

CASE NO.:
Appeal (crl.) 1127 of 2006

PETITIONER:
Shashikant

RESPONDENT:
Central Bureau of Investigation & Others

DATE OF JUDGMENT: 07/11/2006

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T
[Arising out of S.L.P. (Crl.) No.6426 of 2005]

S.B. SINHA, J :

Leave granted.

This appeal is directed against a judgment and order dated 12.09.2005 passed by a learned Single Judge of the Nagpur Bench of the High Court of Judicature at Bombay High Court in Criminal Writ Petition No.558 of 2005 whereby and whereunder the writ petition filed by Appellant herein was dismissed.

Appellant claims himself to be a vigilant employee. He made an anonymous complaint to the Central Bureau of Investigation alleging corrupt practices and financial irregularities on the part of some officers of his department. First respondent No.1 stated that on the basis of a source information, a preliminary inquiry was conducted in which the statements of various officers were recorded. However, the investigating officer was of the opinion that it was not necessary to register a First Information Report. It recommended for holding of departmental proceedings against the concerned officers. The said recommendation found favour with the higher officers. The opinion of the Central Vigilance Commission was also obtained.

It is stated that pursuant to or in furtherance of the said recommendation, the Railway Administration initiated departmental proceedings against the concerned officers, namely, S/Shri Shyam Sunder, U.J. Dave, R.T. Pali and Ganga Prasad Sahu and imposed different penalties on them. The Railway Board thereafter by letters dated 06.12.2005 and 22.02.2006 advised the Central Vigilance Commission as regards imposition of penalties upon the said officers and closure of cases against them.

Appellant, however, in the meanwhile, was transferred by an order dated 20.05.2005. He approached the Central Administrative Tribunal contending that the said order of transfer was mala fide and being an outcome of his complaint and statements made in the inquiry conducted by the first respondent. By an order dated 17.08.2005, the application filed by Appellant was dismissed.

A writ petition was filed by Appellant, inter alia, praying for the following reliefs :

"(i) direct the respondent no.1 to reopen the Preliminary Inquiry No.PE/4A/2004 and submit a report in accordance with law after a detailed

inquiry in the matter to the Competent Court.

(ii) direct the respondent no.1 to register the inquiries for offences against the respondent nos. 2 to 4 for excess purchases and commission of fraud to the Nagpur Municipal Corporation and Amravati Municipal Corporation in terms of octroi amount of Rs. 34 lakhs and for duping the respondent nos. 6 and 7.

(iii) direct the respondent no. 1 to register inquiry for offences in respect of excess purchases of Amla.

(iv) direct the respondent no.1 to receive the complaints of the petitioner in respect of all contracts past and present in terms of excess payment in the Nagpur Store and direct the respondent nos.2 to 5 to provide access to all records & necessary documents to the petitioner for filing the complaints.

(v) direct the respondent no. 2 to reconsider the Order dated 20.5.05 passed by the Chief Personnel Officer (Signal & Telecommunication), Central Railway in view of the disclosures made by the petitioner and his request for detailed enquiry of the Store of Nagpur Division of Central Railway.

(vi) pending the reconsideration of the transfer of the petitioner by the respondent no. 2, stay the effect & operation of the Order passed by the Chief Personnel Officer (S & T), a Subordinate of the respondent no. 2 dated 20/5/2005."

The High Court dismissed the said writ petition, opining :

"If this is an accepted fact, the cognizance of the complaint must have been taken by the CBI and it is for them to enquire/investigate into the matter. The presence of the Petitioner at Nagpur for that purpose is not necessary. The CBI has a national network and they can reach the Petitioner, if they feel it necessary.

In respect of the grievance of the Petitioner as to whether the CBI is not doing their duty, it does not appear to be well founded. As the crux of the matter is that since the Petitioner is aggrieved by his transfer and having failed before the CAT, he has invoked the extraordinary criminal jurisdiction of this Court by filing the present Writ Petition. In our opinion, this is nothing but an abuse of process of Court."

Mr. S.S. Voditel, the learned counsel appearing on behalf of Appellant, would contend that even in a case where the Investigating Officer may exercise his option of closing a case, it would be obligatory on his part to comply with the provisions of Section 157(1)(b) of the Code of Criminal Procedure (for short, 'the Code'). In support of the said contention, our attention has been drawn to some decisions of this Court as also a decision of the Kerala High Court in Velayudhan v. State of Kerala [1998 (1) Crimes 510].

Mr. Vikas Singh, the learned Additional Solicitor General, appearing

on behalf of Respondents, on the other hand, would submit that the first respondent having been constituted in terms of the Section 2 of the Delhi Special Police Establishment Act, 1946 (for short, 'the said Act') and the Central Government having laid down the procedures for conducting investigation including the mode and manner in which the preliminary inquiry should be conducted, (known as CBI Manual), which received the approval of this Court in Vineet Narain and Others v. Union of India and Another [(1998) 1 SCC 226], the impugned judgment of the High Court should not be interfered with.

