

Crl.O.P. No. 20008 of 2013

R. Kasthuri v. State

2014 SCC OnLine Mad 12579

(BEFORE S. NAGAMUTHU, J.)

Tmt. R. Kasthuri Petitioner

v.

State by

1. The District Collector, Cuddalore & District.
2. The Superintendent of Police, Villupuram & District.
3. The Inspector of Police, Kadampuliyur Police Station, Cuddalore District. [Crime No. 351 of 2010]
4. The Additional Inspector General of Police, CB-CID, Guindy, Chennai 600 032.
5. The Revenue Divisional Officer, * Cuddalore.

[*5th respondent impleaded as per order of this court dated 11.11.2014 made in Crl.O.P. No. 20008 of 2013 Respondents

For Petitioner: Mr. S. Sathia Chandran

For Respondents: Mr. S. Shanmugha Velayudham, State Public Prosecutor for R1 to R5 Amicus Curiae, Mr. I. Subramanian, Senior Counsel

Crl.O.P. No. 20008 of 2013

And

M.P. No. 1 of 2013

Decided on December 19, 2014

Prayer: Petition filed under Section 482 of the Code of Criminal Procedure praying [i] to direct the 4th respondent to take over the investigation of the case in Crime No. 351 of 2010 from the file of the 3rd respondent proceed with the investigation by appointing an officer not below the rank of Deputy Superintendent of Police as contemplated in Rule 7 of The Scheduled Castes and Scheduled Tribes [Prevention of Atrocities] Rules, 1995 and file a final report; [ii] to direct the 4th respondent to invoke the provisions of Section 3(1) (iii) and 3(2) of The Scheduled Castes and Scheduled Tribes [Prevention of Atrocities] Act, 1989 in the case in Crime No. 351 of 2010 now on the file of the 3rd respondent and to [iii] to direct the 1st respondent to disburse the relief amount of a sum of Rs. 5,00,000/- under Rule 12 of the Scheduled Castes and Scheduled Tribes [Prevention of Atrocities] Amendment Rules, 2011.

ORDER

This is a case of custodial death. The petitioner is the wife of the deceased - Ravi. They belong to a Scheduled Caste. On 16.08.2010, at about 01.00 a.m., when her husband was with her at her house at Parinthal Village, few police constables barged into their house and took her husband in a vehicle. When the petitioner questioned them, they told her that they were taking him for the purpose of an enquiry in connection with a case. It is further alleged that they snatched away a gold chain from the petitioner and also removed certain other properties from her house. On 17.08.2010, she told her

sister-in-law - Mrs. Chitra about the occurrence. She came to know that her sister-in-law's husband had also been taken to the police station. On 18.08.2010, according to her, seven police constables came to her house and forced her to sign in a blank paper. Then, to her shock, they informed her that her husband was no more and his body was kept in the mortuary of the Government Hospital at Cuddalore. They wanted her to appear for enquiry to be held by the Executive Magistrate/Revenue Divisional Officer. She further alleges that on 19.08.2010 at 05.00 a.m. she informed one Mr. Raju about the occurrence and also had discussion with the other leaders of her community in respect of the next action to be taken. After autopsy, the body of the deceased was handed over to her at 06.00 p.m. In this regard, she made a representation to the Hon'ble Chief Minister and others alleging that her husband had fallen a victim of police torture.

2. The respondent - Police, have a different story. According to the respondent police, one Mr. Thiruvengadam, the Sub Inspector of Police, attached to Pudupet Police Station was deputed for nabbing the accused involved in the theft case in Crime No. 95 of 2010 on the file of Nellikuppam Police Station. When the police party headed by Mr. Thiruvengadam was searching for him, at about 03.00 p.m. on 18.08.2010, the deceased was found moving on the road leading to Sathipattu Village. He was surrounded and taken into custody by the Sub Inspector of Police Mr. Thiruvengadam. On such arrest, he gave a voluntary confession, confessing to his involvement in many occurrences involving theft. When personal search was made, it was found that he had tied to his hip eight sovereigns of gold jewels. It is further stated by the respondent police that the Sub Inspector of Police was taking him towards Nellikuppam. When they were nearing the village border of Sathipattu Village, the deceased - Ravi complained to the Sub Inspector of Police that he had developed chest pain and he wanted to urinate. Therefore, he was allowed to get down from the vehicle. On getting down from the vehicle, according to the police, he started running with a view to escape. So, the Sub Inspector of Police along with the other policemen, who were with him chased the deceased. While running fast, it is alleged that accidentally, he fell into a deep pit. On reaching the pit, the Sub Inspector of Police and other police constables found the deceased unconscious. He had sustained injuries on his right ankle and fingers. As a first aid, the police gave him water. But, he did not open his eyes. Therefore, the police rushed him to the Government Head Quarters Hospital at Cuddalore at 05.20 p.m. But, the Doctor who examined the deceased - Ravi declared him already dead. The body was sent to the mortuary.

