

K. KARUNAKARAN
v.
STATE OF KERALA AND ANR.

MARCH 29, 2000

[G.B. PATTANAIK AND R.P. SETHI, JJ.]

Criminal Procedure Code, 1973—Sections 154 & 482—FIR registration of—Earlier petitions and appeals seeking registration of FIR against the appellant dismissed—Subsequently FIR lodged—Petition of appellant u/s. 482 dismissed by High Court—In appeal, plea of malafide raised for the first time—Held, Registration of FIR cannot be held to be result of malafide—If during preliminary enquiry, commission of offence comes to light on the basis of new material, the officials are obliged to register a case and present it in a competent court of jurisdiction.

During the chief ministership of the appellant, Kerala State Supplies Corporation entered into a contract with a foreign company for the purchase of import of Palmolein.

One 'K' filed petition under Article 226 before High Court seeking direction for registration of appropriate crime case in the matter of import of Palmolein, and seeking appropriate investigation of the matter and registration of case under Prevention of Corruption Act, on the ground that the transaction in the matter was against rules, regulations and guidelines fixed by the Government of India resulting in heavy pecuniary advantage to the foreign based company. The petition was dismissed by the High Court on the ground that the report of Comptroller & Auditor General did not reveal commission of any offence.

'V' an Opposition MLA, presented FIR before Superintendent of Police (Vigilance) against some persons including the appellant, for registration of a case under Section 13(1)(c) & (d) of Prevention of Corruption Act and under Sections 406, 409, 420, 201, 34 and 120B of IPC. The Superintendent of Police refused to register the case on the ground that as per G.O. dated 12.5.1992 they could not initiate inquiry in such matter and should report such complaints to the Government in Vigilance Department which was to issue necessary instructions in the matter. 'V' filed writ petition before High Court, seeking direction to the Superintendent of

A Police to register crime case pursuant to the FIR lodged by him and to investigate the same in accordance with law. The petition was dismissed. The writ appeal against the dismissal order was dismissed by Division Bench of the High Court. The Special Leave Petition filed against the judgment of the Division Bench was also dismissed without assigning any reasons.

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C In the assembly elections, the appellant lost, and another party came into power. The Commissioner-Secretary, vide letter dated 18.6.1996 requested the Director of Vigilance, Investigation to conduct a preliminary enquiry into the allegations in Palmolein deal case, and submit his report to the Government. Preliminary enquiry was conducted and criminal case was registered under section 1 3(1)(d) of Prevention of Corruption Act and under section 120B of IPC, against 7 persons including the appellant.

D Appellant filed a case under section 482 Cr.P.C. before High Court for quashing of the proceedings. The petition was dismissed holding that there was no bar in registering a case and conducting investigation, as fresh matter had come to the notice of the investigating agency.

E In appeal to this Court, the appellant contended that order dated 18.6.1996 was actuated by extraneous considerations and assailed the GO dated 12.5.1992; that the source of power for registering the FIR being illegal and violative of the mandate of judgment of his court in *Vineet Narain & Ors. v. Union of India & Anr.*, [1998] 1 SCC 226, the appellant cannot be subjected to harassment of a criminal trial; and that the registration would amount to overriding the judgments of the High Court and this Court and thus would amount to contempt of court having been filed without new material.

F Dismissing the appeal, this Court

G HELD : 1.1. The registration of the FIR against the appellant and others cannot be held to be the result of malafides or actuated by extraneous considerations. The menace of corruption cannot be permitted to be hidden under the carpet of legal technicalities. In such matters probes conducted are required to be determined on facts and in accordance with law. The allegations of malafides were admittedly not the basis for challenging the basis of the FIR in the High Court. If during the conduct of a preliminary inquiry the commission of an offence comes to

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light on the basis of new materials, the respondent-officials were obliged to register a case and present it in a competent court of jurisdiction for holding of trial and adjudication. [743-C-D]

1.2. From the contents of the latter it cannot be inferred that any direction had been issued for registration of a criminal case against the appellant and others. What the Commissioner Secretary had desired was the conducting of preliminary enquiry which could not be prayed to be shut because as apprehended it could lead to the registration of a case. The FIR indicates that while conducting a preliminary inquiry into the allegations of corruption in the matter of Palmolein directly by the State Government, various details were revealed which showed the commission of offences punishable under various provisions of law. [741-G-H; 742-A-B]

2. The Government Order dated 12.5.1992 has not been shown to be in any way illegal or unconstitutional so far as the rights of the appellant are concerned. Mere apprehension of the order being used against some persons is no ground to hold it illegal or unconstitutional particularly when its illegality or constitutionality has not been challenged. Prima facie it does not hamper or interfere with the statutory functions of an investigating officer who has, otherwise, statutory right to hold and complete the investigations in accordance with the provisions of the Code of Criminal Procedure. [743-E-G]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 86 of 1998.

