

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO. 86 OF 2016**

1. Kennedy Afonso,
243, Kalvaddo, Cavelossim,
Salcette, Goa.
2. Sudeep Dalvi, #4, Kamat Pavellion,
near Galaxy Hospital,
Siolim Road, Xelpem,
Dhuler, Mapusa, Bardez Goa.
3. Sameer Kelekar,
337, 2nd Floor,
Amarjyoti Layout,
Domlur Layout,
Bangalore 71.

... Petitioners

Versus

1. State of Goa through
Chief Secretary Government of Goa
Government of Goa,
Goa Legislature Secretariat
Alto Porvorim Goa 403 521
2. District Collector North Goa
District Collectorate Building
Panaji Goa 403 001.
3. Deputy Collector SDO & SDM,
Collectorate Bldg.,
Panaji Goa.
4. Police Inspector,
Old Goa Police Station,

Old Goa Tiswadi Goa.

5. Police Inspector
Crime Branch Ribandar
Ribandar Goa.
6. Dean
Government of Goa,
Goa Medical College – Deans Office,
Bambolim Goa.
7. The Public Prosecutor,
Panaji Goa.
8. Mario Dias,
r/o House No.561,
Palmarwaddo,
St. Estevem, Ilhas Goa.
9. Remediano Dias,
r/o House No. 561,
Palmarwaddo, St. Estevem,
Ilhas Goa.
10. Maria Monteiro Dias,
r/o House No.561,
Palmarwaddo, St. Estevem,
Ilhas Goa.
11. William O Rodrigues

... Respondents

Mr. S. S. Kantak, Senior Advocate with Mr. C. Padgaonkar,
Advocate for the petitioners.

Mr. S. R. Rivonkar, Public Prosecutor for the respondent nos. 1 to
7.

Mr. Ryan Da Piedade Menezes, Advocate for the respondent no.10.

WITH

CRIMINAL WRIT PETITION NO. 98 OF 2016

1. Mrs. Maria Monteiro e Dias,
w/o Mr. Remediano Dias,
major of age, married,
H.no. 561, Palmar Vaddo,
Santo Estevam, Ilhas Goa.

2. Mr. Mario Francisco Dias,
s/o late Mr. Manuel Dias,
major of age, married,
H.No.561, Palmar Vaddo,
Santo Estevam, Ilhas Goa.
(through his attorney,
the petitioner no.1)

..... Petitioners

V e r s u s

1. The State of Goa,
through Chief Secretary,
Government of Goa,
Secretary, Porvorim,
Bardez Goa.
2. The Collector (North Goa)
& District Magistrate,
North Goa District,
Collectorate Building,
Panaji Goa.
3. Additional Collector (North
Goa) & District Magistrate,
North Goa District,
Collectorate Building,
Panaji Goa.

4. The Police Inspector,
Old Goa Police Station,
Old Goa, Tiswadi Goa,
 5. The Police Inspector,
Crime Branch, Goa Police,
Ribandar, Tiswadi Goa.
 6. Superintendent of Police,
Crime Branch, Goa Police,
Ribandar, Tiswadi Goa.
 7. Superintendent of Police,
North Goa, Porvorim,
Bardez Goa.
 8. The Deputy Collector &
Sub Divisional Magistrate,
Collectorate Building,
Panaji Goa.
 9. Central Bureau of Investigation,
represented by its Director,
having its head office at
Plot No.5-B, CGO Complex,
Lodhi road, New Delhi,
and having office in Goa at
Bungalow No. F-1, Type – VI,
GMC Quarters, NH – 17,
Bambolim Goa.
- Respondents

Mr. Ryan Da Piedade Menezes, Advocate for the petitioners.

Mr. S. R. Rivonkar, Public Prosecutor for the respondent nos. 1 to 7.

**Coram:- F. M. REIS &
NUTAN D. SARDESSAI, JJ.**

Date:- 11th April, 2017

ORAL JUDGMENT (Per F. M. Reis, J)

Heard Mr. S. S. Kantak, learned Senior Counsel appearing for the petitioners, Mr. S. R. Rivonkar, learned Public Prosecutor appearing for the respondent nos. 1 to 7 and Mr. Ryan Da Piedade Menezes, learned counsel appearing for the respondent no.10 in Criminal Writ Petition No. 86 of 2016 and Mr. Ryan Da Piedade Menezes, learned counsel appearing for the petitioners and Mr. S. R. Rivonkar, learned Public Prosecutor appearing for the respondent nos. 1 to 7 in Criminal Writ Petition No. 98 of 2016.

