K. Chandrasekhar

Vs

State of Kerala and Others

With

Mariam Rasheeda

Vs

State of Kerala and Others

With

S. K. Sharma

Vs

State of Kerala and Others

With

S. Nambi Narayanan

Vs

State of Kerala and Others

With

D. Sasi Kumaran

Vs

State of Kerala and Others

With

(1) The Director, Central Bureau of Investigation

(2) Union of India

Vs

State of Kerala and Others

With

Fouzia Hassan

Vs

State of Kerala and Others

Criminal Appeals Nos. 489 to 497 of 1997 and 528 of 1998

(S. M. Quadri, M. K. Mukherjee JJ)

29.04.1998

JUDGMENT

M. K. MUKHERJEE, J. -

1. Leave granted in Special Leave Petition (Criminal) No. 593 of 1998.

2. These appeals have been heard together as they are directed against one and the same judgment rendered by the Kerala High Court. Facts leading to these appeals are as under :

> On 20-10-1994, Shri S. Vijayan, an Inspector of Police, then attached to the Special Branch, Thiruvananthapuram, arrested and took into custody Mariyam Rasheeda (appellant in Criminal Appeal No. 490 of 1997), who came on a visit to India from Maldives, on the allegation that even after the expiry of her visa she continued to stay in India in breach of para 7 of the Foreigners Order, 1948. For the above breach a case under Section 14 of the Foreigners Act, 1946 was registered against her by the Vanchiyoor Police Station (Crime No. 225 of 1994) and investigation taken up.

3. On 13-11-1994, on the complaint of Shri Vijayan another case was registered by Vanchiyoor Police Station (Crime No. 246 of 1994) against her (Mariyam Rasheeda) and Fouzia Hassan [appellant in the criminal appeal arising out of SLP (Criminal) No. 593 of 1998] for offences punishable under Sections 3 and 4 of the Indian Official Secrets Act, 1923 ("IOS Act" for short) on the allegation that in collusion with some Indians and foreigners they had committed acts prejudicial to the safety and sovereignty of India.

4. Initially both the cases were investigated by Shri Vijayan but later on a special team of State Police Officials, headed by Shri C. B. Mathew, Deputy Inspector General (Crimes), and including Shri Vijayan, was constituted to investigate into the same. In the course of investigation S. Nambi Narayanan (appellant in Criminal Appeal No. 492 of 1997) and D. Sasi Kumaran (appellant in Criminal Appeal No. 493 of 1997), two senior scientists working with the Indian Space Research Organisation ("ISRO" for short), S. K. Sharma (appellant in Criminal Appeal No. 491 of 1997), a labour contractor, and K. Chandrasekhar (appellant in Criminal Appeal No. 489 of 1997), an authorised representative of a Russian firm in India, (besides the above two ladies) were arrested.

5. While the investigation was in progress, Shri Mathew sent a report to the Director General of Police, Kerala on 30-11-1994 stating that the special team of State Police Officials was not adequately equipped to conduct effective investigation into the two cases and praying for appropriate orders for getting the cases investigated by the Central Bureau of Investigation ("CBI" for short).

6. On receipt of the report, the Director General of Police recommended to the Government of

Kerala to entrust the investigation to the CBI; and accepting the above recommendation the Government of Kerala issued the following notification on 2-12-1994 :

> "In pursuance of the provisions of Section 6 of the Delhi Special Police Establishment Act, 1946 (Central Act 25 of 1946) the Government of Kerala hereby accord consent to the extension of powers and jurisdiction of the members of the Delhi Special Police Establishment in the whole of the State of Kerala for investigation of Crimes Nos. 225 and 246 of 1994 of Vanchiyoor Police Station. (By order of the Governor)
>
> # sd/- C. P. Nair Commissioner and Secretary to Govt. (Home) EXPLANATORY NOTE##
>
> (This does not form part of the notification and is intended to indicate its general purport.)

Two cases in Crimes Nos. 225 and 246 of 1994 have been registered in the Vanchiyoor Police Station under para 7 of the Foreigners Order, 1948 read with Section 14 of the Foreigners Act, 1946 and under Sections 3 and 4 of the Official Secrets Act, 1923 read with Section 34 of IPC involving inter alia charges of espionage against the accused, so far arrested, two persons who are nationals of Maldives. The Director General of Police has now brought to the notice of the Government that since the incidents of this case spread over to the other States of India and foreign locations and also considering the special nature of the crimes the above two cases may be transferred to the Central Bureau of Investigation who are better equipped and also have the advantage of being a Central Police investigating outfit. After carefully considering the request, Government have decided that the cases in Crimes Nos. 225 and 246 of 1994 of Vanchiyoor Police Station may be transferred to the Central Bureau of Investigation. Hence the notification."

