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HEMANT DHASMANA

v.

CENTRAL BUREAU OF INVESTIGATION AND ANR.

AUGUST 17, 2001

B

[K.T. THOMAS AND S.N. VARIAVA, JJ.]

Criminal Procedure Code, 1973

C *Chapter XII—Section 173(8)—Power under—Scope of—Complaint under Prevention of Corruption Act, 1988—Investigation by CBI—Its report contrary to allegations in complaint—Special Judge ordering further investigation by an officer of particular rank—Held, Special Judge has power to order for further investigation, though the Section does not specifically mention about the power—However, he does not have power to specify a particular officer to Conduct Investigation..*

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Chapter XII—Section 173(2)—Investigation under for offences under Prevention of Corruption Act—Held applicable to CBI official as well—Delhi Special Police Establishment Act, 1946—Prevention of Corruption Act, 1988.

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Appellant made complaint under Prevention of Corruption Act. After investigation of the case, the final report filed by CBI was found contrary to the allegations in the complaint. The Special Judge after hearing the complaint ordered the CBI to re-investigate the matter and further ordered to depute an officer of the rank of DIG of CBI to re-investigate the matter. On appeal

F **High Court held that there was no case for any fresh investigation or for any further investigation and deprecated the direction of the Special Judge for specifying an officer to conduct the investigation.**

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In appeal to this Court appellant contended that the High Court should not have interfered with the order of the Special Judge, particularly when the said order did not contain any final conclusion on the report.

Allowing the appeal, the Court

HELD : 1.1. When the CBI report is against the allegations contained in the complaint and concluded that no offence has been committed by any

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person it is open to the Court to accept the report after hearing the complainant at whose behest the investigation had commenced. If the Court feels, on a persual of such a report that the alleged offences have in fact been committed by some persons, the Court has the power to ignore the contrary conclusions made by the investigating officer in the final report. Then it is open to the Court to independently apply its mind to the facts emerging therefrom and it can even take cognizance of the offences which appear to him to have been committed, in exercise of his power under Section 190(1) (b), Cr.P.C. The third option is the one adumbrated in Section 173(8), Cr.P.C. Although the said sub-section does not, in specific terms, mention about the powers of the Court to order further investigation the power of the police to conduct further investigation envisaged therein can be triggered into motion at the instance of the Court. [652-E-G; 653-B]

Bhagwant Singh v. Commissioner of Police and Anr., [1985] 2 SCC 537; *M/s. India Carat Pvt. Ltd. v. State of Karnataka and Anr.*, [1989] 2 SCC 132 and *Union Public Service Commission v. S.Papaiah and Ors.*, [1997] 7 SCC 614, referred to.

1.2 However, it is not within the province of the Magistrate while exercising the power under Section 173 (8), Cr.P.C. to specify any particular officer to conduct such investigation, not even to suggest the rank of the officer who should conduct such investigation. [654-G]

2. When the final report is laid after conclusion of the investigation the Court has the power to consider the same and issue notice to the complainant to be heard in case the conclusions in the final report are not in concurrence with the allegations made by them. Though the investigation was conducted by the CBI, the provisions under Chapter XII of the Cr.P.C. would apply to such investigation. 'Police' referred to in the Chapter, for the purpose of investigation, would apply to the officer/officers of the Delhi Police Establishment Act. On completion of the investigation the report has to be filed by the CBI in the manner provided in Section 173 (2) of the Code, with the exception that the Magistrate referred to in the section would be understood as a Special Judge when the offences involved are under the Prevention of Corruption Act, 1988. [651-E-G]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No, 829 of 2001.

From the Judgment and Order dated 27.4.2000 of the Allahabad High

A Court in CrI. R. No. 146 of 1998.

Rajinder Sacher and R.P. Gupta for the Appellant.

Altaf Ahmad, Additional Solicitor General, A.K. Raina and P. Parneswaran for the Respondent No. 1.

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Praveen Swarup for the Respondents Nos. 3-6.

The Judgment of the Court was delivered by

THOMAS, J. Leave granted.