3. On returning to the police station, the Sub Inspector of Police submitted a special report to the Inspector of Police narrating the above occurrence. On such report, the Inspector of Police registered a case in Crime No. 135 of 2010 under Section 176(1A) of The Code of Criminal Procedure [herein after referred to as "the Code"]. Since it was a custodial death, the Inspector of Police forwarded the FIR to the Executive Magistrate/Revenue Divisional Officer, Cuddalore. Simultaneously, as per the existing general instructions of the Director General of Police, Chennai, the FIR was forwarded to the learned Judicial Magistrate-II, Panruti for holding an inquiry under Section 176 (1A) of the Code. The Executive Magistrate/Revenue Divisional Officer, Cuddalore, conducted inquest on the body of the deceased and then, forwarded the body for post-mortem examination. The Judicial Magistrate commenced inquiry as per Section 176 (1A) of the Code. On 19.08.2010, at about 03.00 p.m., he held inquiry and recorded the statements of all the policemen involved in the occurrence. At about 05.00 p.m. the learned Magistrate visited the place of occurrence. He also examined two persons by name Anthoniraj and Shanmugam, who, according to the police, had witnessed the occurrence. He recorded the statements of the family members of the deceased

including the petitioner herein. On 19.08.2010, the learned Magistrate visited the house of the deceased also. He examined a number of other witnesses. He completed the examination of the witnesses on 27.08.2010. In the meanwhile, the inquest report dated 25.08.2010 prepared by the Executive Magistrate/Revenue Divisional Officer was received by the learned Magistrate. The Doctor, who conducted autopsy, gave opinion as follows: -

"External in injuries:

1. Contusion over left popliteal fossa 10 × 5 multiple abrasion over it.
2. Abrasion over the penis
 - (a) at the root 1 × 1 cms.
 - (b) at the tip 3 × 2 cms
3. Abrasion in left ankle 1 × 1 cm.
4. Contusion over left sole 5 × 8 cm.
5. Abrasion on right knee 1 × 1 cm.

Internal injuries: -

(1) Contusion injuries (1) and (4) when opened has shown blood clots, muscle tears, intra-muscular bleeding.

(2) No abdomen injury, no fracture on ribs, no head injury or fracture on skulls, hyoid bone intact, no alcohol or poison found on viscera examination.

Opinion:

The deceased died due to myocardial infarction with polytrauma 12 to 36 hours prior to post-mortem."

4. Ultimately, the learned Magistrate, came to the following impression: -

The statement of victim's wife Kasthuri and her mother Periamma shows that the deceased Ravi was taken by the police on 16.08.2010 night, and these two witnesses were with him at that time. This fact was confirmed by the witness Kolanji who identified the house of the deceased on that night. In deed there are contradictions as to date and time stated by other witnesses. However it is clear that the deceased Ravi was picked-up by the police at least one or two days earlier to his death. The police version as to the nabbing of the accused at Sathipattu bus stop on 18.0-8.2010 at 3 P.M. may not be true.

Next comes the cause of death. The deceased was stated to have been tortured by the police at Nadu-Veerapattu P.S. The co-accused in Cr. No. 95/2010 of Nellikuppam P.S. are the eye witnesses to the torture and physical violence on the deceased. The relatives of the deceased stated that the deceased was hale and healthy. The post-mortem report reveals that on the opening of contusion injuries (1) and (4), they have shown blood clots, muscle tears and intra-muscular bleeding. These injuries indicate that there might be physical violence on the deceased. However, it could not be concluded that these injuries are the reason for his death. The medical term "Myocardial infarction" in common parlance refer to "hear attack. The terms

"Polytrauma" refers "multiple injuries". To my limited knowledge of medical jurisprudence, neither the "Myocardial infarction" nor the "Poly-trauma" will result in sudden death of a person of 35 years with health body, where no major injury on vital organs reported. But, the combination of acute myocardial infarction with poly-trauma might have caused the sudden death the charges are remote but cannot be ruled-out. The statement of the co-accused Kolanji and others who said that they saw the deceased Ravi fell unconscious after police beating could not be taken to mean that the death has happened. If that being true, the co-accused persons would have reported it to the Magistrate who remanded them in the next morning. None of the co-accused made any complaint to the Judicial Magistrate about police excesses.

It cannot be ruled out that the Squad might have taken the deceased Ravi to Saathipattu for some investigation related purpose on 18.08.2010 at 3 P.M. and the other events narrated by police would have possibly happened. The statement of two villagers Anthoniraj and Shanmugam who saw the deceased running and falling into the pond cannot be ignored. Therefore, police excesses alone cannot be the reason for the death of the said Ravi. The heart attack with multiple injuries sustained by the deceased when falling into the pond appears to be the real cause of the death. In the result, I conclude that the cause of death of the Ravi S/o.Kaliyan of Thandavankuppam was due to heart attack with multiple injuries sustained by him in unexpected fall from height."

5. The learned Magistrate, thereafter, submitted a report to the District Collector, who in turn, forwarded the same to the Secretary to the Government of Tamil Nadu, Department of Public, Law and Order, Secretariat, Chennai and also to the Senior Superintendent of Police, National Human Rights Commission.

6. The Secretary to the Government, on accepting the report of the Magistrate, under Letter No. 4341/L & O. E/2011-1 dated 13.10.2011, directed dropping of further action in the matter. The said letter of the Secretary to the Government of Tamil Nadu reads as follows: -

"I am directed to refer to your letter second cited and to state that the Government have agreed with the findings of the enquiry officer i.e., Judicial Magistrate-II, Panruti that the cause of death of K. Ravi, S/o.Kaliyan on 18.08.2010 was due to heart attack with multiple injuries sustained by him in unexpected fall from height from the bunds into a small pond and accordingly dropped further action in the matter."

7. In the above stated circumstances, the petitioner has come up with this original petition under Section 482 of Cr.P.C. seeking transfer of the investigation of the said case to the CBCID to be conducted by an officer, not below the rank of the Deputy Superintendent of Police, as contemplated under Rule 7 of the The Scheduled Caste and Scheduled Tribes [Prevention of Atrocities] Rules and to file a final report. She has also sought a direction for payment of compensation of Rs. 5,00,000/- under Rule 12 of the said Rules.

