

SUPREME COURT OF INDIA

State of Haryana & Ors.

Vs.

Ch. Bhajan Lal & Ors.

(2011) 10 SCALE 0718

(J.M.Panchal and H.L.Gokhale,JJ.,)

21.11.1990

JUDGMENT

J.M.Panchal,J.,

1. State of Punjab v. Gurdial Singh, [1980] 1 SCR 1071; relied on. P.V. Jagannath Rao & Ors. v. State of Orissa & Ors., [1968] 3 SCR 789; Sheonandan Paswan v. State of Bihar and Ors., [1983] 1 SCC 438 and Sheonandan Paswan v. State of Bihar & Ors., [1987] 1 SCC 288; referred to. 3.

2.. If any information disclosing a cognizable offence is laid before an officer-in-charge of a police station satisfying the requirements of Section 154(1) of the Criminal Procedure Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information. [279G]

3. Though a police officer cannot investigate a non-cognizable offence, he can investigate a non-cognizable offence under the order of a Magistrate having power to try such non-cognizable case or commit the same for trial within the terms under Section 155(2) of the Code but subject to Section 155(3) of the Code. Further, under the newly introduced Sub-section (4) to Section 155, where a case relates to two offences to which atleast one is cognizable, the case shall be deemed to be a cognizable case notwithstanding that the other offences are non-cognizable and, therefore, under such circumstances the police officers can investigate such offences with the same powers as he has while investigating a cognizable offence. [279H; 280A-B]

4. The core of the Sections 156, 157 and 159 of the Code of Criminal Procedure is that if a police officer has reason to suspect the commission of a cognizable offence, he must either proceed with the investigation or cause an investigation to be proceeded with by his subordinate; that in a case where the police officer sees no sufficient ground for investigation, he can dispense with the investigation altogether; that the field of investigation of any cognizable offence is exclusively within the domain of the investigation agencies over

which the Courts cannot have control and have no power to stifle or impinge upon the proceedings in the investigation so long as the investigation proceeds in compliance with the provisions relating to investigation and that it is only in a case wherein a police officer decides not to investigate an offence, the concerned Magistrate can intervene and either direct an investigation or in the alternative, if he thinks fit, he himself can, at once proceed or depute any Magistrate sub-ordinate to him to proceed to hold a preliminary inquiry into or otherwise to dispose of the case in the manner provided in the Code. [283G-H; 284A-B] State of Bihar and Anr. v. J.A.C. Saldanha and Ors., [1980] 1 SCC 554; S.N. Sharma v. Bipen Kumar Tiwari and Ors., [1970] 3 SCR 946; Emperor v. Khwaja Nazir Ahmad, AIR 1954 P.C. 18 and Abhinandan v. Dinesh, [1967] 3 SCR 668; referred to.

5.1. The expression "reason to suspect the commission of an offence" used in Section 154(1) Cr. P.C. would mean the sagacity of rationally inferring the commission of a cognizable offence based on the specific articulate facts mentioned in the First Information Report as well in the Annexures, if any, enclosed and any attending circumstances which may not amount to proof. In other words, the meaning of the expression "reason to suspect" has to be governed and dictated by the facts and circumstances of each case and at 7 in the First Information Report does not arise. [286E-F]

5.2. The commencement of investigation by a police officer is subject to two conditions, firstly, the police officer should have reason to suspect the commission of a cognizable offence as required by Section 157(1) and secondly, the police officer should subjectively satisfy himself as to whether there is sufficient ground for entering on an investigation even before he starts an investigation into the facts and circumstances of the case as contemplated under clause (b) of the proviso to Section 157(1) of the Code. [288B-C] Pakala Narayanaswami v. Emperor, AIR 1939 P.C. 47; Emperor v. Vimlabai Deshpande, AIR 1946 P.C. 123; United States v. Cortez, 66 L.Ed. (United States Supreme Court Reports) page 623; Dallison v. Caffery, [1964] 2 All E.R. 610; State of Gujarat v. Mohanlal J. Porwal, [1987] 2 SCC 364; Pukhraj v. D.R. Kohli, [1962] Supp. 3 SCR 866; State of West Bengal & Ors. v. Swapan Kumar Guha & Ors., [1982] 3 SCR 121; referred to. Webster's Third International Dictionary; Corpus Juris Secundum, Vol. 83 pp. 923, 927; Words and Phrases, (Permanent Edition 40A) pp. 590, 591; referred to.