C

A complainant, after investigation, was transposed as an accused. Such a prodigy happened in this case. A trap to catch a big fish (Chief Commissioner of Income Tax) was orchestrated by the Central Bureau of Investigation ('the CBI' for short) with a bewitching bait, but still he did not bite it. But the appellant says that two sons of the said Chief Commissioner collected the bulky cash offered to their father. On such a complaint the CBI conducted investigation. After the investigation the CBI turned against the complainant/appellant and ordered him to be prosecuted for giving false information with intent to cause the public servant use his lawful power to the detriment of the public. However, the final report laid by the CBI was not acceptable to the Special Judge and he directed further investigation into the matter but the High Court reversed the said direction by the impugned order.

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Appellant styles himself as a disciple of one Swami Rama, a non-resident Indian, who founded a Trust by name "Himalayan Institute of Medical Sciences" at Dehra Dun with high profile public personage shown as its patrons. The Trust had a lot of income tax problems. Appellant felt that the then Commissioner of Income Tax, Meerut, was troubling the Trust and its founder with notices frequently issued. It was in the said context that they approached B.P. Gupta, Chief Commissioner of Income Tax, Kanpur (the third respondent) for redressal of their grievances.

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Appellant claims to have forwarded a complaint to the DIG of CBI, New Delhi on 6.3.1996, complaining that at the behest of Respondent No.3 the Trust people including the appellant contacted Janardhan Gupta (the son of the third respondent) who demanded Rs. 20 lacs to be paid to his father as bribe and after a lot of haggling, the amount was reduced to Rs.10 lacs and that the amount should be paid to the third respondent within two days.

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What happened thereafter, according to the version of the appellant, A
can be summarised as follows:

On 8.3.1996, CBI made all preparations for a trap. The team of CBI
officers reached the house of one Roshan Lal who was the treasurer of the
Trust and waited for the opportune time to hand over the bribe amount to
the third respondent. A micro-cassette supplied by the CBI to the appellant B
with which he recorded the conversation between the appellant and Janardhan
Gupta (the fourth respondent) and his father (the third respondent). At the
pre-arranged time a bag containing the cash was handed over to Sudhanshu
Gupta, another son of the third respondent, (he is fifth respondent in this
appeal) at his residence in the presence of the fourth respondent. The signal C
was then transmitted to the CBI officers who made a swoop and surrounded
the house and caught the fifth respondent. The bag containing the cash was
recovered from below the bed of the house of the third respondent. The
investigation thereupon was commenced by the CBI.

When the investigation concluded the CBI filed its final report before D
the Special Judge, Anti Corruption (Central) Lucknow. In the final report the
case was given a totally reverse picture. The CBI exonerated the third, fourth
and the fifth respondents in full measure and wanted the court to initiate
prosecution proceedings against the appellant for the offence under Sections
182 and 211 of the Indian Penal Code. The CBI took the stand in strident tone E
that the complaint made by the appellant is not only false but it was aimed
at deterring the Income Tax officials from discharging their functions fearlessly.
It was a calculated move to forestall the strong measures devised against
Swami Rama and the Trust founded by him, according to the CBI.

The Special Judge on receipt of the aforesaid final report issued notice F
to the appellant and after hearing him ordered the CBI to re-investigate the
matter. The operative part of that order is extracted below:

“Under these circumstances perusal of the final report submitted
shows that the investigation of the case was not properly conducted
and this final report was submitted without properly going through G
the provisions contained in the Cr.P.C. and Prevention of Corruption
Act. It is also necessary to point out that preliminary investigation
was conducted by Sh.V.K. Gupta, DIG (CBI). In my view, in this
situation it would be proper that this case is again investigated by
DIG level officer. The final report, not being legitimate is liable to be
rejected. The final report is therefore rejected and the Director CBI, H

A New Delhi is ordered to depute an officer of the rank of DIG in this matter who would investigate this case afresh and submit his report.”

