

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

WRIT PETITION No.15484 of 2009

Between:
Mohamad Nazma Begum

....Petitioner

and

Government of Andhra Pradesh,
Rep.by its Principal Secretary (Home),
Secretariat, Hyderabad,
And others.

....Respondents

JUDGMENT PRONOUNCED ON : 29.04.2016

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THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgments?
2. Whether the copies of judgment may be : Yes
Marked to Law Reporters/Journals?
3. Whether His Lordship wishes to : Yes
see the fair copy of the Judgment?

* THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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+ WRIT PETITION No.15484 of 2009

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Mohamad Nazma Begum

...Petitioner

vs.

\$ Government of Andhra Pradesh,
Rep.by its Principal Secretary (Home),
Secretariat, Hyderabad,
And others

... Respondents

!Counsel for the Petitioner : Sri D.Suresh Kumar

^Counsel for the Respondents : GP for Home
Public Prosecutor
GP for Revenue

<Gist :

>Head Note :

? Cases referred

1. (1993) 2 SCC 746
2. AIR 2000 SC 3421
3. AIR 2005 SC 402

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.15484 of 2009

ORDER:

The petitioner is the wife of one late Sheik Ibrahim, who was an auto driver. They have two children, a daughter and a son. While so, on 16.07.2008 at about 10:00 am when the husband of the petitioner left the house as usual to ply the auto, he did not return home. The petitioner thought that he would come early in the morning. Next day the brother of the petitioner – Chand Pasha, received a phone call from Police verifying the details about the husband of the petitioner and he was informed to come to the Police Station. When the brother of the petitioner went to Mominpet, there were many Police Constables and an Officer including the third respondent, who was the Superintendent of Police of Ranga Reddy District. The third respondent directed him to go to Vikarabad in a Police jeep along with the Inspector of Police. When he went to Vikarabad Government Hospital, he saw the dead body of the petitioner's husband in the mortuary and came to know that he died in the night of 16.07.2008. The petitioner's brother called the petitioner to the hospital. Thereafter they came to know that Sheik Ibrahim died in the Police Station. The dead body was handed over to them at about 11:00 pm on 17.07.2008. After seeing the dead body, the petitioner and her brother noticed injuries on the body. Later on through other auto people and through media they came to know that on the fateful day on 16.07.2008 the husband of the petitioner had a quarrel with a fellow auto driver – Raju, over parking their auto. The said Raju gave a complaint against the husband of the petitioner to the Mominpet Police. At about 6:00 pm the Police came to the petitioner's husband while he was at the auto stand and took him to the Police Station. There he was beat black and blue. There was fracture to his left arm. The Police stated that when he was called to the Police Station and he was asked to sit, there was a power cut for a few minutes. Then he tried to escape and fell down from the second floor of the Police Station. When he was shifted to Vikarabad Hospital he succumbed to death and he was brought dead to the hospital.

It is the case of the petitioner that her husband did not go to the Police Station either as a complainant or a witness or a visitor. He was taken as an accused by the Police. Though G.O.Ms.No.439, dated 17.10.1999, provides for payment of exgratia of Rs.20,000/-, no amount was paid. Though Section 176 of Cr.P.C provides for enquiry, no enquiry was conducted. In those circumstances, the Writ Petition was filed challenging the action of the respondents in not holding the enquiry under Section 176 of Cr.P.C and for award of compensation of Rs.10,00,000/-.

A counter affidavit was filed by the third respondent stating that, on receipt of communication with regard to filing of the Writ Petition, he summoned the entire CD file in Crime No.77 of 2008 registered for the offence punishable under Section 176 Cr.P.C on the file of Mominpet Police Station, Ranga Reddy District. The records revealed that on the basis of the complaint given on 17.07.2008 at 1530 hours by one Shaik Chand Pasha in Mominpet Police Station, a case in Crime No.77 of 2008 was registered under Section 176 Cr.P.C. It was stated that the Special Executive

Magistrate – cum – Revenue Divisional Officer, Vikarabad Division, visited the mortuary of Community Health Centre (APVVP), Vikarabad, on 17.07.2008 and collected the case record from the hospital authorities by securing the presence of two mediators. An inquest was also held over the body of the deceased in their presence. During the inquest the complainant was examined and after conclusion of inquest, the dead body was subjected to postmortem examination with a request to hold autopsy with a team of Doctors under the cover of video in accordance with the instructions of National Human Rights Commission. Accordingly, the team of Doctors i.e., Dr.Pawan Kumar and Dr.A.M.Khan, Civil Assistant Surgeons, Community Health Centre (APVVP), Vikarabad, held autopsy over the body of the deceased. The Doctors opined that the cause of death of the deceased was due to “shock due to extensive hemorrhage due to splenic rupture”. After postmortem examination, the dead body of the deceased was handed over to the kith and kin of the deceased for final rites. The records further revealed that the deceased was brought to the hospital on 16.07.2008 at 1950 hours by HG.95 of P.S.Mominpet. As the condition of the patient was critical, he was planned to be referred to the OGH, Hyderabad, at 2010 hours, but as the patient was gasping, semi pallor, emergency CPR was done and he was declared dead in VKB hospital at 2025 hours on 16.07.2008. The inquest report revealed that the deceased received multiple injuries due to falling from the second floor of the building of Mominpet Police Station and while undergoing treatment he succumbed to the injuries at 8.25 pm on 16.07.2008 at “A” Ward of Government Civil Hospital at Vikarabad. The records revealed that on 16.07.2008 at about 1800 hours one Sri N.Raju, auto rickshaw driver, resident of Sadashivpet of Medak District, came to the Police Station of Mominpet and lodged a report against the deceased stating that he picked up a quarrel, abused him and broken his auto front window glass. On receipt of the report, the Sub Inspector of Police, Mominpet Police Station, deputed two Home Guards to bring the said Ibrahim. Accordingly, both of them went and brought Ibrahim to the Police Station and produced before the Sub Inspector of Police. The Sub Inspector of Police found Ibrahim in a drunken condition. Seeing his condition, the Sub Inspector of Police instructed the Police Constables to make him sit in the veranda. At that time there was a power cut. The Constable went in search of candle. In that darkness Ibrahim went to the second floor of the Police Station building and jumped to the floor at about 7:00 pm in an attempt to escape from the Police custody and due to which he sustained injuries. On hearing the sound of thud, the Sub Inspector and others searched and found Ibrahim at the northern side of the Police Station on the ground. The Sub Inspector tried for 108 Ambulance, but he could not secure the same. The Sub Inspector of Police, with the help of the Police Station staff, shifted Ibrahim to road side and sent him in an auto to Vikarabad Government Hospital along with Home Guard to save his life. While undergoing treatment, Ibrahim died at 2015 hours. It was stated that there was foul play suspected in the death of deceased by his blood relatives. Hence, it was a clear case of suicidal death due to jumping from the height. Since the inquest of the deceased was held by the Revenue Divisional Officer, Vikarabad, and post mortem examination was also conducted by the team of Doctors as per the guidelines of the National Human Rights Commission, there was no need to conduct enquiry under Section 176(1) of Cr.P.C by a Judicial Magistrate of First Class and register a case under Section 302 IPC against the policemen.

