



2018/KER/69697

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 19TH DAY OF DECEMBER 2018 / 28TH AGRAHAYANA, 1940

WP(C).No. 19737 of 2018

PETITIONER:

P.GOPALAKRISHNAN @DILEEP
S/O LATE. PADMANABHA PILLAI,
PADMA SAROVARAM HOUSE,
KOTTARAKADAVU, ALUVA,
ERNAKULAM DISTRICT.

BY ADVS.

SRI.B.RAMAN PILLAI (SR.)
SRI.E.VIJIN KARTHIK
SRI.PHILIP T.VARGHESE
SRI.SUJESH MENON V.B.
SRI.THOMAS ABRAHAM (NILACKAPPILLIL)
SRI.THOMAS T.VARGHESE

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY SECRETARY,
HOME DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695001.
- 2 THE STATE POLICE CHIEF
POLICE HEAD QUARTERS,
THIRUVANANTHAPURAM-695010.
- 3 UNION OF INDIA
REPRESENTED BY THE SECRETARY,
DEPARTMENT OF PERSONNEL AND TRAINING,
NORTH BLOCK, NEW DELHI-110001.
- 4 THE SECRETARY
MINISTRY OF HOME AFFAIRS,
GOVERNMENT OF INDIA, NEW DELHI-110003.
- 5 THE CENTRAL BUREAU OF INVESTIGATION
REPRESENTED BY ITS DIRECTOR,
NEW DELHI, PIN-110001.
- 6 THE SUPERINTENDENT OF POLICE
THE CENTRAL BUREAU OF INVESTIGATION,
KATHRIKADAVU, KOCHI-682017.



BY ADVS.

SPECIAL PP FOR CBI: S.S.AJITHKUMAR

SRI.JAISHANKAR V.NAIR, CGC

SRI.SUMAN CHAKRAVARTHY, SR. GOVT.PLEADER

OTHER PRESENT:

ADV.SIDHARTH LUTHRA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
16.08.2018, THE COURT ON 19.12.2018 DELIVERED THE FOLLOWING:

JUDGMENT

Petitioner herein stands arrayed as the 8th accused in Crime No.297 of 2018 of Nedumbassery Police Station for offences punishable under sections 120B, 342, 360, 376D, 411, 506(i), 201, 212 r/w 34 of the Indian Penal Code and sections 66E and 67A of the IT Act.

2. Petitioner herein is an acclaimed Malayalam film actor. Defacto complainant is also a well known film actress. Defacto complainant was travelling by car from Thrissur to Ernakulam on 17.02.2017. When she reached Ankamaly, another vehicle hit on the rear side of the vehicle. Few people travelling in that vehicle picked up a quarrel with the driver of the defacto complainant and thereafter, on a purported attempt to settle the dispute, entered the car and drove the car towards Ernakulam, along the National Highway. It was stated that, when it reached Thrikkakkara, first accused entered the rear side of the



car, sat near the defacto complainant, threatened her and forcefully undressed her. It is stated that, thereafter, he allegedly committed sexual acts on her. It was simultaneously recorded by him on his mobile. After the act was completed, she was abandoned at the house of a film director and the accused persons left. FIS was laid at the midnight and the above crime was registered. In the course of investigation, 7 persons including the first accused were arrested. It was revealed that, accused No.1 had hatched a conspiracy to abduct the defacto complainant, sexually abuse her, videograph it and to blackmail her. He sought the help of accused Nos.2 and 3 and with the assistance of the remaining accused, implemented the plan. It was stated that, they stage managed the accident in collusion with the driver of the defacto complainant and in a purported attempt to settle the dispute, had access to the car and forcefully committed the sexual assault on the victim. It was revealed that the first accused had recorded the entire sexual abuse on the victim, on his mobile. He had transferred the data from his mobile to another memory card. It was handed over by the first accused to his lawyer, when he attempted to seek bail from the court. The memory card and mobile which were entrusted to the counsel were submitted by him before the magistrate court. All the 7 accused were arrested along with another person, who had harboured one of the accused. After completion of investigation, final report was filed on 18.04.2017, for the offences



mentioned above.

3. It was stated in the final report that the investigation into the location of memory card continued and it was reported that, on receiving the mobile and the original memory card, supplementary final report would be filed. According to the prosecution, the investigation into the larger conspiracy also continued, since it was revealed by the first accused that, he was acting under the directions of another person.

