

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL WRIT PETITION NO. 4107 OF 2024

Anna Maruti Shinde
Age: 52 Years, Occupation: Unemployed,
R/at Kharvai, Near Pittar Kathlic
Kirana Store, Kharvai Badlapur East,
District Thane, 421 503
... Petitioner

Versus

The State of Maharashtra
... Respondent

Mr. Amit Katarnaware a/w Ms. Pooja Dongare and Mr. Aditya
Katarnaware for the Petitioner

Mr. Amit Desai, Sr. Advocate/Spl. P.P a/w Mr. Hiten S.
Venegavkar, P.P and Mrs. P. P. Shinde, A.P.P for the Respondent-
State

Mrs. Manjula Rao, Sr. Advocate, as an *amicus curiae* a/w Mr.
Kunal J. Rane, Mr. Rohan Deshmukh, Mr. Pratik Deomore and
Ms. Latika Chitre

CORAM : REVATI MOHITE DERE &

DR. NEELA GOKHALE, JJ.

RESERVED ON : 13th MARCH 2025

PRONOUNCED ON : 7th APRIL 2025

ORDER (Per Revati Mohite Dere, J.) :

1 The genesis giving rise to the present petition was an
alleged case of sexual abuse of two, four-year-old girls at a

prominent co-educational school in Badlapur, Thane in September 2024. The petitioner's son, now deceased-Akshay Shinde was accused of the aforesaid offence and a crime bearing C.R. No.380/2024 was registered against him with the Badlapur (East) Police Station, Thane, alleging offences punishable under Sections 65(2), 74, 75, 76 of the Bharatiya Nyaya Sanhita ('BNS') along with Sections 4(2), 8 and 10 of the Protection of Children From Sexual Offences Act, 2012 ('POCSO') Act. Akshay Shinde was arrested on **17th August 2024** and was in judicial custody in Taloja Central Jail in the said C.R. C.R. No.391/2024 was also registered against him under Sections 65(2), 74, 75, 76 of the BNS along with Sections 4(2), 8, 10 and 21(2) of the POCSO Act. Thus, two separate C.Rs were registered against Akshay Shinde for the two incidents that took place in the school. Both, the said CRs were transferred from Badlapur (East) Police Station to the Crime Branch, Thane on 7th September 2024. Later, another C.R., being C.R. No.409/2024 was registered against Akshay Shinde, with the Boisar Police Station at the instance of his wife,

for the alleged offences punishable under Sections 377, 324, 323 and 504 of the Indian Penal Code (`IPC'). The same was initially registered as Zero FIR on 5th September 2024 and later was transferred to Badlapur Police Station on 7th September 2024. The said C.R. was transferred to the Crime Branch, Thane on 7th September, 2024 itself.

2 On 20th September 2024, the Crime Branch, Thane applied to the jurisdictional Magistrate and sought a production warrant of Mr. Akshay Shinde. The Magistrate issued an order on the same date, which warrant was produced before the Special Court, (POCSO), Kalyan where the Special Judge permitted the Crime Branch, Thane to take Akshay's custody from Taloja Jail. Pursuant to this order, on 23rd September 2024, the officials from the Crime Branch took Akshay in custody from Taloja Jail after completing necessary formalities and at about 5:30 p.m. left the jail premises in a vehicle with a police inspector sitting next to the driver and one API and two Hawaldars in the rear of the vehicle.

There was an incident of firing in the police van, during which altercation, Akshay lost his life and one officer sustained a bullet injury in his thigh. It is this incident which is alleged by the petitioner to be a fake encounter by the police.

3 The petitioner addressed a complaint to the Commissioner of Police ('CP'), Kalwa, Thane and to the Deputy General of Police ('DGP') of the Maharashtra State via e-mail dated 24th September 2024 requesting the police to investigate in the incident leading to death of his son, Akshay. Aggrieved by the inaction of the Police in registering an FIR; conducting proper investigation; preservation of the CCTV footage of Taloja Jail, etc., the petitioner has filed the present petition, essentially seeking a direction to the police to register an FIR and conduct investigation through a Special Investigating Team ('SIT'), amongst other reliefs.

