A STATE REP. BY INSPECTOR OF POLICE, VIGILANCE & ANTI-CORRUPTION, TIRUCHIRAPALLI, TAMIL NADU

v.

V. JAYAPAUL

MARCH 22, 2004

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[MRS. RUMA PAL AND P. VENKATARAMA REDDI, JJ.]

Criminal Procedure Code, 1973—Sections 154, 155 and 156—
C *Investigation by Police officer, who prepared a First Information Report on receipt of information about corrupt practices of accused—High Court quashing the proceedings holding that the same police officer cannot lodge an FIR and take up investigation—Validity of—Held, a police officer can* **suo moto** *lodge an FIR on receipt of information and take up investigation—Hence, quashing of proceedings by High Court not valid.*

D **Inspector of Police (Vigilance & Anti-Corruption), on receipt of information about the corrupt practices of respondent-accused prepared a First Information Report and registered the crime under Sections 420 and 201 IPC and under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act. A copy of the FIR was lodged with trial**
E **court. The same Inspector took up the investigation and filed a charge-sheet against the respondent in the trial Court. The respondent filed an application before High Court to quash the proceedings on the ground that the police officer, who lodged the FIR, cannot take up investigation of the case. The High Court allowed the application and quashed the proceedings holding that the investigation by the same police officer, who**
F **lodged the FIR, would prejudice the respondent inasmuch as the investigating officer cannot be expected to act fairly and objectively. Hence the appeal by the State.**

Allowing the appeal, the Court

G **HELD: 1.1. There is nothing in the provisions of the Criminal Procedure Code which precluded the appellant from taking up the investigation. The fact that the said police officer prepared the FIR on the basis of the information received by him and registered the suspected crime does not disqualify him from taking up the investigation of the cognizable offence. A *suo motu* move on the part of the police officer to investigate a**

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cognizable offence impelled by the information received from some source is not outside the purview of the provisions contained in Sections 154 to 157 CrPC or any other provisions of the Code. [333-A-C] A

State of U.P. v. *Bhagwant Kishore,* AIR (1964) SC 221, referred to.

1.2. The High Court neither found nor any argument was addressed to the effect that there is a statutory bar against the police officer who registered the FIR on the basis of the information received taking up the investigation. There is no principle or binding authority to hold that the moment the competent police officer, on the basis of information received, makes out an FIR incorporating his name as the informant, he forfeits his right to investigate. If at all, such investigation could only be assailed on the ground of bias or real likelihood of bias on the part of the investigating officer. The question of bias would depend on the facts and circumstances of each case and it is not proper to lay down a broad and unqualified proposition, in the manner in which it has been done by the High Court, that whenever a police officer proceeds to investigate after registering the FIR on his own, the investigation would necessarily be unfair or biased. The police officer received certain discreet information, which, according to his assessment, warranted a probe and therefore made up his mind to investigate. The formality of preparing the FIR in which he records the factum of having received the information about the suspected commission of the offence and then taking up the investigation after registering the crime, does not, by any semblance of reasoning, vitiate the investigation on the ground of bias or the like factor. If the reason which weighed with the High Court could be a ground to quash the prosecution, the powers of investigation conferred on the police officers would be unduly hampered for no good reason. What is expected to be done by the police officers in the normal course of discharge of their official duties will then be vulnerable to attack. [333-E-H; 334-A-C] B C D E

Bhagwan Singh v. *State of Rajasthan,* AIR (1976) SC 985 and *Megha Singh* v. *State of Haryana,* [1996] 11 SCC 709, distinguished.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 359 of 2004.

From the Judgment and Order dated 18.7.2001 of the Madras High Court in Crl. O.P. No. 12161 of 2001.

R. Venkataramani, Ashok and P.N. Ramalingam for the Appellant.

A.T.M. Rangaraman, V. Balaji, Ms. T.S. Santhi and Rakesh K. Sharma for the Respondent.

The Judgment of the Court was delivered by

P. VENKATARAMA REDDI, J. Leave granted.

Whether the High Court was justified in quashing the criminal proceedings on the ground that the police officer, who laid/recorded the FIR regarding the suspected commission of certain cognizable offences by the respondent should not have investigated the case and submitted the final report? That is the question which arises for consideration in this appeal filed by the State.

