

R. SARALA

A

v.

T.S. VELU

APRIL 13, 2000

[K.T. THOMAS AND D.P. MOHAPATRA, JJ.]

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Criminal Procedure Code 1973—Section 163(2)—Investigation by police—Scope—Whether investigating agency can be compelled to seek opinion of a Public Prosecutor under the orders of Court—Held, No—Investigation and prosecution are two different facets in administration of criminal justice.

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In a case of death of a young bride, the police after conducting the investigation submitted a Challan against her husband and his mother for the offences under Section 304-B and 498-A of the Indian Penal Code. Father of the deceased not being satisfied with the challan since the appellant, sister-in-law of the deceased and her father were not arraigned as accused, moved the High Court under Section 482, Criminal Procedure Code. The High Court directed the investigating Officer to take back the case from the Court and consult the Public Prosecutor and submit a fresh charge sheet in tune with the opinion of the Public prosecutor. The appellant's father filed a petition before the Single Judge for recalling the order but the petition was dismissed by the High Court holding that Section 362, Criminal Procedure Code contains a bar against recalling any order passed under the Code. Hence this appeal. The appellant contended that the Single Judge erred in directing the investigating officer to submit the amended charge sheet in accordance with the opinion of the Public Prosecutor. The respondent contended that there is nothing objectionable for the investigating officer to consult the Public Prosecutor before laying a report under Section 163(2) of the Code.

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The question raised for consideration in this appeal is, should the High Court direct the investigating Officer to take opinion of the Public Prosecutor for filing the charge sheet.

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Allowing the appeal, the Court

HELD : 1.1. : Investigation is defined in Section 2(h) of the Code of Criminal Procedure, as including “all the proceedings under this Code for

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A the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf." In this case it was the investigation to be conducted by a police officer. [5-B]

B 1.2. Public Prosecutor is appointed, as indicated in Section 24 of the Code, for conducting any prosecution, appeal or other proceedings in the Court. He has also the power to withdraw any case from the prosecution with the consent of the Court. He is the Officer of the Court. Thus Public Prosecutor is to deal with a different field in the administration of justice and he is not involved in investigation. It is not in the scheme of the Code for supporting or sponsoring any combined operation between the investigation officer and the Public Prosecutor for filing the report in the Court. [6-D-E]

D 1.3. The Investigating Officer, though is subject to supervision by his superiors in rank is, not to take instructions regarding investigation of any particular case even from the executive government of which he is a subordinate officer. [7-B-C]

E 1.4. Even when law required that prosecution could be commenced only with the sanction of the authority concerned this Court took the stand that such sanctioning Authority is not a consultee of the Investigating Officer to form his opinion regarding the final shape of investigation. The position in the present case is even much lighter and hence the Investigating Officer cannot be directed to be influenced by the opinion of the Public Prosecutor. [18-E]

F 1.5. The High Court has committed an illegality in directing the final report to be taken back and to file a fresh report incorporating the opinion of the Public Prosecutor. Such an order cannot stand legal Scrutiny. [8-F]

G *H.N. Rishbud & Inder Singh v. State of Delhi*, [1955] 1 SCR 1150; *Emperor v. Khwaja Nazir Ahmad*, AIR (1945) PC 18; *Abhinandan Jha v. Dinesh Mishra*, AIR (1968) SC 117; *Vineet Narain v. Union of India*, [1998] 1 SCC 226 and *State v. Raj Kumar Jain*, [1998] 6 SCC 551, relied on.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 366-368 of 2000.

H From the Judgment and Order dated 8.2.99 of the Madras High Court in CrI.O.P. No. 8937 of 1998.

S. Sivasubramaniam and T. Raja for the Appellant. A

V. Balachandran and V.G. Pragasam for the Respondents.

The Judgment of the Court was delivered by

THOMAS, J. Leave granted. B

Investigation and prosecution are two different facets in the administration of criminal justice. The role of Public Prosecutor is inside the court, whereas investigation is outside the court. Normally the role of Public Prosecutor commences after investigating agency presents the case in the court on culmination of investigation. Its exception is that Public Prosecutor may have to deal with bail applications moved by the parties concerned at any stage. Involving the Public Prosecutor in investigation is injudicious as well as pernicious in law. At any rate no investigating agency can be compelled to seek opinion of a Public Prosecutor under the orders of court. Here is a case wherein the Investigation Officer concerned is directed by the High Court to take back the case from the court whereat it was laid by him after completing the investigation and he is further directed to consult the Public Prosecutor and submit a fresh charge-sheet in tune with the opinion of the Public Prosecutor. Is such a course permissible in law? C D

