1960

October 28.

R. P. KAPUR AND OTHERS

v.

SARDAR PRATAP SINGH KAIRON AND OTHERS.

(S. K. DAS, M. HIDAYATULLAH, K. C. DAS GUPTA J. C. SHAH and N. RAJAGOPALA AYYANGAR, JJ.)

Criminal Procedure—Investigation of offences—Investigation by Deputy Superintendent of Police under orders of Inspector-General of Police — Validity — Allegations against Chief Minister— Necessity of affidavit by Chief Minister—Code of Criminal Procedure, 1898 (V of 1898), ss. 154, 156, 157 and 551—Constitution of India, Art. 14.

One S sent a complaint against the first petitioner to the Chief Minister who sent it to the Additional Inspector-General of Police who in his turn sent it to the Deputy Superintendent of Police, C.I.D., with the endorsement "Register a case and investigate personally". The Deputy Superintendent of Police drew up a first information report. There were also three other cases instituted against the petitioners or some of them, which were being investigated into by the C.I.D. Police officers. The petitioners contended that the respondents had violated the provisions of ss. 154, 156 and 157 of the Code of Criminal Procedure and had adopted a procedure unknown to law and had thus singled out the petitioners for unequal treatment in violation of Art. 14 of the Constitution.

Held, that the procedure adopted was authorised by s. 551 of the Code and in the first case the Inspector-General had power to deal with the complaint and to direct investigation of the same by the Deputy Superintendent of Police. Even if the reason given for the Inspector-General making over the investigation to the Deputy Superintendent of Police that the case was of a technical nature was not correct, it was open to him to make over the investigation to the Deputy Superintendent of Police in view of the status of the petitioners. The procedure adopted in the other three cases was also not illegal, and there was no unequal treatment of the petitioners in the matter of the institution or investigation of the cases so as to entitle them to invoke in aid Art. 14 of the Constitution.

H. N. Rishbud and Inder Singh v. *The State of Delhi*, [1955] 1 S.C.R. 1150, *King Emperor* v. *Nilkantha*, I.L.R. 35 Mad. 247, *Pulin Bihari Ghosh* v. *The King*, I.L.R. [1950] 1 Cal. 124 and *Textile Traders Syndicate Ltd.* v. *The State of U. P.*, A.I.R. 1959 All. 337, referred to.

Since allegations were made against the Chief Minister by the petitioners, he owed a duty to the Court to file an affidavit stating what the correct position was so far as he remembered it.

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ORIGINAL JURISDICTION: Petition No. 59 of 1960.

Petition under Article 32 of the Constitution of India for enforcement of Fundamental Rights.

A. S. R. Chari, S. N. Andley, J. B. Dadachanji, Rameshwar Nath and *P. L. Vohra*, for the Petitioners.

S. M. Sikri, Advocate-General for the State of Punjab, *H. S. Doabia*, Additional Advocate-General for the State of Punjab, *M. S. Punnu*, Deputy Advocate-General for the State of Punjab and *D. Gupta*, for the Respondents.

1960. October 28. The Judgment of the Court was delivered by

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S. K. DAS J.—This is a writ petition. The three petitioners before us are (1) R. P. Kapur, a member of the Indian Civil Service, who before his suspension was serving as a Commissioner in the State of Punjab, (2) Sheila Kapur, his wife, and (3) Kaushalya Devi, his mother-in-law. They have moved this Court under Art. 32 of the Constitution for the enforcement of their rights under Arts. 14 and 21 of the Constitution, which rights they say have been violated by the respondents who are the State of Punjab, Sardar Pratap Singh Kairon, Chief Minister thereof, and certain officials, police, administrative and magisterial who have been conducting, or are connected with, the investigation or inquiry into a number of criminal cases instituted against the petitioners. We shall refer to some of these officials later in this judgment in relation to the part which they have played or are playing in those criminal cases.