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 employees of Union of India. It is also not disputed that the C.B.I. Manual was made by the Central Government providing for detailed procedure as regards the mode and manner in which complaints against public servants are to be dealt with.

In Vineet Narain (supra), it was held :

"12. The CBI Manual based on statutory provisions of the CrPC provides essential guidelines for the CBIs functioning. It is imperative that the CBI adheres 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."

CBI Manual provides for a preliminary inquiry. By reason thereof a distinction has been made between a preliminary inquiry and a regular case. A preliminary inquiry in terms of Para 9.1 of the CBI Manual may be converted into a regular case as soon as sufficient material becomes available to show that prima facie there has been commission of a cognizable offence.

Paragraph 9.2 reads as under :

"While proposing registration of a Preliminary Enquiry pertaining to the abuse of official position by a public servant in the matter of business/commercial decision, the important difference between a business risk and a mala fide conduct should be kept in mind with view to ensure that while corrupt public servants are suitably dealt with the bona fide business/commercial decisions taken by public servants in discharge of their duties are not taken up for unnecessary probe."

Paragraph 9.7 reads as under :

"As soon as it is decided to register a PE, the SP will take action to get the PE Registration Report

prepared, which will invariably be vetted by him and in case of important enquiries even drafted by him. Registration Report of PE should be written in the PE Registration Report Form and not on the form prescribed for recording First Information Report under Section 154 Cr. PC. Beside the allegations in brief, the complete details of the suspects involved should be recorded in the PE Registration Report. In respect of the public servants found involved in the matter, their Group, the Service (IAS, IRS, IPS etc.), present designation, scale of pay, present pay and date of superannuation (if available) should also be mentioned in the PE. registration report. The copies of the PE Registration Reports should be sent to the authorities mentioned in the Annexure 9-A to this chapter."

Paragraphs 9.10 and 9.11 provide for collection of documents and recording of statements during preliminary inquiry, providing for that the statements of witnesses during preliminary inquiry should be recorded in the same manner as recorded during investigation of regular cases.

Paragraphs 9.12 to 9.14 provide for the procedures for converting a preliminary inquiry into a regular case. Indisputably, the provisions of the Code are applicable in relation to the inquiries.

The provisions of the said Act indisputably are applicable to the fact of the present case. The jurisdiction of the first respondent, in this behalf, is not in question.

Appellant does not deny or dispute that the first respondent initiated a preliminary inquiry upon receipt of the complaint. The question which arises for consideration is as to whether it was obligatory on the part of the first respondent to lodge a First Information Report and carry out a full-fledged investigation about the truthfulness or otherwise of the allegations made in the said anonymous complaint.

Although ordinarily in terms of Section 154 of the Code, when a report is received relating to the cognizable offence, a First Information Report should be lodged, to carry out a preliminary inquiry even under the Code is not unknown.

When an anonymous complaint is received, no investigating officer would initiate investigative process immediately thereupon. It may for good reasons carry out a preliminary enquiry to find out the truth or otherwise of the allegations contained therein.

A three-Judge Bench of this Court in *The State of Uttar Pradesh v. Bhagwant Kishore Joshi* [1964 (3) SCR 71], referring to the provisions of Section 5A of the Prevention of Corruption Act, 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 *In re Nanumuri Anandayya* 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 *In re Rangarajulu*, 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 lookout; 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* 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 unauthenticated 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..."

Only when a F.I.R. is lodged, the officer in charge of the police station statutorily liable to report thereabout to a Magistrate who is empowered to take cognizance in terms of proviso to Section 157(1) of the Code. Proviso (b) appended thereto empowers the Investigating Officer not to investigate where it appears to him that there is no sufficient ground for entering into an investigation. Sub-section (2) of Section 157 reads as under :

"(2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub-section (1), the officer in charge of the police station shall state in his report his reasons for not fully complying with the requirements to that sub-section, and, in the case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause it to be investigated."

The question, therefore, as to whether an empowered officer who had made investigation or caused the same to be made in a cognizable offence within the meaning of Section 157 of the Code or had not initiated an investigation on the basis of an information which would not come within the meaning of Section 154 of the Code is essentially required to be determined in the fact situation obtaining in each case.