4 When the matter was first taken up for hearing on 25th September 2024, apart from narrating a chronology of the

incident, Mr. Venegavkar, learned Public Prosecutor appearing for the respondent-State sought time to take instructions regarding registration of an FIR based on the petitioner's complaint. The Court was also informed that the investigation in the incident was transferred to the State CID on 24th September 2024. Mr. Venegavkar assured the Court regarding the steps the police will take to collect evidence, including preserving CCTV footage from Taloja Jail until Akshay was taken to the Hospital post the incident, and sending the weapons to the FSL, etc.

5 By order dated 3rd October 2024, this Court put certain queries to Dr. Birendra Saraf, Advocate General appearing for the respondent-State. Dr. Saraf stated that the issues flagged by this Court will be investigated, if not already done. Accordingly, we called for the Magistrate's Inquiry Report which was being conducted under Section 196 of the Bharatiya Nagarik Suraksha Sanhita ('BNSS') into the custodial death of Akshay, if so ready. On 18th November 2024, the Chief Judicial Magistrate,

Thane, vide letter dated 14th November 2024 sought extension of time to submit the Inquiry Report. During the hearing, it was brought to our notice that recreation of the incident was yet to be done. The learned Advocate General, on instructions, made a statement that all documents will be submitted within two weeks to enable the learned Magistrate to complete the inquiry. The said statement was accepted. Accordingly, we noted in our order that unless all documents were submitted, the Magistrate would not be in a position to complete his inquiry. On 2nd December 2024, we were informed by Dr. Saraf, Advocate General that all the documents collected during the course of the inquiry were submitted to the Magistrate on 27th September 2024. On 20th January 2025, this Court received the Inquiry Report from the Magistrate in a sealed cover. The said Report was opened and a copy thereof was furnished to all the parties.

6 On 24th February 2025, this Court was confronted with a peculiar request from the petitioner and his wife. They

informed the Court that they no longer wished to pursue this case. However, considering that questions arose over the legality and appropriateness of police action leading to Akshay's custodial death, more so, in view of the finding of facts contained in the Magistrate's Report, we would fail in our duty if we allow the entire issue to be swept under the carpet, especially when the moot question relating to adherence of constitutional norms and due process of law was at stake. It would be unfair to the petitioner and his wife, in particular, to have lost their son in unexplained circumstances and be deprived of a closure and also to the citizens of a democratic country in general, to remain blissfully unaware of police action, shrouded in secrecy and having no recourse to the truth in the matter. Citizens cannot be permitted to remain uncertain regarding their faith in the law enforcing machinery. It is the responsibility of the police, being officers of the State to follow constitutional principles and uphold the right to life of every individual, whether an innocent one or a criminal. When a question is raised, as to whether the police

officials in the present matter have acted in aid of their constitutional obligations, it is only fair to secure an answer to the misgivings and clear the shroud of mystery. The law enforcement machinery must enjoy unconditional and complete trust of its citizens, lest lack of it, may affect the credibility of the rule of law.

7 Thus, by order dated 27th February 2025, we deemed it appropriate and requested Ms. Manjula Rao, learned senior counsel to assist us in the present matter as an *amicus curiae*, which she graciously accepted.

8 Mr. Amit Desai, learned senior counsel appeared as a Special Public Prosecutor for the State and Ms. Manjula Rao assisted us as an *amicus curiae*. Mr. Amit Katarnaware, learned advocate originally represented the petitioner, however, since the petitioner himself has withdrawn from the matter, Mr. Katarnaware was discharged of his representation.

9 Only one question troubles us, which is- absence of an

FIR despite information relating to commission of a cognizable offence being given to an officer in-charge of a police station. Settled position of law makes it mandatory to register an FIR. We repeatedly requested the counsel representing the respondent-State, including senior counsel Mr. Amit Desai to throw light on our query. Mr. Desai, learned senior counsel articulated his response in his usual eloquence. He took us through a chronology of the incident leading to custodial death of Akshay and the actions taken by the police thereafter. He submitted that on 24th September 2024, a death report of Akshay was sent to the Magistrate in whose custody Akshay was originally detained. On 25th September 2024, the matter was transferred to the State CID. All the papers relating to this incident were also sent to the State CID. On 27th September 2024, a copy of the death report along with the inquest panchanama was sent to the Chief Judicial Magistrate concerned. On 2nd October 2024, certain other documents were also sent to the Magistrate, which included the e-mail complaint of the petitioner. On 5th October 2024, all the

necessary papers were sent to the Magistrate for inquiry. Mr. Desai submitted that the petitioner was informed that his complaint was being investigated.