6. The investigation of an offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offences is legitimately exercised in strict compliance with the provisions falling under Chapter XII of the Code and the Courts are not justified in obliterating the track of investigation when the investigating agencies are well within their legal bounds. A noticeable feature of the scheme under Chapter XIV of the Code is that a Magistrate is kept in the picture at all stages of the police investigation but he is not authorised to interfere with the actual investigation or to direct the police how that investigation is to be conducted. But if a police officer transgresses the circumscribed limits and improperly and illegally exercises his investigatory powers in breach of any statutory provision causing serious prejudice to the personal liberty and also property of a citizen, then the Court, on being approached by the person aggrieved for the redress of any grievance has to consider the nature and extent of

the breach and pass appropriate orders as may be called for without leaving the citizens to the mercy of police echelons since human dignity is a dear value of our Constitution. No one can demand absolute immunity even if he is wrong and claim unquestionable right and unlimited powers exercisable upto unfathomable cosmos. Any recognition of 'Power' which no authority on earth can enjoy. [290D-G] Emperor v. Khwaja Nazir Ahmad, AIR 1945 P.C. 18; R.P. Kapur v. The State of Punjab, [1960] 3 SCR 388; Nandini Satpathy v. P.L. Dani & Anr., [1978] 2 SCC 424; S.N. Sharma v. Bipen Kumar Tiwari and Ors., [1970] 3 SCR 946; Prabhu Dayal Deorath etc. etc. v. The District Magistrate, Kamrup & Ors., [1974] 2 SCR 12; State of West Bengal and Ors. v. Swapan Kumar Guha and Ors., [1982] 3 SCR 121; referred to. 7.1 The view of the High Court that the non-filing of a written statement by a competent authority of the State Government by way of reply to the averments in the Writ Petition was serious flaw on the part of the appellants and as such the averments of Respondent No. 1 should be held as having disproved the entire crimination alleged in the F.I.R., is neither conceivable nor comprehensible. [293D]

7.2. It is true that some of the allegations do suffer from misty vagueness and lack of particulars. Further, there are no specific averments that either Respondent No. 1 or his relations and friends had no source of income to accumulate the properties now standing in their names and that Respondent No. 1 showed any favour to them by misusing his official position. [294B-C] These are all matters which would be examined only during the course of investigation and thereafter by the court on the material collected and placed before it by the investigating agencies. The question whether the relations and friends of Respondent No. 1 have independently purchased the properties out of their own funds or not, also cannot be decided by the Court at this stage on the denial statement of Respondent No. 1 alone. [294C-D] State of West Bengal and Ors. v. Swapan Kumar Guha and Ors., [1982] 3 SCR 121; distinguished. State of Bihar and Anr. v. J.A.C. Saldanha and Ors., [1980] 1 SCC 554; relied on.

8.1. In the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guide- i7 myriad kinds of cases wherein such power should be exercised:

“(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. [305D-H; 306A-E] 8.2. In the instant case, the allegations made in the complaint, do clearly constitute a cognizable offence just- i7 on and this case does not call for the exercise of extraor- dinary or inherent powers of the High Court to quash the F.I.R. itself. [307B] State of West Bengal v. S.N. Basak, [1963] 2 SCR 52; distinguished. R.P. Kapur v. The State of Punjab, [1960] 3 SCR 388; S.N. Sharma v. Bipen Kumar Tiwari and Ors., [1970] 3 SCR 946; Hazari Lal Gupta v. Rameshwar Prasad and Anr. etc., [1972] 1 SCC 452; Jehan Singh v. Delhi Administration, [1974] 3 SCR 794; Amar Nath v. State of Haryana, [1977] 4 SCC 137; Madhu Limaye v. State of Maharashtra, [1977] 4 SCC 551; Kurukshetra University and Anr. v. State of Haryana and Anr., [1977] 4 SCC 451; State of Bihar and Anr. v. J.A.C. Saldanha and Ors., [1980] 1 SCC 554; Municipal Corporation of Delhi v. Purshotam Dass Jhunjunwala and Ors., [1983] 1 SCC 9; State of West Bengal and Ors. v. Swapan Kumar Guha and Ors., [1982] 3 SCR 121; Smt. Nagawwa v. Veeranna Shiva- lingappa Konjalgi & Ors., [1976] Supp. SCR 123; Pratibha Rani v. Suraj Kumar and Anr., [1985] 2 SCC 370; Madhavrao Jiwaji Rao Scindia and Ors. v. Sambhajirao Chandrojirao Angre and Ors., [1988] 1 SCC 692; State of Bihar v. Murad Ali Khan and Ors., [1988] 4 SCC 655; Talab Haji Hussain v. Madhukar Purshottam Mondekar and Anr., [1958] SCR 1226; L.U. Jadhav v. Shankarrao Abasa- heb Pawar, [1983] 4 SCC 231; J.P. Sharma v. Vinod Kumar Jain and Ors., [1986] 3 SCC 67; State of U.P.v.V.R.K. Srivastava and Anr., [1989] 4 SCC 59; Emperor v. Khwaja Nazir Ahmad, AIR 1945 P.C. 18; referred to.

