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MANIYARI MADHAVAN

SUB-INSPECTOR OF POLICE AND ORS.

SEPTEMBER 22, 1993

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[M.N. VENKATACHALIAH, CJ. AND S. MOHAN, J.]

Constitution of India, 1950 : Article 142—Supreme Court's direction for investigation by C.B.I.—Procedure to be followed—Held, procedure under s.6 of Delhi Special Police Establishment Act, need not be followed where the Court exercises jurisdiction under Article 142.

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Delhi Special Police Establishment Act, 1946 : S.6—Delhi Special Police Establishment—Jurisdiction of—Investigation in a State—Consent of State Government—Held, not required where investigation is directed by Supreme Court exercising jurisdiction under Article 142 of the Constitution.

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The petitioner, a journalist and editor of a newspaper, filed a criminal miscellaneous petition before the High Court alleging criminal assault on person and property at the instance of the police officers of the State. He prayed for a direction to investigate into the matter by an impartial agency. The High Court directed the Deputy Inspector General, Northern Range of the State to look into the complaint of the petitioner.

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The petitioner filed the special leave petition against the order of the High Court seeking direction for investigation by the C.B.I. This Court declined to grant the prayer but gave a direction on 22.12.1989 that another Deputy Inspector General of the State Police, named in the order, would supervise the investigation, and the same be completed within the time granted. But the investigation was not completed within the time frame. The officer supervising the investigation was also sent on deputation without the orders of this Court. In the circumstances, this Court felt that the conduct and progress of the investigation of the case was such as not to inspire confidence. It recalled the earlier order, and directed the C.B.I. to investigate the complaint of the petitioner, complete the investigation and make a report to this Court.

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The C.B.I. filed its investigation report stating that the evidence collected revealed commission of offences enumerated therein and that the

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person named be prosecuted for those offences.

The respondents contended that the Delhi Special Police Establishment could not investigate into the matter unless the State Government accorded consent for the exercise of power under s.6 of the Delhi Special Police Establishment Act, 1946. It was also contended that in view of the facts of the case the trial could not be held and this Court can direct that no trial need take place.

Disposing of the special leave petition, this Court

HELD : 1. As regards jurisdiction of the members of the Delhi Special Police Establishment, the procedure under s.6 of the Delhi Special Police Establishment Act, 1946 need not be followed where this Court exercises jurisdiction under Article 142 of the Constitution. Even otherwise, a notification dated 3.10.1992 was issued by the State Government according the consent as required under s.6 of the Act. [413-C-F]

2. Whether the police officers are guilty or not of the offences for which they are charged is a matter to be established in a criminal trial.

[413-B]

3. The investigation report submitted by the C.B.I. is recorded.

[410-C]

CRIMINAL APPELLATE JURISDICTION : Special Leave Petition (Crl.) No. 2755 of 1988.

From the Judgment and Order dated 8.4.89 of the Kerala High Court in Crl. Misc. No. 328 of 1989.

K.N. Balgopal and C.N. Sreekumar for the petitioner.

Altaf Ahmad, Additional Solicitor General, U.R. Lalit, M.K. Michael, M.A. Firoz, M.T. George and Ranjan Mukherjee for the respondents.

The Judgment of the Court was delivered by

MOHAN, J. The Special Leave Petition is directed against the order made in Crl. Misc. Petition No. 328 of 1988 before the High Court of Kerala. The respondent herein filed the said Crl. Misc. Petition against the officers of Cannanor Town Police and others alleging criminal assault on

- A his printing press. In that petition he sought a direction to investigate into the matter by an impartial agency.

The short facts are Maniyeri Madhavi is a journalist and is the editor of newspaper by name 'Sudnam Evening Daily'. He complained of an attack on his person and property at the instance of the police officers of the State. The High Court in a writ petition filed by him considered it necessary that the Deputy Inspector General of Police, Northern Range, be directed to look into the complaint of the petitioner making a representation in that behalf. He approached this Court praying for an investigation by the C.B.I. This Court did not give the direction. However, a direction was given that instead of the Deputy Inspector General, Northern Range, Mr. M.G.A. Raman, Deputy Inspector General of Police, Central Range, would supervise the investigation. It was also directed that a case be registered on the basis of representation submitted by the petitioner to Mr. Raman and the investigation be completed within a period of two months from the date of the receipt of such representation. Pursuant to this order, the representation was made to Mr. Raman by the petitioner. Mr. Raman did not complete the investigation within the time frame. On 11.3.91 the Government of Kerala filed an application seeking extension of time and certain directions consequent upon Mr. Raman ceasing to be incharge of the investigation. At this stage, the petitioner moved this Court on 13.3.1992 praying that the earlier order entrusting the investigation to the State Police be withdrawn and the matter be investigated by the C.B.I. On 3.9.1992 this Court directed the Home Secretary to file an affidavit mentioning the stage of the investigation and also to specify the names of officers of the rank of Inspector General of Police, who could be entrusted with the investigation, if need arose. The Home Secretary ignored the order. He asked the Under Secretary to file an affidavit. This Court took serious notice of this and passed the following order :-