8. A detailed counter affidavit has been filed by the 1st respondent wherein, inter alia, it is stated that the deceased - Ravi was lawfully arrested in connection with the case in Crime No. 95 of 2010 on the file of Nellikuppam Police Station for the alleged offences under Sections 457 and 380 of IPC. It is further contended that he was involved in three other cases of house breaking and theft; and one murder and robbery case in Kancheepuram District and one robbery case in Villupuram District. It is reiterated in the counter that the deceased, while trying to escape, accidentally fell into the pit, sustained injuries and later died while he was shifted to the hospital. It is

further stated that the Doctor who conducted autopsy opined that the death was due myocardial infarction. Thus, the Doctor's opinion is that it was a natural death. According to the counter, the deceased was not at all attacked by the police as it is alleged by the petitioner. Thus, according to the respondent police, no further investigation is required in the matter.

9. I have heard Mr. S. Sathia Chandran, the learned counsel appearing for the petitioner; Mr. S. Shanmugha Velayudham, the learned Public Prosecutor appearing for the respondents. Considering the complex legal issues involved in the matter, this court requested Mr. I. Subramanian, the learned senior counsel and the former Public Prosecutor to assist the court as Amicus Curiae. Accordingly, he also made his submissions. I have also perused the records carefully.

10. From the narration of the facts and from the stand taken by the petitioner vis a vis the police, it emerges that when the deceased sustained injury and died, he was very much in the police custody. Now, the question is whether the deceased fell a victim of the alleged brutal attack made by the police or while trying to escape from the police custody he fell into the pit and died due to natural cause viz., myocardial infarction.

11. This court, like a trial court, cannot venture upon to resolve this factual dispute. The rival contentions require a through investigation in order to unearth the truth. But, strangely, after registering the FIR, the Inspector of Police did not conduct any investigation at all. The Executive Magistrate/Revenue Divisional Magistrate conducted only inquest and submitted a report to the learned Judicial Magistrate and he did not do anything more. The learned Judicial Magistrate held a detailed inquiry and has concluded that the police excesses alone cannot be the result for the death of Ravi. He has further concluded that the cause of death was due to myocardial infarction. But, the said report of the learned Magistrate drawn under Section 176(1A) of the Code has been taken as a final verdict in the matter and accordingly, the Government has directed to drop further action in the matter. Thus, there was no further investigation into the circumstances relating to the cause of death. Now, it needs to be examined as to whether the said course adopted by the learned Judicial Magistrate, the Inspector of Police, the District Collector and the Government are legally sustainable and whether the petitioner is entitled for any relief.

12. Let us, at the first, have a survey of the legal scenario prior to the introduction of sub-section (1A) of Section 176 of the Code. Until, 1955, in this State, the judiciary was treated as part and parcel of the Executive. The judiciary was separated from the Executive in the year 1955. Until then, with regard to an inquiry into a charge of torture or of causing death or grievous hurt against a police official, as per Police Standing Order No. 157 (old), the Sub-Divisional Magistrate concerned should take cognizance of the offence, under the relevant Clause of Sub-section (1) of Section 190 of the Criminal Procedure Code, 1898 and thereafter inquire into the case and dispose of it according to the provisions of the same Code. Thus, until the Judiciary was separated from the Executive, the inquiry held by the Sub Divisional Magistrate was undoubtedly a judicial inquiry in which the Sub Divisional Magistrate had powers under the Criminal Procedure Code to summon witnesses, to compel the production of documents or things and to examine witnesses on oath. After the separation of the Judiciary from the Executive, the inquiry under PSO No. 157 had shed its judicial character. The revised PSO 157 (old) issued under G.O. No. 2854, Home, dated 12-10-1955 contemplated an inquiry of a non-judicial character by the Revenue Divisional Officer who should arrive at a finding on the point whether there were grounds for launching a criminal prosecution against the police officials and report his findings to the District Collector. From the said report, if any prosecution was considered

necessary, the District Collector should issue instructions to the Revenue Divisional Officer for laying a formal complaint before the appropriate Judicial Magistrate. So far as the City of Chennai is concerned, the inquiry into the charges of police torture were conducted by Presidency Magistrates. From the said report, if it was decided to prosecute the police official concerned, the Commissioner of Police would be directed to lay a formal complaint in a Court of a Presidency Magistrate other than the Magistrate who held the inquiry under PSO 157 (old).

13. The inquiry contemplated by the revised PSO, being essentially a non-judicial one, neither the Presidency Magistrate nor the Revenue Divisional Officer had the power to compel the attendance of witnesses before him or take evidence on oath during inquiry. In order to remedy this drawback, the Government decided to invest Presidency Magistrates and Revenue Divisional Officers with powers under Section 2 of "The Madras Revenue Inquiries Act, 1893". As per the powers thus conferred, the Presidency Magistrates and Revenue Divisional Officers gained authority to receive evidence whenever they proceeded to conduct an inquiry under PSO 157 (old). The authority to receive evidence also carried with it ipso facto the authority to administer oath, by virtue of Section 4 of the Indian Oaths Act, 1873. It is needless to point out that such inquiry held by the Executive Magistrate or Presidency Magistrate was governed by S.176 of the old Code.