4. In the course of investigation, it was revealed that the first accused was acting under the specific directions of the petitioner herein. According to the prosecution, petitioner herein was maintaining doubt that the defacto complainant was responsible for the break down of his earlier marriage with another film actress. He wanted to take revenge on her and had conspired with the first accused sometime in March 2013 to sexually abuse her and to take its vedigraph. Accused No.1 was allegedly offered one and a half crores of rupees on successful accomplishment. Thereafter, the conspiracy was hatched at 4 different places. In furtherance of the above conspiracy, an aborted attempt to abduct the victim was made by the first accused at Goa. It was thereafter, he sought the assistance of accused 2 to 7 in this case, to commit the present act. It was also alleged by the prosecution that, after the crime was registered, first accused desperately tried to contact the friends and



acquaintance of the 8th accused, to handover the memory card and to claim the money offered. It was also alleged that the first accused attempted to collect money which the 8th accused had promised to give on accomplishment of the act as conspired. He also attempted to hand over the original memory card to the 8th respondent. In the meanwhile, first accused was arrested. While in jail, first accused got the help of a co-prisoner and with his help, stealthily brought a mobile phone inside the jail. He started contacting the close friend of 8th accused by name Nadirsha, who was also a film personality, and the driver of the 8th accused, by name Appunni. It was stated that the first accused attempted to extract money from the above persons and to convey the message to the 8th accused to pay the money as offered by the 8th accused. A letter addressed to the 8th accused, got written by him inside the jail was taken outside by another person, who forwarded it through whatsapp to said Appunni. It was alleged that, 10th accused, under the directions of the first accused had attempted to reach the house of 8th accused to deliver the letter, but, failed. Hence, it was sent by whatsapp to driver Appunni. Petitioner herein was arrested in the course of investigation. He was in custody for about 85 days. After he was released on bail, he filed the present writ petition for a direction to the CBI to conduct an impartial, fair and truthful investigation.

5. The crux of the contentions set up in the writ petition is that



the investigation was unfair, tainted, malafide and truth was suppressed. It was contended by the petitioner that his mother, while he was in jail and after his release, himself, had submitted representations to the Government, claiming innocence and that, he was falsely implicated. It was contended that, immediately after the incident, there was a concerted effort to spread rumours about his involvement and to get him implicated in the criminal case. It was also alleged that, attempts were made by the first accused through his friends to blackmail the petitioner and to demand money from him, threatening to implicate him in the above crime. Since he did not oblige, first accused implicated the petitioner herein, it was contended. According to the petitioner herein, it was complained to the DGP that attempts were made to falsely implicate him and to extract money. However, no investigation was conducted. Facts in favour of the petitioner herein were ignored and he was falsely implicated in the crime. It was also alleged that, undue influence was exerted on the investigation agency. IG of police who was the supervising officer was sidelined and investigation was carried on by few police officers who had the ultimate aim of framing the petitioner. Hence, he sought for a direction to the second respondent/State to hand over the investigation to respondent No.5, the CBI and to conduct a fair, impartial and truthful investigation.

6. A detailed statement of objection was filed by the investigating



officer, traversing the various allegations and denying them. Heard the learned Senior Counsel Sri.Sidharth Luthra and Sri.Raman Pillai for the petitioner, Senior Government Pleader Sri.Suman Chakravarthy and the Special Public Prosecutor for the CBI, Sri.Sasthamangalam P.Ajithkumar. Examined the records.

7. Mr.Sidharth Luthra, the learned senior counsel for the petitioner contended that the investigation was not fair and was apparently a tainted one. It was contended that, not only fair trial but, a fair investigation also was an important right available to the accused. It was an important facet of the Fundamental Right under Article 20 and 21 of the Constitution of India. According to the learned senior counsel, bias and selective investigation of the investigating agency was patent from the records and very important aspects were omitted to be investigated. It was contended by the learned senior counsel that the accused is entitled, as of right, to seek transfer of investigation, if he is able to establish that, investigation was not fair and the investigation conducted by the investigating agency was totally biased. If the petitioner is able to establish that the investigation was tainted or biased, if material and relevant inputs in his favour were not taken into consideration, he is entitled to seek transfer of the investigation to any other agency including CBI or for such other directions. It was also contended that the duty of the Constitutional Court to transfer the investigation was not fettered by



the stage at which the case stood. It was contended that the settled legal position was that, even after filing of the final report and even at the stage of trial, in appropriate cases, Constitutional Courts are entitled to exercise its jurisdiction.