10 On law, Mr. Desai, learned senior counsel drew our attention to Section 173 and 176 of the BNSS (equivalent to Section 154 and 157 of the Code). According to Mr. Desai, there are two ways in which investigation commences. Firstly, it may commence pursuant to registration of an FIR as contemplated under Section 154 of the Code and secondly, the police may proceed to investigate an offence under Section 157 of the Code. He further took us to Section 194 of the BNSS (equivalent to Section 174 of the Code) requiring the police to inquire and report on information in various situations mentioned in the provision itself. He placed reliance on various judgments of the Apex Court as under:

- (i) *Pedda Narayana & Ors. v. State of Andhra Pradesh*¹;
- (ii) *George & Ors. v. State of Kerala & Anr.*²;
- (iii) *Manoj Kumar Sharma & Ors. v. State of Chhatisgarh & Anr.*³;
- (iv) *People's Union for Civil Liberties & Anr. v. State of Maharashtra & Ors.*⁴;
- (v) *Radha Mohan Singh alias Lal Saheb & Ors. v. State of UP*⁵;
- (vi) *Sushil Kumar Nayak v. State of Odisha*⁶.

11 The reliance on the aforesaid decisions was in response to the findings on fact in the ADR submitted by the Magistrate. Mr. Desai ratiocinated that the object of an ADR is merely to ascertain whether a person has died under suspicious circumstances or an unnatural death and if so, what is the '*cause of the death*'. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what

1 (1975) 4 SCC 153

2 (1998) 4 SCC 605

3 (2016) 9 SCC 1

4 (2014) 10 SCC 635

5 (2006) 2 SCC 450

6 2017 SCC OnLine Ori 563

circumstances he was assaulted are foreign to the ambit and scope of the proceeding under Section 174 of the Code. To that extent, Mr. Desai says, the finding of the Magistrate conducting the ADR regarding involvement of police officials in the custodial death of Akshay are beyond the ambit and scope of the Magisterial inquiry and hence, cannot be considered. He further submitted that the Supreme Court in the case of *PUCL (Supra)* has issued guidelines to be followed in the matter of investigating police encounters in the case of death as the standard procedure for thorough, effective and independent investigation. He buttressed this contention by pointing to para 31 of the *PUCL (Supra)*. Summing up, he contended that firstly, the State has strictly complied with the guidelines issued by the Supreme Court in *PUCL (Supra)*; the inquiry report of the Magistrate is not binding on the State; it is in addition to the investigation by the police; that the findings of fact in the ADR is not treated as ‘information’ to the police and finally, observations of the Magistrate in the ADR are beyond the mandate of the Magistrate. He thus, submits that the State is

seized of the investigation in the incident of custodial death of Akshay and remained duty bound to carry it to its logical end. Thus, Mr. Desai stated that State CID is still conducting its investigation.

12 Ms. Manjula Rao, learned *amicus curiae* stressed on Section 154 of the Code. She submitted that the criminal system in India follows one principle alone which is presumption of innocence until proved guilty. Hence, she says Akshay, being accused of a crime was entitled to a fair trial and the incident leading to his death was surely an information that should be treated as information of commission of a cognizable offence. Ms. Rao submitted that logically and legally, this information was sufficient to require the police to register an FIR. She also pointed to the complaint made by the petitioner and his wife to the DGP, the CP and the local police. A bare reading of the said complaint, she asserts, makes out a cognizable offence. She further submits that when the Crime Branch transferred the investigation to the

State CID, the State CID was apprised of the information (complaint) given by the petitioner and his wife to the Crime Branch and as such, it was incumbent on the State CID to atleast register an FIR.

13 She meticulously took us through the guidelines laid down in *PUCL (Supra)* and the directions issued by the Supreme Court in the decision of *Lalita Kumari v. State of UP*⁷. She carefully read out the observations of the Supreme Court in *Lalita Kumari (Supra)*, more particularly in paragraph 38, which reproduced the view of the Supreme Court in *State of Haryana v. Bhajan Lal (1992 Supp. (1) SCC 335)*. She also relied on *PUCL (Supra)* and paragraphs 13 and 14 of the decision of the Supreme Court in *Rohtash Kumar v. State of Haryana & Ors.*⁸. She also drew our attention to a recent decision of the Supreme Court in the case of *Sindhu Janak Nagargoje v. State of Maharashtra & Ors.*⁹ where the Supreme Court once again reiterated the