Briefly stated the case of the petitioners is that petitioner no. 1 had the misfortune to incur the wrath of the Chief Minister of the State. It is alleged that the Chief Minister was annoyed with petitioner no. 1, because the latter did not show his readiness to give evidence for the prosecution in a case known as the Karnal Murder Case (later referred to as the Grewal case) in which one D. S. Grewal, then Superintendent of Police, Karnal, and some other police officials were, along with others, accused of some serious offences. That case was transferred by this Court to a Special

Judge, at Delhi, who commenced the trial sometime in May/June 1959. Petitioner no. 1 was at the time Commissioner of Ambala, and he alleges that he was told by the Chief Minister that it was proposed to cite the Deputy Commissioner and the Deputy Inspector-General of Police as prosecution witnesses in the said case and it would be in the fitness of things that petitioner no. 1 should also figure as a prosecution witness; to this suggestion petitioner no. 1 gave a somewhat dubious reply to the effect that his appearance as a prosecution witness might or might not help the prosecution. Another reason for the displeasure of the Chief Minister, as alleged in the petition, related to certain orders which petitioner no. 1 had passed as Commissioner, Patiala Division, in a revenue case known as the Sangrur case. We shall presently give more details of that case, but it is enough to state here that the allegation is that in that case petitioner no. 1 passed certain orders, involving the disposal of properties worth about Rs. 9 lacs, which were adverse to one Surinder Kairon, son of the Chief Minister. It is stated that as a result of the displeasure which petitioner no. 1 had incurred for the two reasons mentioned above, a special procedure was adopted in the investigation of the criminal cases instituted against the petitioners; and some new cases were started through the instrumentality of the C. I. D. Police with a view to subject the petitioners to harassment and persecution. The substantial allegation, to quote the language of the petition, is that "a special procedure or rather a technique has been devised for circumventing the mandatory provisions of the law (meaning the Code of Criminal Procedure) as regards the petitioners, two of whom are ladies and who are being dragged about unnecessarily because they happen to be releted to petitioner no. 1". It is stated that there has been a deliberate departure from the normal and legal procedure in the matter of institution and investigation of criminal cases against the petitioners—a departure said to be the result of "an evil eye and unequal hand" which the petitioners allege constitutes

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a denial of the right of equal protection of the laws guaranteed to them under Art. 14 of the Constitution. The special procedure or technique of which the petitioners complain is said to consist of several items, such as (1) entertainment of a criminal complaint personally by the Chief Minister; (2) institution of complaints by the C. I. D. police; (3) registration of first informations after such complaints; (4) investigations in advance of the complaints; (5) investigation by specially chosen (hand-picked as learned Counsel for the petitioners has suggested) C.I.D. officials, not necessarily of high rank, who have no power to investigate; (6) the arrangement of a special C.I.D. squad to "unearth something" against the petitioners, etc. In the petition four criminal cases were referred to as illustrative of the special procedure, said to be unwarranted by law, adopted against the petitioners, and in a supplementary petition filed on June 9, 1960, some more cases were referred to. After we had conveyed to learned Counsel for the petitioners that we could not consider the supplementary petition which the respondent had no opportunity of meeting, the supplementary petition was withdrawn. Therefore, we do not propose to say anything about the cases which are referred to in the supplementary petition. The four cases mentioned in the original petition are:—

(1) F.I.R. no. 304 of 1958, given by one M. L. Sethi, referred to hereinafter for brevity as Sethi's case;

(2) F.I.R. no. 39 of 1959, instituted on the complaint of one M. L. Dhingra, called hereinafter as Dhingra's case;

(3) F.I.R. no. 135 of 1959, instituted on the complaint of the Civil Supply Officer, Karnal, the accused in this case being the State Orphanage Advisory Board of which petitioner no. 1 was Vice-President at the relevant time and Kartar Singh, farm manager of Kaushalya Devi, called the Orphanage case; and

(4) F.I.R. no. 26 of 1960, instituted on the complaint of Daryao Sing, D.S.P., C.I.D., Karnal, (one of the respondent police officials) in which there are three

accused persons including petitioner no. 1, called for brevity the Ayurvedic Fund case.

We may say at once that we are not concerned with the merits of any of the aforesaid cases: that is a question which will fall for consideration if and when the cases are tried in Court. Therefore, nothing said in this judgment shall be construed as affecting the merits of the cases. Two questions have been posed before us in relation to these cases: one is if in the matter of institution and investigation of these cases a special procedure unknown to law has been adopted; and the other is if the petitioners have been singled out for unequal treatment in administering the law relating to the institution and investigation of criminal cases in the State. The two questions are in one sense connected, for if a special procedure unknown to law has been adopted against the petitioners, that by itself will be a denial of the right of the equal protection of the laws. Learned Counsel for the petitioners has, however, argued the second question somewhat independently of the first question, and he has submitted that even if the procedure adopted against the petitioners is warranted by law, it is a departure from the normal procedure and has been adopted with "an evil eye and unequal hand" so as to put the petitioners to harassment and persecution. We shall consider both these questions in relation to the procedure adopted in the four cases referred to above.