8. To substantiate the contentions, learned senior counsel relied on a catena of decisions. In ***Bimal Gurung v. Union of India (2018 SCC Online SC 504)***, the transfer was sought on the ground that, there was wrongful implication of several persons for offences alleged under the provisions of IPC. Transfer of the investigation to an independent agency like NIA or CBI was sought. Rejecting the prayer, the Honourable Supreme Court held that the transfer of cases to an independent agency was not required in the facts and circumstances of the case. It was held by the Supreme Court that, even after the commencement of trial, there cannot be any fetter on the power of the Court to transfer the investigation in appropriate cases. Even though the Courts are empowered under law and its discretion is available, the power and its exercise are two distinct matters. The Court does not direct transfer of investigation just for the asking nor is the transfer directed only to satisfy the ego or to vindicate the prestige of a party interested in such investigation. The decision whether transfer should or should not be ordered, rests on the Court's satisfaction whether the facts and circumstances of a given case demand such an order. No hard-and-fast



rule can be prescribed for universal application to all cases. What is important is that the Court, while exercising its jurisdiction to direct transfer, remains sensitive to the principle that, transfers are not ordered just because a party seeks to lead the investigator to a given conclusion. It is only when there is a reasonable apprehension about justice becoming a victim, because of shabby or partisan investigation that the Court may step in and exercise its extraordinary powers.

9. In an earlier decision in ***Sanjiv Kumar v. State of Haryana and Ors. ((2005)5 SCC 517)***, evaluating the legal principle, the Court had noted that the petitioner who was an IAS officer had filed the writ petition before the Supreme Court complaining large scale corruption and tampering of records in the selection of teachers by the State for 4000 vacancies. The Supreme Court held that, it was a case seeking to bring to the fore the rampant corruption in the corridors of politics and bureaucracy. The Court held that, considering the facts and circumstances of the case, the nature of allegations and the mighty people who are alleged to be involved, the better option was to entrust the matter to investigation by the CBI.

10. In ***Dharam Pal v. State of Haryana and Ors. ((2016)4 SCC 160)*** relying on the earlier decision in *State of West Bengal v. Committee for Protection of Democratic Rights ((2010)3 SCC 571)* wherein, the Constitutional Bench held that, to instill faith of victim and public at



large in investigating agency, the Court may refer the matter to a competent investigating agency. It was reminded that, though direction for transfer of investigation to another agency has to be sparingly used. It was a case, wherein, the daughter of the appellant was raped by the accused, who threatened her with dire consequences, if it was revealed. Though, it was disclosed to the appellant by the daughter, being afraid of social repercussions, they chose to suffer in silence. Later the wife of the appellant went missing and her body was found in a canal. Supreme Court, accepting the request for a CBI investigation held that the cause of death was due to strangulation, coupled with injury and that was a matter which needed to be investigated by the CBI.

11. In ***Gudalure M.J.Cherien and Ors. v. Union of India and Ors. ((1992)1 SCC 397)***, a public interest litigation was filed under Article 32 of the Constitution of India alleging that, certain nuns in an institution at Gajraula were raped. Police arrested few persons. Victims did not come forward to identify the culprits in the identification parade. Instead of arresting the real culprits, police allegedly asked the victims to identify the arrested persons as culprits. Investigation was completed and chargesheet was submitted. A third party filed the writ petition seeking investigation by another agency. It was held by the Supreme Court that, investigation having been completed by the police and chargesheet submitted to the Court, ordinarily, the Court will not reopen the



investigation, specially by entrusting the same to specialized agency like CBI. However, being aware of the serious nature of the issue involved, Supreme Court in the given situation, to do justice to the parties and to instill confidence in public mind Court asked CBI to investigate.

12. In ***Mithilesh Kumar Singh v. State of Rajasthan and Ors. ((2015)9 SCC 795)*** the matter related to death of a fresher in a college pursuant to an alleged ragging. Alleging that the medical evidence was fabricated by the police in connivance with the doctors to show that the victim was pregnant, CBI enquiry was sought. The Supreme Court held that the exceptional circumstances in that case warranted an investigation by the CBI. Accordingly, the writ petition was allowed. It was held that the importance of fair and proper investigation cannot be understated. In an adversarial system of administration of justice, fairness of investigation is the very first requirement for the fairness of a trial. A trial based on a partisan, motivated, one-sided or biased investigation can hardly be fair. It was held that, though the trial itself may be procedurally correct, the essence and purpose thereof may be vitiated by an unfair or ineffective investigation. To support it, Supreme Court relied on the earlier decisions in *Manu Sharma v. State (NCT of Delhi)* (2010(6) SCC1), *Nirmal Singh Kahlon v. State of Punjab* (2009(1) SCC 441) and *Sasi Thomas v. State* ((2006)12 SCC 421) wherein, the Supreme Court had reiterated each time that the accused is entitled for a



fair investigation. It was held that fair investigation and fair trial were concomitant to the preservation of fundamental rights of an accused under Article 21 of the Constitution of India. It was concluded that, if there is a reasonable apprehension about justice becoming a victim because of shabby or partisan investigation, the Court may step in and exercise its extraordinary powers. In ***Latheesh B Chandran v. State of Kerala (2015)3 KLT 967*** reconsideration of investigation at the DGP level was ordered to be done, at the instance of the accused.

