



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CRIMINAL APPLICATION (DIRECTION) NO. 9593 of 2024
FOR APPROVAL AND SIGNATURE:
HONOURABLE MRS. JUSTICE M. K. THAKKER

Approved for Reporting	Yes	No
	YES	

SUMAN BISHNOI
 Versus
 STATE OF GUJARAT & ANR.

Appearance:

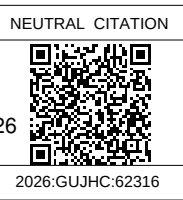
MR ARJUN M JOSHI(11247) for the Applicant(s) No. 1
 MR RC KODEKAR(1395) for the Respondent(s) No. 2
 MR HARDIK DAVE, LD.PUBLIC PROSECUTOR WITH MS MONALI BHATT
 ADDL. PUBLIC PROSECUTOR for the Respondent(s) No. 1

CORAM:HONOURABLE MRS. JUSTICE M. K. THAKKER

Date : 28/09/2026

JUDGMENT

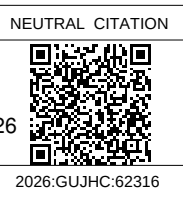
- 1 This is a case where, despite a cognizable offence having been disclosed to the police authority with regard to the custodial death of Mr. Jawri Mal Bishnoi, Joint Director General of Foreign Trade ('the DGFT', hereinafter referred to as such), Rajkot, instead of registering the FIR, the police authority satisfied itself by conducting an inquiry treating the incident as an accidental death. The question that arises for consideration before this Court is whether such conduct on the part of the police authority can be said to be in violation of the directions issued by the Apex Court in various decisions, including **Lalita Kumari v. State of Uttar Pradesh and Others**, reported in **(2014) 2 SCC 1**.

**Factual Matrix:**

2 The deceased, namely Mr. Jawri Mal Bishnoi, DGFT, was an officer serving in the Indian Trade Service since 2011. On 21.03.2023, an official order was issued by the Senior Post Master, Ahmedabad GPO, deputing two independent witnesses, namely Mr. Ajay R. Gard and Mr. Mehulsinh Rathod, to act as independent witnesses on behalf of the CBI, ACB, at the time of drawing the panchnama. On 24.03.2023, the CBI team, along with the aforesaid two independent witnesses, left for Rajkot in two different Government vehicles at around 06:30 a.m. The officers forming part of the said CBI team were Dy.S.P. Mr. Sandeep Bhadoria, Inspector Himanshu Shah, Inspector J.C. Chaudhary, Constable Bharatsinh Zala, Constable Vikramsinh Makwana, Driver-Constable Dinesh C. Thakkar and Driver-Constable P.J. Jadeja. At around 11:00 a.m., upon reaching Rajkot, they contacted the complainant, namely Mr. Ketan Balashankar Trivedi, Marketing Head of Austin Food and Beverages Pvt. Ltd., who had initially filed a complaint before the Head of Branch alleging that the deceased had demanded illegal gratification of Rs.9,00,000/- for performing his official duty and for obtaining the licence required for saving customs duty.

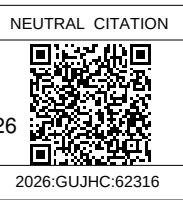


2.1 Dy.S.P. Mr. Bhadoria forwarded the said complaint to the Assistant Superintendent of Police, CBI, ACB, with a direction to verify the genuineness of the complaint. The said verification proceedings were conducted by Police Inspector Mr. Kiran Chaudhary and, as per the allegation made by the complainant Mr. Ketan Trivedi, the deceased had informed him to deliver the bribe amount after 03:30 p.m. on 24.03.2023. A verification report was thereafter submitted, supporting the allegation made by the complainant. At around 02:00 p.m. on 24.03.2023, an FIR came to be registered at CBI, ACB, Gandhinagar, under Section 7 of the Prevention of Corruption Act. Thereafter, at around 03:50 p.m., the pre-trap proceedings, including attaching a digital voice recorder to the arm of the complainant and recording introductory statements, were completed. Between 03:50 p.m. and 04:11 p.m., the deceased accepted the bribe amount from Mr. Ketan Trivedi in his chamber. At 04:11 p.m., the complainant gave the pre-arranged signal to Dy.S.P. Mr. S.S. Bhadoriya. Upon reaching the place at around 04:11 p.m., the CBI team locked the main door of the office and instructed the staff to switch off their mobile phones. An amount of Rs.5,00,000/- was seized



from the right-side drawer of the deceased in the presence of Panch No.1. The hands of the deceased were thereafter washed with sodium carbonate solution, whereupon the right-hand solution turned pink.

