SUPREME COURT OF INDIA

State Represented By Inspector of Police, Chennai.

Vs.

N.S.Gnaneswaran

(Dr.B.S.Chauhan and V.Gopala Gowda JJ.)

09.01.2013

ORDER

1. This appeal is directed against the order dated 25th November, 2003 passed by the High Court of Judicature at Madras in Crl.M.P.No.2302 of 2003 filed under Section 482 of Criminal Procedure Code, (hereinafter referred to as 'Cr.P.C.'), for quashing the FIR in Cr.No.RC MAI 2002A 0052 dated 11.10.2002 urging various legal contentions.

2. For the purpose of appreciating the rival legal contentions urged on behalf of the parties the brief facts are stated hereunder. The appellant herein registered a case against the respondent under Section 120B read with Sections 420, 467, 468 and 471, Indian Penal Code, read with Section 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988. The respondent had challenged the said FIR registered against him and sought for quashing of the same. The principal legal contention urged before the High Court in the Cr.M.P. filed under Section 482 of Cr.P.C. to quash the FIR proceedings is that sub-section (2) of Section 154, Cr.P.C. contemplate that a copy of such information recorded shall be issued forthwith, free of cost to the informant, is a mandatory requirement. On the basis of the said legal contention the respondent has sought for quashing the same. The said legal contention is accepted by the High Court and recorded a finding on the basis of the perusal of the information sought to have been received by the appellant herein is bald in the sense that application under Section 154, Cr.PC. has no place nor could it be said that the case has been registered in accordance with law. Therefore, it came to the conclusion that it is not a case registered in accordance with law and such a case is registered, deviating from the procedure contemplated under Section 154, Cr.P.C. The same is bereft of the force of law and the same is non-est in law and for this reason the High Court has quashed the FIR. The correctness of the said

findings assigned by the learned Judge is under challenge in this appeal raising the following issues:--

> I) Whether the High Court in the facts and circumstances of the case was justified in allowing the petition under Section 482, Cr.P.C.?
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> II) Whether an FIR registered on the basis of recorded information disclosing commission to cognizable offence and under Section 154(1), Cr.P.C. for the purposes of conducting investigation of the case under Sections 156 and 157, Cr.P.C. is permissible in law?
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> III) Whether the High Court in its impugned decision has correctly interpreted Section 154, Cr.P.C. with reference to its ambit and scope of and has correctly read the said Section in juxta-position with Sections 156 and 157 Cr.P.C?

3. In support of the said issues, the learned senior counsel Mr.K. Radhakrishnan, appearing on behalf of the Appellant, has placed strong reliance upon the CBI (Crime) Manual of 2005 -- Chapter 8 regarding registration of Complaints and Source of Information, which Manual has been prepared as per the observations made by a larger Bench decision of this Court in the case of Vineet Narain Ors. vs. Union of India Anr. [(1998) 1 SCC 226]. The learned senior counsel has invited our attention to paras 8.26 and 8.27 which provisions state that collection of source of information must be submitted in writing giving all available details of specific acts of omissions and commissions and copies of documents collected discreetly. The verification of SIRs must begin only after the competent authority has approved its registration. At this stage regular SIR number will be assigned to the SIR which will also be entered in the Source of information sub-module of CRIMES Module with all other details. As per para 8.28, the SIR may be classified as SECRET. These files must be maintained by the S.P. in his office. In view of the aforesaid procedure required to be followed by the appellant herein as per the CBI Manual, which is in conformity with the observations made by the decision of this Court such procedure is required to be followed by the appellant Investigating Agency. Therefore, the learned senior counsel submits that the procedure as contemplated under Section 154, Cr.P.C. is not required to be followed. Learned senior counsel has also placed reliance upon Chapter 10 regarding registration of FIR. Para 10.1 provides for the procedure required to be followed for registration of FIR which states that on receipt of a complaint or after verification of information or on completion of a Preliminary Enquiry taken up by CBI if, it is revealed that prima facie a cognizable offence has been committed by a person and