7 (2014) 2 SCC 1

8 (2013) 14 SCC 290

9 2023 SCC OnLine SC 1833

guidelines in *Lalita Kumari (Supra)* and held that registration of an FIR is mandatory if the information discloses commission of a cognizable offence. She thus, concluded that the police officials are alive from various sources, including but not limited to information given by the petitioner and his wife, regarding the custodial death of Akshay; that it was a cognizable offence; and, that ‘reasonableness’ or ‘credibility’ of the information is not a condition precedent for registration of an FIR. She summed up by saying that the police are obliged to register an FIR without qualifying the information and that, the FIR is the starting point of an investigation, be it under Section 154 or Section 157 of the Code, the incident which is the subject matter of the present case.

14 At the outset, having heard learned counsel for the parties and after perusing the papers, we re-iterate the legal position with respect to registration of an FIR in cases, where a cognizable offence is disclosed. In this context, it would be necessary to cull out the propositions laid down by the Apex

Court in *Lalita Kumari (Supra)* which holds the field vis-à-vis registration of an FIR on a complaint disclosing the commission of a cognizable offence. The key findings recorded by the Apex Court in *Lalita Kumari (Supra)* with which we are concerned are noted as under :

(i) the legislative intent of introducing 154 (now 173 of BNSS) is to make registration of FIR mandatory, in a case of cognizable offence without conducting any preliminary inquiry;

(ii) the officer in-charge of the police station is to investigate into the cognizable offence without an order of the Magistrate i.e. reduction of the first information regarding commission of a cognizable offence whether received orally or in writing, into a book separately prescribed for recording such information;

(iii) the object is to set the criminal law in motion;

(iv) at the stage of registration of a crime, the basis of the

information disclosing a cognizable offence as mandated by Section 154(1) of the Code, the concerned police officer cannot embark upon an inquiry, as to whether the information laid by the informant is reliable or genuine or otherwise, and as such, refuse to register a case on the ground, that the information is not reliable or credible;

(v) Infact, the officer in-charge of the police station is statutorily obliged to register a case and then proceed with the investigation if he has reason to suspect the commission of an offence which he is empowered under Section 156 of the Code to investigation, subject to the proviso of Section 157;

(vi) If the officer in-charge of the police station refuses to exercise jurisdiction vested in him and register a case on the information of a cognizable offence being reported, the officer violates the statutory duty cast on him and the person aggrieved by such refusal can send the substance of the information in writing to the Superintendent of Police concerned, who if

satisfied, that the information forwarded to him discloses the commission of a cognizable offence, either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, as mandated by sub-section (3) of Section 154;

(vii) Section 154(1) of the Code has cautiously used the expression ‘information’ without qualifying the same as in Section 41(1) (a) or (g) of the Code wherein the expressions used are ‘reasonable complaint’ and ‘credible information’. Thus, ‘reasonableness’ or ‘credibility’ of the said information is not a condition precedent for registration of a case. Consequently, the condition that is *sine qua non* for recording an FIR under Section 154 of the Code is that there must be information and that information must disclose a cognizable offence;

(viii) Section 154 of the Code is mandatory, having regard to the word employed in Section 154(1) of the Code i.e. ‘shall’. Thus, Section 154(1) of the Code read in the light of the statutory

scheme, does not confer any discretion on the office in-charge of the police station for embarking upon a preliminary inquiry prior to the registration of an FIR;

(ix) The object sought to be achieved by registering the earliest information as FIR is *interalia* two-fold; firstly, that the criminal process is set into motion and is well documented from the very start and secondly, that the earliest information received in relation to the commission of a cognizable offence is recorded so there cannot be any embellishment etc. later;

(x) The Court mandating registration of an FIR on disclosure of a cognizable offence also takes care of the rights of the accused i.e. there are provisions in the Code which provides for checks and balances on police powers;

(xi) The underpinning of compulsory registration of the FIR is not only to ensure transparency in the criminal justice delivery system but also to ensure judicial oversight. Section

157(1) deploys the word 'forthwith'. Thus, any information received under Section 154(1) or otherwise, has to be duly informed in the form of a report to the Magistrate. Thus, the commission of a cognizable offence is not only brought to the knowledge of the investigating agency but also the subordinate judiciary.