2.2 Thereafter, the CBI team called Mr. Rajesh Jatav, Section Head at the DGFT Office, for interrogation of the deceased. At around 05:50 p.m., the CBI officers, including Police Inspector Mr. G.C. Chauhan, Police Constable Kanubhai Rathod, Driver Police Constable Dineshbhai Thakkar, Government Panch Kuldip Ghadvi, Government Panch Somya Vachharajni and Woman Police Constable Kailashben, went to the residence of the deceased. However, they found the flat locked. A call was made to the wife of the deceased, but she did not answer the call. At around 06:15 p.m., the son of the deceased, namely Aditya Bishnoi, reached the residence. Upon being asked about the key, he stated that he did not possess the key to the house. The son thereafter informed the brother of the deceased, namely Paras Bishnoi, regarding the CBI raid. At the office, the deceased was formally arrested at around 06:45 p.m. His two mobile phones, namely an iPhone 12 Pro Max and an iPhone 13 Mini, were seized, along with



cash of Rs.9,938/-. At around 06:46 p.m., the CBI team informed the Additional DGFT, Shri Vijay Kumar, regarding the arrest of the deceased. However, according to the case of the petitioner, no official information regarding such arrest was given to the petitioner, his son or the son of the deceased. At around 10:09 p.m., contact was made with the flat owner, namely Mr. Atul Joshi, who arrived with another key to the flat. However, the said key could not be used to open the door. Thereafter, at around 11:25 p.m., the CBI called a key maker, who opened the door of the residence of the deceased.

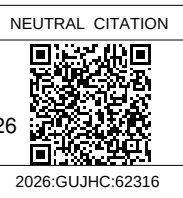
2.3 At the office, the CBI, as contended, continued the post-trap panchnama up to the next day morning, i.e. till around 09:45 a.m. At that point of time, the deceased was detained in his chamber under the guard of police constables and preparations were being made to take him to Gandhinagar. It is reported by Constable Mr. Zala that the deceased jumped out of the window. At around 09:56 a.m., the 108 emergency service was called and the deceased was taken to the Civil Hospital, where he was declared dead. Thereafter, the Head Constable, Mr. Jigneshbhai, of the Civil Hospital Police Chowki informed Pradhyumannagar



Police Station at around 10:50 a.m. regarding the death of the deceased while in the custody of the CBI, under Section 174 of the Code of Criminal Procedure. The said case was registered as Accidental Death No.30 of 2023. The said information was thereafter forwarded to Mr. K.S. Bhagora, P.S.I., by the Police Station Officer of Pradhyumannagar Police Station, directing him to inquire into A.D. No.30 of 2023. Pradhyumannagar Police Station thereafter forwarded a copy of the A.D. to the Commissioner of Police, Rajkot, who, in turn, forwarded the same to the Secretary, Home Department, Gandhinagar; the Secretary, Gujarat State Human Rights Commission, Gandhinagar; the D.G. and I.G. of Police, Gandhinagar, the D.G. of C.I.D. Crime, Gandhinagar, the Additional D.G., SC & ST, Gandhinagar, the District Magistrate; the District and Sessions Judge, Rajkot; the JMFC, Rajkot and the Head of the CBI, ACB, Gandhinagar, through e-mail dated 25.03.2023. The Inspector of Police and Head of Branch, CBI, ACB, Gandhinagar, also communicated to the learned Principal District and Sessions Judge, Rajkot, on 25.03.2023, requesting that an inquiry under Section 176 of the Code of Criminal Procedure be conducted regarding the cause of death of the deceased.