B The CBI moved the High Court of Allahabad in revision, against the said order of the Special Judge. The contention of the CBI before the High Court of Allahabad was that the alleged micro-cassettes of the tape recorded conversation purported to have made between the appellant and the fourth respondent were neither attested by any independent witness nor recorded by any officials of the CBI nor authenticated by it and that it was a “self-managed cassette” of the appellant. The learned Single Judge of the High Court who passed the impugned order expressed like this:

C “On a consideration of the entire materials submitted along with the report and made available before the learned Special Judge, there was no case for any fresh investigation or for any further investigation. It has been mentioned above that further investigation could only be ordered when some other evidence was in sight and was not collected or was left over, and could help the merit of the case. In the instant case every relevant material was collected and no material was left over, and every such material so collected was made the basis of the final report and thus every material was placed before the Special Judge.”

E The High Court deprecated the direction of the Special Judge for specifying an officer of the DIG rank of the CBI to conduct the investigation. Learned Single Judge of the High Court upheld the contention of the CBI that an officer of the rank of DIG is mainly a supervisory officer and the CBI Manual contains the measures to be adopted for conducting investigation.

F In the view of the High Court the order of the Special Judge is clearly against Section 173(8) of the Code of Criminal Procedure (for short 'the Code'). This is how the High Court has expressed on that aspect in the final portion of the impugned judgment:

G “The Special Judge could have either rejected or could have accepted the final report under the circumstances of the case after applying his judicial mind and after recording the basis of his opinion. There was no sense in ordering the fresh investigation in the circumstances of the case in disregard of provisions of Section 173(8) of the Code and making the entire investigation a futile exercise. It was not a case of further investigation. The order is bad in law.”

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Ultimately the learned Single Judge, after setting aside the order of the Special Judge, directed him to consider the materials before him once again and to pass suitable orders in accordance with law. A

Learned counsel for the appellant contended that the High Court should not have interfered with the order of the Special Judge, particularly when the said order did not contain any final conclusion on the report. According to him, all that the Special Judge said was that further investigation should be conducted. At any rate, the CBI recovered 10 lakhs of rupees from the house of the third respondent and hence a further investigation would have only helped the CBI to know how it reached there and through whom, etc., contended the counsel. B C

Mr. Altaf Ahmad, learned Additional Solicitor General, submitted that the conclusion of the CBI was based on the materials collected by them and that was filtered at different levels of the organisation of the CBI. The final report was laid only when the CBI was convinced of the conclusions reached therein. D

The real question is not whether the conclusion reached by the CBI had been subjected to verification or supervision at different departmental level. Nor even whether the conclusion is correct. When the final report is laid after conclusion of the investigation the Court has the power to consider the same and issue notice to the complainant to be heard in case the conclusions in the final report are not in concurrence with the allegations made by them. Though the investigation was conducted by the CBI the provisions under Chapter XII of the Code would apply to such investigation. The police referred to in the Chapter, for the purpose of investigation, would apply to the officer/officers of the Delhi Police Establishment Act. On completion of the investigation the report has to be filed by the CBI in the manner provided in Section 173(2) of the Code, with the exception that the magistrate referred to in the section would be understood as a Special Judge when the offence involved are under the Prevention of Corruption Act, 1988. E F

The first sub-section to Section 173 says that the investigation shall be completed without unnecessary delay. It is sub-section (2) which contemplates the report on conclusion of the investigation. It reads thus: G

“(2)(i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by H

A the State Government, stating-

- (a) the names of the parties; (b) the nature of the information; (c) the names of the persons who appear to be acquainted with the circumstances of the case; (d) whether any offence appears to have been committed and, if so, by whom; (e) whether the accused has been arrested; (f) whether he has been released on his bond and, if so, whether with or without sureties; (g) whether he has been forwarded in custody under section 170.

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 C (ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.”

