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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(CRL) 3225/2016 & Crl.M.A. 17477/2016 (stay)

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Date of Decision: 20.07.2017

TARUN KUMAR (EXECUTIVE MAGISTRATE)

..... Petitioner

Through Mr.Rakesh Kumar, Adv. with
Ms.Anubha Singh, Adv.

versus

STATE (NCT OF DELHI)

..... Respondent

Through Mr. Piyush Singhal, Adv. for
Mr.Ashish Aggarwal, ASC.
ASI Jaiveer Singh PS Khajuri
Khas.

CORAM:-

HON'BLE MR JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J (ORAL)

1. The petitioner, an Executive Magistrate, had conducted the inquest proceedings in connection with FIR No.390/2012 dated 26.10.2012 (P.S.Khajuri Khas) which was instituted for the offences under Sections 498A/306 IPC read with Section 4 of the Dowry Prohibition Act, 1961. The accused persons of the case were chargesheeted and were tried.
2. The petitioner appeared before the Trial Court as PW-5.

3. The Trial Court, while analyzing the deposition of witnesses in his judgment dated 05.03.2016, came to the conclusion that the manner in which inquest proceedings were conducted by the petitioner was not proper; rather peculiar and objectionable. The Trial Court, therefore, directed that a copy of the judgment to be sent to the Secretary, Department of Home, Government of NCT to evaluate and assess the conduct of the petitioner and take suitable action against him. The Trial Court also directed that the report in that regard be filed within eight weeks of the receipt of the order/judgment.

4. The petitioner, therefore, has prayed for setting aside/expunging the observations made in the judgment, commenting upon the conduct of the petitioner as an Executive Magistrate who held inquest and the direction of learned Trial Judge to the Secretary, Department of Home, Government of NCT to conduct an enquiry and take suitable action against the petitioner.

5. The petitioner, it has been argued, was posted as an Executive Magistrate, Seemapuri, Shahdara and was additionally looking after Seelampur division. He received information on 27.10.2016 about a lady having suffered burn injuries for which she was being treated at Safdarjung Hospital. A request was made to the petitioner by the police to come to Safdarjung Hospital. It has been submitted that pursuant to the aforesaid request, the petitioner reached Safdarjung Hospital at 1 pm where and when he was informed that the victim had died. At that time, the body of the deceased was being shifted to the mortuary for post mortem. It was then that the petitioner recorded the statement of the father of the deceased which was written down by a

police officer, on his direction. The statement of the father of the deceased was read over to him, who thereafter put his thumb impression on the same. After this, the statement of one Amrita, sister of the deceased was also recorded in the same manner. The statement of mother of the deceased was also recorded which was taken down by her daughter in the presence of the petitioner and the statement, after being explained to her, was signed by her as well. All these statements were counter-signed by the petitioner. The petitioner, then, handed over those statements to the IO of the case to be handed over to the SHO of the concerned police station for the sequel action. On 27.10.2012, the petitioner also went to the Safdarjung hospital mortuary and completed the inquest proceedings. Inquest report was prepared on which the petitioner made his endorsement. Thereafter, the case was investigated and the accused persons were sent up for trial.

6. The petitioner, it has been submitted, appeared before the learned Trial Court on summons and gave his deposition as PW-5.

7. The Trial Court acquitted the accused persons on the ground that though the PWs.1, 3 & 4 namely Lokender Singh, father of the deceased; Amrita, sister of the deceased and Smt.Bela Devi, mother of the deceased, respectively, stated about the cause of death of the deceased to be the dowry demand by all the accused persons and harassment of the deceased but failed to prove the aforesaid charges. The Trial Court also took note of the fact that the deceased had denied any harassment to her. Her last statement was recorded by PW-6, SI Balbir Singh, in the hospital in presence of one Dr.Sanjay. However,

while analyzing the statements of aforesaid PWs namely PWs.1, 3 & 4 and PW-7 namely Rohin who is the son of the deceased, the Trial Court found that the aforesaid PWs categorically denied their having made any statement before the petitioner.