It is necessary to state that the petition has been contested by the respondents. The Chief Minister has himself made no affidavit in respect of the allegations made against him; but affidavits in reply have been made by the Chief Secretary and the Home Secretary to the Punjab Government and some of the respondent officials. To these affidavits we shall advert later in somewhat greater detail. We shall also have something to say about the failure of the Chief Minister to make an affidavit. It is enough to state here that the respondents have seriously contested both the allegations made on behalf of the petitioners, namely, (1) that a special procedure unknown to law was

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adopted against them or (2) that the procedure adopted was motivated by "an evil eye and unequal hand" so as to persecute and harass the petitioners. The respondents have said that the procedure adopted was warranted by law and the employment of the C. I. D. officials in the investigation of the cases against the petitioners was due to the special nature of the cases. The respondents have also contested the correctness of the allegation that petitioner no. 1 had incurred the displeasure of the Chief Minister on account of the two reasons stated in the petition. In brief, the claim of the respondents is that there has been no violation of the rights of the petitioners guaranteed under Arts. 14 and 21, and there are no grounds for interference by this Court under Art. 32 of the Constitution. It has been stated on behalf of the respondents that in the two cases called Sethi's case and Dhingra's case, the petitioners had moved the High Court without success for quashing the proceedings and in Sethi's case, an appeal to this Court against the order of the High Court also proved unsuccessful. It is also pointed out that a petition made by petitioner no. 1 in the High Court for proceeding by way of contempt of court against the Chief Minister on some of the allegations now raised or allegations similar in nature, was dismissed *in limine* and the learned Advocate-General of the Punjab has taken us through the order of the High Court in respect of some of the allegations made.

Having stated the respective cases of the parties before us, we shall proceed now to a more detailed examination of the procedure adopted in the four cases instituted against the petitioners. But before we do so, it is necessary to say a few words about Grewal's case and Sangrur case which are stated to furnish the reasons why petitioner no. 1 incurred the displeasure of the Chief Minister. It is alleged that in Grewal's case petitioner no. 1 was asked to give evidence for the prosecution, but he gave a dubious reply which displeased the Chief Minister. It is worthy of note, however, that the trial in Grewal's case began in May-June, 1959; Sethi's complaint was made in

December, 1958 and Dhingra's in February, 1959. Obviously, those two cases could not be the result of any refusal by petitioner no. 1 to give evidence in Grewal's case. On May 28, 1959, petitioner no. 1 wrote to the Chief Secretary about Sethi's case and Dhingra's case, but no allegation was made therein against the Chief Minister. What the petitioner wanted then was that an opportunity should be given to him to explain his position. On June 9, 1959, petitioner no. 1 again wrote to the Chief Secretary about the complaints of Sethi and Dhingra—again there was no allegation against the Chief Minister. On June 29, 1959, petitioner no. 1 filed two petitions in the Punjab High Court for quashing the proceedings in Sethi's case and Dhingra's case; in this petition an allegation was made that powerful influences were operating against the petitioner "to harm him and debar him officially" and Sethi's case and Dhingra's case were the result of such influences, but there was no specific mention of Grewal's case and of any request to the petitioner to give evidence in that case. It was for the first time on July 20, 1959, when the petition for contempt proceedings was filed that a specific allegation against the Chief Minister was made in paragraphs 35 to 37 thereof (this is annexure I to the present petition). This petition was dismissed *in limine*, the High Court saying that it was not *prima facie* satisfied that the allegation was made out. We do not think that petitioner no. 1 has been able to advance his case any further in spite of the fact that the Chief Minister has made no affidavit, a matter to which we shall advert later.