- "We are afraid, in this case the concerned officers of the State seem to manifest a disturbing degree of indifference. We take serious note of these lapses. Apart from considering as to which agency should now investigate this serious offence alleged against the State Police by a journalist, we would also like the State Government to explain why Mr. Raman who was in the midst of the investigation, was relieved and sent on deputation without the orders of this Court. In the meanwhile, the principal accused, the Superintendent of Police, has been elevated as a Deputy Inspector

General of Police. Mr. Raman himself will have to explain as to why he did not complete the investigation in time; allowed time to lapse - and according to the petitioner, of allowing evidence to be lost with ulterior motives - and abandon the supervision of the investigation. These lapses in the investigation seem to lend credence to the grievance of the petitioner that Mr. Raman himself, being a State Police Officer, has not been able to distance himself from the interests of these accused of highhandedness against the petitioner. The Home Secretary will explain why he did not obey the orders of this Court dated 3.9.1992 which expressly directed him to file an affidavit.

We direct the Home Secretary, State of Kerala Mr. Raman the then Deputy Inspector General of Police (now working as the Vigilance Officer of the Hotel Corporation of India) and the Chief Secretary representing the State, to show-cause why action should not be taken against them for the lapses and omissions in obeying the orders of this Court. The Home Secretary as also Mr. Raman will appear personally before this Court while the Chief Secretary may be represented by his counsel. Notices in the appropriate form shall issue to them for proceedings of contempt of Court."

Regarding the grievance of the petitioner it was ordered thus :-

"In the meanwhile, the interests of the petitioner have suffered. His travails in pursuit of an honest investigation of his serious grievance against the police officers of the State have not ended. He has been running from pillar to post to have his serious grievance that the Superintendent of Police virtually destroyed his Press, investigated. We think the least that we should do to him immediately is to compensate him in terms of costs for his being compelled to approach the Court repetitively for relief, We direct the State of Kerala to pay to the petitioner a sum of Rs. 10,000 towards costs, now tentatively assessed, in addition to whatever damages that may be determined finally.

This matter be called on 13.10.1992. The Home Secretary and Mr. Raman, the then Deputy Inspector General of Police (now Vigilance Officer, Hotel Corporation of India) shall be present in Court personally on that day.

A Since it appears appropriate that the conduct and progress of the investigation of the case is such as not to inspire confidence, we recall the operative part of our order dated 22.12.1989 *and direct the C.B.I. to investigate the complaint of the petitioner, complete the investigation and make a report to this Court within four months from today.* All the records of the investigation including the representation filed by the petitioner before Mr. Raman shall be transferred by the State to the C.B.I. promptly for further action." (Emphasis supplied)

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Pursuant to this the C.B.I. have filed its investigation report dated 5th of May, 1993. We will extract the relevant portions of the report :-

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"During investigation evidence has been collected to show that prior to his arrest Shri Madhavan had published several news items in his evening daily critical of police activity. This seems to have enraged the District Police Administration in general and accused No. 8, the then SP of the District, in particular, as some personal attacks were also made. The Police were waiting for an opportunity to get him. They got their chance when he published in his newspaper on 2.2.1988 the name, parentage, caste and other details of a rape victim, Kumari Manja, daughter of Chandu, and advasi girl hailing from Thurunelli, Wayanad District, Kerala. The Police managed to procure a complaint typed against Shri Madhavan in the name of the rape victim and her parents and got their thumb impressions on the same alleging that the publication of the identity of the rape victim and her parents, had caused them pain and loss of prestige. On receipt of this complaint through SP/Wayanad, accused No. 8, ordered registration of a case against Shri Madhavan in Kannur Town Police Station. Crime No. 50/88 was registered by A-1 on 12.2.1988 at 14.30 hours u/s 223A IPC and 7(i)(d) of Protection of Civil Rights Act. On the same day in the evening a police party consisting of accused No. 1, 3, 4, 5, 6, 17 and 18 went to the office of Sudinam and arrested Shri Madhavan. They did not reveal the grounds his arrest though asked for. They took him in the police jeep driven by A-17 through a circuitous route to Kannur police station and enroute they manhandled him. Accused No. 6 followed the jeep in the personal Contessa car of A-8.

H At the Police Station the body search of Shri Madhvan was

conducted by A-1 and he was put in the lock-up. The Prisoner's Search Register of Kannur Town Police Station has a forged signature of Shri Madhavan, purported to have been put by him at the time of his body search. Since, in the meanwhile, news of his arrest was known in the town, his colleagues and relatives went to the Police Station to get him released on bail. However, they were chased out by A-1 and party. Three of them then personally met A-8 and pleaded for bail, but they were also rebuffed. Shri Madhavan was produced before the local Magistrate in the early hours of next day and he complained to the Magistrate of the ill-treatment at the hands of Police. The Magistrate recorded a separate complaint, but did not take any further action. He ordered his release on bail on personal bond.