13. Regarding fairness in investigation, learned Senior Counsel further relied on the decision in ***V.S.Achuthanandan v. State of Kerala & Ors. (2013)1 KLJ 65*** wherein, the Single Bench of this Court had reiterated that, fairness in investigation not only to the complainant, but to the accused who is proceeded against, is the mandate of law. In ***Sidhartha Vashisht v. State (NCT of Delhi) ((2010)6 SCC 1)*** the Supreme Court held that the alleged accused is entitled to fair and true investigation, and fair trial and the prosecution is expected to play balanced role at the time of trial. It was held that the investigation should be judicious, fair, transparent and expeditious to ensure the compliance with the basic principle of law.

14. In ***K.Chandrasekhar v. State of Kerala and Ors. ((1998)5 SCC 223)*** the Supreme Court held that, if before taking up further investigation, an opinion has already been formed regarding the guilt of



the accused and that too, at a stage when the commission of the offence itself was yet to be proved, it is obvious that the investigation cannot and will not be fair and its outcome will be a foregone conclusion. The Supreme Court emphasized that a prejudiced investigation can only be an unfair investigation.

15. The above proposition was reiterated by the Supreme Court in the Constitution Bench decision in ***State of West Bengal v. Committee for Protection of Democratic Rights, West Bengal ((2010)3 SCC 571)***. It was held that, in as far as the question of issuing a direction to the CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised, but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. The extraordinary power must be exercised sparingly, cautiously and to instill confidence in investigation or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the Fundamental Rights.

16. Countering these allegations, learned Public Prosecutor, apart from referring to the above decisions, relied also on the decisions of the Supreme Court in ***Divine Retreat Centre v. State of Kerala and Ors. (2008)3 SCC 542***, ***Secretary, Minor Irrigation & Rural***



Engineering Services, U.P and Ors. v. Sahngoo Ram Arya and Another ((2002)5 SCC 521) and ***Sakiri Vasu v. State of U.P. and Ors. (2008(2) KHC 13)*** and also a single Bench decision of this Court in ***Saritha S. Nair v. State of Kerala and Ors. (2016(2) KHC 444)***.

17. The recapitulation of the above decisions lead to a conclusion that, in appropriate cases, where justice demands, to do complete justice to the investigation, to ensure that a fair and proper investigation is carried out and in matters of national or international ramifications, Constitutional Courts are competent to order further investigation and may even entrust the matter with a proper agency. It was also held that the stage at which the matter was pending was of little consequence, if the interest of justice demanded such a transfer. It was also cautioned that, however, Courts while exercising that power has to be conscious, vigilant and only in exceptional circumstances, the above power is to be exercised. Though in most of the above cases, the investigation was ordered to be handed over to CBI at the instance of complainant or on their behalf, the underlying principle of investigation that it should be fair to both complainant and accused was reiterated in most of the cases.

18. In the light of the above consistent judicial precedent, the facts involved in the present case has to be analyzed to ascertain whether the matter needs to be entrusted to another agency or even to CBI, and whether the situations contemplated in the above facts and circumstances



are attracted.

19. According to the petitioner, on 22.02.2017, a news item had appeared in the prominent newspapers in connection with the incident dated 17/2/2017 relating to the abduction and sexual abuse of the defacto complainant, that a prominent actor was questioned at his home at Aluva. On the same day, petitioner posted a comment in his facebook account referring to the above allegations and stating that, it was not with reference to the petitioner herein. He stated that, he being a resident of Aluva, he had verified as to whether any other film personality residing at Aluva was implicated and questioned by the police. It was stated that, he understood that nobody in the film industry was connected in the above incident or were questioned by the police. He also sent Ext.P4 letter to the DGP complaining that rumors are purposefully spread to make it appear that the petitioner herein is involved in the crime. He referred to few persons enemical to him, and the portals and magazines which published such articles. He requested the State Police Chief to investigate and to initiate criminal proceedings against false propaganda and publication of portals carrying such false information.

20. According to the petitioner herein, thereafter on 10th April, 2017, the friend of the petitioner herein, one Nadirsha and Appunni were contacted by a stranger claiming to be a friend of the first accused. It was one Vishnu, who was later arrayed as the 10th accused. Though there



was a call on 28.03.2017 from Vishnu, there was no conversation. There were few calls after 10.04.2017. On 10.04.2017, petitioner contacted the State Police Chief, and repeated his apprehensions. He was directed by the State Police Chief to complain in writing. He filed a formal complaint to the DGP by e-mail on 20.04.2017 disclosing the commission of offence under section 385 IPC. Hard copy was forwarded on 22.04.2017. It was also alleged by the petitioner that, Vishnu made telephone calls to Appunni during the period from 12.04.2017 till 21.04.2017 and the recorded calls were handed over by the petitioner to the State Police Chief by whatsapp as evident from Exts.P5 and P5(a). It reveals that a whatsapp message was received by Appunni on 18.04.2017. According to the petitioner, during this period, first accused was in custody and someone or other contacted the petitioner herein or his friends, making threatening calls or demands. However, in spite of this being brought to the notice of the State Police Chief and the investigating agency, no action was taken to enquire into it. It was not also enquired as to how the first accused contacted from jail.