As to the Sangrur case, that was also referred to in the petition of July 20, 1959, and the High Court did not accept the allegation of petitioner no. 1. What happened in that case was this. The late Sardar Mukan Sing of Sangrur left two widows, Sardarni Pritam Kuar and Sardarni Pavitar Kaur. Sardarni Pavitar Kaur had three daughters one of whom was married to Surinder Singh Kairon, son of the Chief Minister. The Sangrur estate was in charge of the Court of Wards, that is, the Financial Commissioner, Punjab. On June

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19, 1958, the Court of Wards decided to release the estate after partitioning the immovable property between the two widows. At one time a question arose as to whether the immovable properties should be partitioned into five equal shares for the two widows and three daughters or into two shares only for the two widows. Sometime before May 6, 1959, it was decided that the partition would be of two shares only and thereafter a detailed mode of partition was agreed to between the parties. This is clear from the note of petitioner no. 1 dated May 6, 1959. Thereafter there was no more dispute left, and the case of petitioner no. 1 that he was arrested on July 18, 1959, because he dictated an adverse order some days previously which had been typed but not yet signed does not *prima facie* appear to be correct, apart altogether from the question whether petitioner no. 1 was acting merely as the channel between the Deputy Commissioner, and the Financial Commissioner, the latter being the only authority competent to pass final orders in the matter.

We have, therefore, come to the conclusion that the petitioners have not established what they have alleged, namely, that R. P. Kapur, one of the petitioners, had incurred the displeasure of the Chief Minister by reason of what happened in the Grewal case and the Sangrur case. Whether there were other reasons, administrative or otherwise, for the displeasure of the Chief Minister is a matter which is not germane to the present case. In the affidavits filed before us some reference has been made to the past record of R. P. Kapur. We consider it unnecessary to refer to that record; firstly, because it is not relevant to the case before us, and secondly because we think that it is not fair to refer to the confidential record of an officer unless the circumstances in which certain adverse remarks were made are known.

We proceed now to consider the four criminal cases pending against the petitioners or some of them, in relation to the two points urged: (1) whether in the institution and investigation of these cases a special procedure unknown to law has been adopted and (2)

if the petitioners have been singled out for unequal treatment in administering the law relating to the institution and investigation of criminal cases in the State.

The first two cases, namely, Sethi's case and Dhingra's case need be dealt with at some length. Sethi's case started on a complaint which it was said was sent direct to the Chief Minister. Four material allegations about fraudulent misrepresentation were made in that complaint. It was alleged that R. P. Kapur had fraudulently misrepresented to Sethi that a particular piece of land which he had sold to Sethi had been purchased by him at Rs. 10 per square yard; that he had fraudulently concealed from Sethi the pendency of certain proceedings before the Land Acquisition Collector, Delhi, and of the acquisition of the said land under s. 17 of the relevant Act; that he had made a fraudulent misrepresentation as regards the scheme of housing with regard to the area in which the land lay. Though the complaint was dated December 10, 1958, it appears to have been made over to the Additional Inspector General of Police on December 23, 1958. The Additional Inspector General of Police then appears to have passed an order to the following effect: "Register a case and investigate personally". This was addressed to Sardar Hardayal Singh, D. S. P. Thereupon Sardar Hardayal Singh, Deputy Superintendent of Police, C.I.D., Amritsar, appears to have drawn up a first information report. The original complaint which Sethi filed has not been produced before us. What was produced before us was a carbon copy and on that carbon copy was the order of the Additional Inspector General of Police to which we have already made a reference. The allegation of the petitioners was that the original complaint had been sent to the Chief Minister and the Chief Minister had passed certain orders thereon. On behalf of the petitioners it was suggested that the original was not produced in order to conceal from the Court the orders which the Chief Minister had passed thereon. We have stated earlier that the Chief Minister had filed no affidavit in respect of these allegations. An affidavit has been filed by A. N. Kashyap, Home Secretary

