

CWP-24439-2012

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-24439-2012

Judgment reserved on:31.10.2015

Date of Decision: 24.12.2015

Jarnail Singh

... Petitioner(s)

Versus

State of Punjab and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?.
- 2) To be referred to the Reporters or not ?.
- 3) Whether the judgment should be reported in the Digest ?

Argued by: Mr. Vikram Chaudhary, Sr. Advocate with
Ms. Isha Goyal, Advocate for
the petitioner.

Mr. Suresh Singla, Addl. A. G. Punjab.

Mr. P.S.Ahluwalia, Advocate,
for respondent Nos.3 to 6.

Mr. S.S.Sandhu, Standing Counsel,
for C.B.I.

Paramjeet Singh, J.

Instant writ petition has been filed under Articles 226/227 of the Constitution of India praying for issuance of a writ in the nature of mandamus directing the respondents/State of Punjab to enquire into the alleged police encounter in which Gurshahid Singh @ Gursheer Singh @ Shera, son of the petitioner has been killed by the police, through the

CWP-24439-2012

Central Bureau of Investigation and to register FIR against the erring police officers who are responsible for the said killing of son of the petitioner and also to hand over the investigation of F.I.R. No.83 dated 06.09.2012, registered at Police Station Bathinda, under Sections 307/34 IPC read with Sections 25/27/24(54)/59 of Arms Act to the Central Bureau of Investigation.

In brief, facts giving rise to the present petition are to the effect that Gurshahid Singh @ Shera, son of the unfortunate petitioner, was a National Level Hammer Thrower and he had participated in so many events organized by the State of Punjab and the Government of India. He also won Medal in Hammer Throw in the event held at Bangalore, Karnataka. It is also averred that some false FIRs were registered against the son of the petitioner along with others and ultimately in most of the FIRs, he was acquitted after trial due to his innocence. The particulars of different FIRs registered against him are given below:

1. FIR No.171/2009, under Sections 401/411/420/467/471/120-B IPC and 25/54/59 of Arms Act, Police Station Sector 36, Chandigarh;
2. FIR No.235/09, under Sections 395 IPC and 25/54/59 of Arms Act, Police Station Sector 34, Chandigarh;
3. FIR No.47 dated 15.05.2009, Police Station Sector 20, Panchkula, under Sections 395/417 IPC;
4. FIR No.31 dated 25.01.2009, under Sections 307/224/225/353/332/323/186 IPC, Police Station City Barnala;
5. FIR No.99 dated 30.06.2009, Police Station Division No.6, Ludhaina, under Sections 391/342/34 IPC.

CWP-24439-2012

The averments in writ petition are to the effect that on 06.09.2012, at about 7.00 P.M., the police after apprehending the son of the petitioner forcibly took him to an unknown place where he was brutally murdered by firing a gun shot and brought back as dead. Thereafter, a story was made up that at about 7.00 P.M, when street lights were on in the area of Kamla Nehru Colony, Gurshahid was travelling in a car with one lady and on seeing the police party, he started firing towards the police party. In order to save themselves, the police party also started firing in retaliation. During this firing, Gurshahid became injured and later on died in hospital. Accordingly, the police registered the FIR against Gurshahid (since deceased) under Sections 307/34 IPC alongwith one lady namely Namdeek Kaur, who was shown to be accompanying him. It is alleged that in fact, it was a cold-blooded murder of the son of the petitioner by the police headed by Kuldeep Singh Chahal, IPS, Assistant Superintendent of Police, City-II, Bathinda and later on the incident was shown to be fake encounter. It is pleaded that following strong reasons show that son of the petitioner was apprehended and killed and then it has been shown to be an encounter:

- (i) It was a Fortuner and running car which was shown to be driven by Gurshahid Singh and one girl was also shown to be sitting with him. It was a hot season i.e. Ist week of September, the Air Conditioner must have been on and window glasses must have been shut, therefore, how with the shut glasses of a running car,

CWP-24439-2012

the driver could fire a shot on the police or in case some shots were allegedly fired by the person driving the car, the window glass or any other glass must have broken, but same has not been happened, which creates a great doubt.