7. Following the above notification, CBI re-registered the above cases as RC No. 10/S/1994 and RC No. 11/S/1994 respectively and took up investigation. On completion of investigation in the former the CBI submitted charge-sheet (challan) against Mariyam Rasheeda on 4-12-1994, which culminated in an order of acquittal recorded in her favour by the Chief Judicial Magistrate, Cochin on 11-11-1996. As regards the latter the CBI filed its report in final form under Section 173(2) of the Code of Criminal Procedure ("Code" for short) on 16-4-1996 before the same Magistrate praying for discharge of all the accused persons as, according to it, the allegations of espionage were not proved and they were false. The report was accepted and the accused-appellants were discharged.

8. Thereafter on 27-6-1996 the Government of Kerala issued a notification withdrawing the consent earlier given to the CBI to investigate Crime No. 246 of 1994 (RC No. 11/S/1994). The said notification along with its explanatory note reads as under :

> "In pursuance of the provisions of Section 6 of the Delhi Special Police Establishment Act, 1946 (Central Act 25 of 1946), the Government of Kerala hereby withdraw their consent accorded as per Notification No. 66329/SSA-3/94/Home, dated the 2-12-1994 for the extension of the powers and jurisdiction of the members of the Delhi Special Police Establishment in the whole of the State of Kerala for investigating Crime No. 246 of 1994 of Vanchiyoor Police Station. (By order of the Governor)

M. Mohankumar Additional Chief Secretary EXPLANATORY NOTE##

(This does not form part of the notification but is included to indicate its general purpose.)

The two cases in Crimes Nos. 225 and 246 of 1994 registered in the Vanchiyoor Police Station under Section 7 of the Foreigners Order, 1948 read with Section 14 of the Foreigners Act, 1946 and under Sections 3 and 4 of the Official Secrets Act, 1923 and Section 34 of IPC invoking charges of espionage had been transferred to CBI for investigation considering the special nature of the cases. As per the Government Notification No. 66329/SSA-3/94/Home, dated 2-12-1994 CR No. 246 of 1994 of Vanchiyoor Police Station has now been referred as not proved, and a closure report submitted to the Court by the CBI. The Government consider it necessary in public interest to order a reinvestigation of the case by a special team of State Police Officers. Hence this notification."

This was followed by an amendatory notification issued on 8-7-1996, which reads as under :

"In the Explanatory Note to Notification No. 27707/SSA-3/96 Home, dated the 27-6-1996 published as Extraordinary Gazette No. 823 dated 6-7-1996,

(i) for the words 'referred as not proved' occurring in the second sentence read 'referred by the CBI as not proved and false', and

(ii) for the words 'a reinvestigation of the case' occurring in the third sentence read 'further investigation of the case'."

9. Aggrieved by the notification withdrawing the consent so as to enable a special team of State Police Officers to further investigate into Crime No. 246 of 1994, the six accused-appellants presented separate writ petitions before the Kerala High Court in which the State of Kerala, represented by the Chief Secretary, the Secretary (Home Department), Government of Kerala and CBI were arrayed as Respondents 1, 2 and 3 respectively. Later on, Shri Vijayan, and K. Nandini, an advocate, got themselves impleaded as respondents in those writ petitions. During hearing of the petitions it was, inter alia, contended on behalf of the accused-appellants that the Government of Kerala was not competent to order further investigation by its police officers into the allegations which had already been investigated into by the CBI. Accordingly, they prayed for quashing of the notification dated 27-6-1996, as amended by the notification dated 8-7-1996. In supporting the accused-appellants, the CBI first submitted that as the consent given under Section 6 of the Delhi Special Police Establishment Act ("Act" or short) fell in the category of conditional legislation, the question of withdrawal could not and did not arise for the powers conferred the thereunder had exhausted themselves with the initiation of investigation by it. It next submitted that in case any further evidence surfaced, the Government of Kerala could only refer the same to the CBI for it was alone competent to further investigate into the matter. By its judgment dated 27-11-1996 the High Court of Kerala dismissed the writ petitions on the ground that the matter of giving or withholding of consent under Section 6 of the Act was an executive action of the State Government and the said Act was not a piece of conditional legislation. According to the High Court Section 21 of the General Clauses Act, 1897 applied to the notification in question and, therefore, the withdrawal of the consent by Government of Kerala could not be said to be invalid. Lastly, the Court observed that although there was no statutory requirement for the State Police to obtain permission from the Court

concerned to further investigate into the matter, it should obtain such permission in view of the judgment of this Court in Ram Lal Narang v. State (Delhi Admn.) ((1979) 2 SCC 322 : 1979 SCC (Cri) 479). Summing up, the High Court recorded the following findings :

> (1) The impugned notification being valid, the same cannot be quashed; and
>
> (2) The State Government has no jurisdiction to file a complaint before a court in respect of any offence under Sections 3, 4 and 5 of the Act in the case.