There are 3 witnesses who were passing on the road at that time and heard Madhavan's cries from the jeep. There are no eye-witnesses to prove beating of the complainant while in police custody. However, there are a number of witnesses who had seen him in the Police Station with bleeding injuries on the lips. When produced before the Magistrate at about 4.30 a.m. on 13.2.1988 he had complained to the Magistrate about the police beating and the Magistrate had recorded his complaint and also observed the blood stains on the shirt. The Medical Officer who treated him in the Hospital has also said that he was complaining of pain all over the body and had an abrasion on the upper lip. It is also in his evidence that the SP i.e. accused No. 8 had tried to put pressure on the Medical Officer to get the person discharged from the Hospital.

After he was arrested, as many as six persons, all respectable journalists and an advocate, had gone to the Police Station to get Madhavan released on bail. They were driven out by the police on the ground that the SP had instructed them not to release him on bail. Three of them had gone to meet the SP personally in his office for the same purpose, but their request was not accepted. It has also come out in the evidence that the SP had remained in the office till late in the night and was monitoring the progress in the matter of his arrest and the investigation. This has come out in the evidence of several eye witnesses including the Sub-Divisional Police Officer and one SI, who were not parties to the ill-treatment of the journalist.

A Accused No. 4 and 5 were working directly under the control of the SP, accused No. 8. With a view to concealing their involvement which would indirectly point towards involvement of the SP, the records of the Armed Reserve Camp at Kannur were tampered with and new page was substituted in the General Diary to show as if these two police men were present in the camp. The fact that the page was changed has been proved by the evidence of the Superintendent of the Government Press where the said diary had been printed. There are other interpolation in the GD to show the presence of these persons in the AR camp. These interpolations have been done by A-14, 15 and 16 at the instance of A-8.

C The evidence collected reveals the commission of offences of criminal conspiracy, voluntarily causing hurt, wrongful confinement, in attempt to wrongfully confine a person, mischief causing damage, forgery and causing disappearance of evidence of offence, including giving false information to screen offender, which are punishable under section 120B r/w 323, 342, 357, 427, 465 and 201 IPC.

D Considering all these aspects, it has been decided that A-1, A-2, A-3, A-4, A-5, A-6, A-8, A-14, A-15, A-16, A-17 and A-18 be prosecuted for offences u/s 120 B r/w 323, 342, 357, 427, 465 and 201 IPC, after getting the sanction of the Government of Kerala under section 197(i)(b) and if necessary u/s 197(3) of Cr. P.C."

E Before us it was argued on behalf of the petitioner-journalist that the report may be accepted and the matter be proceeded with before the appropriate forum.

F Learned counsel for the respondent would urge that the case is developed by the petitioner from stage to stage when 2 F.I. Rs. are properly scrutinised. A mere cut on the lip, has been magnified and made much off. Then again, the petitioner would take advantage of the differences between the police officer and his wife and go to the extent of citing his wife as a witness on his behalf. This clearly exhibits his vengeful attitude. In view of all this, the trial could not be held. This Court which directed the report from C.B.I. Can always say that no trial need take place and protect the police officers.

Further argument was that the Delhi Special Police Establishment cannot investigate into the matter unless the Government of Kerala accord consent for the exercise of powers Section 6 of Delhi Special Police Establishment Act. A

We have given our careful considerations to the above submissions. We do not think we can come to the rescue of the police officers. Whether they are guilty or not of the offences for which they are charged is a matter to be established in a criminal trial. Therefore, we refrain from making any observation. B

As regards jurisdiction of the members of the Delhi Special Establishment, we do not think the procedure under Section 6 need be followed where this Court exercises jurisdiction under Article 142 of the Constitution. Even otherwise, we find a notification has been issued by Government of Kerala to the following effect :- C

GOVERNMENT OF KERALA
HOME (F) DEPARTMENT
NOTIFICATION D

No. 8021/F1/92/Home

Thiruvananthapuram,

Dated 3rd Oct., 1992 E

In pursuance of the provisions of section 6 of the Delhi Special Police Establishment Act, 1946 (Central Act 25 of 1946), the Government of Kerala hereby accord consent to the extension of powers and jurisdiction of the members of the Delhi Special Police Establishment in the whole of the State of Kerala for investigation of the complaint of Shri Maniyeri Madhavan, Editor, 'Sudinam Dairy' Kannur as ordered by the Hon'ble Supreme Court of India in their order dated 24.9.1992 in SLP No. 2755/88. F

(By order of the Governor), G

Sd/-

C.P. Nair

Commer. & Secretary to

Government

Explanatory Note H

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(This does not form part of the notification, but is intended to indicate its general purport).

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The Hon'ble Supreme Court of India, in their order dated 24.9.1992, in SLP No. 2755/88 has directed the Central Bureau of Investigation to investigate the complaint of Shri Maniyeri Madhavan, Editor, 'Sudinam Daily', Kannur against the attacks made on him and his property allegedly at the investigation of certain police officers of the State of Kerala, and to submit a report within four months. Hence this notification."

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All that this Court has to do is to merely record the report and let the law take its course. The Special Leave Petition is ordered on the above terms.

R.P.

Petition dismissed.