(xii) The Court contemplates two kinds of FIRs; firstly, the duly signed FIR under Section 154(1) by the informant to the concerned police station, and second kind of FIR could be registered by the police itself on any information received or other than by way of an informant [Section 157(1)] and even this information has to be duly recorded and the copy should be sent to the Magistrate. Thus, the registration of FIR either under Section 154(1) of the Code or otherwise under Section 157(1) of the Code is obligatory.

(xiii) The object and the obligation of the police to register an FIR has two inherent advantages; (i) it is the first step to

`access to justice for a victim'; (ii) it upholds the rule of law, inasmuch as, any person can bring to the knowledge of the State the commitment of a cognizable offence; it facilitates swift investigation and sometimes, even prevention of the crime. In effect, it effectuates the regime of law; and it ensures no manipulation in criminal cases and lessons incidents of ante dates FIR or deliberately delayed FIRs. On account of delay, the report not only gets bereft of the advantage of spontaneity, leaving open the introduction of coloured version, exaggerated accounts or concocted story, as a result of deliberation and consultation;

(xiv) While registration of an FIR is mandatory, arrest of the accused immediately on registration of an FIR is not mandatory. Infact, registration of an FIR and arrest of the accused person are two entirely different concepts under the law and there are several safeguards available against arrest. Besides, the court also gives the power to the police to close a matter before and after the investigation.

15 Under Section 157 of the Code (now 176 of BNSS), a police officer need not proceed with an investigation, if it appears to him that there is no sufficient ground to investigate the same. But Section 157 itself states that a police officer can start investigation when he has 'reason to suspect the commission of an offence'. Thus, the requirements of launching an investigation under Section 157 of the Code are higher than the requirements under Section 154 of the Code. Under Section 154, it is mandatory to register FIR, once an offence, whether cognizable or not, is revealed, and there is no qualification of 'reason to suspect', the police officer can, in a given case, investigate the matter as is provided in Section 157 and then file a final report under Section 173 of the Code seeking closure of the matter.

Thus, the Scheme of the Code not only ensures that police waste no time on false and frivolous investigation, but also that the police should not intentionally refrain from performing their statutory obligation of investigating a cognizable offence;

16 Whilst mandating registration of an FIR where cognizable offence is disclosed, the Apex Court has also categorised cases in which preliminary inquiry may be conducted. These include cases of matrimonial/family disputes; commercial offences; medical negligence; corruption cases; and cases where there is abnormal delay and laches in initiating criminal prosecution.

17 As mentioned herein-above, reliance was placed by both, Mr. Amit Desai, learned senior counsel/Special Public Prosecutor for the State as well as Ms. Rao, learned *amicus curiae*, on the judgment of the ***PUCL (Supra)***. The case based on a petition filed by PUCL, highlighted growing concerns over ‘encounter killings’ in Maharashtra, specifically referring to cases of alleged fake encounters. The primary issue was whether the police can justify ‘encounter killings’ and whether such actions violated the constitutional rights of the victims, particularly the right to life under Article 21 of the Constitution of India. While

laying down guidelines to be followed during investigation, the Supreme Court reiterated its own observations in *Om Prakash & Ors. vs. State of Jharkhand through Secretary, Department of Home, Ranchi-1 & Anr.*¹⁰. The relevant observations are as under:

‘42.....This court has repeatedly admonished trigger-happy police personnel, who liquidate criminals and project the incident as an encounter. Such killings must be deprecated. They are not recognised as legal by our criminal justice administration system.....But, one cannot be oblivious of the fact that there are cases where the police, who are performing their duty, are attacked and killed. There is a rise in such incidents and judicial notice must be taken of this fact.....’

18 In paragraph 31 of the *PUCL (Supra)*, while concluding, the Apex Court laid down 16 point guidelines to be followed in matters of investigating police encounters in the cases of death as the standard operating procedure for thorough, effective and independent investigation. Para 31 reads thus :

“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

¹⁰ (2012) 12 SCC 72

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 chargesheet 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 dependents 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.”

19 Mr. Desai, in his arguments repeatedly assured that the State has acted in aid of all the guidelines laid down in *PUCL (Supra)*.