From the Judgment and Order dated 1.7.97 of the Kerala High Court in Crl.M.C. No. 1353 of 1997.

K.K. Venugopal, P.S. Poti, P.P. Rao, N. Natarajan, Kallada Sukumaran, S.S.H. Rizvi, R. Sasiprabhu, John Verghese, Manish Garg, Anees Ahmed, Ms. Aditi Singh, K.M.K. Nair, Vipin Nair, Ms. Lansinglu Rongmei, Ms. Malini Poduval, Manu Krishnan and Anshu Mahajan for the appearing parties.

The Judgment of the Court was delivered by

SETHI, J. Referring to letter dated 18.6.1996 filed as Annexure R-2 with the counter affidavit in this Court, terming it to be actuated by extraneous considerations and assailing the Government Order dated 12th May, 1992, (Annexure R-1) as illegal, Shri K.K. Venugopal, Senior Advocate appearing

A for the appellant has prayed for quashing of the FIR No.1/97 (Annexure P-8) and subsequent proceedings initiated against the appellant. It is submitted that the source of power for registering the FIR referable to the aforesaid Government order being illegal and violative of the mandate of judgment of this Court in *Vineet Narain & Ors. v. Union of India & Anr.*, [1998] 1 SCC 226, the appellant cannot be subjected to harassment of a criminal trial. The impugned FIR is stated to be amounting to overriding the judgments of the High Court of Kerala and this Court passed in earlier litigation praying for registration of the FIR against the appellant. The registration of the FIR has been termed to be amounting to contempt of court having been filed without any new material. Political rivalry is alleged to be the prime consideration for registration of the case against the appellant.

The facts of the case are that the appellant was the Chief Minister of the State of Kerala for the period 1991-95. Kerala State Civil Supplies Corporation is stated to have entered into a contract with M/s.Power & Energy Pvt. Limited, Singapore for the purchase of import of 15,000 MT of Palmolein. The Comptroller & Auditor General of India (CAG) is stated to have submitted his report dated 11.2.1994 for the year ending on 31st March, 1993. One Mr.M.Vijay Kumar who was the opposition MLA in the Kerala Assembly raised the allegation of corruption with regard to import of Palmolein in the Assembly. The State Government headed by the appellant is stated to have placed all the Government files relating to the transaction before the Assembly for the information of all the members. One Mr. Kallar Sukumaran, Chief Editor, Gulf India Times filed a petition in the High Court of Kerala under Article 226 of the Constitution, which was registered as OP No.3813/94, praying therein for the issuance of appropriate direction directing the respondent-State to register appropriate crime in the matter of import of Palmolein allegedly on the ground that the aforesaid transaction was against the rules, regulations and guidelines fixed by the Government of India which resulted in giving heavy pecuniary advantage to foreign based company consequent to the agreement between the fourth respondent in the writ petition and the Singapore Company. An appropriate investigation was prayed to be conducted in the matter and a case under the Prevention of Corruption Act be registered against the guilty. The aforesaid writ petition was dismissed by a learned Single Judge of the High Court vide order dated 4th April, 1994 holding that no case was made out for issuance of directions under Article 226 of the Constitution of India as the report submitted by the CAG had a definite purpose to achieve and that the said report by itself did not reveal the

commission of any offence. It was further observed that:

“From the allegations in the original petition it is seen that the object of the petitioner is more political rather than anything else and the main target of attack seems to be the 3rd respondent - the Chief Minister of the State.”