21. It was vehemently contended by the learned senior counsel that the very fact that the petitioner herein was the target of the false propaganda and a concerted effort to blackmail him was brought to the notice of the State Police Chief. No investigation was conducted into that. The purpose of the first accused to falsely implicate the petitioner herein



after failure in his attempt to blackmail him and to extract money from him was not properly investigated by the police and had it been done, it would have been revealed that the petitioner herein was not guilty and was only a victim of machination of first accused, who was a known criminal. Instead of doing it, police proceeded on the assumption that the petitioner herein was behind the conspiracy and attached more sanctity to the version of the first accused, who was a notorious criminal, with known criminal background. If this aspect was properly investigated, the petitioner could not have been implicated.

22. Countering this contentions, learned Public Prosecutor referred to the detailed statement of objection filed by the investigating agency. According to the learned Public Prosecutor, the various allegations raised by the petitioner herein are absolutely false. It was stated that the request for entrustment to CBI by the petitioner and his mother were replied promptly by Exts.P15 and P16 replies. It was also contended that the petitioner herein was attempting to drag and delay the criminal prosecution by filing petitions after petitions. He repeatedly contacted the investigating agency with a definite motive to threaten and coerce the witnesses indirectly. He was also trying to influence the witnesses by targeting the investigating agency and to demoralize it. It was contended by the learned Public Prosecutor that the statement filed by the investigating officer revealed that, about 164 persons were



questioned by the Special Investigation Team before submitting the final report on 18.04.2017. The copy of the memory card to which the disputed contents were transferred, was recovered. It, coupled with the evidence of the victim and the eye witnesses about the circumstances that led to the sexual abuse can easily be established by the prosecution. The attempt of the petitioner herein is only a desperate attempt to wriggle out of the criminal offence committed by him, it was alleged.

23. According to the learned Public Prosecutor, the present investigating officer took over the investigation on 19.05.2017. The previous investigating officer had filed a report dated 18.05.2017 before the investigating agency stating that, larger questions that remained to be concluded are being investigated by the investigating agency. In the course of investigation, on 21.04.2017, CW3, the brother of the victim gave a statement, in which, he raised doubts that, it was the petitioner herein who was behind the criminal conspiracy. It was stated that, petitioner had hatched the conspiracy with the remaining accused to spoil the career and life of the victim. The investigating agency investigated the conspiracy from this angle also. In the meanwhile, the complaint of the petitioner was received by the State Police Chief 22.04.2017 which was forwarded to the investigating agency and received on 01.05.2017. It was complained that Nadirsha, friend of the 8th accused had received calls from a person claiming him to be a friend of the first accused. A letter



purported to be written by the first accused was received by Appunni through his whatsapp. According to the petitioner, he was threatened to be implicated in a criminal case, unless huge amount was not paid. Petitioner had furnished the phone numbers from which the calls and whatsapp messages came. Regarding the truth of the letter received by the friend and driver of the 8th accused, investigating agency questioned the first accused. He was also questioned on the basis of the inputs received from CW3. It was revealed by first accused that, he had stealthily brought into the jail a mobile, with the assistance of a person who was in jail. He had also brought a SIM card, which was purchased from outside. Thereafter, first accused had made several calls to various persons. It was stated by the investigating officer that, Crime No.751 of 2017 was registered for violating the orders of Jail Manual inside the jail. CCTV footages, location of the mobile phone, oral statement of witnesses and the confession of 10th accused admitting that, he had brought the mobile into the jail were gathered. CDR also showed that, calls had gone to the friends and the associate of the petitioner from jail. On the basis of the materials gathered, first accused was questioned in jail. The questioning was confined to conspiracy of 8th accused with the first accused. Materials indicating the conspiracy with the petitioner, preparation and commission of crime were disclosed by the first accused. It was also revealed that the criminal conspiracy was hatched by accused



Nos.1 and 8, at 4 different places.

24. According to the prosecution, petitioner herein though had definite information that needle of suspicion was moving towards him, he remained calm till the final report was laid on 18.04.2017. On 20.04.2017, after the initial report was filed, believing that he was safe and the investigation will not reach him, he came up with a complaint on 20.04.2017 stating that, he was sought to be falsely implicated by threat. CDR records clearly show that the first accused had contacted the friends and acquaintance of the petitioner from 10.04.2017 onwards. However, he did not complain till 20.04.2017.