the matter is fit for investigation to be undertaken by CBI, a First Information Report should be recorded under Section 154, Cr.P.C. and investigation shall be taken up. While considering the registration of an FIR, it should be ensured that at least the main offence(s) have been notified under Section 3 of the Delhi Special Police Establishment Act, 1946. Para 10.2 further provides that while registering an FIR the legal requirements of section 154, Cr.P.C. should be fully complied with. Further learned senior counsel has placed reliance upon the plethora of judgments of this Court in justification of the appeal to set aside the impugned order passed by the High Court and placed strong reliance upon the judgment of this Court in the case of State, represented by Inspector of Police Vigilance and Anti Corruption, Tiruchirapalli, Tamil Nadu vs. V.Jayapaul [AIR 2004 SC 2684] wherein the this Court after referring to the earlier decisions rendered in Bhagwan Singh vs. State of Rajasthan [AIR 1976 SC 985] and Megha Singh vs. State of Haryana [AIR 1995 SC 2339] and after interpreting Sections 153, 154, 156, 157 of Cr.P.C. regarding investigation of cognizable offence(s) the Police Officer who recorded the FIR on the basis of information received, registered suspected crime, is competent to take up investigation and submit his final report. It is not open for the accused or the person against whom the case is registered to allege bias or prejudice to be inferred for quashing the proceedings. In paragraph 4 of the aforesaid judgment, strong reliance has been placed in support of the conclusion that there is nothing in the provision of Cr.P.C. which precludes the Inspector of Police, Vigilance from taking up the investigation if Police Officer prepares the FIR on the basis of the information received by him and registered the suspected crime does not in our view, disqualify him from taking up the investigation of the cognizable offence. A suo-motu move on the part of the Police Officer to investigate a cognizable offence impelled by the information received from some sources is not outside the purview of the provisions contained in Section 154 to 157 of the Code or any other provisions of the Code. The said observations are made by this Court with reference to the scheme of the aforesaid provisions which were clarified by this Court in the case of State of U.P. vs. Bhagwant Kishore Joshi [AIR 1964 SC 221]. The learned senior counsel has also placed reliance upon three judge bench decision of this Court in Lalita Kumari vs. State of U.P. [(2012) 4 SCC 1 para 93]. In support of his legal contention he has urged that the said decision is not applicable to the fact situation therefore this Court need not await the decision of the larger Bench of this Court on the legal question referred to in that case. Therefore, he has urged this Court to allow the appeal by setting aside the impugned order of the High Court. The learned senior counsel has placed reliance on various catena of decisions of this Court which we do not propose to refer to the same in view of the decision of this Court in the case of State, rep.by Inspector of Police, Vigilance and Anti-Corruption, Tiruchirapalli (supra).

4. On the other hand, learned counsel Mr.S.D. Dwarakanath, appearing on behalf of the respondent, has sought to justify the same placing strong reliance upon paragraph 57 of the aforesaid three judge bench decision in Lalita Kumari vs. State of U.P. (supra) in justification of awaiting the decision by the larger Bench wherein three Judge bench decision of this Court in the aforesaid case after referring to the seven Judge bench decision of the Constitutional Bench in the case of Maneka Gandhi vs. Union of India, reported in AIR 1978 SC 597, has held that the procedure required to be followed under Section 154, is mandatory to be followed. This court in the said case has held that if the mandatory procedure under Section 154, Cr.P.C. is not followed it will be in violation of Article 21 of the Constitution of India. Therefore, he submits that the impugned order may not be interfered with by this Court. In view of the undisputed facts that the mandatory procedure under Section 154, Cr.P.C. is not followed by the appellant herein thereby the High Court of Madras has rightly assigned the reason and held that non compliance of the mandatory provisions of Section 154 (1) (2) of Cr.P.C. has vitiated the proceedings and accordingly quashed the same in exercise of inherent powers of the High Court under Section 482, Cr.P.C.

5. With reference to the aforesaid rival contentions this Court has carefully examined the correctness of the impugned order to find out as to whether it warrants our interference with the impugned order in this appeal.

6. The High Court has not recorded the finding that if the contents of the FIR registered against the respondent are taken on its face value do not disclose the cognizable offence and thus, the FIR was liable to be quashed. Rather it has been quashed merely on technical ground that the copy of the said FIR after being lodged had not been given to the informant. The judgment impugned herein is required to be examined as to whether giving the copy of the FIR to the informant is mandatory and if not what is the prejudice caused to the respondent/accused as the informant has not raised the grievance of non-supply of the copy of the FIR nor it has been the case of the respondent that he sought the copy of the FIR and was not given.

