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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 19.01.2018

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W.P.(CRL) 1838/2015 & CRL. M.A. 11690/2016

RAMESHWAR KUMAR

..... Petitioner

Through: Mr. Rajinder Kumar and
Mr. Ashutosh Dubey, Advocates.

Versus

UNION OF INDIA & ORS

..... Respondents

Through: Ms. Kamna Vohra, ASC with SI
Nishant Dahiya and SI O. P. Mandal,
P.S. Ranjit Nagar.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. This writ petition has been preferred by the father of late Ms. Sumanlata under Article 226 of the Constitution of India and section 482 of the Criminal Procedure Code, 1973 (Cr.P.C.) for issuance of directions for conducting fair investigation and for the registration of FIR under sections 302/120-b/467/471/34 IPC against respondent nos.8 to 12 .

2. The brief facts of the case are that the deceased, Ms. Sumanlata got married to the respondent no.8 on 06.04.2006 and had two children out of the said marriage. On 26.06.2015 at about 12:30 a.m., the petitioner received a call from his relatives that his daughter had committed suicide in her

matrimonial home. However, the petitioner was unable to contact the in-laws of his daughter as their mobile phones were switched off.

3. The same night, the petitioner received a call from the mobile phone of Sub Inspector Satender Singh Rathi, Police Station Ranjeet Nagar, New Delhi, the then Investigating Officer (IO), who informed the petitioner that his daughter had committed suicide and that her body was lying in the mortuary of Deen Dayal Upadhyay Hospital, Hari Nagar, New Delhi. Upon making his apprehensions clear to the said IO that his daughter's death was not merely a suicide, the latter reassured the petitioner that the postmortem of the body will be conducted in his presence, for which reason, they could wait for 72 hours for him to reach Delhi from Punjab, to facilitate proper investigation of the matter. However, upon reaching the hospital, the petitioner came to know that the postmortem had already been conducted on the body of the deceased, i.e., within an hour of the hospital receiving the body. According to the postmortem report, the body was sent by SI Pradeep Sharma, who provided the inquest papers to the doctor at about 01:40 p.m. on 27.06.2015 and the doctors started autopsy at about 02:00 p.m, which was completed an hour later (i.e. 3 pm). The manner of death was 'determined'—concluded to be suicide. However, when the petitioner directly reached the matrimonial house of his daughter on 27.06.2015, he noticed that the family was preparing for the cremation of the body. Upon his protest that the death occurred under suspicious circumstances, the police officials on the scene threatened him with dire consequences and forced him to leave. In this manner, the police permitted the cremation of the body following the

postmortem, without conducting any further investigation apropos the death and thereby destroying crucial evidence.

4. Section 174 Cr.P.C. mandates that in case of a suicide or death under circumstances raising reasonable suspicion, a report of the apparent cause of death is to be forwarded to the nearest Magistrate. The provision reads as under:-

“Section 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.”*

5. The Punjab Police Rules, 1934, applicable in Delhi, lay the procedure for investigation in the case of a sudden or unnatural death of an individual.

Apropos inquests, it stipulates as under:-

“25.31. Inquests. (1) *An officer in charge of a police station shall, upon receipt of information Inquests of the sudden or*

unnatural death of any person, when the body of such person is within the local jurisdiction of his police station, immediately send information to the nearest magistrate send information to the nearest magistrate authorized to hold inquests and shall an investigation in the manner prescribed by section 174 , Code of Criminal Procedure when the Sub-Inspector in charge of the Police Station illness or absence from the station house, is himself unable to carry out the investigation , be shall at the firs convenient opportunity person was found, and shall personally verify the result of the investigation.

(2) In cases where the body is not found, or has been buried there can be not investigation under section 174, Code of Criminal Procedure.

In such cases, if there are reasonable grounds for suspicious that a cognizable offence has been committed, that police register a case and commence investigation:

Provided that the following cases shall be exceptions to this rule:-

(a) When the death of any person is caused by injuries unlawfully inflicted by soldier or camp follower, or occurs within the limits of a military cantonment, the inquest shall be conducted by the Cantonment Magistrate, under section 176, Code of Criminal Procedure or by the nearest competent magistrate if the post of Cantonment Magistrate is held by an officer not specially empowered to hold inquests or if the scene of death is outside cantonment limits.

If the magistrate invited to hold the inquest fails to do so, the superintendent or other gazetted officer shall make an 293 investigation under the combined provisions of section 174 and 551, Code of Criminal Procedure, and if no gazetted officer is

available such investigation shall be made by the officer in charge of the police station concerned.

Such inquest or investigation under the Code of Criminal Procedure shall be held in addition to any military court of inquest which may be held.