Learned Counsel for the petitioner submitted that sub-section (1) of Section 176 of Cr.P.C clearly mandates the conduct of judicial enquiry by a Magistrate in a case like this. He relied on **Smt.Nilabati Behera alias Lalita Behera v. State of Orissa**^[1], **Ajab Singh v. State of U.P**^[2]

and **Munshi Singh Gautam v. State of M.P.**^[3]. He submitted that in spite of representations to the Collector and District Magistrate on 09.03.2009 and 06.12.2010, no action was taken.

Learned Government Pleader submits that, in view of the conduct of enquiry by the Revenue Divisional Officer, no further enquiry is necessary.

Section 176 of Cr.P.C, as amended by Act 25 of 2005, reads as follows:

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.

(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 authorised by the Magistrate or the Court, under this Code in addition to the inquiry 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.

(2) The Magistrate holding such an 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 cause 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 person 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.

The facts in the case are not in dispute. The husband of the petitioner, who was taken to the Police Station in connection with a complaint lodged by a fellow auto driver, died while he was with the Police. The case of the petitioner is that there were injuries on the dead body when it was handed over to her in the hospital. The version of the respondents is that the husband of the petitioner tried to escape from the Police Station by jumping from the second floor of the building, as a result of which he sustained injuries and when he was taken to hospital he died.

In the present case this Court is concerned with the legal procedure to be followed in such an event. Section 176 of Cr.P.C was amended by the Code of Criminal Procedure (Amendment) Act, 2005, and it came into force with effect from 23.06.2006. In the instant case, an enquiry by the Sub Divisional Magistrate, Vikarabad Division, was conducted. But, the learned Counsel for the petitioner submits that the enquiry by an Executive Magistrate is not sufficient and as per Section 176(1A) of Cr.P.C, it should be done by a Judicial Magistrate of First Class. Though the learned Counsel for the petitioner relied on the above decisions, they are not directly useful for the point

raised in the present case. They deal with custodial death and in the instant case, though the death occurred while he was in custody, the nature of the death is still a moot point, which has to be decided by the Magistrate. In the postmortem examination, the Doctors opined that the death was due to "shock due to extensive hemorrhage due to splenic rupture". But, the relatives of the deceased suspected the hand of the Police in the death and they required enquiry by a Judicial Magistrate. It appears that the Police were not quite sure of the procedure or the application of Section 176(1A) of Cr.P.C. Even the National Human Rights Commission on a complaint by the Senior Superintendent, District Jail, Fatehgarh, Uttar Pradesh, decided on 05.04.2010, held that an enquiry by Judicial Magistrate or Metropolitan Magistrate is mandatory only in those cases of custodial death where there is reasonable suspicion of foul play or well founded allegation of commission of an offence. All other cases of custodial death where the death is natural or caused by disease may be enquired into by an Executive Magistrate.

A plain reading of Section 176(1A) of Cr.P.C itself makes it clear that the death or disappearance of any person when such person is in the custody of the Police or in any lawful custody, it shall be enquired by a Judicial Magistrate or the Metropolitan Magistrate, within whose local jurisdiction the offence has been committed. Since the said provision came into force with effect from 23.06.2006, prior to the occurrence of the present event i.e., on 16.07.2008, it is imperative that the investigation be conducted by a Judicial Magistrate since the death occurred while the deceased was in the Police Station.

Though the Writ Petition was filed claiming compensation of Rs.10,00,000/- to the petitioner's family, without deciding the nature of death, the same cannot be awarded, and similarly the other relief for registering a case under Section 302 IPC against the Policemen cannot be ordered in the absence of a finding recorded in that respect.

In view of the same, the Writ Petition is partly allowed and the respondents are directed to take steps for holding an enquiry by a Judicial Magistrate as early as possible, but not later than three months from the date of receipt of a copy of this order. The miscellaneous petitions pending in this Writ Petition, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

29.04.2016
vs

^[1] (1993) 2 SCC 746

^[2] AIR 2000 SC 3421

^[3] AIR 2005 SC 402