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to the Government but obviously he was not in a position to say anything about the allegations made against the Chief Minister. We, therefore, proceed on the basis that so far as Sethi's case is concerned, a complaint was made or sent to the Chief Minister who thereupon sent it to the Additional Inspector General of Police who in his turn sent it to Sardar Hardayal Singh, Deputy Superintendent of Police, C. I. D., at Amritsar. The short question before us is—does this amount to adopting a procedure unknown to law or even to unequal treatment so as to attract Art. 14 of the Constitution ? Learned Counsel for the petitioners has taken us through the relevant provisions in Part V, Chapter XIV, of the Code of Criminal Procedure and has submitted that under s. 154 of the Code every information relating to the commission of a cognizable offence should be given to an officer in charge of a police station and under s. 156 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 would have power to inquire into or try under the provisions of Chapter XV relating to the place of inquiry or trial. He has also referred to s. 157 under which the officer in charge of a police station, shall forthwith send a report of the first information to a Magistrate empowered to take cognizance of the offence and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed to the spot to investigate the facts and circumstances of the case, and if necessary to take measures for the discovery and arrest of the offender. It is contended that the provisions of ss. 154, 156 and 157 of the Code have been violated in the case against the petitioners; and thus the petitioners have been subjected to a special procedure unknown to law or, at any rate, to unequal treatment, treatment different from that of other persons against whom informations of a cognizable offence are made.

We are unable to accept these contentions as

correct. First of all, s. 154, Code of Criminal Procedure, does not say that an information of a cognizable offence *can only be made* to an officer in charge of a police station. That section merely lays down, inter alia, that every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information shall be signed by the person giving it and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in that behalf. Section 156 gives power to an officer in charge of a police station to investigate without the order of a Magistrate any cognizable case which a Court, having jurisdiction in the local area etc. would have power to inquire into or try; sub-s. (2) of s. 156 lays down that 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. There has been some argument before us as to the meaning of the expression "any such case" occurring in sub-s. (2) of s. 156. As we are not resting our decision on sub-s. (2) of s. 156, Code of Criminal Procedure, we consider it unnecessary to embark upon a discussion as to the true scope and effect of sub-s. (2) of s. 156. Section 157 of the Criminal Procedure Code lays down the procedure which an officer in charge of a police station must follow where information of a cognizable offence is made. Now, there is another important provision in the Code which is of great relevance in this case and must be read. That provision is contained in s. 551 which is in these terms:

"S. 551. 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."

The Additional Inspector General of Police to whom

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Sethi's complaint was sent was, without doubt, a police officer superior in rank to an officer in charge of a police station. Sardar Hardayal Singh, Deputy Superintendent of Police, C.I.D., Amritsar, was also an officer superior in rank to an officer in charge of a police station. Both these officers could, therefore, exercise the powers, throughout the local area to which they were appointed, as might be exercised by an officer in charge of a police station within the limits of his police station. It is not disputed that the jurisdictional area of the Additional Inspector General of Police was the whole of the State. As to the jurisdictional area of the Deputy Superintendent of Police, C.I.D., the contention on behalf of the respondent State is that though he was posted at Amritsar, his jurisdictional area extended over the whole State. The learned Advocate-General for the respondent State has drawn our attention to Police Rule 21.28 in the Punjab Police Rules, 1934, Vol. III, issued by and with the authority of the State Government under ss. 7 and 12 of the Police Act (V of 1861). That rule lays down that the Criminal Investigation Department has no separate jurisdiction and the Deputy Inspector General of Police, Criminal Investigation Department, may decide to take over the control of any particular investigation himself or depute one or more of his officers to work directly under the control of the Superintendent of Police of the district. Police Rule 21.32 enumerates some of the cases in which the assistance of the Criminal Investigation Department may be sought. Police Rule 25.14 says that the Criminal Investigation Department is able to obtain expert technical assistance, and in cases where such assistance is required the assistance of the Criminal Investigation Department may be obtained. In the affidavit made by Sardar Hardayal Singh, he has stated that he was entrusted with the investigation of Sethi's case because of its technical nature and also because his sphere of duty as a Gazetted Officer attached to the Criminal Investigation Department was the whole of the State in view of the memorandum no. 9581-H-51/7912 dated October