14. The object of S.176 of the Old Code was that an inquiry into a suspicious death should not depend merely upon the opinion, the police may form, but, that there should be a further check by enabling a Magistrate to hold an independent inquiry [vide *In re Laxminarayan Timmanna Karki*, AIR 1928 Bom 390]. Similarly, the object of S.174 of the old Code was merely to ascertain the apparent cause of death and hence the enquiry under that section should be confined to that purpose only and should not be extended for the purpose of finding out the persons who caused the death [vide *Chaman Lal v. Emperor*, AIR 1940 Lah 210]. When things stood thus, before a Division Bench of this Court in *P. Rajangam, Sub Inspector of Police v. State of Madras*, AIR 1959 Mad 294, similar issue came up for consideration. The Division Bench was invited to analyse the scope of the inquiry under s.176 of the old Code and PSO 157 (old) of the Madras Government. Mr. M.K. Nambiar, a Doen of the Madras Bar, contended that P.S.O. No. 157 violated the fundamental rights guaranteed under Articles 14, 20(3) and 21 of The Constitution of India and thus proceeding before a Presidency Magistrate was a nullity. Both the contentions were negated by the Division Bench. The Division Bench, after having analyzed the legal position in England, Australia, United States of America and in India, Per Ramaswami. J., held in para 35 of the judgment as follows: -

"35. Bearing these principles in mind, if we examine the instant case, it will be found that the proceedings of the Fifth Presidency Magistrate which are sought to be quashed by the writ of certiorari, are not judicial or quasi-judicial proceedings amenable to a writ of certiorari in that those proceedings constitute nothing more than a fact finding enquiry and have none of the characteristics of judicial or quasi-judicial proceeding, that it is only optional for the Magistrate holding the inquiry under Section 176 to make a report or not, that the object of the enquiry is nothing more than to furnish materials on which action might be taken or not, that the report by itself would purely be recommendatory and not one effective proprio vigore that it does not dispose of the rights of parties and in fact neither the report nor the statements recorded therein would be admissible in evidence in any future proceedings. Therefore, I find myself in entire agreement with the contention of the learned Advocate-General that in these circumstances a writ of certiorari cannot issue."

15. Somasundaram. J., in his concurring judgment, traveled some distance more. In paragraph 43 of the judgment, His Lordship has expressed his anguish in the following words "As to what should happen after conducting an enquiry under Section 176, the Act is silent." In para 54 of the judgment, His Lordship has concluded as follows: -

"54. Applying the above principles to the proceedings in question, the magistrate first of all does not enquire into the offence; secondly, after enquiry into the proceedings he sends a report. He does not give any decision or determine the rights of the parties. As pointed out earlier, during the whole of this enquiry there was no Prosecutor, and there was no accused to defend himself. It is, as pointed out, in one of the decisions cited above, a fact finding enquiry, an enquiry to ascertain the cause of the death of the person and to report to the Chief Presidency Magistrate the opinion of the enquiring officer. Since such a report does not amount to a decision or the determination of the rights of parties by the Fifth or the Fourth Presidency Magistrate, there is no scope for the issue of a writ."

16. In para 55 of the judgment, His Lordship has held as follows: -

"55. Mr. Nambiar relied on the decision of Kuppuswami Aiyar J. in AIR 1944 Mad 37: 1956 Mad LW 437 as showing that proceedings under Section 176 of the Code of Criminal Procedure are judicial proceedings and are subject to re visional jurisdiction of the High Court. This decision has overlooked an important circumstance namely that under Section 435, Criminal Procedure Code, the High Court can call for and examine the record of any proceeding, only of an inferior criminal Court. It has not been contended before us that this enquiry by a Magistrate under Section 176 is by a Court. As it is not a Court, the records of it cannot be called for by the High Court under Section 435. In our view the decision of Kuppuswami Aiyar, J. is not correct."

17. The above judgment of the Division Bench is a torch bearer holding the filed all along. The judgment is so lucid as it has analysed all the points in issue. The learned Judges have categorically stated that after the separation of the Judiciary from the Executive, an inquiry held under Section 176 of the old Code, either by a Presidency Magistrate in the City of Madras or by an Executive Magistrate in other areas, does not part take the character of a judicial inquiry. During such inquiry, until "The Revenue Inquiry Act" was made applicable, statements were recorded without administering oath. After "The Revenue Inquiry Act" was made applicable, though the statements were recorded on oath, still, the said statements were not to be used in evidence in any future proceedings. It was also held that the nature of the inquiry was only that of a fact finding inquiry to ascertain the cause of the death and such report would not amount to a decision or determination of the rights of the parties. Thus, prior to separation of the Judiciary from the Executive, the inquiry was judicial in character and after the separation, the inquiry was pure and simple non judicial in character. With the above background, let us now look into the Code of Criminal Procedure, 1973 [in short "the Code"].

18. Before the Amendment Act 46 of 2003 was introduced, S.176(1) of the Code stood, thus:

"176. Inquiry by Magistrate into cause of death. - (1) When the case is of the nature referred to in clause (i) or clause (ii) of sub-section (3) of section 174, the nearest Magistrate empowered to hold inquests shall, and in any other case mentioned in sub-section (1) of section 174, any Magistrate so empowered may hold an inquiry into the cause of death either instead of, or in addition to, the investigation held by the police officer; and if he does so, he shall have all the powers in conducting it which he would

have in holding an inquiry into an offence.”

19. Here, we need to notice that sub-section (1) of Section 176 of the code was amended by Amendment Act 46 of 1983 by which the words “when any person dies while in the custody of the police” were inserted as opening words of sub-section (1). Thus, prior to 25.12.1983, under the Code of Criminal Procedure, 1973, the inquiry by an Executive Magistrate into the cause of death was not extended to the death of a person while in the custody of the plice. After the Amendment Act 46 of 1983, the inquiry by an Executive Magistrate into the cause of death of a person while in the custody of the police was also covered.