10. The above judgment of the High Court is under challenge in these appeals filed by the Director, CBI, the Union of India and the six discharged accused persons.

11. We have heard the learned counsel appearing for the parties at length as also appellant Mr. D. Sasi Kumaran, who argued his case himself, and gone through the relevant materials on record.

12. Since it cannot be disputed - and it is not disputed before us - that a prosecution for the offences alleged against the accused persons can be instituted only by a complaint filed by or at the instance of the Central Government in view of Section 13(3) of the IOS Act - and not the State Government (as rightly held by the High Court) the only question that falls for our determination in these appeals is whether the other finding of the High Court that the notification withdrawing consent is valid, can be sustained or not. To answer this question it will be apposite to first refer to the preamble and the relevant provisions of the Act.

13. The Act was enacted to constitute a special police force in Delhi for the investigation of certain offences in the Union Territories and to make provisions for the superintendence and administration of the said force and for the extension to other areas of the powers and jurisdiction of the members of the said force in regard to the investigation of the said offences. Section 2 of the Act entitles the Central Government to constitute such a police force, notwithstanding anything in the Police Act, 1861, to be called the Delhi Special Police Establishment, for the investigation of offences notified under Section 3. The members of the said establishment of or above the rank of Sub-Inspector are empowered, subject to any order which the Central Government may make in this behalf, to exercise any of the powers of the officer-in-charge of a police station in the area in which he is for the time being, and when so exercising such powers shall, subject to any such orders as aforesaid, be deemed to be an officer-in-charge of a police station discharging the functions of such an officer within the limits of his station. Section 3 empowers the Central Government to specify the offence or offences or classes of offences which are to be investigated by the Delhi Special Police Establishment i.e. CBI, by issuing notifications in the Official Gazette. Under Section 5, the Central Government can extend the powers of the Delhi Special Police Establishment to any other part of the country for the investigation of any offences or classes of offences specified in a notification issued under Section 3. Once such an order is made under sub-section (1) of Section 5 the members of the establishment shall be deemed to be the members of the police force of the extended area and will be vested with powers, functions and privileges and be subject to the liabilities of a police officer belonging to that police force. Under sub-section (3) thereof the members of the Delhi Special Police Establishment of or above the rank of Sub-Inspector shall also be deemed to be an officer-in-charge of that extended area while exercising such powers. However, in view of Section 6, the powers and jurisdiction conferred under Section 5 can be exercised in the extended area only with the consent of the Government concerned.

14. Mr. Altaf Ahmed, the learned Additional Solicitor General, appearing for the CBI and Union of

India (the appellants in Criminal Appeals Nos. 494-97 of 1997), submitted that the High Court failed to appreciate that Section 21 of the General Clauses Act had no manner of application in the instant case. In expanding his submission Mr. Altaf Ahmed argued that the Act being a piece of conditional legislation the action taken or power exercised under Section 6 thereof was not reversible and, consequently, the question of applying the provisions of Section 21 of the General Clauses Act, which pertains to action taken or power exercised, which is reversible, could not arise. According to Mr. Altaf Ahmed, the power conferred on the State Government under Section 6 of the Act exhausted itself once it was exercised by granting consent and nothing was left of it and resultantly, when the investigation was undertaken by CBI pursuant thereto, by invoking Section 5 of the Act, it could not be rolled back by withdrawal, by the impugned notification. In other words, according to Mr. Altaf Ahmed, the power under Section 6 of the Act having exhausted itself nothing remained for reversing the exercise of such a power.