- (ii) That in the FIR, it has been stated that during firing, the injured person disclosed his name as Gurshahid @ Shera and also disclosed the name of the girl as Namdeek Kaur and he was taken to Civil Hospital for treatment in the government vehicle of the ASP bearing No.PB65-P-4223 under the supervision of HC Harbans Singh whereas in the hospital when the said young man was got admitted his identity was shown to be some unknown person. If the police already knew his name as Gurshaheed @ Shera, then why in the hospital record his name was not disclosed and only unknown person was admitted.
- (iii) That further at the time of taking medicines from Chemist Shop, it was shown to be for unknown person.
- (iv) That it is shown that the alleged girl who was sitting with deceased had succeeded in running away from the spot. Is it possible in the presence of heavy police contingent for a girl to flee that too during firing from

CWP-24439-2012

both sides?

- (v) That even if for sake of arguments, it is admitted that the girl was accompanying the deceased when the police party started firing on the car in which the deceased was allegedly injured and died later on, then why any other bullet did not hit the girl.
- (vi) That if the police started firing in retaliation, then the bullets must have hit the window glasses, where the deceased was sitting on driver seat. None of the bullets hit the deceased on the upper part of the body. In post mortem report, only one bullet is shown to have crossed the lower part of window which hit on the anti-superior iliac spine of the deceased and same proved to be fatal. There was no injury of any bullet on any other part of the body. There was no damage to the car except one bullet shown to be entered through window of driver side.
- (vii) That as per PMR, both the injuries shown on the body of the deceased entry and exist, blackening is shown, which itself is not possible as bullet Ist crosses the window and thereafter hit the deceased. The blacking of wound is not at all possible.
- (viii) That most importantly on the Bed Head Ticket of deceased in the Civil Hospital, Bathinda, the injured

CWP-24439-2012

person was shown to have expired at 08.07 p.m, whereas in the inquest report, the police has shown deceased to have died at 12.30 a.m. on 07.09.2012.

- (ix) That even in the PMR, the doctors have written the date and time of death as per police papers i.e. 07.09.2012 at 12.30 A.M., which clearly spells out that the police intentionally did not bring into their record. HC Harbans Singh 1115/BTI who allegedly got deceased admitted in hospital made a statement under Section 161 of the Code of Criminal Procedure, that he brought the medicines as per prescription of doctor at once and after some time doctor told him that due to serious condition of injured, he had expired and sent to Mortuary. Accordingly if the doctor disclosed HC Harbans Singh about the death of deceased, why he has not informed the high police officials about his death, whereas news of death of deceased was flashed at 10.00 P.M. From all these facts and circumstances, it is clear that young boy was caught and murdered, then the police later on concocted a false story. Moreover, the girl who was sitting with the deceased was arrested at 2.30 A.M., next morning.
- (x) That it is so mentioned in the FIR that the young man

CWP-24439-2012

driving the car, started firing on the police. If that is so, whether any shot hit anybody or any place, because the place where the incident is shown to be happened, is a residential area and bullet must have hit some where, but it is totally silent. The story that in retaliation the police started firing, is completely an unbelievable story but forwarded by the police.

- (xi) That ASP Bathinda Shri Kuldeep Singh Chahal in his statement under Section 161 Cr.P.C., has changed the entire version of the police, as was recorded in the FIR. He stated that when they stopped the car of deceased, then the girl started shouting fire fire and the young boy in order to kill started firing on the police and the gunmen in order to save themselves took positions, the deceased closed the door of the car. After taking positions, ASP directed the deceased to come out of car and thereafter apprehending that he may not fire again, he (ASP) fired a shot from his pistol and one shot hit the window of the car which further hit the deceased, whereas fact is that ASP himself after catching hold of the deceased, killed him and shown it a case of encounter.

It is further averred that the petitioner made representations to various authorities including the Chief Minister, Punjab to inquire into

CWP-24439-2012

the mater but to no avail. The petitioner got photographs of the spot clicked which show that it was a cold-blooded murder but shown to be an encounter. The alleged fake encounter of son of the petitioner is the result of larger conspiracy of the police officials and, therefore, a full fledged investigation by the Central Bureau of Investigation alone can reveal truth. Hence, this writ petition.