20. However, the legislature once again amended sub-section (1) of Section 176 of the Code by Amendment Act 25 of 2005 by which, the opening words “when any person dies while in the custody of the police” were omitted. Thus, as of now, an inquiry by an Executive Magistrate into the cause of death as provided under Section 176 (1) of the Code does not extend to the death of a person while in custody of the police. While so amending sub-section (1) of Section 176 of the Code by the same Amendment Act 25 of 2005, the legislature introduced a new sub-section, that is, (1A) to Section 176 of the Code which reads as follows: -

“176. Inquiry by Magistrate into cause of death. (1)

(1A) Where, -

(a) any person dies or disappears, or

(b) rape is alleged to have been committed on any woman, while such person or woman is in the custody of the police or in any other custody authorized by the Magistrate or the Court, under this Code in addition to the enquiry or investigation held by the police, an inquiry shall be held by the Judicial Magistrate or the Metropolitan Magistrate, as the case may be, within whose local jurisdiction the offence has been committed.”

Thus, post Amendment Act 25 of 2005, in respect of an inquiry into the cause of the death or disappearance of a person or rape while such person or woman was in custody of the police or in any other custody authorized by the Magistrate or court, the power has now been conferred upon the Judicial Magistrate or Metropolitan Magistrate, as the case may be, within whose local jurisdiction the offence has been committed.

21. Sub-section (5) of Section 176 of the Code was also amended by the same amendment. Sub-sections (2) to (5) of Section 176 of the Code reads as follows: -

176. Inquiry by Magistrate into cause of death. - (1)

(2) The Magistrate holding such inquiry shall record the evidence taken by him in connection therewith in any manner hereinafter prescribed according to the circumstances of the case.

(3) Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the causes of his death, the Magistrate may cause the body to be disinterred and examined.

(4) Where an inquiry is to be held under this section, the Magistrate shall, wherever practicable, inform the relatives of the deceased whose names and addresses are

known, and shall allow them to remain present at the inquiry.

(5) The Judicial Magistrate or the Metropolitan Magistrate or Executive Magistrate or police officer holding an inquiry or investigation, as the case may be, under sub-section (1A) shall, within twenty-four hours of the death of a person, forward the body with a view to its being examined to the nearest Civil Surgeon or other qualified medical man appointed in this behalf by the State Government, unless it is not possible to do so for reasons to be recorded in writing.

Explanation - In this section, the expression "relative" means parents, children, brothers, sisters and spouse."

22. Now, a comparison of the language used in sub-section (1) and sub-section (1A) of Section 176 of the Code would go to show that so far as Section 176 (1) of the Code is concerned, the inquiry is confined only to the cause of the death. Therefore, the Executive Magistrate cannot travel beyond the cause of death to give any other finding on the disputed facts. As it has been held by the Division Bench in *P. Rajangam's* case cited supra, the inquiry relates only to the cause of death and not as to the manner in which the injuries were caused and the persons responsible for the same etc.

23. But, in sub-section (1A) a different language has been consciously used by the legislature. Here the legislature has not confined the inquiry only into the cause of the death or cause for the disappearance or cause for rape while in custody of the police. The qualifying words like inquiry "into the cause of the death" as it is found in sub-section (1) of Section 176 of the Code have been consciously omitted in sub-section (1A) of Section 176 of the Code thereby indicating that the inquiry by a Judicial Magistrate under sub-section (1A) is not confined only to the cause of death or cause for the disappearance or cause for rape. Thus, this inquiry has got a wider scope. As per sub-section (2) of Section 176 of the Code, the Magistrates, both the Executive Magistrate as well as the Judicial Magistrates/Metropolitan Magistrates, shall record evidence on oath. Sub-section (5) of section 176 of the Code is more elaborate which states that the Judicial Magistrates/Metropolitan Magistrates or the Executive Magistrates or Police Officers holding an inquiry or investigation, as the case may be, under sub-section (1A) shall, within twenty-four hours of such death, forward the body for post-mortem.

24. As it has been explicitly stated in sub-section (1A), the inquiry by a Judicial Magistrate/Metropolitan Magistrate shall be in addition to the inquiry or investigation conducted by the police. It needs to be mentioned that an inquiry by an Executive Magistrate under sub-section (1) of Section 176 of the Code is either instead of or in addition to the investigation by the police. Therefore, the inquiry held by a Judicial Magistrate/Metropolitan Magistrate shall not be a bar for the police to investigate simultaneously. Since an inquiry held by a Judicial Magistrate, though has got a wider scope than an inquiry held by an Executive Magistrate under sub-section (1) of Section 176 of Cr.P.C., such judicial inquiry cannot be equated to an investigation done by the police in respect of the crime. The inquiry by the Judicial Magistrate/Metropolitan Magistrate may not be a full-fledged one in all respects. For example, he can not go to various places to recover the material objects involved/connected to the crime or the criminal. No where, it is stated in the Code, that simply because the Judicial Magistrate is holding an inquiry under sub-section (1A) of Section 176 of the Code, the police shall stop investigating the matter. It is needless to point out that after holding inquest under sub-section (1) of Section 176 of the Code, in respect of the cause of death, the Executive Magistrate shall submit a report only to the police as per PSO 151 (Old PSO 145). The police without stopping

