

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 488 of 2015**

Shankar Lal Yadav son of Kanwal Prasad Yadav, aged about 72 years, Kirana Shop Owner resident of Village Telai, P.S. Janjgri, Tahsil Akaltara District Janjgir-Champa (Chhattisgarh)

---- Appellant**Versus**

1. State of Chhattisgarh through the Principal Secretary Department of Home, Mahanadi Bhawan, Mantralaya New Raipur (Chhattisgarh)
2. Principal Secretary Department of Health and Family Welfare District Raipur (Chhattisgarh)
3. The Inspector General of Police Bilaspur Division District Bilaspur (Chhattisgarh)
4. The Superintendent of Police Korba Civil and Revenue District Korba (Chhattisgarh)
5. CSP Korba Civil and Revenue District Korba (Chhattisgarh)
6. Town Inspector Urga P.S. House Urga District Korba (Chhattisgarh)
7. Medical Officer Primary Health Centre Korba Block and District Korba (Chhattisgarh)

---- Respondents

For Appellant	:	Shri Vivek Ranjan Tiwari, Advocate
For Respondents	:	Shri B. Gopa Kumar, Dy. Advocate General

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Judgment on Board**Per Navin Sinha, Chief Justice****14/10/2015**

1. The present appeal arises from order dated 31.7.2015 disposing Writ Petition (Cr.) No. 137 of 2014 with the observation that if in future any incriminating material surfaces, the Appellant would be at liberty to seek indulgence of the police authorities for proper enquiry in the matter.
2. The Appellant is the father of the deceased who was found dead near Railway track in suspicious circumstances. Learned Counsel for the Appellant

submitted that it was not a natural death. The rest is a subject matter for investigation. The police had a bounden duty to register First Information Report, investigate the matter and then submit a final report under Section 173 CrPC before the concerned Magistrate. The police had no jurisdiction and is not authorised by the CrPC in case of an unnatural death to hold a preliminary enquiry and then refuse to register an FIR on that basis. Unless and until a proper police investigation is done in accordance with law, it cannot be said that whether it was a suicide, murder or pure accident. The Learned Single Judge had himself observed in paragraph 6 that the manner in which the postmortem had been conducted left him totally dissatisfied. That was an additional ground to have directed the police to investigate.

3. Learned Counsel for the State from the counter-affidavit filed to the writ petition submitted that Merg was registered under Section 174 CrPC when the dead body was found on the Railway track. At the time the body was handed over to the Appellant, he did not express any suspicion about his son having been murdered. It was a simple case of suicide. The deceased was jobless, a cowherd had seen him jumping in front of the train. There was a marital discord also. The Appellant, if aggrieved can pursue remedies under Section 156(3) or 200 CrPC.

4. We have heard Learned Counsel for the parties and also perused the complaint filed by the Appellant before the police, inter alia, stating that there was a piercing injury on the body and that the postmortem report did not specifically state whether the injuries were antemortem or postmortem. The deceased had also sold certain lands to help his in-laws and the loan was not being returned.

5. Suffice it to observe that whether it was a suicide, an accident or a murder, the death was unnatural. Though Merg was registered under Section 174 CrPC, the statutory procedure prescribed therein has not been followed and a curious mix of investigation procedure under Section 156 (1) CrPC has

been made without registering a formal FIR. The police in the facts of the case had a bounden duty under Section 156(1) CrPC to register an FIR, investigate the matter and submit a final report under Section 173(2) CrPC before the concerned Magistrate. There is no jurisdiction in the police to hold a preliminary enquiry and to decide whether the FIR should be registered or not in case of cognizable offence. Prima facie, we are of the opinion that to accept such a submission would be vesting very wide and uncannalized powers with the police, the misuse of which cannot be ruled out especially in instances like the present. In the facts of the case it cannot be said to be an undisputed case of suicide to straightaway invoke Section 174 CrPC.

6. The appeal is therefore allowed and the police is directed to act in accordance with Section 156(1) CrPC by registering formal FIR, investigating the matter and submitting the report to the Magistrate concerned within the statutory time provided in Section 167 CrPC.

7. The order under appeal itself observes that if incriminating materials surfaced the Appellant could seek indulgence of the police. Whether there was incriminating material or not is the statutory duty of the police to investigate and find out.

8. The order under appeal is set aside. The appeal is allowed.

Sd/-

(Navin Sinha)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE