

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 675 OF 2016

Kuldeep Singh.

..Petitioner.

Versus

State of Maharashtra & Others.

..Respondents.

Mr. Nitin Pradhan a/w Nizam Tanveer Mohd. Sharif for the
Petitioner.

Mr. Mukul Rohatgi, Attorney General of India a/w Alok Sahgwan,
Additional A.G. - State of Haryana, Devanshi Singh, Mr. A. H.
Ponda, Samsher Garud, V. Kamble, Joy Pereira, Juhi Wadia i/b
Jayakar & Partners for Respondent No. 14 and 15.

Mr. S. K. Shinde, Public Prosecutor and Ms. U. V. Kejriwal, APP for
the State of Maharashtra.

Mr. Harshad Ponda i/b Mr. Kuldeep U. Nikam for Respondent
Nos. 5 to 13.

Coram : Ranjit More &
Dr. Shalini Phansalkar-Joshi, JJ.
Date : **March 16, 2016.**

P. C. :

1. At the outset, Mr. Shinde invited our attention to the
order dated 17th February 2016 passed by the Apex Court in
Criminal Appeal No.1412 of 2016 and especially the observations
contained in paragraph 3 of the said order. In this paragraph, the
Apex Court has recorded the statement of Mr. Nishikant

Katneshwarkar, the learned standing counsel representing the State of Maharashtra that this Court has in the order dated 15th February 2016 wrongly recorded the statement of the learned Public Prosecutor.

2. We would like to place on record the factual position that when the above writ petition was placed before us on 15th February 2016, Mr. Shinde, the learned PP, having taken instructions, had made a statement that on the basis of the Petitioner's complaint, an FIR would be registered and that would be investigated along with CR. No. 92 of 2016 and accordingly it was mentioned in our order. As this order was challenged before the Apex Court by filing an appeal and during the course of hearing of that appeal, the standing counsel for the State of Maharashtra made a statement before the Apex Court that the High Court in the impugned order has wrongly recorded the statement made by the the learned Public Prosecutor, today therefore, we called upon Mr. Shinde to make his position clear as to whether he had made such a statement before this Court when the matter was disposed of by us [Coram : Ranjit More and

V.L.Achliya, JJ.] on 15th February 2016.

3. Mr. Shinde, the learned PP makes a statement at bar that on 15th February 2016 he had indeed made a statement before this Court, having taken instructions from the officer concerned, that FIR would be registered on the basis of the Petitioner's complaint and that would be investigated along with CR. No. 92 of 2016. He further submits that he had not given any instructions to his counter-part at Apex Court in this regard. He also states that a Note was sent to the standing counsel by his office and in this Note as there is mention that if the Court directs, the FIR would be registered, probably on the basis of said Note, his counter-part at the Apex Court might have made a wrong submission.

4. Mr. Shinde, the learned PP submits that as on today also he stands by the fact that he had made the statement, as recorded in our order dated 15th February 2016. Mr. Shinde also seeks apology for the inconvenience caused. We accept the apology and do not propose to proceed further in this regard.

5. It is equally unfortunate that the submission on behalf of the Petitioner was also made before the Apex Court that without conducting inquest, this Court has made an observation that dead body of the deceased be given to the Petitioner in view of the statement made by him that he is willing to take charge of the dead body for further examination. The Petitioner did not point out before the Apex Court that as a matter of fact, the post-mortem of deceased was already conducted and the same was video-graphed too. The observations to that effect were also made by us in paragraph 5 of the order dated 15th February 2016. Learned Counsel appearing for the Petitioner submitted that the said submission was made before the Apex Court on the basis of ratio laid down by the Apex Court in Peoples' Union for Civil Liberties vs. State of Maharashtra (2014) 10 SCC 635. [for short "PUCL's case"].

6. We are not satisfied with the said explanation and express our strong displeasure in the way in which the Petitioner had made a statement before the Apex Court. Be that as it may,

we do not propose to proceed further in that regard also.

7. By the order dated 15th February 2016 we had disposed of this writ petition in terms of the statement made by learned PP for the State of Maharashtra. The order came to be challenged by the State of Haryana and others by filing an appeal before the Apex Court, namely, Criminal Appeal No.140 of 2016. The ground of challenge before the Apex Court was that they had not been heard by us before passing of the said order.

8. The Apex Court disposed of the appeal by an order dated 17th February 2016. The Apex Court partly set aside the order passed by this Court so far as it relates to the direction given for registration of an FIR on the basis of the statement made by the learned Public Prosecutor for the State of Maharashtra and remanded the matter back to this Court with a direction to implead the Appellants therein as party Respondents in this writ petition and dispose of the writ petition in accordance with law after hearing them.

9. Accordingly, the Appellants before the Apex Court have been impleaded as party Respondents in this petition. We have heard at length Mr. Pradhan and Mr. Nizam, learned Counsel appearing for the Petitioner, Mr. Mukul Rohatgi, the learned Attorney General of India representing in the matter Respondent Nos.14 and 15 and Mr. Harshad Ponda, the learned Counsel appearing for the Respondent Nos.5 to 13.

10. The principal prayer in this writ petition is a direction for registration of an FIR on the basis of Petitioner's complaint dated 9th February 2016 which essentially relates to the death of the Petitioner's brother-Sandip Ghadoli in police encounter at Mumbai on 7th February 2016.

11. Mr. Pradhan, learned Counsel appearing for the Petitioner took us through the order passed by us on 15th February 2016 [Coram :Ranjit More and V. L. Achliya, JJ] and the order made by the Apex Court in Criminal Appeal No.1412 of 2016, being the order dated 17th February 2016. He also took us through the provisions of sections 154, 161 and 162 of the Code

of Criminal Procedure, 1973 to point out that there is qualitative difference between the statement that would be recorded under section 154 and section 161 of the Code of Criminal Procedure, 1973. He submitted that the statement recorded under section 161 of the Code can be used only for the limited purpose of contradiction and so far as the statement recorded under section 154 of the Code is concerned, it can be used both, for the purpose of corroboration and contradiction. Therefore, according to him, in the instant case, it is necessary to record the separate complaint of the Petitioner under section 154 of the Code and it will not suffice that the Petitioner's statement is recorded as a witness under section 161 of the Code in the ongoing investigation commenced on the basis of the FIR registered at the instance of Haryana police. He also submitted that unless the FIR is registered on the basis of the Petitioner's statement, the truth will not come out. To substantiate his submission that in respect of the same incident, two FIRs are maintainable, Mr. Pradhan heavily relied upon the decision of the Apex Court in Anju Choudhary vs. State of UP [(2013) 6 SCC 384].

12. Mr. Mukul Rohatgi, learned Attorney General of India opposed the petition very vehemently. He submitted that already an FIR is registered in respect of the very same incident and to investigate the same a Special Investigation Team [for short "SIT"] is formed by the Commissioner of Police, Mumbai, which is investigating the matter from all possible angles. He further submitted that in respect of the incident in question there cannot be second FIR as the Petitioner can put forth his grievance before the SIT and if ultimately after investigation the SIT finds that the police officers from Haryana police have committed any offence, the report in that regard would be filed under section 173 of the Code. He submitted that, at any rate for the very same incident there cannot be two FIRs. He heavily relied upon the decision of the Apex Court in People' Union Civil Liberties v. State of Maharashtra [(2014) 10 SCC 635] wherein the Apex Court has laid down the procedure to be followed while investigating the cases of police encounter. By pointing out to observations of the Apex Court in paragraph 31 of the said decision, he submitted that the procedure laid down therein is a self-contained code and is being followed by the SIT in the present case. Even then if the

Petitioner has any grievance, he has a remedy to approach the Sessions Judge in terms of observations contained in paragraph 31.16 of the said judgment.

13. Mr. Ponda, learned Counsel appearing for the Respondent Nos 5 to 13 has supported Mr. Rohtagi, the learned Attorney General in his submissions.

14. Mr. Shinde, learned PP invited our attention to the Petitioner's complaint dated 9th February 2016 on the basis of which the Petitioner is insisting for the registration of an FIR. He submitted that the Petitioner's knowledge about the incident is hearsay. He submitted that in paragraph 3 of his complaint dated 9th February 2016, the Petitioner has stated that he came to know about the incident from one Shyam, who is an employee in Hotel Airport Metro, where the incident took place. He submitted that the statement of the witness Shyam has been recorded by the SIT and the same does not disclose that he (Shyam) is an eye-witness to the incident. He submitted that if the Petitioner comes forward to give his statement, it would be recorded and

appropriate investigation would be done with regard to the allegations made by him and if it is found that officers from Haryana police have committed any offence, the appropriate report would be filed against them under section 173 of the code.

15. Having considered the rial submissions and having gone through the petition and the decisions relied upon by the learned Counsel appearing for the respective parties, we find ourselves unable to accept the submissions of learned Counsel appearing for the Petitioner and hence we are not inclined to entertain the writ petition.