D When the report is filed under the Sub-section the magistrate (in this case the Special Judge) has to deal with it by bestowing his judicial consideration. If the report is to the effect that the allegations in the original complaint were found true in the investigation, or that some other accused and/or some other offences were also detected, the Court has to decide whether cognizance of the offences should be taken or not on the strength of that report. We do not think that it is necessary for us to vex our mind, in this case, regarding that aspect when the report points to the offences committed by some persons. But when the report is against the allegations contained in the complaint and concluded that no offence has been committed by any person it is open to the Court to accept the report after hearing the complainant at whose behest the investigation had commenced. If the Court feels, on a perusal of such a report that the alleged offences have in fact been committed by some persons the Court has the power to ignore the contrary conclusions made by the investigating officer in the final report. Then it is open to the Court to independently apply its mind to the facts emerging therefrom and can even take cognizance of the offences which appear to him to have been committed, in exercise of his power under Section 190(1)(b) of the Code. The third option is the one adumbrated in Section 173(8) of the Code. That sub-section reads thus:

H “Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the magistrate a

further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).”

Although the said sub-section does not, in specific terms, mention about the powers of the Court to order further investigation the power of the police to conduct further investigation envisaged therein can be triggered into motion at the instance of the Court. When any such order is passed by a court which has the jurisdiction to do so it would not be a proper exercise of revisional powers to interfere therewith because the further investigation would only be for the ends of justice. After the further investigation, the authority conducting such investigation can either reach the same conclusion and reiterate it or it can reach a different conclusion. During such extended investigation the officers can either act on the same materials or on other materials which may come to their notice. It is for the investigating agency to exercise its power when it is put back to that track. If they come to the same conclusion it is of added advantage to the persons against whom the allegations were made, and if the allegations are found false again the complainant would be in trouble. So from any point of view the Special Judge’s direction would be of advantage for the ends of justice. It is too premature for the High Court to predict that the investigating officer would not be able to collect any further material at all. That is an area which should have been left to the investigating officer to survey and recheck.

In *Bhagwant Singh v. Commissioner of Police and Anr.*, [1985] 2 SCC 537 a three-Judge Bench of this Court has said, though in a slightly different context, that three options are open to the court on receipt of a report under Section 173(2) of the Code, when such report states that no offence has been committed by the persons accused in the complaint. They are:

- (1) The court may accept and drop the proceedings; or
- (2) The court may disagree with the report and take cognizance of the offence and issue process if it takes the view that there is sufficient ground for proceeding further; or
- (3) The court may direct further investigation to be made by the police.

Another three Judge Bench in *M/s. India Carat Pvt. Ltd. v. State of Karnataka and Anr.*, [1989] 2 SCC 132 has stated thus:

A “The position is, therefore, now well settled that upon receipt of a police report under Section 173(2) a Magistrate is entitled to take cognizance of an offence under Section 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, in exercise of his powers under Section 190(1)(b) and direct the issue of process to the accused.”

D In *Union Public Service Commission v. S. Pappiah and Ors.*, [1997] 7 SCC 614 a two Judge Bench considered the scope of Section 173(8) of the Code in extenso. Dr.A.S. Anand, J (as the learned Chief Justice then was) after extracting Section 173(8) of the Code has observed thus:

E “The Magistrate could, thus in exercise of the powers under Section 173(8) Cr.P.C. direct the CBI to ‘further investigate’ the case and collect further evidence keeping in view the objection raised by the appellant to the investigation and the ‘new’ report to be submitted by the investigating officer would be governed by sub-sections (2) to (6) of Section 173 Cr.P.C.”

F When the Special Judge has opted to order for a further investigation the High Court should have stated to the CBI to comply with that direction. Nonetheless, we are in agreement with the observation of the learned Single Judge of the High Court that the Special Judge or the magistrate could not direct that a particular police officer or even an officer of a particular rank should conduct such further investigation. It is not within the province of the magistrate while exercising the power under Section 173(8) to specify any particular officer to conduct such investigation, not even to suggest the rank of the officer who should conduct such investigation.

H In the result, we allow this appeal and set aside the judgment under challenge. However, while restoring the order of the Special Judge we make it clear that the direction made by the Special Judge that further investigation

shall be conducted by an officer of the DIG rank of the CBI, will stand deleted. **A**
We make it abundantly clear that we have not considered the merits of the
allegations made against the respondent or the conclusions reached by the
CBI in the report already laid before a Special Judge. Hence, further investigation
as ordered by the Special Judge can be conducted untrammelled by any of the
observations made by the Special Judge or by us. **B**

K.K.T.

Appeal allowed.