8. The petitioner as PW-5 had stated before the Trial Court that on the date of the incident i.e. 26.10.2012, he reached Safdarjung Hospital at 1 pm on information from Khajuri Khas police station. By that time the deceased had been declared dead and her dead body was being sent for post mortem. At that time, the parents of the deceased and the police officials were also present. The statement of the father of the deceased (PW-1) was recorded by him (Exh.PW-2/D) but written down by the IO of the case. Similarly, the statements of the sister and the mother of the deceased namely PWs.3 & 4 were also recorded. Their statements are Exh.PW-3/D and PW-3/D1. It was clearly deposed by the petitioner that on 29.10.2012, he had gone to the mortuary of the Safdarjung hospital and had completed the inquest proceedings. The dead body was identified by witnesses. The petitioner had filled up the inquest form and had made a request to the doctor for post mortem. The petitioner also had signed the death summary. On his endorsement, the dead body was released in favour of the relatives/family members.

9. While deposing before the Trial Court, the petitioner made a categorical statement that he had recorded the statements of PWs.1, 3 & 4 in the park situated in front of the Burn Ward of the Safdarjung hospital.

10. However, SI Dhyan Singh, PW-10 has stated that he had informed the SDM, Seelampur about the incident but since SDM, Seelampur was on leave, SDM, Seemapuri division i.e. the petitioner visited the Burn Ward, Safdarjung hospital and conducted the proceedings there. According to his statement, the petitioner reached the Safdarjung Burn Ward at about 2.45 pm but by that time the deceased had already expired. He has also affirmed before the Trial Court that the petitioner visited the mortuary, inspected the dead body and recorded the statement of PWs.1, 4, 5 & 6.

11. Constable Satbir, PW-13 deposed before the Trial Court that the petitioner did not record the statements of the witnesses but their statements were recorded by SI Dhyan Singh, PW-10.

12. It is in this context that the Trial Court observed that because of the peculiar manner of holding the inquest proceedings, the witnesses denied that they were ever interrogated by the petitioner in his capacity as SDM. The Trial Court also took exception to the fact that the entire inquest proceedings were conducted in the park in front of the lawns of the hospital and that also in presence of the police officials.

13. The Trial Court, therefore, recorded as follows:-

“57. With the similar object, PW5 was informed to conduct the inquest proceedings and he also conducted the proceedings, but he presumed that the death occurred within seven years of marriage of deceased (whereas it was beyond seven years) and conducted the entire proceedings. But, still he conducted the proceedings in such vague manner. PW5 was supposed to conduct the inquest proceedings in proper and magisterial manner

especially when proceedings were being conducted in the manner of dowry death. However, the procedure adopted by him was an open enquiry and in the presence of police officials.

58. In fact, the presence of police is not to be considered safe during the examination/interrogation of witnesses by the SDM/Executive Magistrate, in this case, PW5 not only carried out the inquest proceedings in the presence of police officials but also utilized the services of IO in recording the statement of PW1 and PW3 at hospital. Besides it, PW5 got recorded statement of PW4 through PW3 despite the fact that she was witness to this case and there were serious allegation of dowry death. Even the presence of in-laws of deceased was also not avoided and entire proceedings were conducted in their presence as well.

59. Even the conduct of PW5 also could not be appreciated on one another aspect as well. As per the testimony of PW5, he reached Safdarjung Hospital at 1.00 pm and by that time deceased had already expired. But, PW10 SI Dhian Singh has deposed that deceased was alive when the SDM reached the hospital. Even the document EXPW5/4 prepared by PW5 has also proved that the time of death was 2:45 pm. It is beyond explanation if deceased had already expired then why he noted down the time of death of deceased at 2:45 pm in the inquest papers in contradiction to the death summery of deceased which is EXPW5/6. In such circumstances, if deceased was alive, PW5 was supposed to verify the statement/suicide note of deceased from her and to record it again or to certify it, but nothing such was done by him.

60. Though the testimony of PW10 is against the death summery of deceased Ex. PW5/6 prepared by the doctor and certified by PW5 which has proved that she died at 12:20 pm, yet the PW5 did not go through it before

conducting the inquest proceedings and reflects the casual approach of the PW5 in conducting inquest.

61. The statement of deceased had been recorded by PW6 in the presence of Dr. Sanjay but PW5 did not bother to go through that statement and even did not try to interrogate or record the statement of the concerned doctor Sanjay, who provided the certificate of fitness to deceased to make statement, to ascertain the statement of the deceased especially when the complainant and other witnesses enraged the allegations against the police. Had it been done so by the PW5, the controversy would have rested upon, but he did not try to do so and generated a new controversy that the statements of witnesses were not recorded by him. It is beyond explanation as to who precluded the PW5 to record the statement of that doctor.