9.1. The entire matter is only at a premature stage and the investigation has not proceeded with except some preliminary effort taken on the date of the registration of the case. The evidence has to be gathered after a thorough investigation and placed before the Court on the basis of which alone the Court can come to a conclusion one way or the other on the plea of mala fides. If the allegations are bereft of truth and made maliciously, the investigation will say so. At this stage, when there are only allegations and recriminations but no evidence, this Court cannot anticipate the result of the investigation and render a finding on the question of mala fides on the materials at present available. Therefore, it cannot be said that the complaint should be thrown overboard on the mere unsubstantiated plea of mala fides. Even assuming that the complainant has laid the complaint only on account of his personal animosity that, by itself, will not be a ground to discard the complaint containing serious allegations which have to be tested and weighed after the evidence is collected. [307G-H; 308A-D] ¶73

9.2. The dominant purpose of registration of the case and the intended follow up action are only to investigate the allegations and present a case before the Court, if sufficient evidence in support of those allegations are collected but not to make a character assassination of the person complained against. [308H; 309A] S. Pratap Singh v. The State of Punjab, [1964] 4 SCR 733; State of Haryana v. Rajindra Sareen, [1972] 2 SCR 452; Express Newspapers Pvt. Ltd. & Ors. v. Union of India & Ors., [1985] Supp. 3 SCR 382; P.V. Jagannath Rao & Ors. v. State of Orissa & Ors., [1968] 3 SCR 789; The King v. Minister of Health, [1929] 1 K.B. 619; Rex v. Brighton Corporation Ex-parte Shoosmith, 96 L.T. 762; Earl Fitzwilliam's Wentworth Estate Co. Ltd. v. Minister of Town and Country Planning, [1951] 2 K.B. 284; referred to.

10.1. A police officer with whom an investigation of an offence under Section 5(1)(e) of the Prevention of Corruption Act is entrusted should not proceed with a pre-conceived idea of guilt of that person indicated with such offence and subject him to any harassment and victimisation, because in case the allegations of illegal accumulation of wealth are found, during the course of investigation as baseless, the harm done not only to that person but also to the office he held will be incalculable and inestimable. [297C-E]

10.2. In the instant case, the SP seems to have exhibited some over-enthusiasm, presumably to please 'some one' and had directed the SHO to register the case and investigate the same even on the very first day of the receipt of the complaint from the DGP, in whose office the complaint was lying for merely 9 days. This unprecedented overenthusiasm shown by the S.P., without disclosing the reasons for making an order entrusting the investigation to the SHO who is not a designated officer under Section 5A(1), really shocks one's sense of justice and fair play even though the untested allegations made in the complaint require a thorough investigation. Still, it is an inexplicable riddle as to why the S.P. had departed from the normal rule and hastily ordered the SHO to investigate the serious allegations, levelled against a former Chief Minister and a Minister in the Cabinet of the Central Government on the face of the registration of the case. However, this conduct of the SP can never serve as a ground for quashing the FIR. [298C-E] Sirajuddin v. State of Madras, [1970] 3 SCR 931; The State of Uttar Pradesh v. Bhagwant Kishore Joshi, [1964] 3 SCR 71; relied on. ¶73