26, 1951. That memorandum shows that the Deputy Inspector General, C.I.D. and all gazetted officers of the Criminal Investigation Department have jurisdiction extending over the whole of the Punjab State. This is also supported by the affidavit made by Shamshere Singh, Additional Inspector General of Police. Learned Counsel for the petitioners has pointed out that Sethi's case involved no technical questions and the ground stated in the affidavits of Shamshere Singh and Sardar Hardayal Singh is not, therefore, correct. The question before us is not whether the reason for which the investigation was made over to Sardar Hardayal Singh is correct or not. The question before us is, whether in making over the investigation to Sardar Hardayal Singh a special procedure unknown to law was adopted or the law as to the investigation of cases was administered with an evil eye or unequal hand. If the police officer concerned thought that the case should be investigated by the C. I. D. — even though for a reason which does not appeal to us—it cannot be said that the procedure adopted was illegal. We are unable to agree with learned Counsel for the petitioners that any of these two contentions has been made out in the present case. We are satisfied that the Inspector General of Police, C.I.D. had power to deal with Sethi's complaint and had further power to direct investigation of the same by Sardar Hardayal Singh who as a police officer superior in rank to an officer incharge of a police station could exercise powers of an officer in charge of a police station in respect of the same. It cannot, therefore, be said that the procedure adopted was unknown to law. Nor are we satisfied that the procedure adopted was motivated by any evil purpose, though we are not quite impressed by the reason given by Shamshere Singh or Sardar Hardayal Singh that Sethi's case was of a technical nature and, therefore, required the assistance of the C.I.D. Even if it was not of a technical nature, it was open to the Additional Inspector General of Police to make over the investigation to a Deputy Superintendent of Police in view of the status of the petitioners. In paragraph 31 of his affidavit

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A. N. Kashyap, Home Secretary, has said that the Inspector General of Police on receiving the complaint from Sethi ordered on his own the registration of the case without any order or direction from the Chief Minister. The correctness of this statement has been very seriously commented on. In the absence of any affidavit from the Chief Minister and of the original complaint, we have preferred to proceed in this case on the footing that the Additional Inspector General of Police got the complaint from the Chief Minister and then passed necessary orders thereon. Even on that footing we are unable to hold that there has been any violation of legal procedure or that an unfair discrimination has been made against the petitioners.

Learned Counsel for the petitioners has relied on certain observations made by this Court in *H. N. Rishbud and Inder Singh* v. *The State of Delhi* (1). The observations occur at page 1160 of the report and are to the effect that it is of considerable importance to an accused person that the evidence collected against him during investigation is collected under the responsibility of an authorised and competent investigating officer. These observations were made in a case where the question that fell for decision was whether the provisions in s. 5(4) and the proviso to s. 3 of the Prevention of Corruption Act, 1947 (Act II of 1947) and the corresponding s. 5A of the Prevention of Corruption (Second Amendent) Act, 1952 (Act LIX of 1952), were mandatory or not. It was held that they were mandatory and an investigation conducted in violation thereof was illegal. It was also held that an illegality committed in the course of an investigation did not affect the competence and jurisdiction of the Court for trial; but if any breach of the mandatory provisions relating to investigation were brought to the notice of the Court at an early stage of the trial, the Court would have to consider the nature and extent of the violation and pass appropriate orders for such reinvestigation as might be called for. We do not think that the observations made and the decision are of any

(1) [1955] (1) S.C.R. 1150.

assistance to the petitioners. We have held that there has been no violation of any mandatory provisions as to investigation in Sethi's case against the petitioners and the investigation procedure followed is legal. Our attention has been drawn to *King Emperor* v. *Nilkantha* (1). On a certificate by the Advocate-General, the case was considered by a Full Bench of the Madras High Court and one of the questions for decision was—"Is an Inspector of the Criminal Investigation Department an authority legally competent to investigate the facts within the meaning of s. 157, Evidence Act?" The question was answered in the affirmative by the majority of judges, Abdur Rahim, J. and Sundara Ayyar, J., dissenting. In the course of the arguments before their Lordships, one of the questions mooted was whether Inspectors of the Criminal Investigation Department were appointed to any local area within the purview of s. 551, Code of Criminal Procedure. Some of the Judges held that the whole Presidency was their local area; some held that that was not so. On the materials before us, we have no hesitation in holding that the Deputy Superintendent of Police entrusted with the investigation of Sethi's case had the necessary authority to hold the investigation. The decision in *Pulin Bihari Ghosh* v. *The King* (2) on which also some reliance has been placed does not appear to us to be in point: that was a case in which the Magistrate purported to act both under s. 202 and s. 156(3), Code of Criminal Procedure, and it was held that proceedings under s. 202 and investigation under s. 156(3) could not proceed simultaneously; it was further held that a direction under s. 156(3) could only be made to an officer in charge of a police station. No question arose there of the exercise of powers under s. 551, Code of Criminal Procedure, and the decision does not establish what the petitioners are seeking to establish in the present case. More in point is the decision in *Textile Traders Syndicate Ltd.* v. *State of U. P.* (3) where it was held that an Inspector of Police in the Criminal Investigation Department was superior in rank to that of an

(1) I.L.R. 35 Mad. 247. (2) I.L.R. [1950] 1 Cal. 124.
(3) A.I.R. 1959 All. 337.