2. Both the above Writ Petitions were taken up together at the request of the learned counsel appearing for both the parties as it was pointed out that substantially the grievances of the petitioners are similar.

3. Rule. Heard forthwith with the consent of the learned counsel.

4. The learned counsel appearing for the respective respondents waive service.

5. Briefly, it is the case of the petitioners in Criminal Writ Petition No.86 of 2016 that the deceased Jose Bismarque Desiderio Dias was residing at St. Estevam and that the said deceased took up different issues considering the social activities of such village. It is further contended that the deceased was also taking part in different environmental issues and social activities and that during his lifetime, the said deceased had filed a N.C. complaint against different persons. The petitioners further contended that on 05.11.2015 the deceased went missing and was seen for the last time. Consequently, inquiries were conducted by the villagers to find out the whereabouts of the deceased and different meetings which allegedly took place on the said date during the night time were elaborately mentioned by the petitioners. The petitioners have

also pointed out in their petition the alleged contradiction in the versions given by the different persons who had met the deceased on the relevant date or had knowledge about his whereabouts on such date. The petitioners further state that on 07.11.2015 at 9.00 a.m. the body of the deceased was found floating in the river Mandovi at Pilgao side of the river. The local police station took charge of the body after it was retrieved from the river and the inquest panchanama was conducted on the same day. The petitioners have also disclosed the alleged external injuries which were noticed on the body of the deceased and that the memorandum of autopsy was conducted on the same date and that the family of the deceased received a copy of such memorandum of autopsy on 30.12.2015. The petitioners further state the manner in which they have obtained the copies of the relevant records from the police station as well as from the G.M.C. Ultimately, the Sub Divisional Magistrate, Panaji under Section 174 of the Criminal Procedure Code passed an order dated 21.04.2016 stating that the death of the deceased who died on 07.11.2015 at 9.10 hours was due to asphyxia as a result of drowning in water. Accordingly, the

death was recorded therein as an accidental death. Being aggrieved by the said order, the petitioners have approached this Court inter alia seeking for a relief to issue a Writ of Certiorari calling for the records of the said proceedings and to direct the learned District Magistrate to act in accordance with Section 176(1) of the Code of Criminal Procedure. A further relief sought is to quash the order dated 21.04.2016 passed by the learned District Magistrate and further direct the CBI to conduct the investigation in the matter of the death of the deceased after registering an FIR.

6. Criminal Writ Petition No. 98 of 2016 is filed by the family members of the deceased. The brother of the deceased lodged a complaint on 07.11.2015 alleging foul play in connection with the death of his brother. It is the contention of the petitioners that besides reiterating the facts stated herein above that the inquiry and investigation conducted by the respondents is not in accordance with law as according to them the learned District Magistrate was not justified to record an accidental death of the deceased and consequence thereto the petitioners have sought inter alia to quash

and set aside the order dated 21.04.2016 and to direct the respondent no.5 to register the complaint dated 07.11.2015 as an FIR and investigate in accordance with law.

7. The respondents/prosecution has also filed their reply disputing the contentions raised by the petitioners and inter alia contending that after a proper investigation by two agencies, the local police as well as by the Crime Branch, the matter was ultimately proceeded under Section 174 of the Criminal Procedure Code before the District Magistrate and the District Magistrate recorded the death of the deceased as an accidental death.

8. We have extensively heard the learned Counsel appearing for the petitioners as well as the learned Public Prosecutor. During the course of the proceedings, we issued directions to carry out investigations with regard to ascertain the cause of death of the deceased but, however, such attempt did not lead to any conclusive investigation and as such, the matter was heard on merits.

