

CASE NO.:

Appeal (crl.) 1163-66 of 1998

Appeal (crl.) 1162 of 1998

Appeal (crl.) 42 of 2001

PETITIONER:

CENTRAL BUREAU OF INVESTIGATION THROUGH S.P., JAIPUR

Vs.

RESPONDENT:

STATE OF RAJASTHAN AND ANOTHER

DATE OF JUDGMENT: 19/01/2001

BENCH:

R.P.Sethi, K.T.Thomas

JUDGMENT:

L.....I.....T.....T.....T.....T.....T.....T...J

J U D G M E N T

THOMAS, J. Has a magistrate power to direct the Central Bureau of Investigation to conduct investigation into any offence? This question, seemingly ingenuous, has become compounded with divergent verdicts pronounced by different High Courts. When the High Courts of Rajasthan and Delhi answered the question in the affirmative, the High Courts of Gujarat and Karnataka have answered it in the negative. These appeals are filed at the instance of the Central Bureau of Investigation (for short CBI) in challenge of the judgments of the High Courts of Rajasthan and Delhi by which the orders passed by certain magistrates were upheld.

It is not necessary to narrate the facts in each case. The common feature in all the appeals is, when a complaint was filed before a magistrate alleging serious offences, he ordered investigation to be conducted by the CBI and on completion of the investigation final report was required to be filed. We may now mention what happened thereafter to one of the cases before us. The CBI challenged the order of the magistrate before the High Court of Delhi contending that the magistrate has no jurisdiction to order the CBI to conduct the investigation, at least without obtaining consent of the State Government concerned as required under Section 6 of the Delhi Special Police Establishment Act, 1946, (Delhi Act for short). The CBI sought support for the said contention from some of the earlier decisions rendered by single judges of the Delhi High Court. When the matter was placed before a Division Bench of the Delhi High Court, a contrary view was taken and the Bench held that the magistrate has the power to do so. The Division Bench of the Delhi High Court, in reaching the said view, has mainly

relied on the observations made by this Court in State of West Bengal & ors. vs. Sampat Lal & ors. {1985 (1) SCC 317}. Learned Judges highlighted the following observation contained in Sampat Lal: In our considered opinion, Section 6 of the Delhi Act does not apply when the Court gives a direction to the CBI to conduct an investigation and counsel for the parties rightly did not dispute this position. In this view, the impugned order of the learned Single Judge and the appellate decision of the Division Bench appointing DIG of CBI to inquire into the matter would not be open to attack for want of sanction under Section 6 of the Delhi Act.

Learned Judges gave emphasis to the words when the court gives a direction to the CBI to conduct an investigation. The Division Bench of the High Court took it for granted that what this Court meant by the word court as used in the said observation in Sampat Lal should be understood as any court. The Division Bench declined to accept the view of the Karnataka High Court (in one of the decisions) that what the Supreme Court meant in Sampat Lal's case is the High Court and not any court.

It is unnecessary for us to resolve the controversy fomented up with the expression court in Sampat Lal because the question whether a magistrate has the power to direct the CBI to conduct the investigation was not the issue involved in Sampat Lal at all. The fact situation in Sampat Lal was centered on the direction issued by the High Court. That apart, it is not advisable to read more than what is contained in a judgment.

For deciding the present question we may refer to the powers of the magistrate in ordering investigation. There are three provisions in the Code of Criminal Procedure (for short the Code) by which a magistrate can order investigation to be conducted. They are Sections 155, 156 and 202 of the Code. Among them Section 155 concerns only with the investigation into non-cognizable offences whereas Section 202 only enables a magistrate to have the assistance of an investigation conducted either by the police or by any other person, for the limited purpose of deciding whether or not there is sufficient ground for proceeding with the complaint. Hence we need not vex our mind with those two provisions. It is Section 156 of the Code which is relevant for the present purpose as it deals with investigation into cognizable offences. The section reads thus: 156. Police officers power to investigate cognizable cases.- (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned.

If the power of a magistrate to order investigation by the CBI in non-cognizable cases cannot be traced in the above provision, it is not possible to trace such power in

any other provision of the Code. What is contained in sub-section (3) of Section 156, is the power to order the investigation referred to in sub-section (1), because the words order such an investigation as above-mentioned in sub-section (3) are unmistakably clear as referring to the other sub-section. Thus the power is to order an officer in charge of a police station to conduct investigation.

The two expressions police station and officer in charge of a police station have been given separate definitions in the Code. Section 2(o) of the Code defines officer in charge of a police station as under: Officer in charge of a police station includes, when the officer in charge of the police station is absent from the station-house or unable from illness or other cause to perform his duties, the police officer present at the station-house who is next in rank to such officer and is above the rank of constable or, when the State Government so directs, any other police officer so present.

Section 2(s) defines a police station as under: Police station means any post or place declared generally or specially by the State Government, to be a police station, and includes any local area specified by the State Government in this behalf.

It is clear that a place or post declared by the Government as police station, must have a police officer in charge of it and if he, for any reason, is absent in the station-house, the officer who is in next junior rank present in the police station, shall perform the function as officer in charge of that police station. The primary responsibility for conducting investigation into offences in cognizable cases vests with such police officer. Section 156(3) of the Code empowers a magistrate to direct such officer in charge of the police station to investigate any cognizable case over which such magistrate has jurisdiction.