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officer in charge of a police station and under s. 551, Code of Criminal Procedure, he could exercise the powers of an officer in charge of a police station throughout the State.

Turning now to Dhingra's case, the position is this. Admittedly, a complaint dated February 27, 1959, was sent to the Chief Minister with a covering letter in which it was stated that " R. P. Kapur had already started tampering with the evidence and I, therefore, request that orders be passed that the Police should take in hand investigation immediately and collect all material evidence ". The Chief Minister wrote on this : " Inspector General, Police, is sick. Will Addl. Inspector General please take immediate action in taking over papers from Government departments concerned and the papers with Sri Dhingra. Please give a prima facie report." The Additional Inspector General then made the following endorsement : " Please take immediate necessary action. Depute one of your officers to contact Sri Dhingra and get the necessary records from him. Immediate action may be taken to take over the record from the various departments. A case may be registered. I have informed Chief Secretary and he agrees with this." This was addressed to the Deputy Inspector General, C.I.D., and the latter wrote—" Case should be registered .and investigated by Bir Singh, D.S.P., under your supervision. Immediate steps should be taken to get the salient records of Sri Dhingra." This was addressed to Ujager Singh, Superintendent of Police, C.I.D. The case was then registered by Sardar Sampuran Singh, Inspector of Police, Police Station Chandigarh, and the investigation was in charge of Sardar Bir Singh, Deputy Superintendent of Police, C.I.D.

The legal position as to the institution of Dhingra's case and its investigation is the same as in Sethi's case. The legal sanction for both is s. 551, Code of Criminal Procedure, and the reasons which we have given for holding that the procedure followed in instituting and investigating Sethi's case is legally valid apply to Dhingra's case also. On behalf of the

petitioners it has been submitted that the hand of the Chief Minister is no longer concealed in respect of Dhingra's case. It is pointed out that in 1959, a complaint is made in respect of offences alleged to have been committed about five years ago in 1954 and the Chief Minister, without any enquiry whatsoever, says "Please give a prima facie report," and the same C.I.D. machinery is again set in rapid motion as in Sethi's case, and this at a time when Sethi's case was kept "hanging as a sword" over the petitioners. It has been further submitted that the direction as to the seizure of papers was not justified in law, as the Chief Minister had no legal power to give such a direction. We do not think that these submissions establish what the petitioners have to establish in order to succeed on their writ petition, namely, that in the institution of Dhingra's case and its investigation, a procedure unknown to law has been followed or that the petitioners have been singled out for an unfair and discriminating treatment. We do not know what reasons led the Chief Minister to make the endorsement on the complaint of Dhingra as he did and why instead of referring the complaint to the officer in charge of the police station concerned, a reference was made to the Additional Inspector General or the Criminal Investigation Department. These are matters within his special knowledge, and he has chosen to throw no light on them. Shamshere Singh has said in his affidavit that he dealt with Dhingra's case in exercise of his powers under s. 551, Code of Criminal Procedure. Sardar Bir Singh has said in his affidavit that this case was also of a technical nature and so the investigation was entrusted to him. As we have said in Sethi's case this reason does not appear to us to be a convincing reason, but the Police officers concerned may honestly have thought that the case should be investigated by the Criminal Investigation Department. We are not called upon to express any opinion on the merits of Dhingra's case, and all that we say now is that the petitioners have failed to establish either of their two contentions—(1) that the procedure adopted was illegal, or (2) that the petitioners were unfairly discriminated against.