the investigation or awaiting for the report of the Metropolitan Magistrate or Judicial Magistrate, as the case may be, shall simultaneously conduct investigation to unearth the truth and to bring to book the real perpetrators of the crime. Under sub-section (1A) of Section 176, inquiry held by the Judicial Magistrate or Metropolitan Magistrate is in addition to the investigation held by the police and not in substitution of the police investigation. Neither the investigation made by the police shall preclude a Judicial Magistrate/Metropolitan Magistrate from holding an inquiry under sub-section (1A) of Section 176 nor such inquiry by Judicial Magistrate/Metropolitan Magistrate shall preclude the police from investigating the case. In this regard, I may refer to Chapter VII of the Code. If any case is registered under Section 154 in Chapter VII of the Code, it should reach the logical end with the filing of a report under Section 173 of the Code before the jurisdictional Magistrate. There is no provision in the Code enabling the police to drop the investigation without taking the same to the logical end. Even in a case where the investigating officer finds that either there was no offence committed or for any other reason, no further action could be taken against any individual, he is required to file a negative final report before the jurisdictional Judicial Magistrate/Metropolitan Magistrate and it is for the said Magistrate to consider as to whether to take cognizance from out of materials available or to order for further investigation; or to accept the negative report. Therefore, if there is any death or disappearance or rape, while in police custody, and if it is an offence [as per the expression used in sub-section (1A)] the investigation shall be conducted by the police without being hindered in any manner by the inquiry held by the Judicial Magistrate or Metropolitan Magistrate, as the case may be, and the investigating officer on completing the investigation, shall submit a final report to the Judicial Magistrate or Metropolitan Magistrate under Section 173 of Cr.P.C.

25. As I have already pointed out, the inquiry held by the Judicial Magistrate or Metropolitan Magistrate, cannot be, at any stretch of imagination equated to an investigation by the police. During investigation, the police officer shall enjoy enormous powers and skill to thoroughly investigate the matter and he has got lot of tools also to investigate; whereas the Judicial Magistrate or Metropolitan Magistrate may not have such tools. In this regard, we may refer to the judgment of the Hon'ble Supreme Court in *Radha Mohan Singh alias Lal Saheb v. State of U.P.* (2006) 2 SCC 450. In that case, the Hon'ble Supreme Court was concerned with the inquiries under sub-sections (1) and (2) of Section 174 of the Code. In para 14 of the said judgment, the Hon'ble Supreme Court, after having analyzed the power of the police to investigate into a crime vis a vis the power of the Executive Magistrate to hold inquest, held as follows: -

"14. The language of the aforesaid statutory provision is plain and simple and there is no ambiguity therein. An investigation under Section 174 is limited in scope and is confined to the ascertainment of the apparent cause of death. It is concerned with discovering whether in a given case the death was accidental, suicidal or homicidal or caused by animal and in what manner or by what weapon or instrument the injuries on the body appear to have been inflicted. It is for this limited purpose that persons acquainted with the facts of the case are summoned and examined under Section 175. The details of the overt acts are not necessary to be recorded in the inquest report. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted or who are the witnesses of the assault is foreign to the ambit and scope of proceedings under Section 174. Neither in practice nor in law it is necessary for the person holding the inquest to mention all these details."

26. Again in para 15 of the judgment, the Hon'ble Supreme Court has held as follows:

"15.After noticing the language used in Section 174 Cr.P.C. and earlier decisions of this Court it was ruled that the High Court was clearly in error in observing as aforesaid or drawing any inference against the prosecution. Thus, it is well settled by a catena of decisions of this Court that the purpose of holding an inquest is very limited, viz., to ascertain as to whether a person has committed suicide or has been killed by another or by an animal or by machinery or by an accident or has died under circumstances raising a reasonable suspicion that some other person has committed an offence. There is absolutely no requirement in law of mentioning the details of the FIR, names of the accused or the names of the eye-witnesses or the gist of their statement nor it is required to be signed by any eye-witness....."

27. The Madhya Pradesh High Court, in *Tarachand v. The State of Madhya Pradesh* [W.P. No. 1491 of 2009 dated 07.07.2011] has compared S.176 (1A) with Section 174 of the Code and has taken the view that a report submitted by the Additional Chief Judicial Magistrate by holding an inquiry under Section 176(1A) of the Code cannot be construed to be a full fledged inquiry in respect of the entire occurrence.

28. A Division Bench of Gujarat High Court in *State of Gujarat v. Union of India*, had an occasion to consider the scope of an inquiry to be held under Section 176(1A) of the Code. The Division Bench has held as follows: -

"37. (1)"

(2) The report of the Judicial/Metropolitan Magistrate under Section 176 of Cr.P.C., is having a recommendatory value by way of opinion of fact finding inquiry for the cause of the death. (3) The persons who are found or involved in the report under Section 176 of Cr.P.C. being liable for the cause of death are not affected by the report, since they will have right of defence, if complaint is filed for any offence(s), hence, not entitled to challenge the report."

29. To this extent, I am in full agreement with the Division Bench of the Gujarat High Court. But, the Court has gone one step further to say that the report of the Judicial Magistrate or Metropolitan Magistrate under Section 176 of the Code, normally is to be responded and acted upon by the State; however, but for extraordinary, very strong and valid reasons, the State may differ from the report, but, such action of the State shall be subject to the judicial review of the High Court under Article 226 of the Constitution of India and at that stage, the contents of the report can be examined by the High Court for putting law into motion or for further direction.