Upon notice, respondents put in appearance. Respondent Nos.1, 2, 4, 8 and 9, respondent No.3, respondent No.5 and respondent No.7 filed their separate replies, respectively. The stand taken by respondent Nos.1, 2, 4, 8 and 9 and respondent No.3 and respondent No.5 is to the effect that son of the petitioner was involved in as many as ten matters pertaining to bank robbery, dacoity, attempt to murder, extortion, kidnapping for ransom as well as murder at various places. The Fortuner Car in which son of the petitioner was sitting at the time of occurrence was a stolen vehicle and on 06.09.2012, an intimation was received in Bathinda that the aforesaid car i.e. a white coloured car of Toyota Fortuner make bearing No.0045 is roaming in and around Bathinda City in a suspicious circumstance. In pursuance to this, the S.H.Os of all the police stations in Bathinda were issued instructions through the DCR Bathinda to lay *nakas* and to round up the said car. Besides this, a team under the supervision of Sh. Kuldeep Singh Chahal, IPS (ACP Bathinda) and S.H.O. P.S.Cantt. Inspector Kuldeep Singh alongwith other police officials in their respective official vehicles i.e. PB65 P-4223 and PB03 W-5977 was constituted for search of the

CWP-24439-2012

aforementioned car. At about 7.00 P.M., when the police arrived near House No.443, Kamla Nehru Colony, Bathinda near to the Rest House (where, respondent No.5 was residing at that point of time), the reported car bearing the registration No.PB-31-0045 was found parked under the street light. It was noted that two persons occupied the vehicle, a young man in the driving seat and a girl in the adjoining seat, who sensing the presence of the police, tried to flee the spot. The driver of the official vehicle of respondent No.5 on the direction of respondent No.5 made a cut to left side and positioned the official vehicle in front of the Car, in the attempt to stop him from fleeing the spot. In response to this, the person on the wheel of the car opened the door of his car and started firing on the official vehicle of respondent No.5. Seeing this, police officials immediately took their respective position. Respondent No.5 repeatedly warned the driver of the Fortuner to come out of it. However, the said person in the Fortuner Car fired 4 times from his pistol after opening the door and one of his fired bullets hit the Bumper of Car No.PB-65P-4233 i.e. the official vehicle of respondent No.5, behind which respondent No.5 had taken his position. Since the occupant of Fortuner was not desisting and was firing towards the police officials, respondent No.5 fired from his service pistol on the Fortuner Car out of which one bullet hit the front door near the handle at a height of approximately 35” and passed through the door and struck the occupant on the lower portion of his stomach. During the cross-firing, respondent No.5 had directed his gunman to puncture the tyres of the car which he

CWP-24439-2012

did so with his AK-47 rifle. The said action was only after the occupant of the car, had fired on the police party, and apprehending further threat to security and realizing that the occupant of the car was armed with fire weapon, the order was given. The chain of events was happening so fast, that in the heat of the moment and the ensuing confusion, the young woman, occupying the adjoining seat, escaped taking advantage of this situation. The petitioner is trying to challenge the veracity of the occurrence in question. The happening of the chain of events in this manner had been witnessed by number of residents of the locality who not only deposed under Section 161 Cr.P.C. before the police but also deposed during the course of the magisterial inquiry ordered by the then Deputy Commissioner, Bathinda on the request of the then SSP, Bathinda. The deceased was immediately shifted to the hospital in wounded condition where the doctors made an attempt to save him but he succumbed to the injury received by him. The very fact that the deceased was alive when he was got admitted in the hospital negates the claim of the petitioner that he was killed and later a fake encounter has been shown to have taken place at the place of occurrence. The petitioner in the zeal of proving the occurrence in question as a fake encounter, has raised untenable contentions which are negated from the following factual matrix of the case. Besides concealing the antecedents of the deceased, the petitioner has concealed that his son was living in the colony in question where the occurrence took place, with the fake name and identity. Surprisingly, respondent No.5 himself was living in

