

SUPREME COURT OF INDIA

State of Kerala

Vs.

P.B. Sourabhan & Ors.

Crl.A.No.192 of 2016

(Ranjan Gogoi And Prafulla C.Pant,JJ.)

04.03.2016

JUDGMENT

Ranjan Gogoi,J.

(S.L.P.(Crl.) No.9088 of 2012)

1. Leave granted.

2. The short question that arises for decision in the present appeals is whether the State Police Chief/Director General of Police is empowered to appoint a superior police officer to investigate a crime case registered outside the territorial jurisdiction of such officer.

3. The High Court answered the aforesaid question in the negative giving rise to the present appeals by the State as well as by the complainant in one of the cases (who is also the accused in the other case) at whose instance the appointment was made and authorization issued by the State Police Chief.

4. Over certain matrimonial disputes between the parties, two police cases i.e. Crime No. 621 of 2011 and Crime No. 637 of 2011 were registered in the Pettah Police Station. The complainant in Crime No. 637 of 2011, who is the accused in Crime No. 621 of 2011, had filed a representation before the State Police Chief for further investigation by a competent/neutral officer. On the said representation, the State Police Chief by an order dated 24.01.2012 directed the District Police Chief of Thiruvananthapuram City that the Assistant Commissioner of Police, Cantonment, Thiruvananthapuram City may be entrusted with further investigation of Crime Nos.621 of 2011 and 637 of 2011 of Pettah Police Station.

Pursuant to the above direction of the State Police Chief, one M.G.Haridas, Assistant Commissioner of Police, Cantonment, Thiruvananthapuram City was authorised to conduct further investigation of the two cases and send weekly reports. This was by order dated 12.03.2012 of the Deputy Commissioner of Police (L & O) Thiruvananthapuram City. Thereafter it appears that the specially authorised and entrusted officer filed an application before the learned trial court for further investigation of the two cases which was allowed by

the said court on 20.03.2012. The aforesaid order appointing M.G. Haridas, Assistant Commissioner of Police, Cantonment to conduct further investigation of the two cases and the order of the learned trial court dated. 20.03.2012 granting permission for further investigation under Section 173(8) Cr.P.C were assailed before the High Court. The challenge before the High Court was primarily on the ground that the said orders are in excess of the powers vested by Section 36 of the Cr. P.C. and that Section 18 of the Kerala Police Act which vests the administration, supervision, direction and control of the police throughout the State in the State Police Chief cannot override the provisions of Section 36 Cr. P.C.

5. We have heard the learned counsel for the parties and considered the matter.

6. Section 36 of the Cr.P.C. and Section 18(1) of the Police Act are in the following terms:

“36. Powers of superior officers of police :-

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

“18. State Police Chief :-

(1) The administration, supervision, direction and control of the Police throughout the State shall, subject to the control of the Government, be vested in an officer designated as the State Police Chief.”

7. Section 36 empowers police officers superior in rank to an officer in charge of a Police Station to exercise the same powers as that of an officer in charge of a police station insofar as the territorial/local area within the jurisdiction of such superior police officers is concerned. Section 18(1) of the State Police Act, on the other hand, vests the administration, supervision, direction and control of the police throughout the State in the State Police Chief. The power under Section 36, on a plain reading thereof, is to be exercised by the District Police Chief who, by virtue of the said section, is empowered to appoint an officer above the rank of an officer in charge of a police station to exercise the same powers as may be exercised by an officer in charge of the police station. This is, however, subject to the condition that such superior officer would be competent to exercise powers within the territorial/local limits of his jurisdiction. We do not see how Section 36 Cr.P.C, in any way, can debar the exercise of powers by the State Police Chief to appoint any superior officer who, in his opinion, would be competent and fit to investigate a particular case keeping in view the circumstances thereof. Section 36 Cr.P.C does not fetter the jurisdiction of the State Police Chief to pass such an order based on his satisfaction. It is the satisfaction of the State Police Chief, in the light of the facts of a given case, that would be determinative of the appointment to be made in which situation the limits of jurisdiction will not act as fetter or come in the way of exercise of such jurisdiction by the superior officer so appointed. Such an appointment would not be hedged by the limitations imposed by Section 36 Cr.P.C. Section

18 of the State Police Act, on the other hand, does not confer any such power and merely recognises the State Police Chief as the head of the police force in the State.

8. In the instant case the High Court, in our considered view, was not right in reading the constraints imposed by Section 36 of the Cr.P.C. on the powers of the State Police Chief to appoint a suitable and competent officer to investigate a case irrespective of the limits of local jurisdiction of such officer, if such a course of action is required. This is not to say that the power of the State Police Chief would not be amenable to the judicial process; it can always be subjected to challenge on grounds of malafide or as being without justification and reasonable cause. This, however, is not the ground(s) on which the impugned actions were challenged before the High Court. Furthermore, a perusal of the representation on the basis of which the appointment of the special officer was made by the State Police Chief goes to show that what was sought for was the appointment of a neutral and impartial police officer to conduct further investigation in a fair and unbiased manner without specifically naming of any particular officer in the said application.

9. For the aforesaid reasons, we cannot agree with the view taken by the High Court and the conclusions reached. Consequently, the order dated 01.08.2012 passed by the High Court is set aside and both appeals are allowed.