2.4 On 26.03.2023, in connection with the inquiry initiated under Section 174 of the Code of Criminal Procedure regarding the accidental death, the Police Commissioner constituted a team headed by D.C.P. Mr. Sudhirkumar Desai, with Assistant Commissioner of Police Mr. Bhargav Pandya and Police Inspector Mr. M.G. Vasava, Pradhyumnagar Police Station, as its members. On the same day, i.e. on 26.03.2023, the son of the deceased, namely Aditya Bishnoi, forwarded a complaint to the learned Chief Judicial Magistrate, District Rajkot, requesting registration of a complaint under Section 200 of the Code of Criminal Procedure, alleging commission of offences punishable under Sections 302, 389 and 34 of the Indian Penal Code in connection with the custodial death of his father. It was alleged in the said complaint that, during the raid at the residence, a conversation regarding issuance of threats to implicate the son in a false FIR, in the event of non-cooperation, including an FIR under the NDPS Act, had been recorded on his mobile phone. A request was also made for forensic examination of the said mobile phone. It was further alleged that the father had been falsely implicated in the ACB case at the instance of a powerful complainant and that, considering the



physique and size of the father, there was no possibility of his having jumped from the window. The son also submitted a written complaint, which was inwards at the police station as Aavak No.2164 of 2023, making substantially the same allegations. The said complaint was also forwarded to the learned Magistrate.

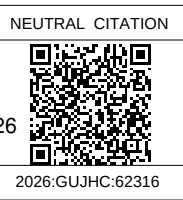
2.5 The SIT thereafter conducted an investigation in connection with A.D. No.33 of 2023 by preparing the inquest panchnama, obtaining the FSL opinion regarding the death of the deceased, recording the statements of the employees who were present in the office, conducting videography, preparing a reconstruction panchnama and recording the statements of the neighbours of the deceased. The report was submitted on 17.07.2023. Upon conclusion of the investigation, it was opined that proper care had not been taken by the CBI officers while conducting the post-trap panchnama, however, it was also opined that no involvement of the CBI officers was found in the commission of suicide by the deceased.

2.6 With regard to the judicial inquiry conducted under Section 176 of the Code of Criminal Procedure, the Inquiry Officer, i.e. the 2nd Additional Senior Civil Judge and Additional Chief



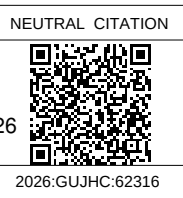
Judicial Magistrate, Rajkot, recorded the statements of 29 witnesses and submitted a report under Section 176(1-A)(b) of the Code of Criminal Procedure. In the said report, it was concluded that the CBI officers had neither caused any harm nor inflicted any injury upon the deceased and that they had acted in accordance with the Rules. Aggrieved by the alleged conduct of the police authority in not registering an FIR despite the allegations made in relation to the custodial death of the deceased, the present petition has been filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure.

- 3 Heard the learned advocate Ms.Payoshi Roy with Mr. Arjun Joshi for the petitioner, learned Special Public Prosecutor Mr. R.C.Kodekar and Mr. Hardik Dave learned Public Prosecutor for the respondent-State.
- 4 Learned advocate Ms. Payoshi Roy submits that, though the deceased was arrested at 06:45 p.m. on 24.03.2023, he was kept in the office under the guise of conducting the post-trap panchnama up to 09:45 a.m. on 25.03.2023. It is submitted that it is the bounden duty of the police officer to produce the accused immediately before the Magistrate; however, the deceased was kept in the office itself



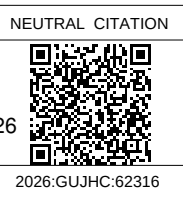
and was harassed and tortured by the CBI officers. It is further submitted that even the arrest of the deceased was not officially informed by the CBI officials and that the signature of the deceased was not obtained on the arrest panchnama, as mandated under Section 41-B of the Code of Criminal Procedure. Keeping the deceased in custody for about 19 hours till his death and not producing him before the Magistrate, as mandated under Article 22(2) of the Constitution of India and Section 167 of the Code of Criminal Procedure, itself creates a doubt with regard to the conduct of the CBI officials.

4.1 It is submitted that by the learned advocate Ms. Roy, at about 05:15 p.m., around 10 persons came to the house of the petitioner and started banging on the door. None of the officers was wearing any name tag or badge. The petitioner was alone in the house with her daughter, who was appearing for her ongoing 10th Standard examinations. As the petitioner refused to open the door and asked the officers to show their identity cards and the search warrant, they started using abusive language. The petitioner tried to call her husband, but the call was not answered and thereafter his phone was switched off. Even when the son of the petitioner, who was aged about 17 years, reached there and



asked for the identity cards and search warrant, the CBI officials refused to show the same. The son thereafter called his uncle and a family lawyer; however, despite repeated requests, the CBI officials refused to speak with the lawyer over the phone. Thereafter, the CBI officers called a locksmith and opened the door with the assistance of the locksmith. It is submitted that by the learned advocate Ms. Roy, during the personal search conducted in the night, repeated threats were issued to falsely implicate the petitioner and her family members in serious cases under the NDPS Act. The petitioner was forced to sign certain papers admitting the recovery of a bag containing cash from her house. Upon her refusal to sign the same, the officers became angry. At around midnight, i.e. 03:30 a.m., one officer, namely Mr. B.S. Chauhan, called the raiding party officers who were present at the residence. The petitioner requested that she be permitted to speak with her husband, but the said request was refused. However, the petitioner could hear the voice of her husband screaming in pain and begging the officers not to implicate him in a false FIR.

4.2 It is submitted that by the learned advocate Ms. Roy, at around 07:00 or 08:00 a.m. on 25.03.2023,



the officer returned the mobile phone of the petitioner's son, which had been kept in his jeans, while the voice recorder was kept switched on, whereby the conversation with the CBI officials was recorded. According to the learned advocate, the said recording supports the allegations regarding the threats issued by the CBI officers. At around 10:10 a.m., the petitioner received a call from her husband's driver, Dipesh, informing her that her husband had fallen from the window and had succumbed to the injuries. It is submitted that the deceased's brother, who was residing at Bikaner, reached the office of the deceased at around 10:20 a.m. and was informed by the office staff that the deceased had been taken to the Civil Hospital, Rajkot. It is further submitted that the post-mortem examination was conducted under the supervision of two autopsy surgeons, which, according to the learned advocate, was also in violation of the guidelines issued by the National Human Rights Commission, which mandate a team of five doctors in cases of custodial death.

4.3 It is submitted that by the learned advocate Ms. Roy that there were lacerated wounds and abrasions on the head, limbs and abdomen of the deceased. Contusions and haematomas were



present in the parietal and occipital regions, and fractures were present in the cranial region and the ribs. A haemorrhage was also present in the head. The post-mortem report records the cause of death as shock and haemorrhage on account of injuries to the head and chest caused by a hard and blunt object. The report further observes that external injury No.1, being a lacerated wound on the head, along with the internal injuries, was sufficient to cause death in the ordinary course of nature. It is further submitted that the post-mortem report records that the stomach of the deceased was empty, with reddish material present therein, indicating, according to the learned advocate, that the deceased had not been given any food within six hours prior to his death.

4.4 It is submitted that by the learned advocate Ms. Roy the son of the petitioner filed a complaint before the Station House Officer, Pradhyumannagar Police Station, Rajkot, requesting registration of an FIR under Sections 302 and 389 read with Section 34 of the Indian Penal Code. He also filed a complaint before the learned Chief Judicial Magistrate, Rajkot, regarding the death of his father and requested that appropriate action be taken against the CBI



officers. However, despite the aforesaid complaints, neither did the police officer register an FIR nor did the learned Magistrate consider the same as a complaint. On the contrary, the said complaint was treated as part of the judicial inquiry, which, according to the learned advocate, is unheard of and contrary to the settled principles of law. It is further submitted that even the report of the inquiry was not provided to the petitioner. Though an application under the Right to Information Act was filed, the same came to be rejected on 06.09.2023 on the ground that the documents were readily available from the concerned Court. Thereafter, an application was made before the concerned Court however, the same was rejected on the ground that the report could be procured in accordance with the provisions of the Criminal Manual. It is submitted that, during the judicial inquiry conducted under Section 176 of the Code of Criminal Procedure, the son of the petitioner was examined as a witness and he reiterated the allegations made in the complaint. However, despite the same, it was concluded that no adverse material was found against the police officials.

4.5 Learned advocate Ms. Roy submits that, in the



aforesaid background, once disclosure of a cognizable offence is made, registration of an FIR is mandatory and the matter is required to be investigated by an independent investigating officer. However, the police officer of Pradhyumannagar Police Station, along with the ACP, conducted the inquiry under Section 174 of the Code of Criminal Procedure and submitted a report exonerating the concerned officers from the allegations. In that background, it is submitted that the police authorities were required to register the FIR and conduct an independent investigation. Learned advocate, therefore, submits that the present petition may be allowed.

- 5 Learned Special Public Prosecutor Mr. R.C. Kodekar, appearing for the CBI, submits that the allegation against the deceased was that he had demanded an undue advantage of Rs.9,00,000/- for issuance of a No Objection Certificate so as to facilitate release of the bank guarantee and fixed deposits of Ketan Balashankar Trivedi, Marketing Head of Austin Food and Beverages Pvt. Ltd. It is submitted that FIR being RC029202380006 came to be registered at CBI, ACB, Gandhinagar, on 24.03.2023 against Jawri Mal Bishnoi, Joint Director General of Foreign Trade, the deceased, under Section 7 of the Prevention of Corruption Act, 1988. The trap was laid on the same



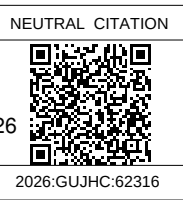
day, i.e. on 24.03.2023, and the deceased was apprehended in his chamber while demanding and accepting an undue advantage of Rs.5,00,000/- from the complainant, Ketan Trivedi, in the presence of independent witnesses. The tainted bribe amount was recovered from the drawer of his table. It is submitted that, during the post-trap proceedings, the accused did not cooperate with the investigation and, instead, gave evasive replies and misled the CBI team by furnishing a false address of his native place. Subsequently, at 18:45 hours on 24.03.2023, the deceased was formally arrested and his mobile phone was seized in the presence of independent Panch witnesses.

5.1 It is further submitted that by the learned Special Public Prosecutor Mr.Kodekar that during the course of investigation, the mobile phones and iPads were sent to Gandhinagar for retrieval of the available data, wherein details relating to financial transactions, references to hawala transactions, property details and incriminating cheques were retrieved. The CBI team thereafter visited the residence of the deceased for conducting a search. However, the family members, including the petitioner Ms. Suman Bishnoi, daughter Arju Bishnoi, son Master Aditya Bishnoi and nephew Varun Bishnoi, did not cooperate with the CBI



team. Initially, the house was found locked from inside, though the daughter and wife of the deceased were present therein and did not respond despite repeated doorbells and knocking. With the assistance of a locksmith, the house was thereafter opened. It is submitted that the nephew, namely Varun Bishnoi, was seen rushing down the stairs and moving towards the main gate in a suspicious manner while carrying a blue-coloured bag. When chased by the CBI officials, he ran away, leaving behind the said bag, which was found to contain cash of Rs.3,57,500/- in the presence of independent witnesses. The CCTV footage revealed that the blue-coloured bag had been thrown from 'B' Block and was thereafter collected by the nephew during the course of the search at the residence.

5.2 It is further submitted by Mr.Kodekar that cash amounting to Rs.3,57,500/-, additional cash of Rs.7,900/-, Korean currency amounting to 3,87,000, and USD 5,091 were recovered, for which no plausible explanation was furnished by the family members. The CBI officers also seized unaccounted cash of Rs.49,99,000/- along with nine packets of silver metal bullion weighing 100 grams each from the balcony of vacant Flat No. B-202, situated opposite Flat No. B-203, which was



the residence of the deceased. It is submitted that a committee member of Sopan Luxuria Apartment, namely Hitesh Khetani, informed the CBI that Ms. Suman Bishnoi had approached him and requested him to open Flat No. B-202, stating that her clothes had fallen into the balcony. However, as the said committee member was aware of the proceedings being conducted by the CBI and the vacant flat was owned by his brother, instead of opening the door of the said flat, he informed the police officer.

5.3 Learned Special Public Prosecutor Mr. Kodekar further submits that six files pertaining to the periodic export of food cans of the complainant for issuance of NOC were pending before the office of the Joint DGFT, Rajkot, for release of bank guarantees amounting to approximately Rs.50,00,000/- since 2022. Out of the said six files, five related to Advance Authorisation and one related to Export Promotion Capital Goods. According to the learned Special Public Prosecutor, the pendency of the said files indicates the motive of the deceased in demanding an undue advantage from the complainant. It is submitted that by Mr.Kodekar, after completion of the statutory formalities in the presence of