CWP-24439-2012

the same locality at a very close proximity to the place of occurrence. The petitioner has contended that as per the FIR, his son had disclosed his identity but yet while getting him admitted, he was shown to be unknown, therefore, it is a fake occurrence. To rebut this, it is contended that no doubt, the deceased had disclosed his identity on confrontation to Inspector Kuldeep Singh after being hit who seeing the condition of the injured, directed the police officials present there, to shift the injured immediately to the hospital, however, since the situation was so tense, he did not disclose the identity of the injured to the person who was taking him to hospital. In the post mortem report, hitting of bullet on the bumper of the official car of respondent No.5 negates the claim of the petitioner that none of the vehicle of the police was hit. Carrying out the magisterial inquiry with the orders of the Deputy Commissioner of Bathinda on the complaint of the then SSP, Bathinda into the occurrence in question also negates the claim of the petitioner that despite his repeated requests, no inquiry had been got conducted. Perusal of FSL report clearly reflects that only one bullet hit the body and that there were five injuries surrounding the entrance wound and only one exit injury. Even though the PMR report dated 07.09.2012 indicated the presence of blackening and the petitioner on the basis of that has opted to say that it is a staged encounter, without taking into consideration that the blackening was a result of the blood coagulation around the wound due to the fact that the post mortem of the body has been done after 18 hours of the death of the deceased. As per investigation, the deceased

CWP-24439-2012

was residing in House No.443, Kamla Nehru Colony, Bathinda, very near to the place of occurrence, by impersonating him as one Udaipal Singh. The son of the petitioner was residing in a rented house owned by Shri Mohinder Singh Dhiman, Advocate, son of Shri Kishan Singh, on the ground floor. As per the said landlord, the deceased had taken on rent the said house with the fake name of Udaipal Singh son of Kulwinder Singh, resident of V. Sehzadi, District Ferozepur whereas his actual name was Gurshahid Singh alias Shera son of Jarnail Singh, resident of V. Khuban, P.S. Bahaw Wala, District Fazilka. On 31.08.2012, the accomplice of the deceased namely Gurpreet Singh Sekho while roaming in the car in question i.e. PB-31-0045 in Chandigarh had the cross firing with police party of District Ferozepur led by Inspector Dalbir Singh, however, he managed to run away. Regarding this, FIR No.438 dated 31.08.2012 under Section 336 IPC read with Sections 25/27/54/59 of Arms Act was registered with P.S.Sector 34, Chandigarh. The injured was taken to the hospital in the official car of respondent No.5 along with an HC which would never have been the case if the police had any sort of a malafide intention or any sort of a grudge against the deceased. In pursuance of ruqa, FIR No.83 dated 06.09.2012, under Section 307/34 IPC read with Section 25/27/24(54) and 59 of the Arms Act was registered at P.S.Cantt. Bathinda. On investigation, it came to notice that number displayed on the Fortuner Car was fake and its real registration Number was PB-08-BM-0071. The vehicle was stolen and regarding this, FIR No.152 dated

CWP-24439-2012

30.07.2012 was registered with P.S. Rama Mandi, Jalandhar. A large number of witnesses have testified on oath before the Court of law that the incident had happened in their presence. If the police had any intention to set up a story of fake encounter, they would not have done the same in a broad day light in the middle of residential area and locality. As stated earlier, the son of the petitioner was rushed to the hospital after the alleged occurrence and when he was admitted, he was alive. As per the medical evidence, there was only one injury which hit the body and there were five injuries surrounding the entrance wound and only one exit injury. As the bullet penetrated after hitting the door, the door particles had hit in the body. The injuries surrounding the entry wound in the body of the deceased and the presence of splinter near the entry wound themselves speak that the fire was made from distance from outside the car and further passed through the deceased. The blackening was a result of the blood coagulation around the wound as the post mortem of the body was performed after 18 hours of the death of the son of the petitioner. The police party was firing in self-defence and fired upon the wheels of the vehicle upon which liquid in tyres had leaked and spread on the floor, which the petitioner has opted very conveniently to term as blood. It has also come in the magisterial inquiry that it was the deceased who firstly made firing upon the police party due to which the police party made firing in order to save itself. To ensure the fair investigation, the Superintendent of Police, Bathinda also constituted a Special Investigating Team headed by Superintendent of Police

CWP-24439-2012

(Detective) and other officials. The Hon'ble Chairperson of National Human Rights Commission, New Delhi was also intimated about the death of son of the petitioner in police encounter on 08.09.2013. Thereafter, the matter was closed by the Hon'ble National Human Rights Commission.

