SUPERINTENDENT OF POLICE, C.B.I. AND ORS. A

v.

TAPAN KR. SINGH

APRIL 10, 2003

[N. SANTOSH HEGDE AND B.P. SINGH, JJ.] B

Code of Criminal Procedure, 1973:

Section 154—First Information Report:

C

Necessary Contents—Held: Is to provide basis for police officer to suspect commission of cognizable offence and not to give full details regarding the matter.

Non mentioning of correct section—Conclusiveness of—Held: Is not conclusive since Court has to frame appropriate charges having regard to the D *material on record.*

Sections 154 and 156—Recording of information in General Diary Entry—To the effect that person accepting a sum by way of illegal gratification and carrying amount with him on journey by train—Whether disclosure of E *commission of cognizable offence—Held: Offence of criminal mis-conduct under Section 13 of Prevention of Corruption Act made out which is a cognizable offence and police officer empowered to investigate—Information recorded in General Diary Entry can be treated as FIR—Prevention of Corruption Act, 1988 Section 13.*

F

Section 165—Search and Seizure by Police Officer—On basis of General Diary Entry—Non fulfillment of mandatory requirement—Legality of search and seizure—Held: Is pre-mature to consider at this stage.

Appellant-Superintendent of police, CBI received information and a General Diary Entry was recorded to the effect that respondent has been G **a corrupt official and has been in the habit of demanding and accepting illegal gratifications and that he demanded and accepted huge cash which he was carrying with him while on journey by train. Police party intercepted the respondent at the railway station and conducted search of his person, his belongings as also his residential flat. They recovered a** H

A huge amount of money and seized the said amount with other articles. Superintendent of police, CBI then lodged an FIR under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988 and a case was registered. Respondent filed a revision petition. High Court quashed the investigation, the G. D. Entry and FIR holding that as the G. D. Entry did not disclose the commission of cognizable offence, police had no B authority to investigate, thus the investigation, search and seizure made were illegal. Hence the present appeal.

Appellants contended that the information recorded in the G. D. Entry does disclose the commission of a cognizable offence; that even if C the submission that after recording the G. D. Entry only a preliminary enquiry was made is not accepted, they are still entitled to sustain the legality of the investigation on the basis that the G. D. Entry may be treated as a FIR since it disclosed the commission of a cognizable offence.

Allowing the appeal, the Court.

D

HELD: 1. High Court erred in exercising its revisional jurisdiction to quash G.D. Entry, F.I.R. and the investigation undertaken by the police officer and also in granting relief to the respondent by directing the return of the seized amount and articles. Order of High Court is set aside and the appellants are directed to proceed with the investigation in accordance E with law. [496-G, H]

2. It is well settled that FIR is not an encyclopaedia, which must disclose all facts and details relating to the offence reported. An informant may lodge a report about the commission of an offence though he may not know the name of the victim or his assailant. He may not even know F how the occurrence took place. A first informant need not necessarily be an eye witness so as to be able to disclose in great details all aspects of the offence committed. What is of significance is that the information given must disclose the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the G commission of a cognizable offence, which the concerned police officer is empowered under Section 156 of the Code to investigate. At this stage this is enough for a police officer and not that he must be convinced or satisfied that a cognizable offence has been committed. If he has reasons to suspect on the basis of information received, that a cognizable offence may have been committed, he is bound to record the information and conduct an H investigation. At this stage it is also not necessary for him to satisfy himself

about the truthfulness of the information. It is only after a complete investigation that he may be able to report on the truthfulness or otherwise of the information. Similarly, even if the information does not furnish all the details, he must find out those details in the course of investigation and collect all the necessary evidence. The information given disclosing the commission of a cognizable offence only sets in motion the investigative machinery, with a view to collect all necessary evidence, and thereafter to take action in accordance with law. [494-G, H; 495-A-D]