15. Mr. Salve, appearing for S. K. Sharma (the appellant in Criminal Appeal No. 491 of 1997), first drew our attention to a notification being No. 7/5/55-AVD dated 6-11-1956 issued by the Government of India in exercise of its powers conferred by Section 3 of the Act, specifying the offences and classes of offences to be investigated by the Delhi Special Police Establishment (which include offences under the IOS Act, 1923) and a letter dated 14-12-1956 addressed by the Chief Secretary of Government of Kerala to an Under-Secretary of the Government of India, intimating that the Government of Kerala had accorded their consent for the members of the Delhi Special Police Establishment exercising powers and jurisdiction within the State of Kerala in respect of the offences specified in the above notification, and submitted that the notification dated 2-12-1994 granting consent (and for that matter withdrawal thereof) only for investigating into Crime No. 246 of 1994 was redundant for by virtue of the earlier letter of general consent, the CBI was competent to investigate into all offences mentioned in the notification dated 6-11-1956 including the offences in question. His main submission, however, was that once a consent was given by a State Government empowering the CBI to investigate into an offence, the former could not withdraw the same. In support of this contention he relied upon the judgment of this Court in Kazi Lhendup Dorji v. Central Bureau of Investigation (1994 Supp (2) SCC 116 : 1994 SCC (Cri) 873). His last submission was that the withdrawal of the consent was clearly a mala fide action on the part of the Government of Kerala. To bring home this contention, he relied upon certain facts and circumstances appearing on record, to which we will refer at the appropriate stage.

16. The learned counsel appearing for the other accused-appellants, and appellant D. Sasi Kumaran adopted and reiterated the submissions made by Mr. Altaf Ahmed and Mr. Salve.

17. In refuting the above contentions, Mr. Shanti Bhushan, the learned counsel appearing for the State of Kerala along with its Advocate General, submitted that the Act only enables CBI to investigate into offences specified as contemplated by Section 3, but does not in any way take away the right of the State Police to investigate into those offences. He pointed out that the offences for which notifications have been issued under Section 3 include offences under Sections 380 and 411 IPC and submitted that it would be absurd to suggest that the State Police was denuded of its powers to investigate into those offences in accordance with Chapter XII of the Code merely because the CBI has been empowered to investigate into those offences. In elaborating this contention he submitted that the power to investigate a cognizable case is conferred on the officer in charge of a police station under Section 156(1) of the Code (appearing in Chapter XII) and in exercise thereof he can investigate any such 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. He drew our attention to Chapter XIII (which relates to the jurisdiction of the criminal courts in

inquiries and trials) of the Code and argued that Sections 177 to 184 appearing therein would show that more than one court have territorial jurisdiction to inquire into and try the same offence. By way of illustration he made a particular reference to Section 183 to contend that if a murder was committed in a train all the courts, having territorial jurisdiction in the areas through which the train was passing, would be competent to try the offence. That, according to him, necessarily meant that each one of the officers in charge of the police stations through which the train passed would be competent to investigate the offence of murder in view of the plain language of Section 156(1) of the Code and none of them could claim any exclusive jurisdiction to investigate. Of course, he added, if on the filing of charge-sheets on completion of their respective investigations, courts in different States took cognizance of that offence the High Court would have to decide under Section 186 of the Code as to which of those courts would try the offence. He contended that Section 186 of the Code clearly demonstrates that while the law does not contemplate parallel trials for the same offence in different courts it does clearly envisage parallel or simultaneous investigations of the same offence by police officials of different States. He reiterated that since the law does not prohibit simultaneous investigation by different investigating agencies into the same offence if each one of them has been conferred powers of investigation, the issuance of an order under Section 5(1) of the Act along with the consent of the State Government under Section 6 thereof would only mean that the officers of the CBI can also investigate into that offence. To buttress his contention he drew our attention to the judgment of this Court in A. C. Sharma v. Delhi Admn. ((1973) 1 SCC 726 : 1973 SCC (Cri) 608 234) In that case the following question came up for consideration (as formulated by this Court in para 6 of the judgment : (SCC p. 729)

> "6. The short but important question with far-reaching effect, if the appellant's contention were to prevail, requiring our decision is, whether with the setting up of the Delhi Special Police Establishment, the Anti-Corruption Branch of the Delhi Police had been completely deprived of its power to investigate into the offences like the present or whether both the DSPE and the Anti-Corruption Branch had power to investigate, it being a matter of internal administrative arrangement for the appropriate authorities to regulate the assignment of investigation of cases according to the exigencies of the situation."

18. After referring to the scheme of the Act and its different provisions the Court answered the same as under : (SCC p. 732, para 13)

> "The scheme of this Act does not either expressly or by necessary implication divest the regular police authorities of their jurisdiction, powers and competence to investigate into offences under any other competent law. As a general rule, it would require clear and express language to effectively exclude as a matter of law the power of investigation of all the offences mentioned in this notification from the jurisdiction and competence of the regular police authorities conferred on them by CrPC and other laws and to vest this power exclusively in the DSPE. The DSPE Act seems to be only permissive or empowering, intended merely to enable the DSPE also to investigate into the offences specified as contemplated by Section 3 without impairing any other law empowering the regular police authorities to investigate offences."