*62. PW6 had already recorded the statement of deceased at 11:00 am in the presence of Dr. Sanjay who gave certificate at point A on Ex. PW6/1 that she was **“conscious, oriented and not under seduction and is fit to give statement”**, but PW5 did not examine him to prove this fact. In fact, the lapses on the part of the then SDM Sh. Tarun Kumar cannot be considered bonafide lapse on his part. Rather it was a casual approach or negligence to deal with a serious matter in which life of a person was on stake. Even he did not go through the documents properly to ascertain the period of marriage to come to the conclusion that it was not a dowry death within the period of seven years of marriage in terms of section 304B IPC. As such, PW5 had failed to discharge his statutory duty properly in terms of section 176 the Code of Criminal Procedure.*

63. In fact, the allegations of family members of deceased may be because of the modus operandi adopted by PW5 in recording the statements of family members through IO and they might have presumed that PW5 never conducted any such proceedings at hospital. Though the mode and manner of conducting inquest proceedings by

PW5 was not in consent with admitted norms of inquest proceedings, yet it cannot be said that no proceeding was carried out at hospital. As such, the statements of family members of deceased in exclusion of their earlier statements have failed to prove that accused instigated the deceased to commit suicide.

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79. The copy of this judgment is sent to the Secretary, Deptt. Of Home, Govt of NCT, Delhi to appraise the conduct of the then SDM/Executive Magistrate Sh. Tarun Kumar to take suitable action against him. Report be filed within eight weeks on receipt of copy of judgment.”

14. The learned counsel appearing for the petitioner submits that the petitioner, as an officer holding the inquest proceedings was to evaluate the criminal intent of the accused persons in case of an unnatural death. The petitioner, under Section 176 Cr.P.C, it has been urged, was not beset with the investigation of the case for which only the investigating officer is responsible. It has also been submitted that there are no rules or guidelines for holding any inquest proceeding and whatever appeared prudent under the circumstances, the petitioner did the same with all the diligence at his command. It is thus argued that in the absence of any malafide intentions and without putting the petitioner on notice regarding any animadversion about his conduct, adverse comment ought not to have been made by the Trial Court. The petitioner laments that the Trial Court did not stop at making adverse comments on the manner in which inquest proceedings were conducted but also directed the Secretary Home department to conduct proceedings against the petitioner and take suitable action. The

Secretary Home was also directed to report to the Trial Court about the action taken against the petitioner. The petitioner, therefore, submits that such a comment and direction, which is uncalled for in the facts of this case, has damaged his reputation as an officer and has caused irreparable harm to him which has a prejudicial effect on the service career.

15. In order to appreciate as to what was expected of the petitioner as SDM conducting inquest proceedings, it would be necessary to refer to Sections 174 and 176 of the Code of Criminal Procedure:-

“174. Police to enquire and report on suicide, etc.

(1) When the officer in charge of a police station or some other police officer specially empowered by the State Government in that behalf receives information that a person has committed suicide, or has been killed by another or by an animal or by machinery or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, he shall immediately give intimation thereof to the nearest Executive Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the State Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises, and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any); such marks appear to have been inflicted.

(2) The report shall be signed by such police officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub- divisional Magistrate.

(3) When-

(i) the case involves suicide by a woman within seven years of her marriage; or

(ii) the case relates to the death of a woman within seven years of her marriage in any circumstances raising a reasonable suspicion that some other person committed an offence in relation to such woman; or

(iii) the case relates to the death of a woman within seven years of her marriage and any relative of the woman has made a request in this behalf; or

(iv) there is any doubt regarding the cause of death; or

(v) the police officer for any other reason considers it expedient so to do, he shall. subject to such rules as the State Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the State Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

(4) The following Magistrates are empowered to hold inquests, namely, any District Magistrate or Sub-divisional Magistrate and any other Executive Magistrate specially empowered in this behalf by the State Government or the District Magistrate.

176. Inquiry by Magistrate into cause of death.

(1) When any person dies while in the custody of the police or 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.

(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.”