3.1. The information recorded in the General Diary Entry does make a categoric assertion that the respondent has accepted a sum of rupees one lakh by way of illegal gratification, and that he was carrying the said amount with him while on journey by train on the particular day. If these assertions are accepted on their face value, clearly an offence of criminal mis-conduct under Section 13 of the Prevention of Corruption Act, 1988 is made out. It cannot be disputed that such offence is a cognizable offence having regard to the second item of the last part of Schedule 1 of the Code of Criminal Procedure under the head "II—Classification of Offences Against other laws". Thus a cognizable offence was committed by the respondent, which the Superintendent of Police, C. B. I., was empowered to investigate. Therefore, if the Superintendent of Police, C. B. I. proceeded to intercept the respondent and investigate the case, he did only that which he was in law obliged to do. His taking up the investigation, therefore, cannot be faulted. Further the High Court has also quashed the G. D. Entry and the investigation on the ground that the information did not disclose all the ingredients of the offence, as if the informant is obliged to reproduce the language of the section, which defines "criminal misconduct" in the Prevention of Corruption Act. The law does not require the mentioning of all the ingredients of the offence in the FIR. It is only after a complete investigation that it may be possible to say whether any offence is made out on the basis of evidence collected by the investigating agency. [491-C-D; 495-H; 496-A-C]

3.2. The High Court also held that before conducting the search and seizure the mandatory requirement of Section 165 was not fulfilled inasmuch as the Investigating Officer did not record in writing the grounds for his belief as required by the said section. It is pre-mature at this stage to consider whether search and seizure was done in accordance with law as that is a question which has to be considered by the Court, if the accused is ultimately put up for trial and he challenges the search and seizure

made. Similarly, the question as to whether the G. D. Entry, or F. I. R. formally recorded, is the F.I.R. in the case, is a matter which may be similarly agitated before the Court. Where two informations are recorded and it is contended before the Court that the one projected by the prosecution as the F.I.R. is not really the F.I.R. but some other information recorded earlier is the F.I.R. that is a matter which the Court trying the accused has jurisdiction to decide. Similarly, the mentioning of a particular Section in the F.I.R. is not by itself conclusive as it is for the Court to frame charges having regard to the material on record. Even if a wrong Section is mentioned in the F.I.R. that does not prevent the Court from framing appropriate charges. [496-D-F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 938 of 1995.

From the Judgment and Order dated 28.2.1992 of the Kolkata High Court in Crl. R.No. 1913 of 1990.

P.P. Malhotra and Tufail A. Khan, P. Parmeswaran for the Appellants.

S.B. Sanyal, N.R. Choudhary, Somnath Mukherjee, J.P. Pandey and Devashish Barua for the Respondents.

The Judgment of the Court was delivered by

B. P. SINGH, J. The Union of India, Superintendent of Police, Central Bureau of Investigation and other officers of the said Bureau have come up in appeal against the judgment and order of the High Court of Judicature at Calcutta dated February 28, 1992 in Criminal Revision No. 1913 of 1990 whereby the High Court while allowing the revision petition quashed the investigation on the basis of G. D. Entry No. 681 as also the First Information Report recorded on October 20, 1990. It further quashed R. C. Case No. 51 of 1990 under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act. Consequently it also quashed the search and seizure effected on October 18, 1990 and directed that the money and articles seized be returned to the person from whom they were seized.

The brief facts of the case are as follows :-

On October 17, 1990 the Superintendent of Police, Central Bureau of Investigation (S.P.E.) (A.C.B.), Calcutta received information from reliable

source on telephone that respondent, who was then Director (Personnel), Eastern Coal Fields Limited, was a corrupt officer in the habit of demanding and accepting illegal gratification, had demanded and accepted a sum of rupees one lakh which he was carrying with him while going to Nagpur by Gitanjali Express on October 17, 1990. Since the parties have advanced arguments before us on the question whether the said report could be treated to be an information within the meaning of Section 154 of the Code of Criminal Procedure, it is convenient to reproduce the General Diary Entry No. 681 of October 17, 1990 in extenso which is as follows :-