But the sheer fact that guideline No. 31.2 itself remains to be acted

upon, negates his argument at the very threshold. The starting point of any investigation i.e, registration of an FIR itself is not complied with. We cannot but agree with Ms. Rao, that the guidelines in *PUCL (Supra)* are cited only to be ignored by the State. Furthermore, the guidelines refer to an intelligence input received by police being chased and the police facing an ambush in a particular incident. In the present incident, there is an even greater need for transparency, given that the victim was already in police custody, accompanied by as many as four police personnel, yet the police claim it to be an encounter. To verify the authenticity of this claim and dispel any doubts, strict adherence to the principles laid down by the Apex Court is essential.

20 On the backdrop of the above principles, reverting to the facts in the present case, it is important to note that Akshay Shinde was arrested initially in C.R. No. 380/2024 and C.R. No.391/2024, both registered with the Badlapur (East) Police Station, Thane, for having committed offences under the POCSO Act and provisions of the BNS. The said CRs were transferred to the Crime Branch, Thane, for further investigation. Whilst in

custody, another C.R. came to be registered at the instance of Akshay Shinde's wife with Boisar Police Station i.e. C.R. No. 409/2024. The said FIR was initially registered as 00 FIR on 25th September 2024 and was transferred to Badlapur Police Station, Thane on 7th September 2024. The offences alleged were under the IPC. The said CR was transferred from the Boisar Police Station to Badlapur Police Station on 7th September 2024 and from Badlapur Police Station to Crime Branch, Thane, on the same day i.e. on 7th September 2024. Pursuant thereto, the Crime Branch, Thane applied to the Jurisdictional Magistrate and sought production warrant of Akshay Shinde which was issued on the same day. The said warrant was then produced before the learned Special Judge (POCSO), Kalyan, where the Special Judge permitted the Crime Branch, Thane to take Akshay's custody from Taloja Jail, pursuant thereto, the officials of Crime Branch, Thane took Akshay's custody from Taloja Jail, after completing formalities. Whilst taking him to the Crime Branch Office, the alleged incident took place i.e. firing in the police van. In the said

incident, Akshay was shot and one officer received a bullet injury in his thigh. Immediately, on 24th September 2024, early morning, Mumbra Police registered ADR No.326/2024 under Section 194 of the BNSS. The said ADR registered by Mumbra Police was transferred to Crime Branch and thereafter to State CID on 25th September 2024. On 24th itself, the petitioner addressed an email to the police authorities asking them to investigate the incident as he suspected that Akshay was killed in a police encounter. Admittedly, neither the petitioner's statement was recorded nor was the petitioner called, nor was an FIR registered and hence, by this petition, the petitioner sought registration of an FIR and conduct of investigation through a SIT.

21 From time to time, several orders were passed by this Court. During the course of hearing, we observed that the State CID had not collected relevant material/reports. Eventually, learned Advocate General informed this Court on 2nd December 2024 that the State CID had submitted all the documents

including all the Forensic reports to the Magistrate on 27th September 2024, so as to enable the learned Magistrate to conduct his inquiry, as without submitting the relevant documents, the Magistrate could not have been in a position to carry out the inquiry. It appears that information, right from the CDRs, Forensic Reports, statements of witnesses, etc. were placed before the Magistrate. The Magistrate after conducting an inquiry found merit in the allegations made by the petitioner. The Magistrate observed that the police were in a position to control the situation and could have avoided Akshay's death. The Magistrate has recorded the circumstances which create a doubt about the genuineness of the encounter. Thus, we are concerned only with the findings recorded by the Magistrate conducting the inquiry vis-à-vis the cause of death of Akshay Shinde. Although, the learned Magistrate named the police officials responsible for the same, we find that the same could not have been done, considering the mandate of the inquiry, which was only to find out the '*cause of death*' and not to name the perpetrators. To this

extent, we are in agreement with Mr. Desai, learned senior counsel/Spl. P.P appearing for the State. Ms. Rao, learned *amicus* also does not dispute this legal position. She, however, states that the said finding, inasmuch as, it names the officer can be ignored and the findings vis-à-vis the cause of death, can certainly be looked into. We are in agreement with the submissions advanced by Ms. Rao, learned *amicus*.