7. The issue also requires to be examined on the touchstone of doctrine of prejudice. Thus, unless in a given situation, the aggrieved makes out a case of prejudice or injustice, some infraction of law would not vitiate the order/enqury/result. In judging a question of prejudice, the court must act with a broad vision and look to the substance and not to technicalities. (Vide: Jankinath

Sarangi v. State of Orissa, (1969) 3 SCC 392; Anr., AIR 1998 SC 3038; State of A.P. v. Thakkidiram Reddy Ors., (1998) 6 SCC 554; and Ors., (2002) 8 SCC 68).

8. In Dahari Ors. v. State of Uttar Pradesh, (2012) 10 SCC 256, this Court considered the prejudice in a trial where charges had not properly been taken care of. In the said case the trial commenced against five accused under Section 302 read with Section 149 IPC and they stood convicted by the Sessions Court. The High Court though acquitted 3 persons but for the remaining accused conviction was maintained under Section 302 read with Section 149 IPC. This Court held that in such a factual situation, the High Court could most certainly has convicted the appellant under Section 302 read with Section 34 IPC and as no prejudice has been shown to have been caused to them, the question of interference could not arise.

9. In the instant case, learned counsel for the respondent is not able to show any prejudice caused to him for not supplying the copy of the FIR to the informant.

10. While determining whether a provision is mandatory or directory, in addition to the language used therein, the Court has to examine the context in which the provision is used and the purpose it seeks to achieve. It may also be necessary to find out the intent of the legislature for enacting it and the serious and general inconveniences or injustice to persons relating thereto from its application. The law which creates public duties is directory but if it confers private rights it is mandatory.

11. A Constitution Bench of this Court, in State of U.P. Ors. v. Babu Ram Upadhya, AIR 1961 SC 751, considered the issue and held as under:–

> "For ascertaining the real intention of the Legislature, the Court may consider, inter alia, the nature and the design of the statute, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non- compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered." (emphasis added)
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> (See also: Dattatraya Moreshwar v. State of Bombay Ors., AIR 1952 SC 181; Raza Buland Sugar Co. Ltd., Rampur v. Municipal Board, Rampur,

AIR 1965 SC 895; and State of Mysore v. V.K. Kangan, AIR 1975 SC 2190).

12. In Sharif-Ud-Din Vs. Abdul Gani Lone, AIR 1980 SC 303, this Court, while considering the provisions of sub-section (3) of Section 89 of the JK Representation of People Act, 1957, held that the difference between a mandatory and directory rule is that the former requires strict observance while in the case of latter, substantial compliance of the rule may be enough and where the statute provides that failure to make observance of a particular rule would lead to a specific consequence, the provision has to be construed as mandatory.

13. In M/s. Rubber House v. M/s. Excellsior Needle Industries Pvt. Ltd., AIR 1989 SC 1160, this Court considered the provisions of the Haryana (Control of Rent Eviction) Rules, 1976, which provided for mentioning the amount of arrears of rent in the application was held to be directory though the word "shall" has been used in the statutory provision for the reason that non-compliance of the rule, i.e. non-mentioning of the quantum of arrears of rent did involve no invalidating consequence and also did not visit any penalty.

14. In B.S. Khurana Ors. v. Municipal Corporation of Delhi Ors., (2000) 7 SCC 679, this Court considered the provisions of the Delhi Municipal Corporation Act, 1957, particularly those dealing with transfer of immovable property owned by the Municipal Corporation, and held to be mandatory for the reason that the effect of non-observance of the statutory prescription would vitiate the transfer.

15. In State of Haryana Anr. v. Raghubir Dayal, (1995) 1 SCC 133, this Court observed as under:–

> "If by holding them to be mandatory, serious general inconvenience is caused to innocent persons or general public, without very much furthering the object of the Act, the same would be construed as directory."

16. Ors., AIR 1975 SC 915, this Court held that where "the imperative language, the beneficent purpose and importance of the provisions for efficacious implementation of the general scheme of the Act, all unerringly lead to the conclusion that they were intended to be mandatory, neglect of any of those statutory requisites would be fatal."