16. Thus in cases involving suicide by any woman within seven years of her marriage or if the case relates to death of a woman within seven years of marriage under suspicious circumstances, a Magistrate is required to hold an enquiry into the cause of death either instead of, or in addition to, the investigation held by the police officer. While holding the inquest proceeding, a Magistrate has all the powers as if he were holding an enquiry into an offence. However, with the addition of Section 1A to Section 176 Cr.P.C, the inquest proceedings have become mandatory if it relates to cause of death of a person while in police custody.

17. The original purpose of Section 174 was that an enquiry into a suspicious death ought not to be limited upon the holding of inquest by a police officer but there should be a further check, enabling the Magistrate to hold an enquiry. Magisterial inquest becomes mandatory when a woman dies within seven years of her marriage, raising reasonable suspicion that some person has committed the offence and on the death of a person in police custody. Thus, in dowry death cases, apart from custodial death cases, a Magisterial enquiry need be conducted.

18. Under section 1A of Section 176 Cr.P.C i.e., in cases of custodial death, the Magisterial enquiry would definitely involve enquiry into the conduct of a police officer but may not necessarily be so in dowry death cases where more often than not, there are specific complaints by the relatives of the deceased against her husband and the in-laws. Thus a Magisterial enquiry into a dowry death case, which is not in the first instance clueless, the enquiry revolves around ascertaining as to whether the deceased has died in doubtful circumstances and if so, what is the apparent cause of death. The object of proceedings under Sections 174 & 176 are limited and cannot be undertaken to mean a full fledged investigation or trial. It is precisely for this reason that only with respect to cases falling under Sections 174 (3) (i) & (ii) namely suicide of a woman within seven years of her marriage and death of a woman within seven years of her marriage in any suspicious circumstances, a Magisterial enquiry is a must. However, in other cases, there is no compulsion of a Magisterial enquiry. Thus neither a police inquest nor a Magisterial inquest ought

to be misunderstood as a full fledged investigation or a trial. The questions regarding the details viz. as to how the deceased was killed, who was the main person behind the killing and that what are the circumstances for such death or whether the relatives of the deceased are falsely implicating the accused persons are beyond the scope of the inquest proceedings. The object is only to find out as to whether it is homicidal in nature or not and it is confined to ascertainment of the apparent cause of death namely whether it was accidental, suicidal or homicidal or caused by any animal and by what manner or by what weapon or instrument. Only in cases where there is a custodial death, there would be a necessity of holding an absolutely independent enquiry. So far as other enquiry is concerned, it is argued, it may be in addition to or independently of the enquiry by a police officer.

19. No specific procedure for holding inquest proceeding has been framed and it has been left primarily to the discretion of the learned Magistrate. It is only under Section 1A of Section 176 Cr.P.C where inquest is held with respect to custodial crime that the Magistrate is required to record the evidence in a manner which is prescribed according to the circumstances of the case.

20. Thus, the petitioner reached the hospital and recorded the statement of the relatives of the deceased. Of course, he ought to have recorded the statement of the doctor PW-6 also who had recorded the last statement of the deceased but his not doing so cannot be specifically held against him as he being careless and adopting a cavalier approach in conducting inquest in a serious case.

21. There is some discrepancy with respect to the time at which the petitioner reached the Burn Ward of Safdarjung hospital. However, such discrepancy may or may not have been prejudicial, to either side, later in the trial. The Trial Court judgment also does not reflect as to whether charges were proved against anti-timing or post-timing of the death. In such circumstances, the presence of a police officer, while the petitioner was holding the enquiry, would not render the proceedings doubtful. Firstly, it was not a custodial death case and secondly, the father, mother and sister of the deceased talked about dowry demand and harassment of the deceased which goaded her to commit suicide. In the facts of this case, therefore, when there was no apparent ambiguity about the death being suicidal, recording of statements of the witnesses by the petitioner but noted down by a police officer, cannot be seriously faulted with.

22. From the circumstances of the case and materials available it appears that the relatives of the deceased had assembled at the Burn Ward of the hospital. Recording of their statements, therefore, in front of the Burn Ward, in the lawns, is only suggestive of the prompt nature of enquiry to ascertain whether the death was in unnatural circumstances, perhaps suicidal. It was only after the ascertainment of the suicidal nature of death and the allegations leveled by the relatives about demand of dowry and harassment, that the petitioner directed for immediate lodging of the case and investigation in the same thereafter.

