter misconception of its jurisdiction almost directed the Magistrate before whom the papers are pending to act in manner as enjoined by the High Court. How the High Court has usurped the jurisdiction of the learned Magistrate, the following passage from the judgment of the High Court would be illustrative. After setting aside the impugned order of the learned Magistrate dated February 24, 1979, and remitting the case to the learned Magistrate, the High Court gave the following direction :

> He will now proceed to consider the final report submitted by the Police (C.I.D.). I should, however, like to observe for the benefit of the learned Magistrate that he will bear in mind that mere failure to follow rules and regulations is neither cheating nor breach of trust. He will also bear in mind while applying himself to the case diary with all thoroughness whether there is any material to show that the Railways have suffered. In order to constitute offence of cheating causation of damage or harm to a person in body, mind, reputation or property is essential. The learned Magistrate will direct his attention to this aspect of the matter. Loss to the Railways cannot be presumed merely from the fact of irregular booking. The learned Magistrate will consider the effect of issuing of despatch advice and forwarding notes by TISCO at

the time of despatch of goods. The learned Magistrate will also bear in mind that mere failure to pay does not amount to cheating for, mere breach of contract is not cheating. The attention of the learned Additional Chief Judicial Magistrate is particularly drawn to the cases of Harakrishna Mahatab v. Emperor (AIR 1930 Pat 209 : 31 Cri LJ 249), Major Robert Stuart Wauchope v. Emperor (AIR 1933 Cal 800 : 35 Cri LJ 156) and State of Kerala v. A. Prasad Pillai (AIR 1973 SC 326 : (1972) 2 SCC 661 : 1972 SCC (Cri) 705) To my mind the Railway as an organisation profited rather than lost by the unusual procedure adopted in relation TISCO. The learned Magistrate will also consider whether the whole case diary reveals any material indicating that any public servant had enriched himself either by bribery or by breach of faith. After going through the case diary thoroughly the learned Magistrate will decide dehors the recommendation of Superintendent of Railway Police, respondent 7 and C.I.D. whether any offence had been committed and if so which accuse should be put on trial.

28. Is there anything more required to write the final epitaph and say amen by the learned Additional Chief Judicial Magistrate after the finding is recorded by the High Court, more especially finding of fact that railway organisation has profited rather than lost by the unusual procedure ? It is a clear case of usurpation of jurisdiction vested in the learned Additional Chief Judicial Magistrate to take or not to take cognizance of a case on the material placed before him. The High Court in exercise of the extraordinary jurisdiction committed a grave error by making observations on seriously disputed questions of facts taking its cue from affidavits which in such a situation would hardly provide any reliable material. In our opinion the High Court was clearly in error in giving the direction virtually amounting to a mandamus to close the case before the investigation is complete. We say no more.

29. There are some serious allegations made against respondent 6 by the original petitioner and some of them were repeated with vehemence even at the hearing before this Court. We do not propose to examine them on merits save and except saying that once the investigation was taken over by respondent 3 and the conclusion reached by respondent 6 and his subordinate investigating officer to file the charge-sheet was not acted upon, the stage at which the case was brought to the High Court did not call for investigation into the mala fides of respondent 6, appellant in the cognate appeal. After making him a respondent in the High Court an opportunity was taken to cast aspersions against his character. His whole attitude in registering an offence and directing investigation into the offence has been questioned though an independent officer not even remotely connected with police department, the Commissioner of Chhota Nagpur Division, found substance in the first information report, in the investigation done by respondent 6 and his conclusion, which again was affirmed by D.I.G., Railway, not shown to biased. The High Court interfered at the stage where investigation was to be taken up by an independent agency and, therefore, the so called bias of respondent 6 becomes wholly irrelevant. It must, however, be pointed out that if an information is lodged at the police station and an offence is registered, the mala fide of the informant would be of secondary importance if the investigation produces unimpeachable evidence disclosing the offence. We, therefore, consider the aspersions cast on the character of respondent 6 and the allegations of mala fides made against him virtually accepted by the High Court in entirety as utterly irrelevant and the same may be treated as expunged for the purposes of this appeal.

30. We accordingly allow Criminal Appeal 301 of 1979, quash and set aside the order of the High Court and restore the order passed by the learned Additional Chief Judicial Magistrate, Jamshedpur, dated February 24, 1979. In view of this order it is not necessary to pass any final order in the

cognate appeal (Criminal Appeal 300 of 1979) preferred by respondent 6.

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