22 When we asked Mr. Desai what was the reservation in registering an FIR as mandated by ***Lalita Kumari (Supra)***, and more particularly, now with regard to the findings recorded by the Magistrate, Mr. Desai informed us that State CID is still investigating the matter. We fail to understand what further investigation is being done by State CID, more particularly, when we were informed by the learned Advocate General on 2nd December 2024 that State CID had handed over all papers of investigation and there was nothing more left. The order dated 2nd December 2024 reads thus :

“1. Dr. Saraf, learned Advocate General, on instructions of the Superintendent of Police – Prashant Waghunde states that all documents collected during the course of inquiry have been submitted to the learned Magistrate on 27th November, 2024. He submits that apart from other documents which were submitted to the learned Magistrate, the State C.I.D has submitted the recreation panchanama dated 25th November, 2024; statement of Shri Shekhar Ramdas Bagde – A.C.P Crime dated 19th November, 2024; and certain additional documents/statements recorded.

2. Although, Dr. Saraf, on instructions, states that all documents have been submitted to the Magistrate, however, we on perusal of the statement of the Doctor find that the X-Ray film of Nilesh More, taken by the concerned Doctor, has not been collected by the State – C.I.D, for reasons best known to them.

3. Dr. Saraf, on instructions of the Superintendent of Police–Prashant Waghunde, who is present in Court, states that the X-Ray film will be collected at the earliest, either from the concerned Hospital or the patient and will be submitted to the learned Magistrate.

4. No investigation has been done by the State CID also with respect to the hand-writing/two sentences mentioned above Shekhar Bagde’s statement in Hindi on the M.L.C paper. Similarly, the Police have not taken care to record the statement of Dr. Aniruddh Malgaonkar (Kalva Hospital) who has written in English on the case papers.

5. Dr. Saraf assures that inquiry will be done with respect to both the aspects and necessary papers will be

submitted to the learned Magistrate within one week from today. Statement accepted.

6. *Needless to state, that if the learned Magistrate conducting the inquiry seeks additional information/documents/statements from the Police, the Police to provide the same.*

7. *Since the papers have been sent belatedly to the Magistrate conducting the Magisterial inquiry and some papers are to be submitted within one week from today, we deem it appropriate to extend the time as sought for by the learned Magistrate.*

8. *Stand over to 20th January, 2025.*

9. *The learned Magistrate to submit his report on the next date, in a sealed envelope, if the same is ready.”*

23 Mr. Desai submitted that on receiving the inquiry papers, sent by the Magistrate to this Court, the State CID will compare the said statements with their statements and thereafter, take further steps. The said submission rings hollow. We are unable to understand the reluctance of the State CID or the police authorities to register an FIR more particularly, when the petitioner's complaint and now the inquiry report *prima facie* discloses the commission of a cognizable offence.

24 Mr. Desai also informed us that an appropriate decision on registering an FIR will be taken after the Commission of Inquiry appointed by the State Government is received. He states that the Commission of Inquiry headed by a retired Chief Justice is also looking into the custodial death. We again fail to understand whether that can be a reason for not registering the FIR, considering that the Commission of Inquiry recommendation will be only recommendatory in nature. The present inquiry conducted by the Magistrate is as mandated by law under Section 176 of the Code (now 176 of BNSS). Thus, having regard to the principles enunciated in *Lalita Kumari (Supra)* and the facts in hand, we are of the opinion, that a cognizable offence is disclosed on the basis of the petitioner's complaint or otherwise and as such, the police are duty bound to proceed in accordance with law. Reasonableness and credibility of the information is not a condition precedent for registration of an FIR. Consequently, the only condition that is *sine qua non* for recording an FIR under Section 154 is that there must be

information and that information must disclose a cognizable offence, both present in the present matter.

25 We may note with anguish that the petitioner who hails from a poor strata of the society, had promptly registered a complaint with the police authorities on 24th September 2024. The petitioner and his wife informed us in February 2025 that considering the delay that has taken place; their financial condition i.e. that they were living on the streets with no source of income and for other reasons, did not wish to press this petition. Only because the complainant/informant/victim hails from the poor strata of the society, his grievance cannot be ignored or brushed aside by the State. The offence, if any, is against the State and it is the responsibility of the State to take appropriate steps, if not on the basis of the petitioner's complaint, even on the basis of the inquiry report or otherwise, on the basis of the information received and take the same to its logical end. Any criminal offence is an offence against the society

and the State acts as the guardian of human rights and as the protector of law.