Respondent No.7 has filed reply with the averments that case is local in nature and does not have any inter state or trans-national ramifications so as to warrant investigation by C.B.I.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner contended that son of the petitioner has been murdered by the police in the alleged encounter without any provocation. The killing of son of the petitioner is violation of Article 21 of the Constitution of India. The life of any person, specifically citizen of India, cannot be cut short by extra judicial means. The act of police officials is a clear case of homicide and investigation is required to be done from an independent investigating agency like C.B.I. The registration of offence under Section 307 IPC against the deceased and the lady accompanying him is a negation of rule of law and is against the settled principles of criminal justice system. Learned senior counsel made reference to various grounds taken in the petition to contend that the police has concocted false and fabricated story. It is a clear case of homicide. The police investigation and magisterial inquiry in this case are eye-wash. The petitioner has never been associated

CWP-24439-2012

during any of the inquiries.

Per contra, learned State counsel and learned counsel for respondent Nos.3 to 6 vehemently opposed the contentions of learned counsel for the petitioner and contended that it is the duty and function of the police to protect the life and property of the citizens of India. The son of the petitioner was a known criminal and involved in number of cases. An intimation was received that car make Fortuner bearing registration No.PB-31K-0045 is moving in suspicious circumstances in Bathinda City and just to apprehend the car, checking was started and same was intercepted by the police party headed by respondent No.5. The occupants of car was son of the petitioner and another lady named Namdeek Kaur. Firstly, son of the petitioner started firing on the official vehicle of respondent No.5 and in retaliation the police started firing. This is not the case of encounter. The said incident has occurred in the residential area of Kamla Nehru Colony, Bathinda which is thickly populated area. The FIR was registered against the son of the petitioner and his companion namely Namdeek Kaur under Sections 307, 473, 411, 34 IPC. At that point of time, the deceased was alive and was taken to the hospital with a purpose to save him, however, unfortunately he died in the hospital. The matter was immediately reported to the State Human Rights Commission and National Human Rights Commission. The magisterial inquiry was also conducted wherein the version of police was found to be correct. The National Human Rights Commission examined the matter and recorded a finding that there is no violation of human

CWP-24439-2012

rights. Even the investigation was also carried out by S.I.T., headed by the Superintendent of Police, Detective, Bathinda. All the material has been collected in accordance with the guidelines issued by the National Human Rights Commission. Furthermore, the vehicle in question in which the deceased and his companion were travelling, was having a fake registration number and was a stolen one. The deceased was also residing in the locality of encounter with a fake name of Udaipal Singh. The matter has also been examined by the Court of law and sentence has been awarded to the said Namdeek Kaur.

Besides this, learned counsel for respondent Nos.3 to 6 contended that respondent No.5 is a young IPS officer and was still under training and has an impeccable service record. The case set up by the petitioner that his son was apprehended and was forcibly taken away to unknown place and brutally murdered by firing gun-shot, is totally false.

Learned counsel for respondent No.7-CBI contended that the Punjab Police is fully competent to investigate such cases and the matter in hand does not have any inter state or trans-national ramifications so as to warrant investigation by C.B.I.

I have given my anxious thoughtful consideration to the contentions of the Ld. counsel for the parties.

Article 21 of the Constitution of India guarantees to all the citizens, the right to life and liberty. Its purport has been extended through a catena of judgments rendered by the Hon'ble Supreme Court

CWP-24439-2012

and the Hon'ble High Courts, to take in its fold every requirement, to enable a citizen to lead proper and respectable life. If the State infringes the liberty of an individual, the same is always tested on the touchstone of Article 21 which provides that life and liberty of a citizen cannot be interfered with, or infringed, except through procedure established by law. The decision in the present case is to be taken in the light of principles enshrined in the Constitution of India specifically under Article 21 of the Constitution of India.