A summary of the factual background of this case can be given thus: E

A young bride - Selvi committed suicide on 29.12.97 by hanging herself on a ceiling fan in the bedroom of her nuptial home. Her husband was Arasu Elango. Their marriage was solemnised on 12.5.97. As the interval between their wedding and Selvi's suicide was so short that an inquiry under Section 174(3) of the Code of Criminal Procedure (for short 'the Code') was held. The Sub Divisional Magistrate conducted the inquiry and submitted a report holding that "it is conclusively proved that due to mental restlessness Selvi had committed suicide; no one is responsible and hence it is informed that her death is not due to dowry harassment." F

However, the police continued with the investigation and submitted a challan against Arasu Elango and his mother for the offences under Section 304-B and 498-A of the IPC. Selvi's father - the first respondent herein - was not satisfied with the aforesaid challan as Arasu Elango's sister (the present appellant) and her father were not arraigned as accused. Hence he moved the High Court of Madras under Section 482 of the Code. Learned Single Judge G H

A of the High Court who disposed of the above petition by an order dated 8.2.1999 has directed thus:

B “Hence, it is ordered that papers shall be placed before the Public Prosecutor, Cuddalore District as it is without any further investigation and he shall render an impartial opinion on the matter and thereafter an amended charge-sheet shall be filed in the concerned court.”

C Appellant’s father (V. Ramalingam) on coming to know of the said order filed a petition before the learned Single Judge for recalling it on the main ground that neither he nor his daughter (appellant) was heard nor were they made parties in the proceedings. But the learned Single Judge dismissed the petition on the main premise that Section 362 of the Code contains a bar against recalling any order passed under the Code. Hence the appellant filed this appeal in challenge of both the orders.

D No endeavour was made before us to canvass against the correctness of the view adopted by the learned Single Judge that the order dated 8.2.1999 could not be recalled by him due to the bar contained in Section 362 of the Code. But even assuming it be so, that does not bar this court in considering the legality of that order in this appeal.

E Mr. S. Sivasubramaniam, learned senior counsel, who argued for the appellant, contended that learned Single Judge had seriously erred in directing the investigating officer to submit the amended charge-sheet in accordance with the opinion of the Public Prosecutor. Shri V. Balachandran, learned counsel arguing for the first respondent, tried to support the impugned order F on the premise that there is nothing objectionable for the Investigation Officer to consult the Public Prosecutor before laying a report under Section 163(2) of the Code.

G The question here is not simply whether an Investigating Officer, on his own volition or on his own initiative, can discuss with the Public Prosecutor or any legal talent, for the purpose of forming his opinion as to the report to be laid in the court. Had that been the question involved in this case it would be unnecessary to vex our mind because it is always open to any officer, including any investigating officer, to get the best legal opinion on any legal aspect concerning the preparation of any report. But the real question is, H should the High Court direct the Investigating Officer to take opinion of the

Public Prosecutor for filing the charge-sheet.

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 a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf.” We are only concerned in this case with the investigation to be conducted by a police officer and hence the latter limb of the definition has no relevance now. Chapter XII of the Code contains provisions regarding “information to the police and their powers to investigate”.

After dealing with various aspects of the investigation from Section 154 to Section 168 of the Code, the statute says in the next two sections regarding the subsequent step. Section 169 of the Code enjoins on the officer in charge of the police station concerned to release the accused from custody on executing a bond if it appears to him that “there is no sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a magistrate”. Section 170 of the Code directs that if upon investigation “it appears to the officer in charge of the police station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a magistrate empowered to take cognizance of the offence upon a police report”. Section 173(1) casts an obligation for completing the investigation without unnecessary delay and sub-section (2) enjoins on the officer in charge of the police station to forward to the magistrate a report in the form prescribed by the State Government, on completion of such investigation. The aforesaid power of the officer in charge of the police station is subjected only to the supervision of superior police officers in rank as envisaged in Section 36 of the Code. There is no stage during which the Investigating Officer is legally obliged to take the opinion of a Public Prosecutor or any authority, except the aforesaid superior police officer in rank.

There is no material difference regarding general powers of investigation by police as between the present Code and the corresponding provisions contained in Chapter XIV of the erstwhile Code of Criminal Procedure 1898. In *H.N. Rishbud and Inder Singh v. The State of Delhi*, [1955] 1 SCR 1150 a three Judge Bench of this Court, after delineating the different steps in investigation as contemplated in the Code, has pointed out that the formation of the opinion, whether or not there is a case to place the accused on trial, should be that of the officer in charge of the police station and none else.

A Following observations are to be noted in this context:

B “The scheme of the Code also shows that while it is permissible for an officer incharge of police station to depute some subordinate officer to conduct some of these steps in the investigation, the responsibility for every one of these steps is that of the person in the situation of the officer incharge of the police station, it having been clearly provided in section 168 that he should report the result to the officer in charge of the police station. It is also clear that the final step in the investigation, viz. the formation of the opinion as to whether or not there is a case to place the accused on trial is to be that of the officer incharge of the police station. There is no provision permitting delegation thereof but only a provision entitling superior officers to supervise or participate under Section 551.”

D Public Prosecutor is appointed, as indicated in Section 24 of the Code, for conducting any prosecution, appeal or other proceedings in the court. He has also the power to withdraw any case from the prosecution with the consent of the court. He is the officer of the court. Thus Public Prosecutor is to deal with a different field in the administration of justice and he is not involved in investigation. It is not in the scheme of the Code for supporting or sponsoring any combined operation between the Investigating Officer and the Public Prosecutor for filing the report in the court.

E In this context a reference can be made to the following observation made by the Judicial Committee of the *Privy Council in Emperor v. Khwaja Nazir Ahmad*, AIR (1945) PC 18:

F “In India as has been shown there is a statutory right on the part of the police to investigate the circumstances of an alleged cognisable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court.”

G Following the above, a two Judge Bench of this Court has stated in *Abhinanadan Jha v. Dinesh Mishra*, AIR (1968) SC 117 as follows:

H “We have already pointed out that the investigation, under the Code, takes in several aspects, and stages, ending ultimately with the formation of an opinion by the police as to whether, on the material

covered and collected a case is made out to place the accused before the Magistrate for trial, and the submission of either a charge-sheet, or a final report is dependent on the nature of the opinion, so formed. The formation of the said opinion, by the police, as pointed out earlier, is the final step in the investigation, and that final step is to be taken only by the police and by no other authority."

In this context we may also point out that the investigating officer, though is subject to supervision by his superiors in rank is, not to take instructions regarding investigation of any particular case even from the executive government of which he is a subordinate officer. This position which was well delineated by the celebrated Lord Denning, has since been followed by this Court. In *R. v. Metropolitan Police Commissioner*, (1968) 1 All.E.R. 763 Lord Denning had said thus:

"I have no hesitation, however, in holding that, like every constable in the land, he should, and is, independent of the executive. He is not subject to the orders of the Secretary of State..I hold it to be the duty of the Commissioner of Police, as it is of every chief constable, to enforce the law of the land. He must take steps so to post his men that crimes may be detected; and that honest citizens may go about their affairs in peace. He must decide whether or not suspected persons are to be prosecuted; and, if need be, bring the prosecution or see that it is brought; but in all these things he is not the servant of anyone, save of the law itself. No Minister of the Crown can tell him that he must, or must not, keep observation on this place or that; or that he must, or must not, prosecute this man or that one. Nor can any police authority tell him so. The responsibility for law enforcement lies on him. He is answerable to the law and to the law alone."

In *Vineet Narain v. Union of India*, [1998] 1 SCC 226 a three-judge bench of this court after quoting the above passage has stated: "There can hardly be any doubt that obligation of the police in our constitutional scheme is no less."

In *State v. Raj Kumar Jain* [1998] 6 SCC 551 a two judge bench considered the legality of an order passed by a Special Judge before whom the CBI filed final report in respect of a junior engineer who was pitted against offences under the Prevention of Corruption Act. The CBI in the report held that the allegations made against him were unsubstantiated. But the Special Judge declined to accept the said report as in his opinion the CBI should have

A taken the view of the Sanctioning Authority. So the Special Judge directed the CBI to conduct further investigation after approaching the Sanctioning Authority. Though the High Court of Delhi did not interfere with the said direction, this Court interfered with it for which their Lordships followed the decision in *Abhinandan Jha* (supra). The bench then observed thus:

B “Viewed in that context, the CBI was under no obligation to place the
C materials collected during investigation before the sanctioning author-
D ity, when they found that no case was made out against the respond-
ent. To put it differently, if the CBI had found on investigation that
a prima facie case was made out against the respondent to place him
on trial and accordingly prepared a charge-sheet (challan) against
him, then only the question of obtaining sanction of the authority
under Section 6(1) of the Act would have arisen for without that the
Court would not be competent to take cognisance of the charge-
sheet. It must, therefore, be said that both the Special Judge and the
High Court were patently wrong in observing that the CBI was
required to obtain sanction from the prosecuting authority before
approaching the Court for accepting the report under Section 173(2)
Cr. P.C. for discharge of the respondent.”

E It is worthy of notice that even when law required that prosecution could
be commenced only with the sanction of the authority concerned this Court
took the stand that such Sanctioning Authority is not a consultee of the
Investigating Officer to form his opinion regarding the final shape of inves-
tigation. The position in the present case is even much lighter and hence the
Investigating Officer cannot be directed to be influenced by the opinion of the
Public Prosecutor.

F The High Court has committed an illegality in directing the final report
to be taken back and to file a fresh report incorporating the opinion of the
Public Prosecutor. Such an order cannot stand legal scrutiny and hence we
allow this appeal and set aside the impugned order.

G R.A.

Appeals allowed.