17. The law on this issue can be summarised that in order to declare a provision mandatory, the test to be applied is as to whether non-compliance of the provision

could render entire proceedings invalid or not. Whether the provision is mandatory or directory, depends upon the intent of Legislature and not upon the language for which the intent is clothed. But the circumstance that Legislature has used the language of compulsive force is always of great relevance.

> If we apply this test to the provisions of Section 154 Cr.P.C., we reach inescapable conclusion that the provisions of Section 154(2) are merely directory and not mandatory as it prescribes only a duty to give the copy of the FIR.

18. Ors. [(2007) 1 SCC 630], while referring to its earlier decision in Vineet Narain v. Union of India, reported in (1998) 1 SCC 226 para 58, this Court has held as under:

> "58.1.12. The CBI Manual based on statutory provisions of the Cr.P.C. provides essential guidelines for the CBI's functioning. It is imperative that the CBI adhere scrupulously to the provisions in the Manual in relation to its investigative functions, like raids, seizure and arrests;. Any deviation from the established procedure should be viewed seriously and severe disciplinary action taken against the officials concerned."

19. The CBI has prepared the Crime Manual of 2005 which is considered by this Court in the case of Ors. [(2009) 1 SCC 441, wherein the apex court at para 30 has laid down the principle as under:--

> "30. Lodging of a first information report by CBI is governed by a manual. It may hold a preliminary inquiry; it has been given the said power in Chapter VI of the CBI Manual. A prima facie case may be held to have been established only on completion of a preliminary enquiry."

20. As per the said Manual, procedure is laid down under Chapter 8 regarding Collection of Source Information under paras 8.26, 8.27 and 8.28 which read as under:-

> 8.26 As a part of their duty and in terms of annual programme of work, all Investigating and Supervisory Officers are required to collect quality information regarding graft, misuse of official position, possession of disproportionate assets, fraud, embezzlement, serious economic offences, illegal trading in narcotics and psychotropic substances, counterfeiting of currency, smuggling of antiques, acts endangering wildlife and environment,

cyber crimes, serious frauds of banking/financial institutions, smuggling of arms ammunition, forgery of passports etc. and other matters falling within the purview of CBI and verify the same to ascertain whether any prima facie material is available to undertake an open probe. While all CBI officers are free to develop such information through discreet means, the officer developing any information must keep his superior officer informed regarding information being developed by him. The immediate superior officer may also keep the Competent Authority, i.e. DIG/JD/ADCBI /SDCBI/DCBI informed in case the officer against whom information is being developed is of a rank against whom only such officer can order registration of a case.

8.27 The source information once developed must be submitted in writing giving all available details with specific acts of omissions and commissions and copies of documents collected discreetly. The internal vigilance enquiries or departmental enquiry reports should normally not be used as basis for submitting the Source Information. The SP concerned after satisfying himself that there is prima facie material meriting action by CBI and further verification is likely to result in registration of a regular case, would order verification if it falls within his competence. In the cases which are within the competence of higher officers, he will forward his detailed comments to the DIG and obtain orders from superior officer competent to order registration. The verification of SIRs must begin only after the Competent Authority has approved its registration. At this stage a regular SIR number will be assigned to the SIR which will also be entered in the Source Information sub-module of CRIMES Module with all other details.

8.28 The SIR may be classified as 'SECRET'. These files must be maintained by the SP in his office."

21. Further, the learned senior counsel also placed reliance upon the procedure required to be followed by the CBI laid down under Chapter 10 regarding registration and FIR by following the procedure under para 10.1 which provides for Registration and First Information Report on receipt of a complaint or after verification of an information or on completion of a preliminary enquiry taken up by CBI if it is revealed that prima facie a cognizable offence has been committed and the matter is fit for investigation to be undertaken by CBI, an FIR should be recorded under Section 154 Cr.P.C. and investigation be taken up. While considering registration of an FIR, it should be ensured that at least the main offence(s) have been notified under Section 3 of the Delhi Special Police

Establishment Act and further the rightly placed reliance upon the judgment of State, represented by Inspector of Police, Vigilance and Anti- Corruption, Tiruchirapalli (supra) wherein this Court, at para 4, has made the following observations which read as under:--