23. This Court is at a loss to understand as to what was the expectation of the Trial Court with regard to the manner and the conduct of the inquest proceedings, from the petitioner.

24. Lest this Court may not be misunderstood, it is not improper to expect a higher degree of alacrity from a Magistrate conducting inquest proceedings but nothing can at all be held against a person if he has conducted himself in all fairness and promptitude. The petitioner could have asked the witnesses to come over to his office to record their statements or could have gone to their respective houses for recording of their statements. That would have taken time. This Court does not see anything wrong in recording the statement of the witnesses in the hospital only and that also immediately after the occurrence.

25. Any adverse comment on an officer or an authority, in a judicial pronouncement, can cause immense damage to the reputation of the concerned person. Strictures in a judgment/order are not uncommon and are taken as an adjunct of the judicial expression. Many a times while delivering judgment or writing an order it becomes necessary to adjudicate the conduct of any person. A Court of law has an inherent power to act upon and voice its conviction but as a general principle, it should be resorted to only with lot of circumspection and caution and definitely not under the circumstances when it is not necessary for the decision of the case. Such a restraint is necessary because an uncalled for stricture can be very damaging. The person commented upon, is not on notice that his conduct also can be commented upon. With an uncalled for stricture/adverse comment, there is no remedy to the person commented against and he, in a way, is condemned without being heard. It is a general principle of law without any dispute that condemnation of a person without affording him an opportunity of

being heard is a complete negation of his basic rights. It is not necessary that in every case where stricture is passed, necessarily the person concerned is to be heard. It will depend upon the circumstances of any given case. In the present case, the petitioner, in his capacity as a Magistrate would be rendered a victim because, to his understanding, he conducted the proceedings in accordance with law and to his satisfaction.

26. The superior Courts have always applied a three pronged test for considering whether any disparaging remark or comment ought to be allowed to remain on record or be expunged – i) whether the concerned person had an opportunity of explaining or defending himself; ii) whether there is an evidence on record bearing on the wrong conduct of the person concerned, justifying the comment and iii) whether such comment was necessary for the decision of the case.

27. Recording of displeasure in a judgment is one thing and directing a departmental proceeding is another and more serious decision of the Court. Directing for taking suitable action against an officer virtually finds that officer guilty which may not be the normal/permissible procedure.

28. The Supreme Court of India in ***Testa Setalvad vs. State of Gujarat, (2014) 10 SCC 88*** reiterated as follows:-

“9. Observations should not be made by courts against persons and authorities, unless they are essential or necessary for decision of the case. Rare should be the occasion and necessities alone should call for its resort. Courts are temples of justice and such respect they also deserve because they do not identify themselves with the

causes before them or those litigating for such causes. The parties before them and the counsel are considered to be devotees and pandits who perform the rituals respectively seeking protection of justice; parties directly and counsel on their behalf. There is no need or justification for any unwarranted besmirching of either the parties or their causes, as a matter of routine.

10. Courts are not expected to play to the gallery or for any applause from anyone or even need to take up cudgels as well against anyone, either to please their own or anyone's fantasies. Uncalled-for observations on the professional competence or conduct of a counsel, or any person or authority or harsh or disparaging remarks are not to be made, unless absolutely required or warranted for deciding the case.”

29. Even if there was a lapse on the part of the petitioner as an Executive Magistrate, the Trial Court ought to have recorded, if it felt like, in its judgment and warned him for being more diligent/serious in the future. Directing the administrative authorities to enquire into the conduct of the petitioner and thereafter take suitable action against him was highly unnecessary and improper.

30. A reading of the judgment leaves an impression that the petitioner, as a functionary of the State, has been convicted whereas the accused persons of the case have been acquitted.

31. Thus, the observations of the Court, the comments regarding holding of inquest proceeding in a peculiar/vague manner by the petitioner and direction to the Secretary, Home department, Govt. of

NCT of Delhi for “appraising” the conduct of the petitioner and taking suitable action against him are not in consonance with law and practice. Such observations and direction are, therefore, expunged and deleted from the judgment.

32. The petition is allowed but without costs.

JULY 20, 2017

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ASHUTOSH KUMAR, J