11.1. A police officer not below the rank of an Inspector of Police authorised by the State Government in terms of the First proviso can take up the investigation of an offence referred to in clause (e) of Section 5(1) of the Prevention of Corruption Act, only on a

separate and independent order of a police officer not below the rank of a Superintendent of Police. A strict compliance of the second proviso is an additional legal requirement to that of the first proviso for conferring a valid authority on a police officer not below the rank of an Inspector of Police to investigate an offence falling under clause (e) of Section 5(1) of the Act. This is clearly spelt out from the expression "further provided" occurring in the second proviso. Thus, investigation by the designated Police Officers is the rule and investigation by an officer of a lower rank is an exception. [311H; 312A-B] 11.2. The granting of permission under Section 5A of the Prevention of Corruption Act authorising an officer of lower rank to conduct the investigation is not to be treated by a Magistrate as a mere matter of routine, but it is an exercise of his judicial discretion having regard to the policy underlying and the order giving the permission should, on the face of it, disclose the reasons for granting such permission. The Superintendent of Police or any police officer of higher rank while granting permission to a non-designated police officer in exercise of his power under the second provision to Section 5A(1), should satisfy himself that there are good and sufficient reasons to entrust the investigation with such police officer of a lower rank and record his reasons for doing so; because the very object of the legislature in enacting Section 5A is to see that the investigation of offences punishable under Sections 161, 165 or 165A of Indian Penal Code as well as those under Section 5 of the Act should be done ordinarily by the officers designated in clauses (a) to (d) of Section 5A(1). The exception should be for adequate reasons which should be disclosed on the face of the order. Strict compliance with Section 5A(1) becomes absolutely necessary because it expressly prohibits police officers below certain ranks, from investigating into offences under Sections 161, 165 and 165A IPC and under Section 5 of the Act without orders of Magistrates specified therein or without the authorisation of the State Government in this behalf and from effecting arrests for those offences without a warrant. [314H; 315A-D] 11.3. The main object of Section 5A is to protect the public servant against harassment and victimisation. Section 5A of the Act is mandatory and not directory and the illegality but that illegality committed in the course of an investigation does not affect the competence and the jurisdiction of the Court for trial and where the cognizance of the case has in fact been taken and the case is proceeded to termination the validity of the proceedings with the preceding investigation does not vitiate the result unless miscarriage of justice has been caused thereby. [311C; 312D-E] 11.4. In the instant case, there is absolutely no reason, given by the S.P. in directing the SHO to investigate and as such the order of the S.P. is directly in violation of the dictum laid down by this Court in several decisions. The third appellant, SHO is not clothed with the requisite legal authority within the meaning of the second provision of Section 5A(1) of the Act to investigate the offence under clause (e) of Section 5(1) of the Act. [315E-F] *H.N. Rishbud and Inder Singh v. The State of Delhi*, [1955] 1 SCR 1150; *The State of Madhya Pradesh v. Mubarak Ali*, [1959] Supp. 2 SCR 201; *A.C. Sharma v. Delhi Administration*, [1973] 3 SCR 477; *A.R. Antulay v. R.S. Nayak*, [1984] 2 SCR 914; *Major E.G. Barsay v. The State of Bombay*, [1962] 2 SCR 195; *Munna Lal v. State of Uttar Pradesh*, [1964] 3 SCR 88; *S.N. Bose v. State of Bihar*, [1968] 3 SCR 563; *Muni Lal v. Delhi Administration*, [1971] 2 SCC 48; *Khandu Sonu Dhobi & Anr. v. State of Maharashtra*, [1972] 3 SCR 510; relied on.

12. The Government order authorised the Inspector General of Police to investigate only the offences falling under Section 5 of the Act. Therefore, the SHO who has taken up the investigation of the offences inclusive of those under Section 161 and 165 IPC is not at all clothed with any authority to investigate these two offences, registered under the IPC, apart from the offence under Section 5(2) of the Act. However, as the question relating to the legal authority of the SHO is raised even at the initial stage, it would be proper and also desirable that the investigation, if at all to be proceeded with in the opinion of the State Government, should proceed only on the basis of a valid order in strict compliance with the mandatory provision of Section 5A(1). [315G-H; 3 16A-B] &