independent Panch witnesses and completion of the post-trap proceedings, at around 09:45 hours on 25.03.2023, the CBI team was about to leave the office for joining the DGFT, Rajkot. However, suddenly, at around 09:50 hours, the deceased jumped out of the window of his chamber situated on the fourth floor of the DGFT Office, Rajkot. Immediately thereafter, the CBI officials called the 108 emergency ambulance service and rushed the deceased to the Civil Hospital, Rajkot. The remaining members of the CBI team informed the PCR as well as the local police regarding the incident. During the course of investigation, the CCTV footage from the camera installed on the fourth floor was collected, which, according to the learned Special Public Prosecutor, corroborates the aforesaid facts. It is submitted that the local police immediately conducted an inquiry under Section 174 of the Code of Criminal Procedure and that a judicial inquiry was also conducted by the learned Chief Judicial Magistrate, Rajkot, under Section 176 of the Code of Criminal Procedure, which was registered as Inquiry No.135 of 2023.

5.4 It is further submitted by Mr. Kodekar that, apart from the aforesaid inquiries, a detailed investigation was also conducted by the SIT



constituted under the head of the ACP, wherein no adverse material was found against the police officials. In view of the two independent inquiries and the detailed investigation conducted by the SIT, wherein no adverse material was found against the concerned police officials or CBI officers, learned Special Public Prosecutor submits that no interference is called for in the present petition and the same may be dismissed.

6 Mr. Hardik Dave, learned Public Prosecutor appearing for the State, in support of the submissions advanced by the learned Special Public Prosecutor Mr. Kodekar, submits that a detailed inquiry has been conducted, one by the police authorities and another by the learned Judicial Magistrate, and, upon completion of the said inquiries, it has been concluded that no harassment or torture was caused to the deceased by the CBI officials. It is, therefore, submitted that reopening the matter by allowing the present application and directing registration of an FIR would amount to an abuse of the process of law. It is further submitted that, even if this Court is of the view that an investigation by way of registration of an FIR is warranted, the same ought to be registered against unknown persons, as naming the concerned persons in the FIR at this stage would have serious

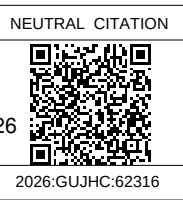


consequences upon their service career as well as their personal liberty. In the aforesaid background, learned Public Prosecutor submits that this Court may refrain from exercising the powers under Section 482 of the Code of Criminal Procedure.

7 Having considered the submissions advanced by the learned advocates appearing for the respective parties and upon considering the factual matrix narrated in the first part of this judgment, as well as the question framed at the beginning of the judgment, this Court is of the view that it would be appropriate to first examine the statutory scheme governing the inquiries initiated under Sections 174 and 176 of the Code of Criminal Procedure and the manner in which such provisions are required to be considered in the facts of the present case.

“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 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.

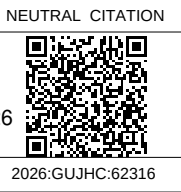
(3) [When -(i) the case involves suicide by a woman within seven years of her marriage; or

(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 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.

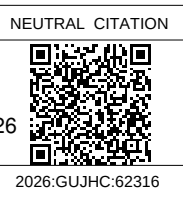
176. Inquiry by Magistrate into cause of death.

(1) when the case is of the nature referred to in clause (i) or clause (ii) of sub-section (3) of section 174], the nearest Magistrate empowered to hold inquests shall, and in any other case mentioned in sub-section (1) of section 174, any Magistrate so empowered may hold an inquiry into the cause of death either instead of, or in addition to, the investigation held by the police officer; and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence.

1A) Where,— (a) any person dies or disappears, or (b) rape is alleged to have been committed on any woman, while such person or woman is in the custody of the police or in any other custody authorised by the Magistrate or the Court, under this Code in addition to the inquiry or investigation held by the police, an inquiry shall be held by the Judicial Magistrate or the Metropolitan Magistrate, as the case may be, within whose local jurisdiction the offence has been committed.]

(2) The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any manner hereinafter prescribed according to the circumstances of the case.

(3) Whenever such Magistrate considers it expedient to make an examination of the dead body of any



person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.

(4) Where an inquiry is to be held under this section, the Magistrate shall, wherever practicable, inform the relatives of the deceased whose names and addresses are known, and shall allow them to remain present at the inquiry.