(b) In the case of the sudden or unnatural death of a European soldier, non-commissioned officer, or officer the inquest shall be held under section 176, Code of Criminal Procedure, by the nearest magistrate duly authorized to hold inquest.

(c) In the case of a death by violence occurring within the walls of a military prison or civil jail the police shall not make an investigation into the cases of death when an inquest has been held by a competent magistrate.

(d) Upon receipt of information of sudden or unnatural death within the walls of a prison the officer in charge of the police station concerned shall send immediate intimation to the senior magistrate present at headquarter and shall proceed to the prison and place a guard over the body and anything which may have caused the death of the deceased to be moved until the arrival of a magistrate.

25.32. Investigations under of section 174, Code of Criminal Procedure. *The respectable inhabitants who are required by section 174, Code of Criminal Procedure, to take part in any investigation into a sudden or unnatural death shall be selected with reference to any special attainments; they may possess which are likely to be of use in such investigation.*

25.33. Investigation officer action at scene of death. *On arrival at the place where the body of a deceased person is*

lying, the police officer making the investigation shall act as follows:-

(1) He shall prevent the destruction of evidence as to the cause of death.

(2) He shall prevent crowding round the body and the obliteration of footsteps.

(3) He shall prevent unnecessary access to the body until the investigation is concluded.

(4) He shall cover up footprints with suitable vessels so long as may be necessary.

(5) He shall draw a correct plan of the scene of death including all features necessary to a right understanding of the case

(6) If no surgeon or other officer arrives, ;he shall together with the other persons conducting the investigation carefully examine the body and not at abnormal appearance.

(7) He shall remove, mark with a seal, and seal up all clothing not adhering to, or required as a covering for, the body all ornaments anything which may have caused or been concerned in the death of the deceased and shall make an inventory thereof. In the inventory shall be described the position in which each thing was found and any blood-stain, mark, rent. Injury or other noticeable fact in connection with such thing. The number and dimension of such station stains, marks rents, ;injuries etc. shall also be given in the inventory. A counterpart of the mark and seal attached to such thing or to the parcel which it has been enclosed shall be entered in. or attached to the inventory. Such inventory shall form part of the inquest report.

(8) He shall take the finger prints of the deceased person if the body is unidentified.

(9) The photographing of the body in situ and of the scene of the occurrence may prove of great evidential value.”

6. This Court in ***Tarun Kumar v. State (NCT of Delhi)*** had noted the purpose of section 174 i.e. the mandatory holding of an enquiry into the cause of death of a woman if it has happened under suspicious circumstances within seven years of her marriage. It was held:-

“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.”

7. In a similar vein, in *Sher Singh v. State of Haryana (2015) 3 SCC 724*, the Supreme Court noted the mandate of section 174 Cr.P.C., in calling for an examination of the deceased woman's body by the nearest Civil Surgeon when such death is caused under suspicious circumstances:-

“6.....Although this Clause does not employ the word 'dowry', it is apparent that its object is to combat this odious societal excrescence. Act 46 of 1983 simultaneously incorporated changes in Section 174(3) of the Code of Criminal Procedure pertaining to the suicide or death of a woman within seven years of her marriage; it mandated the examination by the nearest Civil Surgeon of the body of the unfortunate woman.....

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9. Death can be accidental, suicidal or homicidal. The first type is a tragedy and no criminal complexion is conjured up, unless statutorily so devised, as in Section 304A; but even there the culpable act is that of the person actually causing the death. It seems to us that Section 304B of the Indian Penal Code, inasmuch as it also takes within its contemplation "the death of a womanotherwise than under normal circumstances", endeavours to cover murders masquerading as accidents. Justifiably, the suicidal death of a married woman who was meted out with cruelty by her husband, where her demise occurred within seven years of marriage in connection with a dowry demand should lead to prosecution and punishment under Sections 304B and/or 306 of the Indian Penal Code. However, if the perfidious harassment and cruelty by the husband is conclusively proved by him to have had no causal connection with his

cruel behaviour based on a dowry demand, these provisions are not attracted as held in Bhagwan Das v. Kartar Singh MANU/SC/7650/2007: (2007) 11 SCC 205, although some reservation may remain regarding the reach of Section 306.”

