NAVINCHANDRA N. MAJITHIA

v.

STATE OF MEGHALAYA AND ORS.

OCTOBER 16, 2000

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

Criminal Procedure Code, 1973—Ss. 156, 157 and 2(h)—Police Investigation—Delay due to financial crunch of the State—High Court directing a private party to supply funds for investigation—Validity of—Held, statutory investigating agency cannot be directed to obtain financial assistance from private parties for meeting the expenses of investigation—High Court's directions set aside.

Words & Phrases

"Investigation"—Meaning of in the context of S.2(h) of the Criminal Procedure Code, 1973.

A Shillong based Company entered into certain transactions with a Bombay based Company. Subsequently, an FIR was lodged by the Shillong based Company with the local police that the Bombay based Company had cheated it to the tune of crores of Rupees. Since the investigation in the case did not move fast, the complainant company filed a writ petition before the High Court. A single Judge of the High Court passed an order directing the complainant company to supply funds for investigation. Respondent-State unsuccessfully filed an appeal before the Division Bench of the High Court. Appellant's writ petition before the High Court of Bombay for quashing the FIR was also dismissed solely on the ground that the Court had no jurisdiction to deal with an FIR lodged at Shillong. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1.1. A statutory investigating agency cannot be directed to obtain financial assistance from private parties for meeting the expenses required for conducting the investigation. Thus, the directions issued by the High Court for supplying funds for investigation is set aside. [729-A-B]

1.2. Financial crunch of any state treasury is no justification for

A **allowing a private party to supply funds to the police for conducting such investigation. Augmentation of the fiscal resources of the State for meeting the expenses needed for such investigations is the lookout of the executive. Failure to do it is no premise for directing a complainant to supply funds to the investigating officer. Such funding by interested private parties would vitiate the investigation contemplated in the Criminal Procedure Code. A vitiated investigation is the precursor for miscarriage of criminal justice. Hence any attempt, to create a precedent permitting private parties to supply financial assistance to the police for conducting investigation, should be nipped in the bud itself. No such precedent can secure judicial imprimature. [732-B-C]**

C **1.3. Official investigation has to be totally extricated from any extraneous influence. The police investigation should necessarily be with the fund supplied by the State. It may be possible for a rich complainant to supply any amount of fund to the police for conducting investigation into his complaint. But a poor man cannot afford to supply any financial assistance to the police. Under the constitutional scheme, the police and other statutory investigating agency cannot be allowed to be hackneyed by those who can afford it. All complaints shall be investigated with equal alacrity and with equal fairness irrespective of the financial capacity of the person lodging the complaint. [731-F, G, H; 732-A]**

HN Rishbud v. *State of Delhi,* **AIR (1955) SC 196;** *State of Madhya Pradesh* v. *Mubarak Ali,* **AIR (1959) SC 707;** v. *Sirajjuddin* v. *State of Madras,* **[1970] 3 SCR 931;** *State of Rajasthan* v. *Gurcharandas Chadha,* **[1980] 1 SCC 250 and** *R. Sarala* v. *TS Velu,* **[2000] 4 SCC 459, relied on.**

Navinchandra N. Majithia **v.** *State of Maharashtra and Ors.,* (2000) 10 JT 61.

F *re Muddamma Malla Reddy,* **(1954) CRI. L.J. 167, approved.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 874 of 2000.

From the Judgment and Order dated 30.7.98 of the Gauhati High Court G in W.A. No. 635 of 1997.

Nikhil Sakhardande, S.R. Grover and Ms. Meenakshi Sakhardande for the Appellant.

Ranjan Mukherjee for the State, Anil Shrivastav for the Respondent H Nos. 4-5.

The Judgment of the Court was delivered by

THOMAS, J. The police inaction to carry on with the investigation in a particular criminal case was attributed to financial crunch of the State and the High Court directed the complainant to supply funds to the police to meet the cost. The party against whom the case was filed felt that such privately funded investigation tantamounts to hired investigation which would mar the sanctity of the purpose of statutory investigation and hence he approached this Court for special leave to appeal. Leave granted.

Facts which led to the issuance of the aforesaid direction, briefly, are the following: A Mumbai based company claimed ownership of certain land situated at a commercially strategic location in the city of Mumbai. Another company the headquarters of which is at Shillong in Meghalaya, entered into some transaction with the Mumbai Company in respect of the said land. Further details of the disputes are not very necessary for this appeal except stating from the stage of commencement of the criminal proceedings. An FIR was lodged by the Shillong company with the Shillong police alleging that the Mumbai Company has cheated Shillong Company to the tune of Rupees nine crores. Sometime after lodgment of the said FIR the Shillong Company observed that the police was not moving ahead with the investigation as fast or as distant as the company expected. Hence the Shillong company filed a Writ Petition before the High Court of Guwahati for appropriate directions. A single Judge of the High Court passed a direction, the extract of which reads thus:

> "In the circumstances I direct that in case the petitioner is ready to deposit the amount which would be required to undertake the investigation and for the visit of the senior police officers to Bombay in connection with the investigation work the state government shall allow them to do so and direct the investigating team to proceed in right earnest and speedily.
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> "It is further directed that the amount that would be required to undertake the investigation will be intimated to the petitioner within one week and the petitioner shall make the deposit of the amount within three days thereafter."