26 The Apex Court in the case of *Dharam Pal v. State of Haryana & Ors.*¹¹ observed in para 2 as under:

“2. there are occasions when the individual cry is not guided by any kind of revengeful attitude or anger or venom, but by the distressing disappointment faced by the grieved person in getting his voice heard in proper perspective by the authorities who are in charge of conducting investigation and the frustration of a victim gets more aggravated when he is impecunious, and mentally shattered owing to the situation he is in and thereby knows not where to go, the anguish takes the character of collective agony. When the investigation, as perceived by him, is nothing but an apology for the same and mirrors before him the world of disillusionment that gives rise to the scuffle between the majesty and sanctity of law on one hand and its abuses on the other, he is constrained to seek intervention of the superior courts putting forth a case that his cry is not motivated but an expression of collective mortification and the intention is that justice should not be attenuated.”

27 Our criminal justice system will acquire credibility only when the citizens at large are convinced that justice is based

¹¹ (2016) 4 SCC 160

on the foundation of truth. Of-course, for that, the primary condition is that investigation must be carried out fairly, freely and impartially. Crimes affect the entire society and thus the legitimate interest of the society in the investigation cannot be easily brushed aside. It is thus important to strengthen the faith and confidence of the people in the law enforcing agency and this institution, lest the faith of the people in the administration of justice stands shaken. Denial of fair investigation or delay in investigation is as much injustice to the victim and the society as to the accused. The concept of "fair and proper investigation" means that investigation must be unbiased, honest, just and in accordance with law.

28 Upon perusal of the inquiry report, we are satisfied that the case in question i.e. the encounter requires thorough investigation, as it is undisputed that the deceased succumbed to bullet injuries inflicted by a police officer, when he was in police custody.

29 We may also note, why, despite the petitioner and his wife expressing their desire to withdraw the petition, we thought it appropriate to proceed with the same, by appointing an *amicus*. Closing the matter in their absence would have been easy, but a Constitutional Court cannot ignore the State's failure to fulfill its obligations.

30 A refusal to investigate a crime undermines the Rule of Law, erodes public faith in justice, and allows perpetrators to go unpunished. The State's reluctance to even register an FIR has left the petitioner and his wife feeling helpless, forcing them to forgo closure over their son's untimely death. Such negligence weakens public trust in institutions and compromises the State's legitimacy. As a Constitutional Court, we cannot permit this and be mute spectators.

31 Considering what is observed herein above, the police authorities are duty bound to adhere to the principles laid down

in *Lalita Kumari (Supra)* and ensure that the case which *prima facie* discloses the commission of a cognizable offence, is taken to its logical end. We are constrained to intervene, as restraint on our part would result in failure of justice.

32 Hence, we are left with no other option but to constitute a SIT under the supervision of Shri Lakhmi Gautam, the current Joint Commissioner of Police, Crime, Mumbai. The Joint Commissioner shall form the SIT, comprising officers of his choice from any department and the team shall be headed by a Deputy Commissioner of Police. If the selected officers are from different locations or department, they shall be relieved of their current duties to enable their full participation in the investigation. The State CID to hand over all papers relating to the ADR collected by them during the ADR investigation, to the Joint Commissioner of Police, Crime, Mumbai, within two days. Accordingly, the SIT to take appropriate steps in accordance with law, promptly, having regard to what is observed herein-above by

us, in particular, the judgment of the Apex Court in *Lalita Kumari (Supra)*, on receipt of papers. If the petitioner does not come forward for the reasons cited by him, the criminal law can be set into motion by anyone, including the police.

33 This course of action is warranted in the interest of justice, to advance the cause of justice and to uphold public confidence in the justice delivery system. The same is necessitated, keeping in mind the adage ‘Justice must not only be done, but seen to be done’.

34 We are confident that the SIT, to be constituted as directed, shall make every endeavour to unearth the facts and take the case to its logical end. Needless to state, that the SIT shall conduct the investigation, fairly and impartially from all angles, uninfluenced by anyone.

35 With the aforesaid directions, petition stands disposed of.

36 We would like to record a word of appreciation for the able assistance provided and the efforts taken by Mrs. Manjula Rao, Senior Advocate as an *amicus curiae*, in conducting the petition.

DR. NEELA GOKHALE, J.

REVATI MOHITE DERE, J.

37 After the order was pronounced, Mr. Amit Desai, learned senior counsel appearing on behalf of the State, sought a stay of the order.

38 For the reasons cited in the aforesaid order, the request for a stay, is rejected.

DR. NEELA GOKHALE, J.

REVATI MOHITE DERE, J.