19. On the basis of the law so laid down, the last submission of Mr. Shanti Bhushan on this point was that the power of CBI to investigate into the offences in question was not exclusive but concurrent with the State Police. In distinguishing the case of Kazi Lhendup Dorji (1994 Supp (2)

SCC 116 : 1994 SCC (Cri) 873). Mr. Shanti Bhushan submitted that that was a case where the consent was sought to be withdrawn at a stage when the investigation was in progress, but in the instant case, as the CBI had already completed the investigation and submitted its report in final form the State Government was fully justified in withdrawing the consent for making a proper investigation into the offence in question.

20. In responding to the argument of the appellants based on Section 21 of the General Clauses Act he submitted that the said section was applicable to conferment of administrative power only and not to conferment of judicial or quasi-judicial powers and since grant of consent under Section 6 of the Act was merely an administrative power withdrawal thereof would be permissible under that section.

21. We are constrained to say that the entire argument of Mr. Shanti Bhushan centring round Section 156, read with Chapter XIII, of the Code is fallacious; and the fallacy lies in the basic premise on which he sought to build his argumentatious edifice. In the present appeals, we are not concerned with the question of initiation of parallel or simultaneous investigations by two different agencies, viz., CBI and State Police in two separate cognizable cases registered at two different places over one and the same offence. We are also not concerned with the question whether both CBI and Kerala Police have/had jurisdiction to initiate investigation into the offences in question (answer to which has already been given in the case of A. C. Sharma ((1973) 1 SCC 726 : 1973 SCC (Cri) 608). Indeed, the question that falls for our determination is altogether different : and that is, when the investigation into an offence is transferred and entrusted to CBI for investigation pursuant to the consent given under Section 6 of the Act and the CBI has not only started but completed the investigation armed with that consent and submitted its report under Section 173(2) of the Code can the State Government withdraw the consent and, if so, what is the effect thereof.

22. To answer the above question it will be appropriate to first refer to the case of Kazi Lhendup Dorji. (1994 Supp (2) SCC 116 : 1994 SCC (Cri) 873). In that case by a letter dated 20-10-1976, addressed to the Deputy Secretary to the Government of India (Department of Personnel and Administrative Reforms), the Chief Secretary to the Government of Sikkim conveyed the consent of its Government under Section 6 to the members of the Delhi Special Police Establishment in exercising powers and jurisdiction in the entire State of Sikkim for the investigation of the offences punishable under various provisions of the Indian Penal Code specified therein as well as offences under the Prevention of Corruption Act, 1947. Thereafter on 26-5-1984 a case was registered by the CBI against Shri Narbahadur Bhandari, erstwhile Chief Minister of Sikkim, for offences punishable under Section 5(2) read with Section 5(1)(e) of the Prevention of Corruption Act, 1947 on the allegation that while acting as the Chief Minister and thus being a public servant, he had acquired assets disproportionate to his known sources of income. Another case was thereafter registered by the CBI on 7-8-1984 against Shri Bhandari and others under Section 5(2) read with Section 5(1)(d) of the same Act. After registering those two cases the CBI started investigation; and when the cases were under investigation Shri Bhandari reassumed the Office of the Chief Minister on 19-3-1985. While he was holding that office a notification was issued on 7-1-1987 notifying that all consents of or on behalf of the State Government earlier given under Section 6 of the Act for investigation of offences by CBI are withdrawn and stand cancelled with immediate effect. As a consequence of that notification, CBI suspended further action in the aforementioned two cases against Shri Bhandari. Shri Dorji, who also happened to be a former Chief Minister of Sikkim, then filed a writ petition before this Court under Article 32 of the Constitution of India contending that there was no provision in the Act which empowered the State Government to withdraw the consent which had been accorded and consequently, the impugned notification dated 7-1-1987, withdrawing the

consent was in violation of the provisions of the Act. In contesting the petition Shri Bhandari (who was arrayed as Respondent 4 therein) contended, inter alia, that the consent given under Section 6 of the Act could be rescinded under Section 21 of the General Clauses Act, 1897. In allowing the petition this Court held : (SCC p. 124, para 16)

> "16. Coming to the contention urged by Shri Jethmalani on merits it may be mentioned that Section 21 of the General Clauses Act does not confer a power to issue an order having retrospective operation. Therefore, even if we proceed on the basis that Section 21 of the General Clauses Act is applicable to an order passed under Section 6 of the Act, an order revoking an order giving consent under Section 6 of the Act can have only prospective operation and would not affect matters in which action has been initiated prior to the issuance of the order of revocation.
>
> The impugned notification dated 7-1-1987, has to be construed in this light. If thus construed it would mean that investigation which was commenced by CBI prior to withdrawal of consent under the impugned notification dated 7-1-1987, had to be completed and it was not affected by the said withdrawal of consent. In other words, the CBI was competent to complete the investigation in the cases registered by it against Respondent 4 and other persons and submit the report under Section 173 CrPC in the competent court. On that view of the matter, it is not necessary to go into the question whether the provisions of Section 21 of the General Clauses Act can be invoked in relation to consent given under Section 6 of the Act."