> "G.D. Entry No. 681 of 17.10.1990 of C.B.I.S.P. E., A.C.B., CALCUTTA
>
> 11.30 hours Information received from a reliable source indicate that Shri Tapan Kumar Singh, Director (Personnel), Eastern Coalifields Limited, Sanctorai, West Bengal is an out and out corrupt official and is in habit of demanding and accepting illegal gratifications. Information further revealed that he demanded and accepted huge cash to the tune of Rs. 1 lakh approximately which he would be carrying with him while going to Nagpur by Geetanjali Express on 17.10.1990. He would be boarding the train at Tata. The matter was discussed with the DIG, CBI Calcutta and it was decided to verify the information by intercepting him enroute and to take other follow up actions, if necessary.
>
> Since there is no time for further verification into the matter. I am leaving for Nagpur for Geetanjali Express today (17.10.1990) scheduled to start from Howrah at 13.10 hrs. with a team of C.B.I. officers comprising of Inspector, S.R. Majumdar, Inspector, R.K. Sarkar, Inspector, S. N. Bhattacharjee and Inspector S. K. Dasgupta, this is as per provision of Section 157 of the Cr.P.C.
>
> Sd/- T.K. Sangyal
> SP, CBI, SPE, ACB, Calcutta"

As would be apparent from the said G.D. Entry, the Superintendent of Police, C.B.I. discussed the matter with D.I.G., C.B.I., Calcutta but since there was no time for further verification into the matter, the Superintendent of Police, C.B.I. decided to leave for Nagpur by Gitanjali Express with a view to intercept the respondent and take further necessary action. In the said G.D. Entry it is stated that the Superintendent of Police, C.B.I. left with a

A team of C.B.I. officers and that the action was taken as per the provisions of Section 157 of the Code of Criminal Procedure.

It is not in dispute that on October 18, 1990 at 1130 hours the police party intercepted the respondent at Nagpur Railway Station and conducted his personal search as well as the search of his belongings as also the search B of his residential flat at Nagpur. A huge amount of money was recovered pursuant to such search and the said amount alongwith other articles was seized. After returning to Calcutta on October 20, 1990 the Superintendent of Police, C.B.I. lodged a First Information Report alleging commission of offences punishable under Section 13(2) read with Section 13(1)(e) of the C Prevention of Corruption Act, 1988. On the basis of the said report, R.C. Case No. 51 of 1990 (Calcutta) was registered.

The respondent filed a revision petition before the High Court of Calcutta challenging the proceeding and sought quashing of the investigation as well as the General Diary Entry No. 681 of October 17, 1990 and the First D Information Report lodged by the Superintendent of Police, C.B.I. He also prayed for return of the money and other articles seized from him by the Superintendent of Police, C.B.I. on October 18, 1990.

Before the High Court several submissions were urged on behalf of the respondent seeking quashing of the investigation as well as the G. D. Entry E and the First Information Report.

It was firstly submitted that the General Diary Entry did not disclose the commission of any cognizable offence and hence the Superintendent of Police, C.B.I. had no authority to investigate the allegations made therein under Section 157 of the Code of criminal Procedure, since he could exercise F the power to investigate only if the information given to the police related to the commission of a cognizable offence. Secondly it was urged that since the investigation itself was illegal, the search and seizure made pursuant thereto under Section 165 of the Code of Criminal Procedure were also illegal. Thirdly it was submitted that failure of the Superintendent of Police, C.B. I. G to record in writing the ground for his belief that the things necessary for the purpose of investigation might be found in the place of search, amounted to breach of a mandatory condition and, therefore, vitiated the search. The search was thus illegal and without jurisdiction and, therefore, any recovery made or articles seized pursuant thereto should be returned to the person from whom they were recovered. Lastly it was submitted that the information H

received prior to investigation must be distinguished from the information collected during investigation. The latter cannot take the place of First Information Report. After conducting partial investigation the police officer cannot go back and record a First Information Report under Section 154 of the Code of Criminal Procedure. Such First Information Report is illegal and no action can be taken on the basis of such an illegal First Information Report.