30. This conclusion of the Division Bench of Gujarat High Court, with respect, does not persuade me at all. My reason is that, as I have already pointed out, in this State the Judiciary has been once for all separated from the Executive. Be it a Magistrate or a Judge of the Higher Judiciary, the independence of the judiciary is one of the basic structures of the Constitution of India and even a semblance of the independence of the Judiciary cannot be surrendered to the Executive. In other words, the Executive cannot be permitted to sit in appeal over the actions of the judiciary. Further, as I have already pointed out, at the end of the inquiry by a Judicial Magistrate/Metropolitan Magistrate, under sub-section (1A) of Section 176, the Magistrate does not give any verdict which could be challenged before the court of law. Similarly, the Magistrate does not come to any conclusion or final decision in respect of the entire occurrence. It is only a step in aid of the progress of the investigation by the police. If the report of the Judicial/Metropolitan Magistrate under sub-section (1A) of

the Code is submitted to the Government, then, it will tantamount to the Government to sit in over the action of the judiciary. This course is not possible. Further, there is no provision in the Code of Criminal Procedure, 1973 enabling a Magistrate or mandating him to submit the report to the Government under sub-section (1A) of Section 176 of the Code. A report of an Executive Magistrate prepared under Section 176 of the Code could be submitted to the District Collector, because he is governed by PSO 151 which mandates so. Since PSO 151 is not applicable to the judicial inquiry held by a Judicial/Metropolitan Magistrate under sub-section (1A) of Section 176 of the Code, there is no scope at all for submitting a report by the Judicial/Metropolitan Magistrate to the District Collector or to the Government.

31. This conclusion requires some more elaboration. sub-section (1A) of Section 176 of the Code was introduced, as I have already pointed out, by taking away the power to hold inquiry by Executive Magistrate into the cause of death of a person in police custody. Such power has been now given to a Judicial/Metropolitan Magistrate. We have seen already that prior to separation of the Judiciary from the Executive, the inquiries held by the Magistrates were all judicial inquiries. After the separation of the Judiciary from the Executive, inquiries under Sections 174 and 176 of Code were pure and simple non judicial. Again by introducing sub-section (1A), the original position has been restored, by which, inquiry under sub-section (1A), now has taken the character of a judicial inquiry. Thus, we have gone back to square one again.

32. The amendment to sub-section (1) of Section 176 and introduction of sub-section (1A) was made on the recommendations of the "National Police Commission" in its 4th Report. And, Hon'ble Justice Malimath, in his report, has very categorically stated that an inquiry to be held by a Magistrate shall not be equated to an investigation by the police. It has also been stated that by bringing back judicial inquiry under sub-section (1A), there shall be no merger of the Judiciary with the Executive. The Executive shall always be kept apart from the Judiciary.

33. From the above reports, which are the foundation for the amendment of sub-section (1) of Section 176 and introduction of sub-section (1A) of Section 176 of the Code, the conclusion that an inquiry held by a Judicial Magistrate or Metropolitan Magistrate is a judicial inquiry in character and the same does not either form part of the investigation or part-take the character of investigation is fortified. Thus, I hold that the Judicial/Metropolitan Magistrate shall not submit a report either to the District Collector or to the Government.

34. Then, What next? Often, this question as to what the Magistrate should do on completing the inquiry comes up for debate. The answer is very simple. The Judicial/Metropolitan Magistrate, after completing the inquiry, shall keep the record on his file along with the FIR and the other documents submitted by the police. But, the Magistrate shall furnish copies of the statements and other documents collected by him to the investigating officer as soon as the inquiry is over. The police officer shall not stop the investigation even for a moment after the registration of the FIR and he shall continue to conduct investigation swiftly and thoroughly. On receipt of the copies of the records from the Judicial/Metropolitan Magistrate relating to the inquiry under sub-section (1A) of Section 176 of the Code, the investigating officer shall use the same for his further investigation. This is like a Dying Declaration; Confession recorded under section 164 of the Code; Statements of Witnesses recorded under Section 164 of the Code and report of Test Identification Parade conducted by a Magistrate. Indisputably, the functions of the Magistrate viz., recording dying declaration, confession under section 164 of the Code, statements of the witnesses under Section 164 of the Code and conducting test identification parade do not form part of

investigation and they do not in any manner impair the investigation. Like, the documents viz., dying declaration, confession and statements under 164 of the Code, report on test identification parade that are kept along with the case records and copies are furnished to the police for taking forward the investigation in the right direction, the record of the proceeding under sub-section (1A) of the Code conducted by a Judicial/Metropolitan Magistrate shall also be kept as part and parcel of the case records. On completing the investigation, when police report is submitted under section 173 of the Code, the learned Judicial/Metropolitan Magistrate shall act according to Section 190 of the Code. For any reason if the accused is summoned, he shall be entitled for copies of the record of the proceedings under Section 176(1A) of the Code, as provided under Section 207 of the Code. This is irrespective of the fact whether the prosecution relies on such documents or not. As has been held by the Hon'ble Supreme Court in *V.K. Sasikala v. State rep. by Superintendent of Police*, (2012) 9 SCC 771 furnishing copies of the said record to the accused is in tune with the fair trial to be afforded to the accused under Article 21 of the Constitution of India. It is needless to point out that the statements of the witnesses recorded during inquiry under sub-section (1A) of Section 176 of the Code could be used either for corroboration or for contradiction of the makers of the statements during trial.

36. In the instant case, the learned Judicial Magistrate-II, Panruti has held an inquiry rightly under sub-section (1A) of Section 176 of the Code, but, he had submitted the report to the District Collector and the District Collector, in turn, submitted the same to the Government. As I have already concluded, this procedure adopted by the learned Magistrate is illegal. The learned Magistrate ought not to have submitted his report to the District Collector.