16. The main relief sought in the petition is the registration of an FIR on the basis of Petitioner's complaint dated 9th February 2016 and setting up of an SIT for investigating the said FIR. The registration of an FIR is sought in respect of the incident which occurred on 7th February 2016 in which Petitioner's brother-Sandip Ghadoli was killed. It is the case of the Petitioner that his brother was killed in an fake encounter. Whether encounter was fake or genuine, the fact remains that in

respect of the very same incident, an FIR has already been registered at MIDC Police Station, Mumbai, being CR.No.92 of 2016 for the offence punishable under sections 307, 353 and 332 of the Indian Penal Code, 1860 and sections 3, 25 and 27 of the Arms Act, 1959. The investigation of this FIR was initially entrusted to the Crime Branch and subsequently under the orders of the Commissioner of Police, Mumbai investigation came to be transferred to SIT which is presently investigating the same. As recorded by us in our earlier order dated 15th February 2016, the SIT is headed by ACP and he is assisted by 2 police inspectors, 2 Assistant Police Inspectors and 5 constables. The spot panchanama was drawn and the same was video-graphed. All the weapons, empties and other materials used by the accused as well as encounter party are being sent for examination to FSL (ballistic expert). All the mobiles of the concerned officers and witnesses who accompanied the deceased were also seized and are being sent for forensic examination. The statements of 27 material witnesses have been recorded. The report of the encounter has also been sent to NHRC and Collector Suburbs, Mumbai and also the post-mortem note and

medical certificates of the injured have been obtained.

17. It is also a matter of record that the *post-mortem* of the dead body of deceased Sandip Ghadoli - the brother of the Petitioner has already been carried out and the same is video-graphed. As submitted by Mr. Shinde, the learned PP, the investigation is being carried out by the SIT in a most professional manner, which is a totally independent body.

18. At this stage, the impartiality and credibility of the SIT cannot be doubted. We are of the opinion that the Petitioner is always at liberty to approach the SIT and make grievance that the alleged encounter is fake one and in such event the SIT is bound to investigate into the said allegations too and make appropriate report under section 173 of the Code.

19. In this view of the matter, we are of the clear view that the Petitioner cannot insist for the registration of second FIR in respect of the same incident inasmuch as the non registration of FIR on his complaint would not result in causing any prejudice

to him.

20. It is pertinent to note that the detailed procedure in respect of investigation into the matter of police encounters is laid down by the Apex Court in paragraph 31 of *PUCLs' case*, which is as under :

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:

31.1. 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.

31.2. 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.

31.3. 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 In-charge/Head of the District Hospital. Post-mortem shall be video-graphed 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.

- 31.4. 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.
- 31.5. 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.
- 31.6. The injured criminal/victim should be provided medical aid and his/her statement recorded by the Magistrate or Medical Officer with certificate of fitness.
- 31.7. It should be ensured that there is no delay in sending FIR, diary entries, panchnamas, sketch, etc., to the concerned Court.
- 31.8. 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.
- 31.9. In the event of death, the next of kin of the alleged criminal/victim must be informed at the earliest.
- 31.10. 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.
 - (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.

31.11. 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.

31.12. 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.

31.13. 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.

31.14. 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.

31.15. 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.

31.16. 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.

21. If the submissions of Mr. Shinde, the learned Public Prosecutor representing the Mumbai police/SIT are considered, we find that the procedure as laid down by the Apex Court in paragraph 31 of above decision is being followed by the SIT. This procedure, as rightly submitted by the the learned Attorney General is a self-contained Code. It does not contemplate recording of separate FIRs at the instance of every aggrieved person, merely because he is having a different version of the incident than the one recorded in earlier FIR. After all, SIT is expected to investigate into all the angles of the incident, including even the different and contrary versions of the incident. At the cost of repetition it has to be stated that SIT in the instant case is an independent body consisting of senior police officers from Maharashtra. Let it complete its investigation and submit the report, after which both the parties are at liberty to take appropriate action. Needless to state that registration of an FIR is a serious matter, as it entails serious consequences of even arrest of persons accused in the crime. The Respondents herein are senior police officers from the State of Haryana. Therefore, we find that there is no need to register another FIR in respect of

the very same incident at the instance of the Petitioner herein.

22. At this stage, reference may be made to the decision of *Anju Choudhary (supra)* on which Mr. Pradhan, learned Counsel appearing for the Petitioner has placed heavy reliance. We have gone through the same and we are of the opinion that the said decision also does not take the Petitioner's case any further. The Apex Court has in this decision clearly held that there cannot be more than one FIR about an occurrence. The purpose of registering an FIR is to set the machinery of criminal investigation into motion which culminates with filing of the police report in terms of section 173(2) of the Code. The Apex Court has then observed that it is a settled principle of law that there cannot be two FIRs registered for the same incidence.

23. This takes us to consider the request of Mr. Pradhan that the inquest of the dead body of deceased – Sandeep be conducted. We are not inclined to accept this submission as the inquest has already been carried out and thereafter the post-mortem was performed and the same is video-graphed too.

24. Thus, taking into consideration the totality of the facts and circumstances of the case, we do not find merit in the petition and the same is, therefore, dismissed.

25. In view of the disposal of main writ petition, applications taken out in this petition do not survive and the same are accordingly disposed of.

[Dr. Shalini Phansalkar-Joshi, J.]

[Ranjit More, J.]