On 9.9.1996, the Inspector of Police (Vigilance & Anti- Corruption), Tirucharapalli on the basis of the information received that the respondent-accused was indulging in corrupt practices by extracting money from the drivers and owners of the motor vehicles while conducting check of the vehicles and making use of certain bogus notice forms in the process, prepared the First Information Report, registered the crime under Sections 420, 201 IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act. A copy of the FIR was submitted to the Court of CJM-cum-Special Judge, Tirucharapalli. He then proceeded to take up investigation, gathered information, examined the witnesses and filed the charge-sheet in the Court together with a list of documents including the police notice books and hand-writing experts' reports. The respondent was implicated for the offences under Sections 465, 468 IPC and Section 7 and 13(2) read with 13(1)(d) of P.C. Act. The respondent-accused then moved the High Court of Madras to quash the proceedings. The learned Judge of the High Court, relying on the decision of this Court in *Megha Singh* v. *State of Haryana,* [1996] 11 SCC 709 and two other decisions of the Madras High Court, allowed the application and quashed the proceedings. This is what the learned Judge observed:

> "In view of the consistent rulings of the Supreme Court and of this Court, I am obliged to hold that the very same police officer who registered the case by lodging a first information ought not to have investigated the case and that itself had caused prejudice to the accused."

We have no hesitation in holding that the approach of the High Court is erroneous and its conclusion legally unsustainable. There is nothing in the

provisions of the Criminal Procedure Code which precluded the appellant (Inspector of Police, Vigilance) from taking up the investigation. The fact that the said police officer prepared the FIR on the basis of the information received by him and registered the suspected crime does not, in our view, disqualify him from taking up the investigation of the cognizable offence. A *suo motu* move on the part of the police officer to investigate a cognizable offence impelled by the information received from some sources is not outside the purview of the provisions contained in Sections 154 to 157 of the Code or any other provisions of the Code. The scheme of Sections 154,156 and 157 was clarified thus by Subba Rao, J. speaking for the Court in *State of U.P.* v. *Bhagwant Kishore,* AIR (1964) SC 221.

> "Section 154 of the Code prescribes the mode of recording the information received orally or in writing by an officer in charge of a police station in respect of the commission of a cognizable offence. Section 156 thereof authorizes such an officer to investigate any cognizable offence prescribed therein. Though ordinarily investigation is undertaken on information received by a police officer, the receipt of information is not a condition precedent for investigation. Section 157 prescribes the procedure in the matter of such an investigation which can be initiated either on information or otherwise. It is clear from the said provisions that an officer in charge of a police station can start investigation either on information or otherwise."

In fact, neither the High Court found nor any argument was addressed to the effect that there is a statutory bar against the police officer who registered the FIR on the basis of the information received taking up the investigation.

Though there is no such statutory bar, the premise on which the High Court quashed the proceedings was that the investigation by the same officer who 'lodged' the FIR would prejudice the accused inasmuch as the investigating officer cannot be expected to act fairly and objectively. We find no principle or binding authority to hold that the moment the competent police officer, on the basis of information received, makes out an FIR incorporating his name as the informant, he forfeits his right to investigate. If at all, such investigation could only be assailed on the ground of bias or real likelihood of bias on the part of the investigating officer. The question of bias would depend on the facts and circumstances of each case and it is not proper to lay down a broad and unqualified proposition, in the manner in which it has been done by the High Court, that whenever a police officer proceeds to investigate after registering the FIR on his own, the investigation

A would necessarily be unfair or biased. In the present case, the police officer received certain discreet information, which, according to his assessment, warranted a probe and therefore made up his mind to investigate. The formality of preparing the FIR in which he records the factum of having received the information about the suspected commission of the offence and then taking up the investigation after registering the crime, does not, by any semblance B of reasoning, vitiate the investigation on the ground of bias or the like factor. If the reason which weighed with the High Court could be a ground to quash the prosecution, the powers of investigation conferred on the police officers would be unduly hampered for no good reason. What is expected to be done by the police officers in the normal course of discharge of their official duties C will then be vulnerable to attack.

There are two decisions of this Court from which support was drawn in this case and in some other cases referred to by the High Court. We would like to refer to these two decisions in some detail. The first one is the case of *Bhagwan Singh* v. *State of Rajasthan,* AIR (1976) SC 985. There, the D Head Constable to whom the offer of bribe was allegedly made, seized the currency notes and gave the first information report. Thereafter, he himself took up the investigation. But, later on, when it came to his notice that he was not authorized to do so, he forwarded the papers to the Deputy Superintendent of Police. The DSP then reinvestigated the case and filed the charge sheet E against the accused. The Head Constable and the accompanying Constables were the only witnesses in that case. This Court found several circumstances which cast a doubt on the veracity of the version of the Head Constable and his colleagues. This Court observed that "the entire story sounds unnatural". While so holding, this Court referred to "a rather disturbing feature of the case" and it was pointed out that "Head Constable Ram Singh was the person F to whom the offer of bribe was alleged to have been made by the appellant and he was the informant or complainant who lodged the first information report for taking action against the appellant. It is difficult to understand how in these circumstances, Head Constable Ram Singh could undertake investigation?.. This is an infirmity which is bound to reflect on the credibility G of the prosecution case".