25. It was vehemently contended by the learned Public Prosecutor that though the petitioner claimed that, Appunni had received threatening letter, it was pointed out that the above letter produced as Ext.R2(b) clearly showed that the letter was not couched in a threatening manner. It only explained his alleged relationship with the petitioner herein, believed that, he will not be ditched and that he required financial assistance. In fact, it refers to an agreement between the first accused and the 8th accused. It was stated that, he believed that the petitioner herein will not ditch him, since he along with his friends got involved in the crime. Petitioner herein had a specific case that the first accused had demanded two crores of rupees from him for not implicating him. On the other hand, nowhere in the above letter, there was any reference to an



amount of Rs.2 Crores. From where this demand for two crore rupees came is also not clarified by the petitioner herein. According to the learned senior public prosecutor, several facts were suppressed by the petitioner herein. It was contended that, even before the complaint dated 20.04.2017, several telephone calls were made by the tenth accused on behalf of the first accused with Nadirsha. Appunni had personally met Vishnu on 14.04.2017 at Eloor. However, this meeting with vishnu was suppressed in the complaint. Further, in the complaint, petitioner only referred to one telephone call of Vishnu. Learned counsel contended that the above complaint was only an eye wash and not considered worth separate investigation.

26. The investigation revealed that, after the investigation had commenced, mobile and memory card were handed over by the first accused to his counsel who entrusted his articles to his colleague. In spite of various attempts made by the investigating agency, original memory card could not be recovered. It was contended by the learned Public Prosecutor that, it will not in any manner affect the criminal case since there are sufficient other materials to establish the crime.

27. It was contended by the learned Public Prosecutor that the allegation that the first accused had contacted Nadirsha and Appunni and had sent the above conversation which was recorded and sent by whatsapp to the State Police Chief was partially correct. However, the



entire transcription of the conversation was not forwarded to the State Police Chief. Only the edited copies of the communication, suppressing the comments made by the Appunni or by Nadirsha were cleverly removed and only the version of the other side was audible, it was alleged.

28. It was also contended that the allegation that, conspiracy angle involving the petitioner herein was only belatedly brought out was incorrect. Even though the first accused was implicated initially, it was doubted that, he was acting under the directions of another person. He did not reveal it during the initial investigation. At that time, there was no specific material to establish that, accused 1 to 7 did it under the direction of any other person. It was also contended by the learned Public Prosecutor that the first accused was involved in 10 criminal cases and he was a hardcore criminal. Hence, it could not be expected that he would voluntarily reveal the conspiracy angle unless confronted with solid proof. Only after the filing of the final report, investigating agency got some information about the conspiracy angle. When the first accused was confronted with the materials that he was acting under the direction of the 8th accused, who was maintaining enmity towards the defacto complainant, he started revealing the details. It was contended that, belated bringing out of the conspiracy angle will not in any manner affect the credibility of the investigation.



29. It was submitted by the learned Public Prosecutor that specific allegation about the bias of the investigating agency and that of the various senior officers involved, was absolutely incorrect. The further allegation that, DySP Mr.K.G.Babukumar who was conducting initial part of investigation was removed, since he was an honest officer and that, ADGP was unnecessarily involving in the investigation are both incorrect. It was stated that, all the police officers who constituted the investigation team were senior police officers and had impeccable integrity. It was stated that, Mr.K.G.Babu Kumar DySP was the investigating officer, Mr.Dinendra Kashyap was the IG of Police, who along with ADGP Sandhya who was the ADGP of the Range were the supervisory officers. Both were supervising the investigation at regular intervals. In fact, after the initial final report was filed, by Ext.P5 dated 20.04.2017, petitioner herein himself had complimented the police team which had conducted the investigation. He had commented that, "efficient and dedicated police force of Kerala had got all the culprits and brought them in front of the judiciary in the above sex assault case". Only when the petitioner herein was implicated, he turned around and started repeatedly attacking the investigating agency, it was argued.

30. Further allegation that, Mr.K.G.Babu Kumar, who was honestly conducting the investigation was removed and IG was sidelined were absolutely incorrect. It was stated that, Mr.K.G.Babu Kumar went on



deputation to BPCL, Kochin Refinery. Hence, Inspector of Perumbavoor was appointed as the investigating officer. All other officers continued to be in the investigating team. The allegation that, ADGP was close to the former wife of the petitioner was absolutely baseless and was denied. Even though such an allegation was made by the petitioner, there was no material to substantiate it.

31. Learned Senior Counsel for the petitioner pointed out that, during the above period, one T.P.Sen Kumar was removed from the post of State Police Chief. He was ordered to be re- posted as State Police Chief by the Supreme Court. He took over charge on 06.05.2017 and continued till his retirement on 30.06.2017. On 30.06.2017, he is stated to have commented upon the role played by the ADGP in the investigation in the crime against the petitioner. The media reports were produced as Exts.P8 and P8(a). It contained the news that outgoing State Police Chief was unhappy with the investigation in this case and according to him, it was not proceeding in the proper line. It was alleged by the Police Chief that, all police officials involved in the team were not in the know of several things. Police required a professional approach in the above investigation, he is stated to have commented.