In the present case, the petitioner has sought investigation through an independent agency in the alleged encounter taken place between the police and the crime suspect (son of the petitioner). In the present case, the matter has been investigated by the SIT headed by S.P. (Detective). The magisterial inquiry was also conducted by the Additional Deputy Commissioner. The matter was also examined by the State Human Rights Commission and the National Human Rights Commission. All of them have come to the conclusion that the police did not have any intention to kill the son of the petitioner. The photograph of the damaged windscreen of the police vehicle and forensic report further show that the deceased had opened fire with his 9mm pistol.

Not only this, FIR No.83 of 06.09.2012 was registered against the son of the petitioner and Namdeek Kaur, who was accompanying the son of the petitioner at the time of alleged occurrence. The entire proceedings were also scrutinized by the Court of law and the

CWP-24439-2012

said Namdeek Kaur has been convicted vide judgment dated 29.09.2014.

It needs to be mentioned here that the Hon'ble Supreme Court in ***People's Union for Civil Liberties and another vs. State of Maharashtra and others*** 2015 (1) PLJ (Criminal) 193 has laid following guidelines in the matters of investigating police encounters in the cases of death as the standard procedure for thorough effective and independent investigation:

“31. In light of the above discussion and having regard to the directions issued by the Bombay High Court, guidelines issued by NHRC, suggestions of the appellant - PUCL, amicus curiae and the affidavits filed by the Union of India, State Governments and the Union Territories, we think it appropriate to issue the following requirements to be followed in the matters of investigating police encounters in the cases of death as the standard procedure for thorough, effective and independent investigation :

(1) Whenever the police is in receipt of any intelligence or tip-off regarding criminal movements or activities pertaining to the commission of grave criminal offence, it shall be reduced into writing in some form (preferably into case diary) or in some electronic form. Such recording need not reveal details of the suspect or the location to which the party is headed. If such intelligence or tip-off is received by a higher authority, the same may be noted in some form without revealing details of the suspect or the location.

(2) If pursuant to the tip-off or receipt of any

intelligence, as above, encounter takes place and firearm is used by the police party and as a result of that, death occurs, an FIR to that effect shall be registered and the same shall be forwarded to the court under Section 157 of the Code without any delay. While forwarding the report under Section 157 of the Code, the procedure prescribed under Section 158 of the Code shall be followed.

(3) An independent investigation into the incident/encounter shall be conducted by the CID or police team of another police station under the supervision of a senior officer (at least a level above the head of the police party engaged in the encounter). The team conducting inquiry/investigation shall, at a minimum, seek :

(a) To identify the victim; colour photographs of the victim should be taken;

(b) To recover and preserve evidentiary material, including blood-stained earth, hair, fibers and threads, etc., related to the death;

(c) To identify scene witnesses with complete names, addresses and telephone numbers and obtain their statements (including the statements of police personnel involved) concerning the death;

(d) To determine the cause, manner, location (including preparation of rough sketch of topography of the scene and, if possible, photo/video of the scene and any physical evidence) and time of death as well as any

pattern or practice that may have brought about the death;

(e) It must be ensured that intact fingerprints of deceased are sent for chemical analysis. Any other fingerprints should be located, developed, lifted and sent for chemical analysis;

(f) Post-mortem must be conducted by two doctors in the District Hospital, one of them, as far as possible, should be Incharge/ Head of the District Hospital. Post-mortem shall be videographed and preserved;

(g) Any evidence of weapons, such as guns, projectiles, bullets and cartridge cases, should be taken and preserved. Wherever applicable, tests for gunshot residue and trace metal detection should be performed.

(h) The cause of death should be found out, whether it was natural death, accidental death, suicide or homicide.

(4) A Magisterial inquiry under Section 176 of the Code must invariably be held in all cases of death which occur in the course of police firing and a report thereof must be sent to Judicial Magistrate having jurisdiction under Section 190 of the Code.