> "We have no hesitation in holding that the approach of the High Court is erroneous and its conclusion legally unsustainable. There is nothing in the provisions of the Criminal Procedure Code which precluded the appellant (Inspector of Police, Vigilance) from taking up the investigation. The fact that the said police officer prepared the FIR on the basis of the information received by him and registered the suspected crime does not, in our view, disqualify him from taking up the investigation of the cognizable offence. A suo motu move on the part of the police officer to investigate a cognizable offence impelled by the information received from some sources is not outside the purview of the provisions contained in Sections 154 to 157 of the Code or any other provisions of the Code. The scheme of Sections 154, 156 and 157 was clarified thus by Subba Rao, J. speaking for the Court in State of U.P. vs. Bhagwant Kishore (AIR 1964 SC 221)."

22. Ors. (supra), in para 20, after referring to its earlier decision in State of U.P. v. Bhagwant Kishore Joshi referring to the provisions of Section 5-A of the Prevention of Corruption Act, this Court has opined:

> "Even so the said police officer received a detailed information of the offences alleged to have been committed by the accused with necessary particulars, proceeded to the spot of the offence, ascertained the relevant facts by going through the railway records and submitted a report of the said acts. The said acts constituted an investigation within the meaning of the definition of 'investigation under Section 4(1) of the Code of Criminal Procedure as explained by this Court. The decisions cited by the learned counsel for the State in support of his contention that there was no investigation in the present case are rather wide off the mark. In Nandamuri Anandayya, In re [AIR 1915 Mad 312] a Division Bench of the Madras High Court held that an informal enquiry on the basis of a vague telegram was not an investigation within the meaning of Section 157 of the Code of Criminal Procedure. In Rangarujulu Naidu, In re [AIR 1958 Madras 368] Ramaswami, J. of the Madras High Court described the following three stages a policeman has to pass in a conspiracy case:

'….hears something of interest affecting the public security and which puts him on the alert; makes discreet enquiries, takes soundings and sets up informants and is in the second stage of qui vive or look out; and finally gathers sufficient information enabling him to bite upon something definite and that is the stage when first information is recorded and when investigation starts.'

This graphic description of the stages is only a restatement of the principle that a vague information or an irresponsible rumour would not in itself constitute information within the meaning of Section 154 of the Code or the basis for an investigation under Section 157 thereof. In State of Kerala v. M.J. Samuel [ILR 1960 Kerala 783 (FB)] a Full Bench of the Kerala High Court ruled that, 'it can be stated as a general principle that it is not every piece of information however vague, indefinite and unauhenticated it may be that should be recorded as the first information for the sole reason that such information was the first, in point of time, to be received by the police regarding the commission of an offence'. The Full Bench also took care to make it clear that whether or not a statement would constitute the first information report in a case is a question of fact and would depend upon the circumstances of that case."

23. The said observations are made in the above decisions on the basis of the clarification made by this Court regarding the provisions of Section 154, 156 and 157, Cr.P.C. in the case of State of U.P. vs. Bhagwant Kishore Joshi (supra) upon which rightly placed reliance in justification of the procedure followed by CBI regarding the registration of FIR the same is traceable to the procedure laid down in the Crime Manual 2005, which has been prepared by the CBI for registration of cases under the Delhi Special Police Establishment Act. Therefore, non compliance of the mandatory provisions under Section 154, Cr.P.C. if the case is registered on the basis of the information received suo-motu after specifying that the information reveals prima facie cognizable offence against the respondent herein and found that the matter is fit for investigation to be taken by the appellant herein, in not following the provisions of Section 154 does not vitiate the registration of FIR and further proceedings in the matter of registration. Therefore the request made by the appellant to set aside the impugned order specifying the aforesaid procedure laid down under the Manual and also the decision of this Court referred to (supra) and not complying with the mandatory procedure under Section 154 does not vitiate the registration of FIR against the respondent and further there is no need for this Court to await the larger Bench decision on the issue in the case in Lalita Kumari vs. State of U.P.(supra).

24. Accordingly, the appeal is allowed, the impugned order is hereby set aside. It is open for the CBI to proceed further in the matter to conduct investigation and proceed in accordance with law against the respondent.