In view of the law so laid down by a three-Judge Bench of this Court, it must be held that an investigation started by CBI with the consent of the State Government Concerned cannot be stopped midway by withdrawing the consent.

23. Since, in the present case, unlike that of Kazi Lhendup Dorji (1994 Supp (2) SCC 116 : 1994 SCC (Cri) 873) the consent was withdrawn after report under Section 173(2) CrPC was filed on completion of investigation as the State Government would like to further investigate into the case, the question which still remains to be answered is whether this distinguishing fact alters the principle laid down therein. To answer this question it will be necessary to refer to Section 173 of the Code which, so far as it is relevant for our present purposes, reads as under :

> "73. Report of police officer on completion of investigation. - (1) Every investigation under this chapter shall be completed without unnecessary delay.
>
> (2)(i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating -
>
> (a) the names of the parties;
>
> (b) the nature of the information;
>
> (c) the names of the persons who appear to be acquainted with the circumstances of the case;
>
> (d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody under Section 170.

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him to the person, if any, by whom the information relating to the commission of the offence was first given.

#(3)-(7) * * *##

(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)."

24. From a plain reading of the above section it is evident that even after submission of police report under sub-section (2) on completion of investigation, the police has a right of "further" investigation under subsection (8) but not "fresh investigation" or "reinvestigation". That the Government of Kerala was also conscious of this position is evident from the fact that though initially it stated in the Explanatory Note of their notification dated 27-6-1996 (quoted earlier) that the consent was being withdrawn in public interest to order a "reinvestigation" of the case by a special team of State police officers, in the amendatory notification (quoted earlier) it made it clear that they wanted a "further investigation of the case" instead of "reinvestigation of the case". The dictionary meaning of "further" (when used as an adjective) is "additional; more; supplemental". "Further" investigation therefore is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started ab initio wiping out the earlier investigation altogether. In drawing this conclusion we have also drawn inspiration from the fact that sub-section (8) clearly envisages that on completion of further investigation the investigating agency has to forward to the Magistrate a "further" report or reports - and not fresh report or reports - regarding the "further" evidence obtained during such investigation. Once it is accepted - and it has got to be accepted in view of the judgment in Kazi Lhendup Dorji (1994 Supp (2) SCC 116 : 1994 SCC (Cri) 873) - that an investigation undertaken by CBI pursuant to a consent granted under Section 6 of the Act is to be completed, notwithstanding withdrawal of the consent, and that "further investigation" is a continuation of such investigation which culminates in a further police report under sub-section (8) of Section 173, it necessarily means that withdrawal of consent in the instant case would not entitle the State Police, to further investigate into the case. To put it differently, if any further investigation is to be made it is the CBI alone which can do so, for it was entrusted to investigate into the case by the State Government. Resultantly, the notification issued withdrawing the consent to enable the State Police to further investigate into the case is patently invalid and unsustainable in law. In view of this finding of ours we need not go into the questions, whether Section 21 of the General Clauses Act applies to the consent given under Section 6 of the Act and whether consent given for investigating into Crime No. 246 of 1994 was redundant in view of the general consent earlier given

by the State of Kerala.

25. Even if we were to hold that the State Government had the requisite power and authority to issue the impugned notification, still the same would be liable to be quashed on the ground of mala fide exercise of power.

Eloquent proof thereof is furnished by the following facts and circumstances as appearing on the record :

> (i) While requesting the Director General of Police, Thiruvananthapuram, to transfer the case to CBI for investigation by letter dated 30-11-1994, Shri Mathew, the Deputy Inspector General of Police (who, as noticed earlier, impleaded himself as a respondent in the writ petitions filed by the accused-appellants in the High Court) stated as under :
>
> "(1) The incidents of this case are spread over the three States of Kerala, Tamil Nadu and Karnataka and foreign locations like Colombo and Male.
>
> (2) There is reason to believe that strategically important information about the IAF/Armed Forces (R & D Wing) have been passed on by the espionage chain to unfriendly countries. The complicity of senior military personnel is very likely. The State Police may not be able to question them, conduct search in their office, etc.
>
> (3) There is information (not fully authenticated) about the involvement of a senior officer.
>
> Due to the above-mentioned reasons, I do not think the special team now in charge of the case would be able to do full justice to the case. This is a fit case to be transferred to the Central Bureau of Investigation who are better equipped and also have the advantage of being a Central Police investigating out fit."