32. According to the petitioner herein, when he and Mr.Nadirsha were interrogated, the above IG of Police and several other officials were not present. However, even according to the petitioner herein, the ADGP



had interrogated him and interrogation continued for long 13 hours. The investigating team or head of the investigation team had no grievance that investigation was not progressing in the proper line. The circumstance under which the outgoing State Police Chief made such a comment on the date of demitting office does not appear to be clear. It is also not clear whether such a comment was made after referring to the case diary or the records of investigation. Further, the authenticity of the newspaper reports have also not been confirmed. In the above circumstances, no reliance can be placed on the above newspaper report. Even if the comments were actually made by him, as the State Police Chief for 55 days, he himself cannot shirk off the responsibility if there was laches in the investigation. If he had felt that investigation was not properly progressing, he should have taken corrective steps. Hence, it was unfair on the part of the outgoing State Police Chief, to come out openly in press to make such unwarranted comments about the investigation in a sensational case.

33. To substantiate the contention of the petitioner that the investigation was not fair to the accused, learned senior counsel pointed out that selected news were leaked to the newspapers. Only selected news items fed to the press appeared in the newspaper. Petitioner was arrested and taken to court with a large contingent of police and with unwanted publicity.



34. I am not attracted by the above contention since the petitioner herein was a celebrity. The case had attracted the attention of the entire media and also the public in Kerala. Necessarily, media and public must be interested in the investigation, right from the beginning.

35. Learned counsel for the petitioner relied on the decision in ***Sidhartha Vashisht's case (Supra)*** and contended that, investigation was unfair to the petitioner herein. Learned counsel referred to paragraph 297, wherein, it was held that, there was a danger of serious risk of prejudice, if the media exercises an unrestricted and unregulated freedom such that it publishes photographs of the suspects or the accused before the identification parades are conducted or if the media publishes statements which outrightly hold the suspect or the accused guilty even before such an order has been passed by the court. It was held that, despite the significance of the print and electronic media in the present day, it is not only desirable, but the least that is expected of the persons at the helm of affairs in the field, to ensure that trial by media does not hamper fair investigation by the investigating agency and more importantly, does not prejudice the right of defence of the accused in any manner. It is true that the petitioner had approached the court below complaining of unnecessary media publicity and also that, there was an allegation that the final report was leaked by the police. Ext.P14 is the order passed by the learned magistrate referring to the above. I do not



feel undue publicity given by the news agencies has in any manner prejudiced the investigation. As mentioned above, considering the nature of the case and the celebrity status of the petitioner and the defacto complainant, publicity in the media was inevitable.

36. It was contended by the learned counsel for the petitioner that one police constable Aneesh was set up by the investigating agency almost six months after the initiation of investigation. Relying on the decision in ***Dilawar Balu Kurane v. State of Maharashtra (2002)2 SCC 135***, it was contended by the learned senior counsel for the petitioner that, introducing a new fact at a highly belated stage casts suspicion on the prosecution case. It seems that the facts of the case disclose that, Aneesh was a police officer who was put on guard duty of first accused, while so, the accused had sought the help of Aneesh in contacting the petitioner and others. He seems to have helped him. Evidently, this was an information within the exclusive knowledge of first accused alone. Hence, unless he had voluntarily disclosed, nobody would have been aware of it. This was brought out only at the stage of second round of investigation, after the filing of the first final report. Hence, it cannot be said that a new witness was introduced at the highly belated stage and that itself is a ground for further investigation.

37. Yet another contention of the learned senior counsel was that, in the remand report, there were misstatements of facts averred to by



petitioner and treated them as incriminating and not exculpatory. This is clearly a matter of evidence which is to be appreciated by the trial court at the appropriate stage.

38. A discussion of the above facts clearly show that none of the contentions regarding bias and selective investigation as ground for investigation by another agency is sustainable.

39. It was contended by the learned senior counsel that, investigation was tainted and 'unfair'. It was contended that though chargesheet was filed on 17.04.2017, the mobile phone was not recovered and investigation in the case should have been continued to recover the phone used to record the incident. It is true that, even as per the chargesheet dated 22.11.2017, the mobile phone was not recovered and further investigation continued to recover the mobile. It was also argued that, video clippings of the incident, which were made available from the memory card to which it was transferred did not show that, it was a genuine clip. The stand of the prosecution is that, they have no suspicion regarding the contents of the tape. Evidently, it is a matter of appreciation of evidence.