[(5) The Judicial Magistrate or the Metropolitan Magistrate or Executive Magistrate or police officer holding an inquiry or investigation, as the case may be, under sub-section (1A) shall, within twenty-four hours of the death of a person, forward the body with a view to its being examined to the nearest Civil Surgeon or other qualified medical person appointed in this behalf by the State Government, unless it is not possible to do so for reasons to be recorded in writing.]

Explanation.—In this section, the expression "relative" means parents, children, brothers, sisters and spouse.

- 8 On noticing the language employed in Section 174 of the Code of Criminal Procedure, it becomes clear that the purpose of holding an inquiry thereunder is limited, namely, to ascertain whether 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. However, an inquiry held by the Judicial



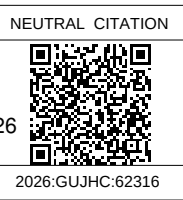
Magistrate or Metropolitan Magistrate under Section 176(1-A) of the Code of Criminal Procedure is in addition to the inquiry or investigation conducted by the police. The inquiry conducted by the Judicial Magistrate cannot operate as a bar against the police conducting an investigation simultaneously. Such an inquiry cannot be treated as a substitute for an investigation conducted by the police in respect of the commission of an offence. The inquiry conducted by the Judicial Magistrate may not, in all respects, be as comprehensive as an investigation conducted by the police. For instance, the Judicial Magistrate may not have the same powers or access to the investigative machinery to visit various places and recover material objects connected with the crime or the offender. Merely because the judicial inquiry has concluded in favour of the police officers, the police cannot be precluded from investigating the matter if the facts otherwise disclose the commission of a cognizable offence. The inquiry conducted by the Judicial Magistrate is in addition to the investigation conducted by the police and not in substitution thereof.

- 9 At this stage, if one refers to Chapter XII of the Code of Criminal Procedure, it becomes clear that, once a case is registered under Section 154 of the Code of Criminal Procedure, the investigation is required to



be carried to its logical conclusion by filing a report under Section 173 before the concerned Magistrate. Even in a case where the Investigating Officer finds that no offence has been committed or that, for any other reason, no further action is required to be taken against the concerned individual, he is required to submit an appropriate final report before the Judicial Magistrate or Metropolitan Magistrate, as the case may be. It is thereafter for the concerned Magistrate to consider whether, on the basis of the material available, cognizance ought to be taken, whether further investigation ought to be directed, or whether the final report is required to be accepted. Therefore, in a case involving death, disappearance or rape while a person is in police custody, if the facts disclose commission of a cognizable offence, the investigation is required to be conducted by the police and cannot be hindered or brought to an end merely on account of the inquiry conducted by the Judicial Magistrate or Metropolitan Magistrate, as the case may be. On completion of such investigation, the Investigating Officer is required to submit a report in accordance with Section 173 of the Code of Criminal Procedure.

9.1 There is yet another important reason for registration of a prompt FIR and commencement of investigation. The police authorities are vested



with extensive statutory powers and investigative expertise and have access to various investigative tools and mechanisms for conducting a thorough investigation. Such investigative powers and tools may not necessarily be available to a Judicial Magistrate or Metropolitan Magistrate while conducting an inquiry under Section 176 of the Code of Criminal Procedure. Consequently, an inquiry under Section 176 cannot be regarded as a substitute for a police investigation where the material available discloses commission of a cognizable offence.

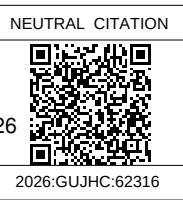
10 This Court has referred the decision rendered by the Apex Court in the case of **Satender Kumar Antil vs. Central Bureau of Investigation**, reported in **2025 SCC OnLine 1578** wherein the Apex Court while referring the definition of the inquiry, investigation and judicial proceedings has held as under:

Section 2 of the BNSS, 2023

"Section 2. Definitions-

(k) "inquiry" means every inquiry, other than a trial. conducted under this Sanhita by a Magistrate or Court:

(1) "investigation" includes all the proceedings under this Sanhita for the collection of evidence conducted by a police officer or by any person (other than a



Magistrate) who is authorised by a Magistrate in this behalf.

(m) "judicial proceeding" includes any proceeding in the course of which evidence is or may be legally taken on oath;" (emphasis supplied)

It is to be noted that the purpose of an investigation by an Investigating Agency, is markedly distinct from that of an inquiry or judicial proceedings by the Court. While the former is to investigate an offence, the latter is a search towards the truthful determination of an occurrence. Therefore, the procedure of one cannot be read into the other.

