DIRECTOR, CENTRAL BUREAU OF INVESTIGATION AND ORS.

v.

'NIYAMAVEDI' REPRESENTED BY ITS MEMBER K. NANDINI, ADVOCATE AND ORS.

APRIL 5, 1995

[A.M. AHMADI, CJ, K.S. PARIPOORNAN AND SUJATA V. MANOHAR, JJ.]

Code of Criminal Procedure, 1973 : Sections 162 and 172 investigation—Power of Court to interfere—Court should refrain from interfering at premature stage of investigation.

Statements made to police during investigation—Police diary—Extent of use—Permissibility of—Held: Court should refrain from disclosing in its order material contained in Police Diaries and statements.

Investigation—Comment by High Court on manner of investigation—Held Court should refrain from making such comments.

During the investigation of the ISRO Espionage Case the respondent-organisation filed a writ petition in the Kerala High Court praying that the first respondent, Inspector General of Police, Southern Zone, Kerala, be arrested for his alleged involvement in the case and he should be suspended from service. The High Court dismissed the petition and the Division Bench also dismissed the appeal. However, in order to examine the contention relating to the alleged involvement of the first respondent in the crimes in question the Division Bench made reference in its judgment to the material disclosed in the course of the investigation viz., police diaries and the statements recorded during the course of investigation. It also made comments on the manner of investigation made by the CBI. Against the order of Division Bench Special Leave Petition was filed in this Court.

Disposing of the petition, this Court

HELD : 1. Under the Code of Criminal Procedure, 1973, only a very limited use can be made of the statements to the police and police diaries,

even in the course of the trial, as set out in Sections 162 and 172. The Division Bench, therefore, should have refrained from disclosing in its order, material contained in these diaries and statements, especially when the investigation in the very case was in progress. It should also have refrained from making any comments on the manner in which investigation was being conducted by the CBI. [199-A, B]

2. Of late, the tendency to interfere in the investigation is on the increase and courts should be wary of its possible consequences. Any observations which may amount to interference in the investigation should not be made. Ordinarily the Court should refrain from interfering at a premature stage of the investigation as that may derail the investigation and demoralise the investigation. [199-D, C]

3. Directions given to the Director of CBI in regard to the investigation matters do not meet with this Court's approval and may be ignored. Ignoring the innuendoes the Court was, however, right in expressing a general view that the investigating agency is expected to act in an efficient and vigilant manner without being pressurised, and in the dismissing the appeal. [199-D, E]

CRIMINAL APPELLATE JURISDICTION : Special Leave Petition (Crl.) No. 942 of 1995.

From the Judgment and Order dated 13.1.95 of the Kerala High Court in Crl. W.A. No. 1676 of 1994.

D.P. Gupta, Solicitor General, K.T.S. Tulsi, Additional Solicitor General, K. Parasaran, K. Swamy and P.Parmeswaran for the Petitioners.

A.X. Verghese and M.K. D. Namboordiry for the Respondents.

The Judgment of the Court was delivered by

MRS. SUJATA V. MANOHAR, J. Investigation regarding Crime Nos. 225/94 and 246/94 of Police Station Vanchiyoor, Distt. Thiruvananthapuram, Kerala State in what has come to be known as the ISRO Espionage Case, were initially carried out by the State Police. On 3rd of December, 1994, at the request of the State of Kerala, investigation was entrusted to the Central Bureau of Investigation by the Government of India. Consequently, cases RC 10(S)/94 and RC and RC 11(S)/94 were registered in SIC.II Branch of the Central Bureau of Investigation. On

completion of investigation in RC 10(S)/94, a chargesheet has been filed before the Chief Judicial Magistrate, Ernakulam, Kerala on 17th of December, 1994. Investigation of case RC 11(S)/94 is continuing.

After the entrustment of the investigation to the Central Bureau of Investigation on 3rd of December, 1994, and while the investigation was in progress, O.P. No. 17367 of 1994 was filed on 13.12.1994 in the High Court of Kerala by an organisation called 'Niyamavedi' being public interest litigation, praying that the first respondent, Raman Srivastava, I.P.S., Inspector General of Police, Southern Zone, Kerala State, Trivandrum, be arrested by the Director, C.B.I., New Delhi for his alleged involvement in the said case and for a direction to the State of Kerala to suspend and remove the first respondent from service. A learned Single Judge of the High Court dismissed the petition with the observation that the power of interference of the Court in the subject in hand at that stage was very limited. He also recorded that statement of the State Government to the effect that the Government had no interest in unduly defending or shielding any officer and that the Government would proceed in the matter only when report from the C.B.I., which is investigating in the case, is received.

In appeal, a Division Bench of the Kerala High Court, after a detailed judgment, rightly dismissed the appeal holding that no court has power to direct the investigating officer to include a person as an accused in the case while the investigation is in progress. The petitioners before us, who are the Director, C.B.I., Home Secretary, Ministry of Home Affairs, Director, Research and Analysis Wing and Director, Central Intelligence Bureau, however, have come before us asking for special leave to appeal from the appellate order of the Kerala High Court in view of certain observations which have been made by the Division Bench in the course of its order dismissing the appeal.

The petitioners had, as directed by the Division Bench, produced for perusal of the Court case diaries of the Kerala State Police as well as of the C.B.I. relating to the investigations carried out in respect of the said crimes including the statements recorded in the course of investigation and certain video cassettes in that connection. These were perused by the Division Bench in chambers. However, a reference at some length has been made in the course of the judgment to the material disclosed in the course of investigation, presumably, in order to examine the contention relating to

the alleged involvement of the first respondent in the crimes in question. Clearly, under the Code of Criminal Procedure, 1973, only a very limited use can be made of the statements to the police and police diaries, even in the course of the trial, as set out in sections 162 and 172 of the Code of Criminal Procedure. The Division Bench, therefore, should have refrained from disclosing in its order, material contained in these diaries and statements, especially when the investigation in the very case was in progress. It should also have refrained from making any comments on the manner in which investigation was being conducted by the C.B.I. looking to the fact that the investigation was far from complete. Any observations which may amount to interference in the investigation, should not be made. Ordinarily the Court should refrain from interfering at a premature stage of the investigation as that may derail the investigation and demoralise the investigation. Of late, the tendency to interfere in the investigation is on the increase and courts should be wary of its possible consequences. We say no more. However, we clarify that certain directions given to the Director of C.B.I. in regard to the investigation matters do not meet with our approval and may be ignored. In short the adverse comments against the C.B.I. were, to say the least, premature and could have been avoided. Ignoring the innuendoes the Court was, however, right in expressing a general view that the investigating agency is expected to act in an efficient and vigilant manner without being pressurised and in dismissing the appeal.

No purpose would, therefore, be served by granting the present petition. With these observations, the special leave petition is accordingly disposed of.

Petition Disposed of.