On behalf of the appellants it was contended before the High Court that the G.D. Entry was not the First Information Report and only the report made on October 20, 1990 was the First Information Report. The action taken by the Superintendent of Police, C.B.I. after recording the G.D. Entry and before lodging the formal First Information Report was only in the nature of a preliminary inquiry before investigation. Secondly the mere mention of a wrong section in the G.D. Entry did not vitiate the exercise of powers if such exercise can be traced to a legitimate source. Lastly it was submitted that even in a preliminary inquiry before initiation of investigation, search and seizure was permissible.

The High Court after considering the submissions urged on behalf of the parties came to the conclusion that the General Diary Entry did not disclose the commission of a cognizable offence and, therefore, investigation pursuant to such a General Diary Entry was illegal. The First Information Report which was lodged after investigation was conducted in part was also illegal and consequently no case could be initiated on the basis of such an illegal First Information Report. It further held that this was not a case in which a preliminary inquiry before investigation was justified. In any event, the Superintendent of Police, C.B.I. did not in fact make any preliminary enquiry and proceeded to take steps for investigation as was apparent from the G. D. Entry wherein he stated that he was taking action under Section 157 of the Code of Criminal Procedure. The submission that a wrong section was mentioned in the G.D. Entry by him was rejected on the grounds firstly, that a senior officer like the Superintendent of Police, C.B.I. was not expected to make such a mistake and secondly, that the State was unable to mention the correct section which he should have mentioned therein. Moreover, there was no provision in the Code of Criminal Procedure authorizing a police officer to make a preliminary enquiry before investigation. The steps taken by the Superintendent of Police, C.B.I. were the steps which an investigating officer is authorized to take while investigating a case on the basis of a report disclosing commission of a cognizable offence, such as apprehension of the

A accused, collection of evidence, search and seizure etc. Though it was not disputed that in law, in an appropriate case, a G.D. Entry may be treated as a First Information Report and can provide the basis for investigation, in the instant case however, the Superintendent of Police, C.B.I. lodged a First Information Report two days later. The steps taken by him after recording the G.D. Entry and before lodging the First Information Report on 20.10.1990 B were the steps in investigation and not the steps in a preliminary enquiry prior to initiation of regular investigation.

The High Court also held that the alleged First Information Report lodged on 20.10.1990 was not a First Information Report in law, as it was C recorded after the investigation had proceeded to some extent, and was therefore covered by Sections 161 and 162 of the Code.

On the question whether the G. D. Entry itself disclosed the commission of a cognizable offence, the Court observed :-

D "Now let me look into the G.D. Entry on the basis of which the instant investigation has been started. On a careful scrutiny of the said G.D. Entry I am of the opinion that the said G.D. Entry contains some vague allegations and does not disclose the commission of any cognizable offence. It has been stated that the present petitioner was an out and out corrupt official and was in the habit of demanding and E accepting illegal gratifications such statement certainly does not disclose the commission of any offence. It has been further stated that the petitioner demanded and accepted huge cash to the tune of Rs. 1,00,000. The statement is equally vague, it has not been stated from whom such huge cash was demanded and accepted. Nor has it been stated that such demand or acceptance was made as a motive or F reward for doing or forbearing to do any official act or for showing or for bearing to show in exercise of his official function, favour or disfavour of any person or for rendering attempting to render any service or disservice to any person. The information as recorded in G. D. Entry No. 681 is extremely (sic) cognizable offence. On such G information as recorded in the said G.D. Entry it cannot be said that the Police Officer reasonably had reason to suspect the commission of any cognizable offence. As the information as recorded in G.D. Entry No. 681 on the basis of which the instant investigation has been started does not disclose the commission of any cognizable offence and as the police officer cannot, reasonably had any reason H

to suspect the commission of a cognizable offence on such held information, this court in view of the aforesaid decision of the Supreme Court holds that the investigation on the basis of the said G. D. Entry is unlawful and without jurisdiction and should, therefore, be quashed". A

Lastly, the High Court held that the search and seizure conducted by the Superintendent of Police, C. B. I. were not in accordance with law as a mandatory requirement of Section 165 of the Code was not fulfilled inasmuch as the officer making the investigation failed to record in writing the grounds for his belief that anything necessary for the purpose of an investigation into any offence which he was authorized to investigate may be found in any place and that such thing could not, in his opinion, be otherwise obtained without undue delay. The search and seizure was, therefore, illegal and the things recovered in pursuance of such illegal search must be returned to the person from whom they were seized. B C