That on the basis of the above letter the Director General of Police recommended investigation by the CBI and the Government of Kerala in its turn issued the notification dated 2-12-1994 (quoted earlier) would be evident from the Explanatory Note appended thereto. If the above formidable impediments stood in the way of the State Government to get the case properly investigated by its police and impelled it to hand over the investigation to the CBI it is hardly conceivable that the State Government would be able to pursue the investigation effectively as those impediments would still be there. Mr. Shanti Bhushan, however, contended, relying upon the following statement made by Shri K. Dasan, an Additional Secretary to the Government of Kerala in his counter-affidavit (filed on 20-2-1997 in Criminal Appeal No. 498 of 1997) :

> "Having regard to the question of public importance involved in this matter the Government ordered that further investigation should be taken up by a special team handed by senior officials of Kerala State Police assisted by senior officials of the Intelligence Bureau, RAW and Intelligence Wing in the defence organisation of Government of India."

that there would be no difficulty in carrying on an effective and purposeful investigation with the assistance of the related organisations of the Central Government. Having regard to the stand taken by the Central Government that they are satisfied with the report of investigation of the CBI we are

not prepared to accept the above statement in absence of any supporting affidavit on behalf of the Government of India or any of those organisations;

(ii) On a careful perusal of the police report submitted by the CBI on completion of the investigation (which runs through more than 100 pages) we find that it has made a detailed investigation from all possible angles before drawing the conclusion that the allegations of espionage did not stand proved and were found to be false. Mr. Shanti Bhushan, however, drew our attention to certain passages from that report to contend that CBI only "investigated the investigation" (to use the words of Mr. Shanti Bhushan), which had been carried on for less than three weeks by the Kerala Police and the Intelligence Bureau of the Central Government, in its (CBI's) anxiety to establish that the statements of the accused-appellants recorded by the Kerala Police and the Intelligence Bureau could not be accepted as correct. He also drew our attention to pp. 7 to 15 of the counter-affidavit filed by Shri T. P. Sen Kumar, Deputy Inspector General of Police, Kerala (in Criminal Appeal No. 491 of 1997), wherein detailed reasons have been given for not accepting the police report submitted by the CBI and for the State Government's decision to withdraw the consent. After having gone through the relevant averments made in those pages we find that the main endeavour of Shri Sen Kumar has been to demonstrate that the conclusions arrived at by the CBI from the materials collected during investigation were wrong and not that the investigation was ill-directed or that the materials collected in course thereof were insufficient or irrelevant. If the State Government found that the conclusions drawn by the CBI were not proper, the only course left to the State Government, in our opinion, was to ask the Central Government to take a different view of the materials collected during investigation and persuade it to lodge a complaint in accordance with Section 13 of the IOS Act. The contention of Mr. Shanti Bhushan that the CBI only "investigated into the investigation" is also without any basis whatsoever for we find that keeping in view the statements made by some of the accused-appellants, the CBI sought for the assistance of INTERPOL and got a number of persons examined by them in Sri Lanka and Maldives [besides a number of witnesses in India, who were examined by it (CBI)]. Further, we find that the State Government did not canvass any satisfactory ground justifying further investigation, while seeking permission of the Chief Judicial Magistrate for that purpose;

(iii) Though the investigation of the case centered round espionage activities in ISRO no complaint was made by it to that effect nor did it raise any grievance on that score. On the contrary, from the police report submitted by the CBI we find that several scientists of this organisation were examined and from the statements made by those officers the CBI drew the following conclusion :

"The sum and substance of the aforesaid statements is that ISRO does not have a system of classifying drawings/documents. In other words, the documents/drawings are not marked as Top Secret, Secret, Confidential or Classified etc. Further, ISRO follows an open-door policy in regard to the issue of documents to the scientists. Since ISRO is a research-oriented organisation, any scientist wanting to study any document is free to go to the Documentation Cell/Library and study the documents. As regards the issue of documents to various Divisions, the procedure was that only the copies used to be issued to the various divisions on indent after duly entering the same in the Documentation Issue Registers. During investigation, it has been

revealed that various drawings running into 16,800 sheets were issued to the Fabrication Division where accused Sasi Kumaran was working, and after his transfer to SAP Ahmedabad on 7-11-1994, all the copies of the drawings were found to be intact. Nambi Narayanan being a senior scientist, though had access to the drawings, but at no stage any drawings/documents were found to have been issued to him. They have also stated that it was usual for scientists to take the documents/drawings required for any meetings/discussions to their houses for study purposes. In these circumstances, the allegation that Nambi Narayanan and Sasi Kumaran might have passed on the documents to a third party, is found to be false."