37. Nextly, the Inspector of Police who registered the case, as it is seen from the counter, did not conduct investigation at all. Perhaps, he was under the mistaken impression that the inquiry held by the learned Judicial Magistrate under sub-section (1A) of Section 176 of the Code was a bar for him to do investigation. I wish to reiterate that the investigation by the police and inquiry by a Judicial/Metropolitan Magistrate would not preclude each other as they operate in different spheres. The Inspector of Police ought to have investigated the case according to law.

38. Nextly, the Government of Tamil Nadu under Letter No. 4341/L & O. E/2011-1 dated 13.10.2011 has dropped all further action in the matter accepting the report of the Judicial Magistrate-II, Panruti, thus, equating the inquiry held by the Magistrate to an investigation by the police and as a final conclusion. The said order of the Government is undoubtedly illegal. Therefore, I have to set aside the Letter of the Secretary to Government, Public (Law & Order) Department, Secretariat, Chennai, in Letter No. 4341/L&O.E/2011-1, dated 13.10.2011 dropping all further action in the matter. The matter needs thorough investigation.

39. Now, the last question is, to whom the investigation should be entrusted to. Though in the original petition it is stated that investigation should be conducted by Deputy Superintendent of Police since the deceased belonged to scheduled caste, as per the provisions of the Scheduled Castes and Scheduled Tribes [Prevention of Atrocities] Rules, I am not persuaded by the said contention. Though the deceased belonged to scheduled caste since the alleged attack on him was not on account of the fact that he belonged to scheduled caste, the provisions of The Scheduled Caste and Scheduled Tribes [Prevention of Atrocities] Act, 1989 and the rules thereunder are not applicable. At the same time, the investigation cannot be entrusted to the Inspector of Police. In this regard, I may refer to the judgment of the in *People's Union for Civil Liberties v. State of Maharashtra*, 2014 (11) Scale 119. As has been directed by the

Hon'ble Supreme Court, since it is a case of custodial death, an independent investigation into the incident should be conducted either by CB CID or by a team of police officers from any other police station under the supervision of a senior officer. Going by the facts of the case, in my considered opinion, it will be in the interest of justice to entrust the investigation to the CB CID for investigation by an officer not below the rank of Deputy Superintendent of Police. I hasten to add that in this order, I have not expressed any opinion regarding the cause of death as to whether it was natural death or homicidal death. The observations made by the learned Judicial Magistrate II, Panruti in his report are also not binding on the investigating officer on this aspect. It is for the investigating officer to thoroughly investigate the matter. So far as the relief of compensation is concerned, I am not inclined to grant the same in this original petition since I am ordering for investigation.

40. To sum up, the conclusions are as follows: -

(1) Any information relating to the death or disappearance of any person or rape of a woman while such person or woman was in the custody of the police or in any other custody authorized by a Magistrate or Court, shall be registered as a case under Section 154 of the Code.

(2) Soon after the registration of the case, the Station House Officer shall forward the FIR to the jurisdictional Judicial Magistrate/Metropolitan Magistrate.

(3) The jurisdictional Magistrate shall thereafter hold an inquiry under Section 176(1A) of the Code.

(4) During such inquiry under Section 176(1A) of the Code the Judicial Magistrate/Metropolitan Magistrate shall have power to record evidence on oath.

(5) On completing the inquiry the Judicial Magistrate/Metropolitan Magistrate shall draw a report and keep the statements of the witnesses, documents collected and the report drawn by him as part of case records.

(6) The Judicial Magistrate/Metropolitan Magistrate shall furnish copies of the statements of the witnesses recorded during inquiry under Section 176(1A) of the Code, the documents collected and the report drawn by him to the investigating police officer without delay.

(7) The investigating police officer shall, without being hindered by the inquiry by the Judicial Magistrate/Metropolitan Magistrate, conduct investigation under Chapter XII of the Code thoroughly and submit a final report to the jurisdictional Magistrate/Court under Section 173 of the Code.

(8) If the case relates to police encounter, as directed by the Hon'ble Supreme Court in *People's Union for Civil Liberties v. State of Maharashtra*, 2014 (11) Scale 119, the investigation shall be entrusted to either CB CID or a police team of another police station under the supervision of a senior police officer (at least a level above the head of the police party engaged in the encounter).

(9) The Judicial Magistrate/Metropolitan Magistrate shall not forward the original records of the inquiry under Section 176(1A) of the Code either to the District Collector or to the Government.

41. In the result, the criminal original petition is allowed in the following terms: -

(i) The Letter of the Secretary to Government, Public (Law & Order) Department, Secretariat, Chennai, in Letter No. 4341/L&O.E/2011-1, dated 13.10.2011 is hereby set aside;

(ii) The Director General of Police, Tamil Nadu, is directed to nominate a police officer from CB CID, not below the rank of Deputy Superintendent of Police and hand over the investigation of the case in Crime No. 351 of 2010 on the file of the Inspector of Police, Kadampuliyur Police Station, Cuddalore District, for a thorough investigation.

(iii) The inquiry report of the Judicial Magistrate-II, Panruti, submitted to the District collector and forwarded to the Government shall be returned to the learned Judicial Magistrate No. II, Panruti forthwith.

(iv) The learned Judicial Magistrate-II, Panruti, shall furnish copies of his proceeding under sub-section (1A) of Section 176 of Cr.P.C. to the investigating police officer as indicated above.

Consequently, connected MP is closed.

42. Before parting with this matter, I wish to record my appreciation to the valuable assistance rendered by Amicus Curiae Mr. I. Subrmanian, the learned Senior Counsel and also to the other Senior Counsel Mr. A. Raghunathan, Dr. A.E. Chelliah, Mr. N.R. Elango, and Mr. Gopalakrishna Lakshmana Raju.

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