Yet again in *State of Haryana and Others v. Bhajan Lal and Others* [(1992) Supp. 1 SCC 335], this Court referred to *P. Sirajuddin etc. v. State of Madras etc.* [(1970) 1 SCC 595] and *Bhagwant Kishore Joshi (supra)* in the following terms :

"77. In this connection, it will be appropriate to recall the views expressed by Mitter, J. in *P. Sirajuddin v. State of Madras* in the following words: (SCC p. 601, para 17)
"Before a public servant, whatever be his status, is

publicly charged with acts of dishonesty which amount to serious misdemeanour or misconduct of the type alleged in this case and a first information is lodged against him, there must be some suitable preliminary enquiry into the allegations by a responsible officer. The lodging of such a report against a person specially one who like the appellant occupied the top position in a department, even if baseless, would do incalculable harm not only to the officer in particular but to the department he belonged to, in general The means adopted no less than the end to be achieved must be impeccable."

78. Mudholkar, J. in a separate judgment in State of Uttar Pradesh v. Bhagwant Kishore Joshi at p. 86 while agreeing with the conclusion of Subba Rao, J. (as he then was) has expressed his opinion stating: (SCR pp. 86-87)

"In the absence of any prohibition in the Code, express or implied, I am of opinion that it is open to a police officer to make preliminary enquiries before registering an offence and making a full scale investigation into it."

Thus, registration of a case is a sine qua non for starting investigation [See Mohindro v. State of Punjab and Others \026 (2001) 9 SCC 581].

Only an anonymous complaint was made in June 2004. Evidently it was within the province of the first respondent to commence a preliminary inquiry. The procedure laid down in the CBI Manual and in particular when it was required to inquire into the allegation of the corruption on the part of some public servants, recourse to the provisions of the Manual cannot be said to be unfair. It did not find any reason to convert the preliminary inquiry into a regular case. Pursuant to or in furtherance of the recommendation made by the first respondent, which had received the imprimatur by the Central Vigilance Commission, departmental proceedings were initiated. The Central Vigilance Commission advised the Railway Board to initiate minor penalty proceedings against the delinquent officers by a letter dated 04.08.2005.

It is not in dispute that Appellant was directed to be transferred on administrative grounds by an order dated 20.05.2005. The complaint was although made by Appellant; but it being anonymous his address was not known. It may be true, initially he having been posted in the store in which the delinquent officers were also working, his statement had been recorded; but when a preliminary inquiry was conducted on the basis of an anonymous complaint without registering a First Information Report, neither it was necessary to comply with the provision of the proviso (b) appended to sub-section (1) of Section 157 of the Code, nor having regard to the fact that the identity of Appellant was being unknown, the question of complying with the said provisions, even if it be held that the same was applicable, did not arise.

Strong reliance has been placed by the learned counsel on a decision of this Court on Hemant Dhasmana v. Central Bureau of Investigation and Another [(2001) 7 SCC 536], wherein it was held that when an investigation had been conducted by the Central Bureau of Investigation, Chapter 12 of the Code would apply. There can be no dispute as regards the proposition of law laid down therein. But the said decision cannot be said to have any application whatsoever in the instant case.

In the decision of the Kerala High Court in Velayudhan (supra), P.K. Balasubramanyan, J. (as His Lordship then was) opined that on objective assessment on the part of the officer, if he finds that no investigation into the allegation is needed, he could certainly act in terms of Section 157 of the Code.

The said decision, however, will have no application in a case of this

nature.

The First Respondent is a statutory authority. It has a statutory duty to carry out investigation in accordance with law. Ordinarily, it is not within the province of the court to direct the investigative agency to carry out investigation in a particular manner. A writ court ordinarily again would not interfere with the functioning of an investigative agency. Only in exceptional cases, it may do so. No such case has been made out by the appellant herein. The nature of relief prayed for in the writ petition also is beyond the domain of a writ court save and except, as indicated hereinbefore, an exceptional case is made out.

Appellant, inter alia, questioned his order of transfer. He moved the Central Administrative Tribunal. His Original Application was dismissed. He in the writ petition filed before the High Court, inter alia, questioned the order of Tribunal. However, now it appears that he has filed another writ petition before the Nagpur Bench of the Bombay High Court, being Writ Petition No.2036 of 2006, wherein notice has been directed to be issued and status quo has been directed to be maintained by a Division Bench of the said court by an order dated 03.05.2006. The High Court is required to consider the said writ petition on its own merit.

So far as the decision of the first respondent herein, not to register a regular case so as to take up an investigation into the allegation against the concerned officers, is concerned, Appellant may have to pursue his own remedy keeping in view the fact that the first respondent before this Court has furnished the details of its findings in the preliminary inquiry as also the result of the departmental proceedings initiated against the delinquent officers.

However, that part of the order whereby Appellant had been directed to pay a cost of Rs.5,000/- is set aside. Subject to the observations and directions mentioned hereinbefore, the appeal is dismissed. However, keeping in view of the peculiar facts and circumstances of the case, there shall be no order as to costs.