(5) The involvement of NHRC is not necessary unless there is serious doubt about independent and impartial investigation. However, the information of the incident without any delay must be sent to NHRC or the State Human

Rights Commission, as the case may be.

(6) The injured criminal/victim should be provided medical aid and his/her statement recorded by the Magistrate or Medical Officer with certificate of fitness.

(7) It should be ensured that there is no delay in sending FIR, diary entries, panchnamas, sketch, etc., to the concerned Court.

(8) After full investigation into the incident, the report should be sent to the competent court under Section 173 of the Code. The trial, pursuant to the charge-sheet submitted by the Investigating Officer, must be concluded expeditiously.

(9) In the event of death, the next of kin of the alleged criminal/victim must be informed at the earliest.

(10) Six monthly statements of all cases where deaths have occurred in police firing must be sent to NHRC by DGPs. It must be ensured that the six monthly statements reach to NHRC by 15th day of January and July, respectively. The statements may be sent in the following format along with post mortem, inquest and, wherever available, the inquiry reports:

(i) Date and place of occurrence.

(ii) Police Station, District.

(iii) Circumstances leading to deaths:

(a) Self defence in encounter.

CWP-24439-2012

(b) In the course of dispersal of unlawful assembly.

(c) In the course of affecting arrest.

(iv) Brief facts of the incident.

(v) Criminal Case No.

(vi) Investigating Agency.

(vii) Findings of the Magisterial Inquiry/Inquiry by Senior Officers:

(a) disclosing, in particular, names and designation of police officials, if found responsible for the death; and

(b) whether use of force was justified and action taken was lawful.

(11) If on the conclusion of investigation the materials/evidence having come on record show that death had occurred by use of firearm amounting to offence under the IPC, disciplinary action against such officer must be promptly initiated and he be placed under suspension.

(12) As regards compensation to be granted to the dependants of the victim who suffered death in a police encounter, the scheme provided under Section 357-A of the Code must be applied.

(13) The police officer(s) concerned must surrender his/her weapons for forensic and ballistic analysis, including any other material, as required by the investigating team, subject to the rights under Article 20 of the Constitution.

CWP-24439-2012

(14) An intimation about the incident must also be sent to the police officer's family and should the family need services of a lawyer/counselling, same must be offered.

(15) No out-of-turn promotion or instant gallantry rewards shall be bestowed on the concerned officers soon after the occurrence. It must be ensured at all costs that such rewards are given/recommended only when the gallantry of the concerned officers is established beyond doubt.

(16) If the family of the victim finds that the above procedure has not been followed or there exists a pattern of abuse or lack of independent investigation or impartiality by any of the functionaries as above mentioned, it may make a complaint to the Sessions Judge having territorial jurisdiction over the place of incident. Upon such complaint being made, the concerned Sessions Judge shall look into the merits of the complaint and address the grievances raised therein.

Although, the decision was rendered on 23.09.2014 in ***People's Union for Civil Liberties (supra)*** and alleged incident in the present case has occurred on 06.09.2012, the steps taken in the present case appears to be on the lines of guidelines now laid down by the Hon'ble Supreme Court. Intimation was sent to the State Human Rights Commission and National Human Rights Commission by the police authorities and the deceased was taken to the hospital for medical

CWP-24439-2012

treatment, investigation was carried out by an independent agency by the officer of the rank of Superintendent of Police, Detective, magisterial inquiry was also carried out and National Human Rights Commission have also examined the matter and came to conclusion that it was not fake encounter. Above all, challan in FIR No.83 dated 06.09.2012 registered against son of the petitioner and lady accompanying him was presented and thereafter criminal court also examined the version of police and convicted the lady accompanying the son of the petitioner. Almost all the guidelines as laid down by the Hon'ble Supreme Court in ***People's Union for Civil Liberties (supra)*** have been followed in the present case.

In view of above, I do not find any justification to order further investigation specifically by the C.B.I. However, instant petition is disposed of with liberty to the petitioner to avail the remedies, if any, as available to him in view of law laid down by the Hon'ble Supreme Court in ***People's Union for Civil Liberties (supra)***.

24.12.2015

parveen kumar

(Paramjeet Singh)
Judge