It is not clear as to why the Court was called upon to make the comments against the propriety of the Head Constable - informant investigating the case when the reinvestigation was done by the Deputy Superintendent of Police. Be that as it may, it is possible to hold on the basis of the facts noted above, H that the so called investigation by the Head Constable himself would be a

mere ritual. The crime itself was directed towards the Head Constable which made him lodge the FIR. It is well high impossible to expect an objective and undetached investigation from the Head Constable who is called upon to check his own version on which the prosecution case solely rests. It was under those circumstances the Court observed that the said infirmity "is bound to reflect on the credibility of the prosecution case". There can be no doubt that the facts of the present case are entirely different and the dicta laid down therein does not fit into the facts of this case.

Now, we may turn our attention to the case of *Megha Singh* v. *State of Haryana,* [1996] 11 SCC 709, on which reliance was placed by the High Court.

In *Megha Singh's* case, PW3, the Head Constable, found a country-made pistol and live cartridges on search of the person of the accused. Then, he seized the articles, prepared a recovery memo and a 'rukka' on the basis of which FIR was recorded by the S.I. of police. However, P.W.3 - the Head Constable himself, for reasons unexplained, proceeded to investigate and record the statements of witnesses under Section 161 Cr.P.C. The substratum of the prosecution case was sought to be proved by the Head Constable. In the appeal against conviction under Section 25 of the Arms Act and Section 6(1) of the TADA Act, this Court found that the evidence of PWs 2 & 3 was discrepant and unreliable and in the absence of independent corroboration, the prosecution case cannot be believed. Towards the end, the Court noted "another disturbing feature in the case". The Court then observed:

> "PW 3, Siri Chand, Head Constable arrested the accused and on search being conducted by him a pistol and the cartridges were recovered from the accused. It was on his complaint a formal first information report was lodged and the case was initiated. He being complainant should not have proceeded with the investigation of the case. But it appears to us that he was not only the complainant in the case but he carried on with the investigation and examined witnesses under Section 161 Cr.P.C. Such practice, to say the least, should not be resorted to so that there may not be any occasion to suspect fair and impartial investigation".

The conviction was set aside by this Court for the above reasons.

At first blush, the observations quoted above might convey the impression that the Court laid down a proposition that a Police Officer who

A in the course of discharge of his duties finds certain incriminating material to connect a person to the crime, shall not undertake further investigation if the FIR was recorded on the basis of the information furnished by him. On closer analysis of the decision, we do not think that any such broad proposition was laid down in that case. While appreciating the evidence of the main witness, i.e., the Head Constable (PW3), this Court referred to this additional B factor-namely, the Head Constable turning out to be the investigator. In fact, there was no apparent reason why the Head Constable proceeded to investigate the case bypassing the Sub-Inspector who recorded the FIR. The fact situation in the present case is entirely different. The appellant - Inspector of Police, after receiving information from some sources, proceeded to investigate and C unearth the crime. Before he did so, he did not have personal knowledge of the suspected offences nor did he participate in any operations connected with the offences. His role was that of investigator - pure and simple. That is the obvious distinction in this case. That apart, the question of testing the veracity of the evidence of any witness, as was done in *Megha Singh's* case, D does not arise in the instant case as the trial is yet to take place. The High Court has quashed the proceedings even before the trial commenced.

Viewed from any angle, we see no illegality in the process of investigation set in motion by the Inspector of Police (appellant) and his action in submitting the final report to the Court of Special Judge.

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In the written submissions filed after the conclusion of hearing, it is contended that the Inspector of Police had no jurisdiction to investigate the offence under the Prevention of Corruption Act without the order of a Magistrate of 1st Class and it was only the Deputy Superintendent of Police who was competent to investigate. Section 17 of the Prevention of Corruption F Act 1988 has been adverted to in this connection. That is not the ground which was urged before the High Court or even in the SLP or in the arguments advanced at the time of hearing. It is not even the case of the Respondent-accused that the Inspector of Police (Vigilance & Anti-Corruption) has not been authorized under the proviso to Section 17. We are therefore not inclined G to deal with that question in this appeal.

In the result the impugned order of the High Court is set aside and the appeal is allowed. No costs.

B.S. Appeal allowed.