9. Mr. S. S. Kantak, learned Senior Counsel appearing for the petitioners has pointed out that the death of the deceased was homicide as according to him there was foul play in the death of the deceased. It is further submitted that the deceased was very much involved in social and environmental issues and even lodged complaints against persons involved in crime against him. It was further pointed out that on the relevant date, based on the different versions available, it came to the notice of the petitioners that the contradiction and different versions would create a grave suspicion of the investigation allegedly carried out by the prosecution which was not fair or in accordance with law. The learned Senior Counsel further pointed out that the investigation in the context of proceedings under Section 174 of the Criminal Procedure Code are qualitatively different from the investigation conducted after registering an FIR. It is further pointed out by the learned Senior Counsel that a bare perusal of the complaint lodged by the brother of the deceased dated 07.11.2015 would itself disclose the commission of a cognizable offence and as such there is no justification for the prosecution to refuse to register an FIR and

proceed with the investigation in accordance with law. The learned Senior Counsel in support of his submissions has relied upon the judgment of the Apex Court reported in **(2016) 9 SCC 1** in the case of ***Manoj Kumar Sharma and others V/s State of Chhattisgarh and another***. The learned Senior Counsel as such points out that the Crime Branch of the State be directed to register an FIR and proceed with the investigation in accordance with law.

10. On the other hand, Mr. S. R. Rivonkar, learned Public Prosecutor points out that after due investigation conducted by the two independent agencies, a report was submitted to the learned District Magistrate under Section 174 of the Criminal Procedure Code which has been duly accepted and registered as an accidental death. The learned Public Prosecutor further points out that even while carrying out such investigation, the assistance of the Advocate was also taken. The learned Public Prosecutor further submits that in such circumstances, there is no reason for reinvestigation of the allegations made in connection with the death of the deceased.

11. Upon hearing the learned Counsel and considering the rival contentions and on perusal of the records, with the assistance of the learned Counsel, we find that the fact remains that there was an unnatural death of the deceased. The death is a woeful situation. Death is a permanent disappearance of all evidence of life. In the present case, on clinical examination of the body of the deceased, the report states that it contained creamy fluid of 150 cc and the valves were congested as mentioned in the report dated 07.11.2015 by the Assistant Professor of the Forensic Medicine of Goa Medical College. The stomach also did not contain any solid food. However, the report dated 02.01.2016 of the panel of doctors of the Forensic Department, indicate that they were of the opinion that the cause of death is suggestive of drowning in water in a decomposing dead body. The family members of the petitioners including his brother are not satisfied with the investigation and pointed out different loose ends therein to contend that considering the social issues the deceased was involved during his lifetime, the prosecution has failed to pursue a fair investigation on the cause of death. In support thereof, videos, CDs have been produced by the

family members which, according to the prosecution, do not inspire confidence. The petitioners contend that the head and neck injuries observed in the inquest panchanama report are found missing in the autopsy report. Ultimately, the Sub-Divisional Magistrate by an Order dated 21.04.2016 has held that the death of the deceased was due to asphyxia as a result of drowning in water and is considered as accidental death summary which is under challenge in the present petition. But the fact remains that the circumstances which led the deceased to the river shore have not been established during the course of investigation. The State cannot shy away from an impartial and a fair investigation to examine the root cause of an unnatural death to the satisfaction of the family members of the deceased.

12. In such circumstances, we are of the opinion that all aspects of the case would have to be investigated so as to examine the cause of the death of the deceased. Law is an endless process of testing and re-testing in a judicial process so as to retain whatever is pure and sound. The Code of Criminal Procedure 1973

prescribed the procedure to investigate into the cognizable offences defined under the Code. In respect of cognizable offences, the Court prescribed the procedure, information to the police and the powers to investigate a cognizable offences. Sub-section (1) of Section 154 envisages that every information relating to a commission of a cognizable offence if given orally to the Officer in charge relating to the commissioning of cognizable offence, shall be reduced to writing by him or under his direction and be read over to the informant and every such information whether given in writing or reduced in writing as aforesaid, shall be signed by the person giving it and the substance thereof shall be entered in the book to be kept by such Officer. On such information being recorded, the Officer in charge of the Police Station, is empowered to investigate into the cognizable cases. As soon as the investigation is complete, the Officer in charge of the Police Station shall forward to the Magistrate who has the power to take cognizance of the offence on the police report, a report in a form as prescribed. In the present case, the respondent did not follow the said procedure despite of the complaint lodged by the family