M.Vijay Kumar MLA of Thiruvanthapuram Constituency presented a First Information Report before the Superintendent of police, Vigilance (Hqrs.) (Annexure P-3) praying for registering a case for offences under Section 13(1)(c) & (d) of the Prevention of Corruption Act and Sections 406, 409, 420, 201, 34 and 120B of the Indian Penal Code against the persons named therein which included the appellant as one of the accused persons. The Superintendent of Police vide his letter informed Shri M. Vijay Kumar that no action could be taken in the report lodged by him in view of GO(P) No.65/92/Vig. dated 12.5.1992. The aforesaid letter, *inter alia*, provided that the Vigilance Department was not to initiate enquiry *suo motu* even when a complaint is made in person or in a signed petition and invariably should report such complaints to the Government in Vigilance Department which was to issue necessary instructions in the matter. It is worth noticing that the appellant herein who was the Chief Minister at the relevant time was also holding the Home Department which included Vigilance Department. After the Superintendent of Police declined to register the FIR, the said M.Vijay Kumar filed writ petition no.9882/94 in the High Court of Kerala praying therein for issuance of direction against the Deputy Superintendent of Police, Vigilance (Hqrs.) Thiruvanthapuram, commanding him to register a crime case pursuant to the FIR lodged by him and to investigate the same in accordance with law. The aforesaid writ petition was dismissed by another judge of the High Court of Kerala vide his judgment dated 26th July, 1994. The learned Judge referred to various documents attached with the FIR and found that as the complaint under Section 154 of the Code of Criminal Procedure had not been filed before the officer incharge of the police station, the fifth respondent was not obliged to register a case. The writ appeal filed against the order of the learned Single Judge of the High Court of Kerala was dismissed by a Division Bench vide its judgment dated 27th September, 1994. The Division Bench observed that the various annexures which were referred to in the body of the FIR had actually not been annexed with the original petition. Some of the annexures being Exhibits P-4, P-5, P-5A, P-9, P-10, P-12, P-15 and P-17 were shown to the Hon'ble Judges constituting the Bench

A who observed:

B “We have gone through these Exhibits also and so has the learned Single Judge. After going through these documents the learned Single Judge has in detail analysed the contents of all these documents as well as the First Information Report. Undoubtedly, these documents pertain to certain financial irregularities in placing orders for import of 15,000 M.T. Palmolein oil during the period December, 1991 to March, 1992. The documents, however, by themselves do not disclose the commission of any cognizable offence by respondents 1 to 4 who are the Chief Minister of Kerala, the former Chief Secretary to Government of Kerala, the Director, Power and Energy Pvt. Ltd. Singapore and the Managing Partner of Mala Export Corporation Limited, Madras. We are not dealing with these documents in extenso as the learned Single Judge has analysed them and we agree with his analysis.”

D The allegations made in the FIR were stated to be based on the report submitted by the CAG for the year ending on 31st March, 1993. Against the judgment of the Division Bench M.Vijay Kumar preferred a special leave petition in this Court being SLP (Criminal) No.54/95 which was dismissed on 10.3.1995 without assigning any reasons.

E The appellant laid down his office as Chief Minister in March, 1995 whereafter elections to the State Assembly were held, in which the party and the Front of the appellant lost and the Left Democratic Front Government came into power on 20th May, 1996. On 18.6.1996 the Commissioner-Secretary requested the Director of Vigilance, Investigation to submit enquiry report to the Government at the earliest after conducting a preliminary enquiry into the allegations raised in the Legislative Assembly pertaining to Palmolein deal in which corruption worth crores of rupees had been alleged. The Superintendent of Police, Vigilance is stated to have conducted a preliminary enquiry upto March, 1997 whereafter Criminal Case No.1 of 1997 at Vigilance Cell, Police Station, Kowdiar, Thiruvananthapuram, Kerala was registered under Sections 13(1)(d) of the Prevention of Corruption Act and under Section 120B IPC against 7 persons including the appellant.

H The appellant filed the Criminal Miscellaneous Case No. 1353/97 under Section 482 of the Criminal Procedure Code in the High Court of Kerala

praying therein that all proceedings pursuant to Crime Case No.1/97 be quashed. The High Court dismissed the petition vide its order dated 1.7.1997 on the ground that as fresh matter had come into the notice of the investigating agency, there was no bar for it to register a case and conduct investigation. The present appeal has been filed against the aforesaid order of the High Court.

The grievance of the appellant that order dated 18.6.1996 (Annexure R-2) is actuated by extraneous considerations and intended to harass a political opponent of a ruling party is without any substance inasmuch as in that letter the Commissioner-Secretary had requested the Vigilance to conduct a preliminary enquiry with respect to the allegations raised in the Legislative Assembly and submit a report. It is worth considering that despite dismissal of the petitions filed against the appellant by the High Court and this Court, the matter pertaining to the purchase of Palmolein deal had not been shelved and was very much alive so far as the State Assembly is concerned. The appellant, when he was the Chief Minister, had declared in the Assembly for probe into the allegations and a Committee on Public Undertakings was seized of the matter.