"It further appears that at the instance of CBI, a Committee of senior scientists was constituted to ascertain whether any classified documents of the organisation were stolen or found missing and their report shows that there were no such missing documents. There cannot, therefore, be any scope for further investigation in respect of purported espionage activities in that organisation in respect of which only the Kerala Police would have jurisdiction to investigate;

(iv) The Government of India, by supporting the case of the writ petitioners (the accused-appellants) in the High Court, and filing some of these appeals in this Court and an affidavit in connection therewith has, in no uncertain terms, made it abundantly clear that they are satisfied with the investigation conducted by the CBI and they strongly oppose any attempt on the part of the State Government to further investigate into the matter by its police. In spite thereof the State Government has been pursuing the matter zealously and strongly defending their action, knowing fully well that a prosecution can be launched by or at the instance of the Central Government only. Having known the stand of the Government of India it was expected of the Government of Kerala to withdraw the impugned notification, for in the ultimate analysis any further investigation by it would be an exercise in futility; and

(v) Though, (as held by this Court in Jamuna Chaudhary v. State of Bihar ((1974) 3 SCC 774 : 1974 SCC (Cri) 250 : AIR 1974 SC 1822)) the duty of the investigating agency is not merely to bolster up a prosecution case with such evidence as may enable the Court to record a conviction but to bring out the real unvarnished truth, yet the Kerala Government wants the instant case to be further investigated by a team nominated by it with the avowed object of establishing that the accused appellants are guilty, even after the investigating agency of its choice, the CBI, found that no case had been made out against them. This will be evident from the following passage from the order dated 13-12-1996 passed by the Chief Judicial Magistrate, Thiruvananthapuram while granting permission to the Kerala Police to further investigate :

"The report submitted by the Director General of Police discloses the fact that he has got reliable information that the conclusions arrived at by the CBI during investigation were not correct. If the case is further investigated more evidence can be collected which would point towards the guilt of the accused."

and from the order of detention dated 6-9-1997 passed against the appellant Mariyam Rasheeda by Mr. Mohan Kumar, Additional Chief Secretary, Government of Kerala. The said order reads as

under :

> "WHEREAS Smt. Mariyam Rasheeda who is a Maldivian national, a foreigner, is an accused in Crime No. 246 of 1994 of Vanchiyoor Police Station, Thiruvananthapuram.
>
> WHEREAS in the judgment dated 27-12-1996 in OPs Nos. 12747, 14248, 15363 and 16358 of 1996 the Hon'ble High Court of Kerala said that the order of the Government of Kerala to conduct further investigation in the above crime case is valid.
>
> WHEREAS the Government of Kerala have taken steps to obtain the formal permission of the Chief Judicial Magistrate, Thiruvananthapuram to conduct further investigation.
>
> AND WHEREAS the Government of Kerala are satisfied that there is sufficient evidence to proceed against the said Mariyam Rasheeda for the offence under Sections 3 and 4 of the Official Secrets Act and for the purpose of further investigation, her continued presence in India is absolutely necessary and that she is likely to abscond and act in a manner prejudicial to the defence of India and the security of India, unless detained.
>
> Now THEREFORE the Government of Kerala hereby order that the aforesaid Smt. Mariyam Rasheeda be detained under Sections 3(1)(a) and (b) of the National Security Act, 1980 (Act No. 65 of 1980) in the Central Prison, Viyyoor, Thrissur."

If before taking up further investigation an opinion has already been formed regarding the guilt of the accused and, that too, at a stage when the commission of the offence itself is yet to be proved, it is obvious that the investigation cannot and will not be fair - and its outcome appears to be a foregone conclusion.

26. From the above facts and circumstances we are constrained to say that the issuance of the impugned notification does not comport with the known pattern of a responsible Government bound by rule of law. This is undoubtedly a matter of concern and consternation. We say no more.

27. On the conclusions as above we allow these appeals and quash the impugned notification. We direct the Government of Kerala to pay a sum of Rs. 1,00,000 (Rupees one lakh) to each of the six accused-appellants as costs.