40. Another grievance of the petitioner was that, one Sreekumar Menon and one Liberty Basheer had acted against the petitioner herein and upon their influence, police and media falsely implicated the petitioner. It was also contended that the petitioner himself had filed a



divorce petition on ground of cruelty and later, divorce was laid on the basis of the mutual consent. These crucial facts ought to have been investigated by the investigating agency, it was contended.

41. The allegation regarding the above Sreekumar Menon and Liberty Basheer are in the realms of mere allegations. I do not feel that, it was a matter which call for an investigation by the CBI. Further, there does not appear to be any material which establishes that investigation was tainted or biased.

Having considered this, I feel that the petitioner herein has not made out any definite, specific and cogent reason to demand for a further investigation by CBI, much less any other agency. I do not find any merit in the contentions set up by the petitioner herein. Necessarily, writ petition fails and is dismissed.

Sd/-

SUNIL THOMAS

JUDGE

Sbna/



APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1	TRUE COPY OF THE NEWS REPORT PUBLISHED IN MALAYALA MANORAMA DAILY DATED 22.02.2017.
EXHIBIT P1 (A)	TRUE COPY OF THE NEWS REPORT IN MATHRUBHUMI DAILY DATED 22.02.2017.
EXHIBIT P2	TRUE COPY OF FACEBOOK POST OF THE PETITIONER DATED 22.02.2017.
EXHIBIT P3	TRUE COPY OF THE NEWS REPORT MALAYALA MANORAMA DAILY DATED 23.02.2017.
EXHIBIT P4	TRUE COPY OF THE PETITION SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT DATED 27.02.2017.
EXHIBIT P5	TRUE COPY OF THE COMPLAINT SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT DATED 20.04.2017.
EXHIBIT P5 (A)	TRUE COPY OF THE COVERING LETTER OF EXHIBIT P5 DATED 20.04.2017.
EXHIBIT P6	TRUE COPY OF THE FINAL REPORT IN CRIME NO.297/2017 OF NEDUMBASSERY POLICE STATION, DATED 17.04.2017.
EXHIBIT P7	TRUE COPY OF THE REPORT PUBLISHED IN MALAYALA MANORAMA DATED 23.06.2017.
EXHIBIT P8	TRUE COPY OF THE REPORT PUBLISHED IN MANORAMA DATED 02.07.2017.
EXHIBIT P8 (A)	TRUE COPY OF THE REPORT PUBLISHED IN MATHRUBHUMI DATED 30.06.2017.
EXHIBIT P9	TRUE COPY OF REMAND REPORT IN CRIME NO.297/2017 OF NEDUMBASSERY POLICE STATION DATED 11.07.2017.



EXHIBIT P10 TRUE COPY OF THE PETITION SUBMITTED BY THE PETITIONER'S MOTHER TO THE CHIEF MINISTER DATED 12.08.2017.

EXHIBIT P11 TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT DT.18.10.2017.

EXHIBIT P12 TRUE COPY OF THE FINAL REPORT IN CRIME NO.297/2017 OF NEDUMBASSERY POLICE STATION DATED 22.11.2017.

EXHIBIT P13 TRUE COPY OF THE CMP NO.49/2018 OF JFMC ANGAMALY DATED 15.01.2018.

EXHIBIT P14 TRUE COPY OF THE ORDER OF JFMC, ANGAMALY IN CMP NO.985/2017 DATED 17.01.2018.

EXHIBIT P15 TRUE COPY OF THE LETTER ISSUED BY THE DISTRICT SUPERINTENDENT OF POLICE ERNAKULAM RURAL DATED 04.11.2017.

EXHIBIT P16 TRUE COPY OF LETTER ISSUED BY THE 1ST RESPONDENT DATED 29.01.2018.

EXHIBIT P17 TRUE COPY OF THE STATEMENT OF OBJECTION FILED BY SPECIAL PUBLIC PROSECUTOR IN CMP NO.49/2018 DATED 22.01.2018.

EXHIBIT P18 TRUE COPY OF THE REPLY FILED BY THE PETITIONER TO EXHIBIT P17 DATED 25.01.2018.

RESPONDENTS EXHIBITS:

ANNEXURE R2(a) TRUE COPY OF THE LETTER OF A1 ADDRESSED TO THE PETITIONER (A8)

ANNEXURE R2(b) THE COPY OF THE REPLY STATEMENT FILED BY THE SPECIAL PUBLIC PROSECUTOR IN RESPONSE TO CMP NO.49/2018 FILED BY THE PETITIONER BEFORE THE JFCM COURT, ANGAMALY

PANNEXURE R2(c) TRUE COPY OF THE PETITION DTD 20.04.2017 SUBMITTED BY THE PETITIONER BEFORE THE STATE POLICE CHIEF.