On these findings, the High Court allowed the Criminal Revision Petition and quashed the G.D. Entry, the First Information Report as well as the investigation, and directed return of the money and articles seized. D

The crucial finding recorded by the High Court is that the facts stated in the G.D. Entry did not disclose the commission of a cognizable offence, and consequently the police had no power or jurisdiction to investigate the allegations made therein. Thus, the investigation undertaken, and the search and seizures made were illegal and without jurisdiction and deserved to be quashed. E

It is the correctness of this finding which is assailed before us by the appellants. They contend that the information recorded in the G. D. Entry does disclose the commission of a cognizable offence. They submitted that even if their contention, that after recording the G. D. Entry only a preliminary enquiry was made, is not accepted, they are still entitled to sustain the legality of the investigation on the basis that the G. D. Entry may be treated as a First Information Report, since it disclosed the commission of a cognizable offence. F

The parties before us did not dispute the legal position that a G. D. Entry may be treated as a First Information Report in an appropriate case, where it discloses the commission of a cognizable offence. If the contention of the appellants is upheld, the order of the High Court must be set aside because if there was in law a First Information Report disclosing the commission of a cognizable offence, the police had the power and jurisdiction G H

A to investigate, and in the process of investigation to conduct search and seizure. It is, therefore, not necessary for us to consider the authorities cited at the Bar on the question of validity of the preliminary enquiry and the validity of the search and seizure.

We have earlier in this judgment reproduced the G.D. Entry dated 17.
B 10.1990 in extenso. The facts stated therein are that the respondent was a corrupt official and was in the habit of accepting illegal gratifications; that he had demanded and accepted cash to the tune of rupees one lakh approximately, and that he would be carrying with him the said amount while going to Nagpur by Gitanjali Express on 17.10.1990.

C The information so recorded does make a categoric assertion that the respondent has accepted a sum of rupees one lakh by way of illegal gratification, and that he was carrying the said amount with him while going to Nagpur by Gitanjali Express on that day. If these assertions are accepted on their face value, clearly an offence of criminal mis-conduct under Section
D 13 of the Prevention of Corruption Act, 1988 is made out. It cannot be disputed that such offence of criminal mis-conduct is a cognizable offence having regard to the second item of the last part of Schedule I of the Code of Criminal Procedure under the head "II Classification of Offences Against other laws".

E The High Court fell into an error in thinking that the information received by the police could not be treated as a First Information Report since the allegation was vague in as much as it was not stated from whom the sum of rupees one lakh was demanded and accepted. Nor was it stated that such demand or acceptance was made as motive or reward for doing or forbearing
F to do any official act, or for showing or forbearing to show in exercise of his official function, favour or disfavour to any person or for rendering, attempting to render any service or disservice to any person. Thus there was no basis for a police officer to suspect the commission of an offence which he was empowered under section 156 of the Code to investigate.

G It is well settled that a First Information Report is not an encyclopedia, which must disclose all facts and details relating to the offence reported. An informant may lodge a report about the commission of an offence though he may not know the name of the victim or his assailant. He may not even know how the occurrence took place. A first informant need not necessarily be an eye witness so as to be able to disclose in great details all aspects of the
H offence committed. What is of significance is that the information given must

disclose the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. At this stage it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. If he has reasons to suspect, on the basis of information received, that a cognizable offence may have been committed, he is bound to record the information and conduct an investigation. At this stage it is also not necessary for him to satisfy himself about the truthfulness of the information. It is only after a complete investigation that he may be able to report on the truthfulness or otherwise of the information. Similarly, even if the information does not furnish all the details he must find out those details in the course of investigation and collect all the necessary evidence. The information given disclosing the commission of a cognizable offence only sets in motion the investigative machinery, with a view to collect all necessary evidence, and thereafter to take action in accordance with law. The true test is whether the information furnished provides a reason to suspect the commission of an offence, which the concerned police officer is empowered under Section 156 of the Code to investigate. If it does, he has no option but to record the information and proceed to investigate the case either himself or depute any other competent officer to conduct the investigation. The question as to whether the report is true, whether it disclose full details regarding the manner of occurrence, whether the accused is named, and whether there is sufficient evidence to support the allegations are all matters which are alien to the consideration of the question whether the report discloses the commission of a cognizable offence. Even if the information does not give full details regarding these matters the investigating officer is not absolved of his duty to investigate the case and discover the true facts, if he can.