As the above direction was obviously unpalatable to the Director General of Police, Meghalaya, he and the Home Secretary of the State filed an appeal along with the State before a Division Bench of the High Court challenging the said direction issued by the Single Judge. According to the State, the

A investigation has to be conducted in Mumbai by the Maharashtra police and hence the direction issued by the Single Judge is unworkable. But the said contention was repelled by the Division Bench. Regarding the direction issued by the Single Judge to get funds from the aggrieved complainant, the Division Bench did not dilate much. Nevertheless learned judges did not interfere with the said direction and observed that "in any case the learned single Judge B has passed a just and proper order in view of the peculiar facts and circumstances of the case."

In this context we may point out that appellant was not brought into the array even at the above stage. He was kept in dark about all what C happened at Shillong as the appellant was doing his business confining to the radius of Mumbai. But when he was called by the police in connection with the FIR lodged at Shillong, he learned about the facts which preceded till then. Hence he moved the High Court of Bombay in a Writ Petition under Article 226 of the Constitution for quashing the FIR and the further proceedings taken thereon. But a Division Bench of Bombay High Court expressed D helplessness in the matter and dismissed the Writ Petition on the sole ground that the High Court of Bombay has no jurisdiction under Article 226 of the Constitution to deal with an FIR registered at Shillong.

When the said Writ Petition was dismissed, the appellant rushed to this E Court with two Special Leave Petitions, one in challenge of the aforesaid judgment of the Bombay High Court which dismissed his Writ Petition for want of territorial jurisdiction and the other in challenge of the judgment of the Division Bench of the Guwahati High Court as per which the Shillong police is directed to collect funds from the respondent company.

F We may point out, contextually, that the special leave petition filed by the appellant against the judgment of the High Court was separately dealt with by granting leave and judgment in that appeal was pronounced. It is reported as *Navinchandra N. Majithia* v. *State of Maharashtra and Ors.*, (2000) 10 JT 61. This Court by the said judgment ordered transfer of the FIR lodged by the respondent company with the Shillong police for investigation G of the Mumbai police.

It was thought that as the grievance of the appellant was redressed by the aforesaid direction made by this Court. But learned counsel for the appellant as well as the State of Meghalaya submitted that the judgment of H the Guwahati High Court would open a Pandora's box as many would claim

the same benefit and the role of the State function would plummet. The counsel further said that the direction cannot be allowed to remain in force as it is contrary to the scheme of the Code of the Criminal Procedure. Hence they insisted on a decision in this appeal on merits.

Thus, the question has bogged down to this: Can a statutory investigating agency be directed to obtain financial assistance from private parties for meeting the expenses required for conducting the investigation.

"Investigation" is defined in Section 2(h) of the Code as including "all the proceedings under this Code for the collection of evidence conducted by police officer or by any person (other than a magistrate) who is authorised by a magistrate in this behalf." Hence no proceedings outside provision of the Code can be dragged into the contours of investigation. In other words, any proceedings falling outside the ambit of the Code will not be regarded as investigation for the purpose of the Code. Under the scheme of the Code, investigation commences with lodgment of information relating to the commission of an offence. If it is a cognizable offence, the officer-in-charge of the police station to whom the information is supplied orally has a statutory duty to reduce it to writing and get the signature of the informant. He shall enter the substance of the information, whether given in writing or reduced to writing as aforesaid, in a book prescribed by the State in that behalf. The Officer-in-charge has no escape from doing so if the offence mentioned therein is a cognizable offence, whether or not such offence was committed within the limits of that police station. But when the offence is non-cognizable, the officer-in-charge of the police station has no obligation to record it if the offence was not committed within the limits of his police station.

Section 156(1) of the Code says that the said police officer can investigate any cognizable offence covered by the said FIR, if the said offence could be inquired into or tried by a Court having jurisdiction over the local area of that police station. If the offence was committed outside the limit of such police station, the officer-in-charge of the police station can transmit the FIR to the police station having such territorial jurisdiction. Various States have formulated rules for effecting transfer of such FIR in such contingencies.