The letter dated 18.6.1996 produced in this Court, for the first time, was not the basis of challenging the First Information Report lodged and the subsequent proceedings conducted against the appellant before the High Court. In the said letter it is stated:

"I am to request you to submit enquiry report to Government at the earliest after conducting a preliminary enquiry into the allegation raised in the Legislative Assembly that there is corruption of crores of rupees behind the agreement signed on the 29th November, 1991 for import of 15000 tonnes of palmolein to Kerala from Malaysia through the Power and Energy Company Singapore. Attention is also invited to the report of the Comptroller and Auditor General relating to the issue. It is also brought to your notice that records related to the matter are available in your office."

From the contents of the letter it cannot be inferred that any direction had been issued for registration of a criminal case against the appellant and others. What the Commissioner-Secretary had desired was the conducting of preliminary enquiry which could not be prayed to be shut because as apprehended it could lead to the registration of a case. The FIR indicates that while conducting a

A preliminary enquiry into the allegations of corruption in the matter of Palmolein directly by the State Government, various details were revealed which showed the commission of offences punishable under various provisions of law.

B After referring to the earlier judgments in the case, the learned Single Judge of the High Court noted the summary of the first information statement of Shri M. Vijay Kumar dated 11.4.1994 and compared it with the FIR (Annexure P-8) dated 21st March, 1997 and rightly concluded:

C “By an assessment of both the first information statement (Annexure-D) and first information report (Annexure A) it is seen that the present first information report is definitely based on further materials and enquiry. The obvious difference between these two sets of first information statement and first information report are:

D (i) In the FIR filed by Superintendent of Police, Vigilance it is clearly found that there was no real requirement for direct import by the State Government;

E (ii) The import was far in excess of the requirement in the State for the projected period;

(iii) The agreement was made without due sanction from the State Government, and Finance Department without specifying the price;

F (iv) Import conditions stipulated by the Government of India were violated in reference to price limited, terms of payment and fixation of retail price for distribution through the P.D.S.

G (v) While fixing the price in terms of USD as against the Indian rupee resulted increase in the value of USD was known/anticipated at the time of agreement resulting in huge loss to the Government;

H (vi) As against the delay from the agreed period upto February, 1992 the supply till March 1992 the penal clause for the delay was not invoked.

These were the relevant and important specific information/allegation as against the earlier First Information Statement of Shri M. Vijayakumar. According to respondents 2 and 3, the present First Information Report is based on a preliminary enquiry conducted in the matter from 9.8.1996 to March, 1997 during which period they examined 63 documents including 18 documents mentioned earlier in the judgments.”

After going through the pleadings of the parties and keeping in view the rival submissions made before us, we are of the opinion that the registration of the FIR against the appellant and others cannot be held to be the result of *malafides* or actuated by extraneous considerations. The menace of corruption cannot be permitted to be hidden under the carpet of legal technicalities. In such matters probe conducted are required to be determined on facts and in accordance with law. The allegations of *malafides* were, admittedly, not the basis for challenging the registration of the FIR in the High Court. If during the conduct of a preliminary enquiry the commission of an offence comes to light on the basis of new materials, the respondent-officials were obliged to register a case and present it in a competent court of jurisdiction for holding of trial and adjudication. The Government order (Annexure R-1) is not shown to have been used against the appellant in any way. The aforesaid order in fact protects the interests of the officials saving them from unnecessary harassment. Mere apprehension of the order being used against some persons is no ground to hold it illegal or unconstitutional particularly when its legality or constitutionality has not been challenged. Prima facie it does not hamper or interfere with the statutory functions of an investigating officer who has, otherwise, statutory rights to hold and complete the investigation in accordance with the provisions of the Code of Criminal Procedure. Our observations with respect to the legality of the Government order are not conclusive regarding its constitutionality but are restricted so far as its applicability to the registration of the FIR against the appellant is concerned. We are, therefore, of the opinion that the aforesaid Government order has not been shown to be in any way illegal or unconstitutional so far as the rights of the appellant are concerned.

During the course of hearing it was pointed out that the investigation has since been completed and the final report submitted in the court of competent jurisdiction as permitted by this Court vide its order dated 11.12.1999. In this view of the matter we do not propose to comment on the merits of the

A case, lest, it may prejudice the parties at the trial.

Under the circumstances the appeal is dismissed with the observation that the appellant and other accused persons shall be at liberty to raise all such pleas of law and fact as are available to them during the trial of the case before the competent court of jurisdiction dealing with it and such pleas shall be considered and decided notwithstanding the observations, if any, made by the High Court on merits.

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K.K.T.

Appeal dismissed.