members of the deceased which, prima facie, disclosed the commissioning of an offence, no F.I.R. was registered. No doubt, the respondents/prosecution followed the proceedings under Section 174 of the Criminal Procedure Code and submitted a report that the death was suggestive of drowning. But, however, the proceedings under Section 174 of the Criminal Procedure Code have a limited scope. The object of such proceedings is to ascertain whether the deceased had died under suspicious circumstances or an unnatural death and if so what is the apparent cause of the death. The aspects as to what led into such situation and whether there were any injuries and the cause thereof are not matters which are examined in such proceedings. The overt acts in such circumstances, are not recorded in the inquest reports. On the other hand, the purpose of registering F.I.R. is to set the machinery of the criminal investigation into motion which culminates with the filing of the police report under Section 173 of the Code. In such circumstances, the provisions of Sections 174 and 175 of the Code, afford a complete Code for the purpose of 'inquiries' in cases of accidental or suspicious death and which are entirely distinct from

‘investigation’ under Section 157 of the Code. In this connection, the Apex Court in the Judgment in the case of ***Manoj Kumar Sharma*** (supra), has observed at paras 19, 20, 21 and 22 thus :

“19. The proceedings under Section 174 have a very limited scope. The object of the proceedings is merely to ascertain whether a person has died under suspicious circumstances or an unnatural death and if so what is the apparent cause of the death. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted is foreign to the ambit and scope of the proceedings under Section 174 of the Code. Neither in practice nor in law was it necessary for the police to mention those details in the inquest report. It is, therefore, not necessary to enter all the details of the overt acts in the inquest report. The procedure under Section 174 is for the purpose of discovering the cause of death, and the evidence taken was very short. When the body cannot be found or has been buried, there can be no investigation under Section 174. This section is intended to

apply to cases in which an inquest is necessary. The proceedings under this Section should be kept more distinct from the proceedings taken on the complaint. Whereas the starting point of the powers of police was changed from the power of the officer in charge of a police station to investigate into a cognizable offence without the order of a Magistrate, to the reduction of the first information regarding commission of a cognizable offence, whether received orally or in writing, into writing. As such, the objective of such placement of provisions was clear which was to ensure that the recording of the first information should be the starting point of any investigation by the police. The purpose of registering FIR is to set the machinery of criminal investigation into motion, which culminates with filing of the police report and only after registration of FIR, beginning of investigation in a case, collection of evidence during investigation and formation of the final opinion is the sequence which results in filing of a report under Section 173 of the Code. In ***George and***

Others vs. State of Kerala and Another (1998) 4 SCC 605, it has been held that the investigating officer is not obliged to investigate, at the stage of inquest, or to ascertain as to who were the assailants. A similar view has been taken in ***Suresh Rai and Others vs. State of Bihar*** (2000) 4 SCC 84.

20. In this view of the matter, Sections 174 and 175 of the Code afford a complete Code in itself for the purpose of “Inquiries” in cases of accidental or suspicious deaths and are entirely distinct from the “investigation” under Section 157 of the Code wherein if an officer in-charge of a police station has reason to suspect the commission of an offence which he is empowered to investigate, he shall proceed in person to the spot to investigate the facts and circumstances of the case. In the case on hand, an inquiry under Section 174 of the Code was convened initially in order to ascertain whether the death is natural or unnatural. Learned senior counsel for the appellants claims that the earlier information regarding unnatural death amounted to FIR

under Section 154 of the Code which was investigated by the police and thereafter the case was closed.

21. On a careful scrutiny of materials on record, the inquiry which was conducted for the purpose of ascertaining whether the death is natural or unnatural cannot be categorized under information relating to the commission of a cognizable offence within the meaning and import of Section 154 of the Code. On information received by Police Station Mulana, the police made an inquiry as contemplated under Section 174 of the Code. After holding an inquiry, the police submitted its report before the sub-Divisional Magistrate, Ambala stating therein that it was a case of hanging and no cognizable offence is found to have been committed. In the report, it was also mentioned that the father of the deceased- R.P. Sharma (PW-1) does not want to take any further action in the matter. In view of the above discussion, it clearly goes to show that what was undertaken by the police was an inquiry under Section 174 of the Code which was limited to the extent of natural or

unnatural death and the case was closed. Whereas, the condition precedent for recording of FIR is that there must be an information and that information must disclose a cognizable offence and in the case on hand, it leaves no matter of doubt that the intimation was an information of the nature contemplated under Section 174 of the Code and it could not be categorized as information disclosing a cognizable offence. Also, there is no material to show that the police after conducting investigation submitted a report under Section 173 of the Code as contemplated, before the competent authority, which accepted the said report and closed the case.