In this context a reference has to be made to Section 36 of the Code which says that 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.

This means any other police officer, who is superior in rank to an officer in charge of a police station, can exercise the same powers of the officer in charge of a police station and when he so exercises the power he would do it in his capacity as officer in charge of the police station. But when a magistrate orders investigation under Section 156(3), he can only direct an officer in charge of a police station to conduct such investigation and not a superior police officer, though such officer can exercise such powers by virtue of Section 36 of the Code. Nonetheless when such an order is passed, any police officer, superior in rank of such officer, can as well exercise the power to conduct investigation, and all such investigations would then be deemed to be the investigation conducted by the officer in charge of a police station. Section 36 of the Code is not meant to substitute the magisterial power envisaged in Section 156(3) of the Code, though it could supplement the powers of an officer in charge of a police station. It is permissible for any superior officer of police to take over the investigation

from such officer in charge of the police station either suo motu or on the direction of the superior officer or even that of the government.

In a decision rendered by the Kerala High Court the complaint was forwarded by a magistrate to the Inspector General of Police (Crimes) for investigation under Section 156(3) of the Code. When the State challenged the said order of the magistrate the High Court held that a magistrate cannot order any police officer, other than one who is in charge of a police station to conduct the investigation, though the Government in exercise of their executive powers can authorise any superior police officer to investigate a case and such direction can be issued by the higher officer to his subordinate officer in the police department. The said decision is reported in State of Kerala vs. Moosa Haji {1993 (2) K.L.T. 609 and also in 1994 Criminal Law Journal 1288}. A two Judge Bench of this Court (G.N. Ray and G.B. Pattanaik, JJ) has affirmed the said decision of the Kerala High Court as per order dated 8.4.1997 in Criminal Appeal No.410 of 1994. The principle involved in the said case would as well be applicable when the magistrate is approached to direct the CBI for conducting the investigation.

Section 5 of the Delhi Act enables the Central Government to extend the powers and jurisdiction of members of the Delhi Police Establishment to any area in a State. Section 6 of the Delhi Act says that nothing contained in Section 5 shall be deemed to enable any member of the Delhi Special Police Establishment to exercise powers and jurisdiction in any area in a State, not being a Union Territory or railway area, without the consent of the Government of that State. A contention was made before us that when the State Government gives consent for the CBI to investigate any offence within the area of the State it would be permissible for the magistrate to direct the officer of the CBI to conduct such investigation. What is envisaged in Sections 5 & 6 of the Delhi Act is not one of conferring power on a magistrate to order the CBI to conduct investigation in exercise of Section 156(3) of the Code.

True, powers of the High Court under Article 226 of the Constitution and of the Supreme Court under Article 32 or Article 142(1) of the Constitution can be invoked, though sparingly, for giving such direction to the CBI to investigate in certain cases, [vide Kashmeri Devi vs. Delhi Administration and anr. {1988 (Supple.) SCC 482} and Maniyeri Madhavan vs. Sub-Inspector of Police and ors. {1994 (1) SCC 536}]. A two Judge Bench of this Court has by an order dated 10.3.1989, referred the question whether the High Court can order the CBI to investigate a cognizable offence committed within a State without the consent of that State Government or without any notification or order having been issued in that behalf under Section 6 of the Delhi Act.

In Mohammed Anis vs. Union of India and ors. {1994 Supple (1) SCC 145} Ahmadi, J. (as his Lordship then was) has observed thus: True it is, that a Division Bench of this Court made an order on March 10, 1989 referring the question whether a court can order the CBI, an establishment under the Delhi Special Police Establishment Act, to investigate a cognizable offence committed within a State without the consent of that State Government or without any notification or order having been issued in that behalf. In

our view, merely because the issue is referred to a larger Bench everything does not grind to a halt. The reference to the expression court in that order cannot in the context mean the Apex Court for the reason that the Apex Court has been conferred extraordinary powers by Article 142(1) of the Constitution so that it can do complete justice in any cause or matter pending before it.

As the present discussion is restricted to the question whether a magistrate can direct the CBI to conduct investigation in exercise of his powers under Section 156(3) of the Code it is unnecessary for us to travel beyond the scope of that issue. We, therefore, reiterate that the magisterial power cannot be stretched under the said sub-section beyond directing the officer in charge of a police station to conduct the investigation.

The appeals are accordingly allowed and the impugned orders of the magistrates as well as the judgments of the High Court are hereby set aside. But this would not prejudice any investigation to be conducted on the FIR registered or to be registered by the police station concerned in respect of the complaints involved in these appeals.

In Criminal Appeal No.1165 of 1998, when special leave was granted the orders of the magistrate directing the CBI to conduct investigation were stayed. However, this Court permitted the complainant in the case, to move the magistrate again for appropriate order for investigation of the offences. Pursuant thereto a direction was given by the magistrate concerned to the officer in charge of Hari Nagar Police Station, New Delhi, and on the strength of the said direction FIR No.32/99 was registered. We considered the facts alleged in the said case and we deem it that it requires to be investigated by a specialised agency, like the CBI. Hence we order the CBI to take up investigation in FIR No.32/99 of Hari Nagar Police Station. These appeals are disposed of accordingly.