In the instant case the information received by the Superintendent of Police, C.B.I. clearly spells out the offence of criminal mis-conduct under Section 13 of the Prevention of Corruption Act, 1988, inasmuch as there is a clear allegation that the respondent has demanded and accepted a sum of rupees one lakh by way of illegal gratification. The allegation is not as vague and bald as the High Court makes it out to be. There is a further assertion that the respondent is carrying with him the said sum of rupees one lakh and is to board the Gitanjali Express going to Nagpur. The allegation certainly gives rise to a suspicion that a cognizable offence may have been committed by the respondent, which the Superintendent of Police C.B.I. was empowered to investigate. Therefore if the Superintendent of Police, C.B.I. proceeded to

A intercept the respondent and investigate the case, he did only that which he was in law obliged to do. His taking up the investigation, therefore, cannot be faulted.

The High Court has also quashed the G.D. Entry and the investigation on the ground that the information did not disclose all the ingredients of the B offence, as if the informant is obliged to reproduce the language of the section which defines "criminal misconduct" in the Prevention of Corruption Act. In our view the law does not require the mentioning of all the ingredients of the offence in the First Information Report. It is only after a complete investigation that it may be possible to say whether any offence is made out C on the basis of evidence collected by the investigating agency.

The High Court also held that before conducting the search and seizure the mandatory requirement of Section 165 was not fulfilled inasmuch as the Investigating Officer did not record in writing the grounds for his belief as required by the said section. It is pre-mature at this stage to consider whether D search and seizure was done in accordance with law as that is a question which has to be considered by the Court, if the accused is ultimately put up for trial and he challenges the search and seizure made. Similarly, the question as to whether the G.D. Entry, or the F.I.R. formally recorded on October 20, 1990, is the F.I.R. in the case, is a matter which may be similarly agitated before the Court. Where two informations are recorded and it is contended E before the Court that the one projected by the prosecution as the F.I.R. is not really the F.I.R. but some other information recorded earlier is the F.I.R., that is a matter which the Court trying the accused has jurisdiction to decide. Similarly, the mentioning of a particular Section in the F.I.R. is not by itself conclusive as it is for the Court to frame charges having regard to the material F on record. Even if a wrong Section is mentioned in the F.I.R., that does not prevent the Court from framing appropriate charges.

We are, therefore, of the considered view that the High Court erred in exercising its revisional jurisdiction to quash the G.D. Entry, the F.I.R. and the investigation undertaken by the Superintendent of Police, C.B.I. in the G facts and circumstances of this case. The High Court also erred in granting relief to the respondent by directing the return of the seized amount and other articles. This appeal, therefore, deserves to be allowed and is accordingly allowed. The judgment and order of the High Court is set aside and the appellants are directed to proceed with the investigation in accordance with law and thereafter to take all steps as are required to be taken in law. H

Since we have directed the investigation to continue, the investigating agency should complete the investigation and thereafter take such action as may be justified in law. Nothing said in this judgment should be construed as expression of opinion on the merit of the case. It is for the investigating agency to collect all necessary evidence and take such steps as may be justified, having regard to the evidence collected by it. We should not be understood to have expressed any opinion on the truthfulness or otherwise of the allegations made in the report on the basis of which the investigation was undertaken. Observations, if any, have been made only for the purpose of deciding the question as to whether the investigating agency was justified in taking up the investigation pursuant to the G.D. Entry No. 681 recorded on the 17th October, 1990. Similarly, any observation made by the High Court while disposing of the Revision should not prejudice the case of the parties.

A B C

N.J. Appeal allowed.