

CASE NO.:
Writ Petition (civil) 13381 of 1984

PETITIONER:
M.C. Mehta

RESPONDENT:
Union of India & Ors

DATE OF JUDGMENT: 27/11/2006

BENCH:
S.B. Sinha

JUDGMENT:
J U D G M E N T
I.A. No. 431
IN
WRIT PETITION (CIVIL) NO. 13381 OF 1984
WITH

I.A. Nos. 440 and 451 in Writ Petition No.13381 of 1984

I.A. Nos. 438, 439, 442-443, 445 and 447
IN I.A. No. 431 in Writ Petition No.13381 of 1984

I.A. No. 441 in I.A. No. 440 in Writ Petition No.13381 of 1984

S.B. Sinha, J.

This Court entrusted investigation to the Central Bureau of Investigation (CBI) which was constituted under the Delhi Special Police Establishment Act, 1946 (for short "the Act"). It was enacted to make provision for the constitution of a special police force in Delhi for investigation of certain offences in the Union territories for the superintendence and administration of the said force and for extension to other of the powers and jurisdiction of members of the said force in regard to the investigation of the said offences.

The said Act was enacted to make provision for the constitution of a special police force in Delhi for the investigation of certain offences in the Union territories for the superintendence and administration of the said force and for extension to other of the powers and jurisdiction of members of the said force in regard to the investigation of the said offences. Section 2 empowers the Central Government to constitute a special force. Indisputably, the first respondent has been constituted in terms thereof. Sub section (2) of Section 2 provides that subject to any orders which the Central Government may make in this behalf, members of the said police establishment shall have throughout any Union territory in relation to the investigation of such offences and arrest of persons concerned in such offences, all the powers, duties, privileges and liabilities which police officers of that Union territory have in connection with the investigation of offences committed therein. The said Act indisputably applies in regard to charges of corruption made against the public servants.

The Central Government has made a manual. It provides for hierarchy of the officers who, having regard to the gravity or otherwise of the offence, would supervise investigation. It provides for appointment of the investigating officer and the officers supervising the investigation. CBI Manual is based on statutory provisions of the Code of Criminal Procedure. It provides for essential guidelines for the functioning of the said body.

In Vineet Narain and Others v. Union of India and Another [(1998) 1 SCC 226], this Court directed that CBI to adhere scrupulously to the provisions of the said Manual.

Even under the Code of Criminal Procedure, such hierarchy of the supervising officers is contemplated. [See State of Bihar v. J.A.C. Saldanha, (1980) 1 SCC 554].

This Court in Vineet Narain (supra) while opining, upon construction of the provisions of the Act, that the jurisdiction of CBI to investigate an offence is to be determined with reference to the notification under Section 3 of the Act and not by any separate order, not having that character, categorically held that the said view was not in conflict with the decision in J.A.C. Saldanha (supra).

CBI Manual, thus, is subject to the provisions of the Code of Criminal Procedure. In case of conflict, although none has been pointed out, evidently, the Code of Criminal Procedure shall prevail. Even under ordinary law, the investigating officer has a statutory duty to investigate into an offence upon receipt of a First Information Report as envisaged under Section 154 of the Code of Criminal Procedure. Section 157 thereof provides for the procedure for investigation, wherefor the only duty cast on the investigating officer is to maintain his case diary in terms of Section 172 of the Code of Criminal Procedure. [See State of Bihar and Another v. P.P. Sharma, IAS and Another 1992 Supp. (1) SCC 222]

It is beyond any doubt or dispute that investigation of an offence is the field exclusively reserved for the police. It may be subject to supervision of higher ranking officer (s) but the court's jurisdiction to have control in this behalf is beyond any controversy.

In Sheonandan Paswan v. State of Bihar and Others [(1987) 1 SCC 288], this Court opined:

"\005In fact, in our constitutional scheme, conferment of such absolute and uncanalised discretion would be violative of the equality clause of the Constitution. The Magistrate is therefore given the power to structure and control the discretion of the police. If the Magistrate finds from the report made by the police either on initial investigation or on further investigation directed by the Magistrate, that prima facie an offence appears to have been committed, the Magistrate is empowered to take cognizance of the offence notwithstanding the contrary opinion of the police and equally if the Magistrate forms an opinion that on the facts set out in the report no offence prima facie appears to have been committed though the police might have come to a contrary conclusion, the Magistrate can decline to take cognizance of the offence. The discretion of the police to prosecute is thus cabined and confined and, subject to appeal or revision, and the Magistrate is made the final arbiter on this question."

Yet again in S.N. Sharma v. Bipen Kumar Tiwari and Others [(1970) 1 SCC 653], this Court held:

"\005The use of this expression makes it clear that Section 159 is primarily meant to give to the Magistrate the power of directing an investigation in cases where the police decide not to investigate the case under the proviso to Section 157(1), and it is in those cases that, if he thinks fit, he can choose the second alternative. If the expression if he

thinks fit had not been used, it might have been argued that this section was intended to give in wide terms the power to the Magistrate to adopt any of the two courses of either directing an investigation, or of proceeding himself or deputing any Magistrate subordinate to him to proceed to hold a preliminary enquiry as the circumstances of the case may require\005"

It was further held:

"\005In our opinion, Section 159 was really intended to give a limited power to the Magistrate to ensure that the police investigate all cognizable offences and do not refuse to do so by abusing the right granted for certain limited cases of not proceeding with the investigation of the offence."

The question came up also for consideration in Hemant Dhasmana v. Central Bureau of Investigation and another [(2001) 7 SCC 536] wherein it was held that upon conclusion of the investigation, a report has to be filed by CBI under Section 173(2) of the Code of Criminal Procedure to Special Judge who takes the place of Magistrate when an offence falls under the Prevention of Corruption Act.

In view of the aforementioned decisions, it is the Magistrate alone who has the final say in the matter.

Subject to the aforementioned, I respectfully concur with the opinion expressed by the learned Brother Kapadia, J.