Investigation thereafter would commence and the investigating officer has to go step by step. The Code contemplates the following steps to be carried out during such investigation:

(1) Proceeding to the spot; (2) ascertainment of the facts and

A circumstances of the case; (3) discovery and arrest of the suspected offender; (4) collection of evidence relating to the commission of the offence which may consist of - (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places of seizure of things considered necessary for the investigation and to be produced B at the trial; and (5) formation of the opinion as to whether on the material collected there is a case to place the accused before a magistrate for trial and, if so, taking the necessary steps for the same by the filing of a charge-sheet under Sec. 173."

C (vide *HN Rishbud* v. *State of Delhi,* AIR (1955) SC 196 and *State of Madhya Pradesh* v. *Mubarak Ali,* AIR (1959) SC 707.

All the above duties are conferred by the statute on the police and they shall be carried out as they are statutory duties. The sublime idea behind formulating such steps for conducting investigation is to enable the statutory D authority to independently carry out the investigation without being influenced by any of the interested parties. Investigation must not only be fair but impartial and the conclusion reached by them should be unbiased.

A Division Bench of the Madras High Court had pointed to that object of the statutory investigation in *re Muddamma Malla Reddy,* (1954) Crl. L. E J. 167 through the following observations:

"The investigating police are primarily the guardians of the liberty of innocent persons. A heavy responsibility devolves on them of seeing that innocent persons are not charged on irresponsible and false implication. There is a duty cast on the investigating police to scrutinize F a first complaint in which number of persons are implicated with rigorous care and to refrain from building up a case on its basis unless satisfied of its truth."

In *Sirajjuddin* v. *State of Madras,* [1970] 3 SCR 931 this Court said thus, G after referring to various provisions in the Code dealing with investigation:

"All the above provisions of the Code are aimed at securing a fair investigation into the facts and circumstances of the criminal case; however serious the crime and howsoever incriminating the circumstances may be against a person supposed to be guilty of a H crime the Code of Criminal Procedure aims at securing a conviction if

it can be had by the use of utmost fairness on the part of the officers investigating the crime before the lodging of a charge- sheet. Clearly the idea is that no one should be put to the harassment of a criminal trial unless there are good and substantial reasons for holding it." A

The said observations were followed by this Court in *State of Rajasthan* v. *Gurcharandas Chadha,* [1980] 1 SCC 250. B

The Code does not recognise private investigating agency. If any person is interested in hiring any such private agency, he may do so at his own risk and cost, but such investigation would not be regarded as investigation made under law. Any evidence collected in such private investigation and any conclusion reached by such investigators cannot be presented by Public Prosecutor in any trial. Of course it may be possible for the defence to present such evidence. In this context, we may refer to a recent decision of this Court *R. Sarala* v. *TS Velu,* [2000] 4 SCC 459. This Court said that even a Public Prosecutor cannot be officially involved during the stage of investigation. The following observations made by this Court in the said decision will be useful: C D

"Investigation and prosecution are two different facets in the administration of criminal justice. The role of a Public Prosecutor is inside the court, whereas investigation is outside the court. Normally the role of a Public Prosecutor commences after the investigating agency presents the case in the court on culmination of investigation. Its exception is that the Public Prosecutor may have to deal with bail applications moved by the parties concerned at any stage. Involving the Public Prosecutor in investigation is unjudicious as well as pernicious in law. At any rate no investigating agency can be compelled to seek the opinion of a Public Prosecutor under the orders of the Court." E F

The above discussion was made for emphasising the need for official investigation to be totally extricated from any extraneous influence. The police investigation should necessarily be with the fund supplied by the State. It may be possible for a rich complainant to supply any amount of fund to the police for conducting investigation into his complaint. But a poor man cannot afford to supply any financial assistance to the police. It is an acknowledged reality that he who pays the piper calls the tune. So he would call the shots. Its corollary is that somebody who incurs the cost of anything would normally secure its control also. In our constitutional scheme, the G H

police and other statutory investigating agency cannot be allowed to be hackneyed by those who can afford it. All complaints shall be investigated with equal alacrity and with equal fairness irrespective of the financial capacity of the person lodging the complaint.

Financial crunch of any state treasury is no justification for allowing a private party to supply funds to the police for conducting such investigation. Augmentation of the fiscal resources of the State for meeting the expenses needed for such investigations is the lookout of the executive. Failure to do it is no premise for directing a complainant to supply funds to the investigating officer. Such funding by interested private parties would vitiate the investigation contemplated in the Code. A vitiated investigation is the precursor for miscarriage of criminal justice. Hence any attempt, to create a precedent permitting private parties to supply financial assistance to the police for conducting investigation, should be nipped in the bud itself. No such precedent can secure judicial imprimatur.

If the impugned judgments are allowed to stand, it would set up an unwholesome precedent. Hence we set aside the directions contained in the impugned judgments for supplying funds to the police.

S.V.K. Appeal allowed.