8. It is the petitioner's case that the deceased had made various complaints of harassment meted out to her by the respondents during the course of her marriage. The petitioner, on various dates, had first requested the Sub-Inspector concerned and then the SHO, PS Ranjeet Nagar for the registration of FIR under sections 302/306 IPC. The apprehensions of the petitioner and the history of complaints made by his deceased daughter regarding the said harassment meted out by the respondents for want of more dowry will bring this case under the purview of section 174(3) Cr.P.C. as involving suspicious circumstances, even though the recorded cause of death was suicide. The permission granted by the police officer concerned for the cremation of the body of the deceased without conducting proper investigation or even waiting for the immediate kin of the deceased, can be understood as lack of exercise of the “good sense” of the police official. This was also observed by the Sub-Divisional Magistrate, Patel Nagar in his letter dated 16.07.2015 issued to the SHO, PS Ranjeet Nagar, whereby he noted the delay in recording the statement of the petitioner under section 174 and in reaching the requisite information to the relevant Executive Magistrate. The letter reads *inter alia*:-

“ Today on 16/07/2015 Sh Rameshwar Kumar and his wife namely Ms Parwati Devi has given her statement to me regarding Cr.P.C.174. I as Sub-Divisional Magistrate, recorded the statement of both of them who are the parents

of deceased, namely, Ms. Suman Lata, it should have been done earlier as per procedure of CrPC 174. But due to unknowing reason the procedure of CrPC section 174 has not been followed by the respective (investigation) agency without informing about the incident to the respective Executive Magistrate.”

9. The non-registration of FIR upon the complaint of the petitioner to the SHO, P.S Ranjeet Nagar, *prima facie* shows the disinclination of the police to conduct proper investigation of the case and the violation of the provisions of section 154 CrPC.

10. According to Modi: A Textbook of Medical Jurisprudence and Toxicology¹, the medical officer must consider certain principles in determining whether a death by hanging is suicidal, homicidal or accidental:-

“(i) Whether Death was Caused by Hanging:- In India, as perhaps elsewhere, it is a common practice to kill a victim and then suspend the body from a tree or a rafter to avert suspicion. Such a post-mortem hanging simulates suicidal hanging. It is, therefore, necessary to find out if hanging was the cause of death in a suspended body.

The presence of a ligature mark alone is not diagnostic of death from hanging inasmuch as, being a purely cadaveric phenomenon it may be produced if a body has been suspended after death. Often a body is suspended after murder to simulate suicidal hanging. In such cases, a close examination of the direction of the friction marks on the

¹ Modi, Rai Bahadur Jaising P, A textbook of medical jurisprudence and toxicology, Elsevier , (2013) PP 448-49

fibres of the rope at the point of suspension may indicate whether the body was pulled by someone else or dropped down by its weight. Besides, a similar mark may also be produced by dragging a body along the ground with a cord passed around the neck soon after death. However,, one can safely say that death was due to hanging, if, in addition to the cord mark, there was dribbling of saliva from the angle of mouth, ecchymoses and slight abrasions around the ligature-mark , laceration of the intima of the carotid arteries with extravasation of blood within their walls and the post-mortem signs of asphyxia, besides if there are no evidence of a struggle, scratches and nail marks, fatal injuries or poisoning.”

11. In the present case, the Post-Mortem Report has been prepared by the Junior Resident of the Hospital and not by the higher ranked officer i.e. the Civil Surgeon, as mandated under section 174(3) Cr.P.C. Evidently, the determination apropos cause of death as 'suicide' has been made even in the face of the various injury and ligature marks as mentioned herein-above. It would be questionable as to how the PMR concluded that the cause of death was suicide without any specified reason, ruling out homicide.

12. Ms. Kamna Vohra, the learned Additional Standing Counsel for the State, has handed over a Status Report, the copy of which has been handed over to the learned counsel for the petitioner.

13. It is not in dispute that the request for inquest proceedings under Clause 25.31 of the Punjab Police Rules as well as Section 174 of the Code of Criminal Procedure, 1973, have not been complied with. There is no explanation for the same. Furthermore, the father's protestation against the disposal of the body of his daughter by her in-laws, too was disregarded and

brushed aside by the police officials. These aspects need to be looked into. The facts of the case and the response of the police officials dealing with, or associated with the case, do not inspire confidence of a fair inquiry by the latter.

14. In the aforesaid circumstances, the Court is of the view that there has been a serious lapse in conducting a fair and proper investigation on the part of the officer entrusted with the investigation of the case. Accordingly, the Court directs that:-

- (1) the investigation of the case is transferred to the Crime Branch, Delhi Police which shall take over the documents and re-investigate the case further.
- (2) appropriate proceedings be initiated against the erring police officers, especially in view of the statement of the Executive Magistrate, as mentioned in para 8 hereinabove.

15. The learned counsel for the appellant submits that other than the registration of the FIR, nothing further has happened; the accused are moving about freely and have indeed threatened the appellant/complainant/father of the deceased.

16. In view of the aforesaid circumstance, it is expected that appropriate action apropos the FIR and other complaints, as expressed by the complainant, and since the unnatural demise pertains to the year 2015, further action will be taken by the Crime Branch expeditiously.

17. The petition, alongwith pending application, stands disposed-off in the above terms.

NAJMI WAZIRI, J.

JANUARY 19, 2018/sb