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We go now to the remaining two cases, the Orphanage Case and the Ayurvedic Fund case. One was instituted on the complaint of the Civil Supply Officer, Karnal, and the other on the statement of Daryao Sing, Deputy Superintendent of Police, C. I. D., Karnal. The Orphanage case is against the Orphanage Advisory Board of which R. P. Kapur was the Vice President at the relevant time, and Kartar Sing, farm manager of Kaushalya Devi. It related to the alleged violation of certain Control Orders in the matter of a brick kiln. The Ayurvedic Fund case is against R. P. Kapur and certain other persons, who are not petitioners before us. It alleged criminal breach of trust etc. in respect of certain funds in the hands of the persons accused therein. As we are not deciding these cases on merits, it is unnecessary to give further details of the allegations made in those cases.

No specific illegality has been brought to our notice with regard to the institution of the Orphanage case except some allegations of high-handedness in the matter of seizure of records of the Orphanage in spite of the protest of the General Manager of the Orphanage and some allegations against Choudhuri Ram Singh, who was then Deputy Inspector General, Ambala Range. These allegations, be they true or not, do not establish any such illegality as would lead us to quash the investigation.

As to the Ayurvedic Fund case, Daryao Sing said in his affidavit:

"I say that the Audit Report contained details of meddling with Orphanage funds and of having made payments to one Kartar Sing, an employee of the petitioner no. 1 and the attorney of Shrimati Kaushalya Devi. It appears that there was excess and double payment of funds. There were purchases of timber and wood without calling for any quotations. It disclosed the issue of Orphanage funds to Madhuban Co-operative Society and that the materials like cement, iron and steel which were under control were also used in the construction of private building of Shri Kapur and his family and the use of such materials went up to 20,000 rupees."

Here again we do not express any opinion as to the correctness or otherwise of the allegations made. All that need be said at this stage is that the institution of the case is not illegal, nor is its investigation vitiated by discrimination.

It is indeed true that the investigation of these cases has been entrusted to certain officers of the Criminal Investigation Department, whether for good reason or not we cannot say. But that circumstance does not by itself make the investigation bad in law. The officers can exercise their powers of investigation under s. 551, Code of Criminal Procedure. Daryao Singh, it may be stated, was an Inspector of the Criminal Investigation Department at Karnal and became a Deputy Superintendent of Police, C. I. D., in December, 1959. He also could exercise the powers under s. 551, Code of Criminal Procedure.

For the reasons given above, we have come to the conclusion that the petitioners are not entitled to succeed and the writ petition must be dismissed, in the circumstances of this case there will be no order for costs.

Before parting with this case we consider it necessary to make some observations with regard to a matter which has caused us some anxiety and concern. Serious allegations have been made against the Chief Minister in this case. He is a party respondent and had notice of the allegations made. In Sethi's complaint it was alleged that he had passed certain orders on the original complaint, which was sent to the Additional Inspector General of Police with those orders. The original complaint was not made available to us on the ground that it could not be traced. The Additional Inspector General of Police said in his affidavit that on receiving the complaint from Sri M. L. Sethi, he ordered the investigation of the case without any order or direction from the Chief Minister. He did not specifically say if he received the complaint direct from Sethi or through the Chief Minister. In Dhingra's case the Chief Minister passed an order which might either mean that he ordered the

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submission of a *prima facie* report or merely directed that a report should be submitted if a *prima facie* case was made out. It is not clear why he ordered the seizure of papers before even a *prima facie* report was given, in respect of an offence said to have been committed five years ago. These are all matters on which the Chief Minister alone was in a position to enlighten us. In view of the allegations made against him, we consider that the Chief Minister owed a duty to this Court to file an affidavit stating what the correct position was so far as he remembered it. We recognise that it may not be possible for a Chief Minister to remember the circumstances in which a document passes through his hands; there must be many papers which a Chief Minister has to deal with in the day to day business of administration. If the Chief Minister did not remember the circumstances, it would have been easy for him to say so. If he remembered the circumstances, he could have refuted the allegations with equal ease. This is not a case where the refutation should have been left to Secretaries and other officers, who could only speak from the records and were not in a position to say why the Chief Minister passed certain orders. The petitioners are obviously suffering from a sense of grievance that they have not had a fair deal. We have held that there is no legal justification for that grievance; but in an executive as well as judicial administration justice must not only be done but it must appear that justice is being done. An affidavit from the Chief Minister would have cleared much of the doubt which in the absence of such an affidavit arose in this case.

Petition dismissed.