22. In view of the above, we are of the opinion that the investigation on an inquiry under Section 174 of the Code is distinct from the investigation as contemplated under Section 154 of the Code relating to commission of a cognizable offence and in the case on hand there was no FIR registered with the Police Station Mulana neither any investigation nor any report under Section 173

of the Code was submitted. Therefore, challenge to the impugned FIR under Crime No. 194 of 2005 registered by Police Station Bhilai Nagar could not be assailed on the ground that it was the second FIR in the garb of which investigation or fresh investigation of the same incident was initiated.”

13. The State has a higher obligation i.e. to maintain law and order and the preservation of peace and harmony in the society. When serious allegations are made in connection with the alleged crime, it is the duty of the State in preserving law and order and providing specific investigation in serious crimes in the bigger public interest. Noticeably, the family members of the deceased immediately after the death of the deceased have been persistently appealing for an impartial investigation. They had also raised doubts about the genuineness of the probe conducted by the prosecution in the course of the inquiry under Section 174 of the Criminal Procedure Code. It is to be noted that every offence is a crime against the society and is unpardonable, yet there are some crimes which deprive invaluable right to life of persons which

leaves all sensible right and minded persons of the society shocked and anguished. In such circumstances, even though some time has elapsed, it would still be imperative in order to do complete justice and enforcing the statutory right guaranteed to carry out an investigation after registering the F.I.R. The rights guaranteed under Article 21 of the Constitution of India not only recognises both the life and liberty of the accused but also interest of the victim, his near and dear ones as well as of the community at large and therefore it cannot be alienated from each other. The investigation of the crime has to be effective and purposeful besides being fair and objective.

14. With this in mind, it is the duty to ensure that truth is discovered so as to prevent miscarriage of justice. The State being the guardian of human right and protector of law has to discharge its role with responsibility considering that any criminal offence is one against the society at large. The police have a foremost duty to carry out investigation to ultimately search for the truth and bring the offender, if any to book. In carrying out such investigation, it is

the duty of the police to get material and search for things so as to reconstruct the circumstances of the alleged crime and ascertain the mental condition at the relevant time so as to determine the truth as far as it can be discovered in any post-factum inquiry. Such investigations have to be accurate and with sincerity in lawful search for the true facts of an event under investigation. The prosecution has to realise that throughout their investigation even a minor contradiction or error may destroy the confidence of the investigation. The advancement of science and other modern technology definitely has its strength in carrying out the investigation of a crime to search for material from which inferences can be drawn to solve the alleged crime.

15. In the present case taking note of the observations of the Apex Court referred to herein above and for the aforesaid reasons, we are of the considered opinion that the inquiry carried out by the respondent/prosecution in the proceedings under Section 174 of the Code to ascertain whether death is natural or unnatural, cannot be categorized under an information relating to the commissioning of a

cognizable offence within the meaning and the import of Section 154 of the Code. On perusal of the complaint lodged by the brother of the deceased who is the petitioner in the above Writ Petition dated 07.11.2015, prima facie, discloses the commissioning of a cognizable offence and, as such, the respondent/prosecution are not justified to refuse to register the F.I.R. based on such complaint.

16. Taking note of the said observations of the Apex Court, we are of the considered opinion that the petitioners are entitled for a direction of this Court to the respondent no. 5/Crime Branch Panaji, to register the F.I.R. based on the complaint dated 07.11.2015 and proceed to investigate the case as expeditiously as possible in accordance with law. Such investigation would have to be carried out taking note of the observations of the Apex Court to the effect of an inquiry under Section 174 of the Code as referred to therein.

17. In view of the above, we pass the following :

ORDER

- (i) The respondent no.5/Crime Branch is directed to register an F.I.R. based on the complaint dated 07.11.2015 and proceed with the investigation in the light of the observations made by the Apex Court in the said judgment and in accordance with law.
- (ii) The respondent no.5/Crime Branch shall file a report every three months in this Court with regard to the progress of such investigation.
- (iii) Rule is made absolute in the above terms.
- (iv) Both the petitions stand disposed of accordingly.
- (v) Place the matter on order board in the month of July, 2017.

NUTAN D. SARDESSAI, J.**F. M. REIS, J.****at***