11 Thus, while distinguishing between an inquiry and an investigation, it may be borne in mind that the object of an inquiry is to determine the truth or falsity of certain facts in order to take further action thereon, whereas the object of an investigation is to collect evidence. Therefore, the procedure applicable to one cannot be read into the other.

12 It is contended by the learned advocate for the CBI that, instead of seeking a remedy before this Court under Article 226 of the Constitution of India, the petitioner ought to be directed to approach the learned Magistrate by filing a complaint. The said contention does not appear to be reasonable, as immediately after the death of the deceased, the petitioner approached the Station House Officer, Pradhyumannagar Police Station, Rajkot, for registration of an FIR and also filed a complaint

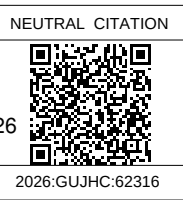


before the learned Judicial Magistrate, Rajkot. However, instead of taking appropriate action, either by registering an FIR or by treating the same as a private complaint, the said complaint was made a part of the inquiry conducted under Section 176 of the Code of Criminal Procedure.

13 At this stage, reference of the decision rendered by the Bombay High Court in the case of **Vijayabai Vyankat Suryawanshi v. State of Maharashtra**, reported in **2025 SCC OnLine Bom 2588**, is required to be made wherein, in an identical situation, the Bombay High Court has held as under:

“9. We are aware about the legal position regarding directions to be given in respect of lodging of the FIR, which have been reiterated in subsequent pronouncements. In *Sakiri Vasu v. State of Uttar Pradesh*, (2008) 2 SCC 409, it has been observed thus:—

25. we have elaborated on the above matter because we often find that when someone has a grievance that the First Information Report has not been registered at a police station and/or an appropriate investigation is not being done by the police, he rushes to the High Court to file a writ petition or a petition under Section 482 Cr. P.C. We are of the opinion that High Court should not encourage this practice and should ordinarily refuse to interfere in such matters and relegate the petitioner to his altering remedy, firstly under Section 154(3) and Section 36 Cr. P.C. before the concerned police officers and if that is of no avail, by approaching a Magistrate



concerned under Section 156(3).

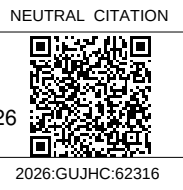
26. If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154(3) Cr. P.C. or other police officer referred to in Section 36 Cr. P.C. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3) Cr. P.C. instead of rushing to the High Court by way of a writ petition or a petition under Section 482 Cr. P.C. Moreover he has a further remedy of filing a criminal complaint under Section 200 Cr. P.C. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?

Thereafter, in *Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage*, [(2016) 6 SCC 277] which has been then referred in *M. Subramaniam v. S. Janaki*, [(2020) 16 SCC 728], the said legal position was more clarified. We also want to take note of the decision in *Divine Retreat Centre v. State of Kerala*, [(2008) 3 SCC 542 : AIR 2008 SC 1614], wherein it has held that a writ petition in case of non taking of action by police on information given to them are not maintainable and the remedy would be then available to the informant under Section 190 and 200 of the Code of Criminal Procedure. However, in all these cases, no point of death of a person, who is in either the police custody or the judicial custody, was involved. In respect of offences those occur against a person in police custody or custodial death, in our opinion, the stand that is required to be taken by this Court should be different.



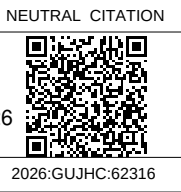
Being the protectors of the constitutional rights of a citizen, who by virtue of the order passed in a judicial process, is in the custody, then if his constitutional rights are violated by an officer or any other citizen in jail, then at this prima facie stage, we say that the interference is required.

10. Here, the record shows especially the report of learned Judicial Magistrate First Class, Parbhani that in all 27 accused persons including Somnath were remanded to police custody till 14.12.2024, after they were allegedly arrested on 12.12.2024. At that time, no complaint was made before the learned Magistrate, rather note has been taken by the learned Chief Judicial Magistrate, Parbhani that the accused persons have not made any complaint of ill treatment at the hands of police. Note has also been then taken about the statement of Advocate that accused might be having complaint, but they are under pressure from police. Therefore, learned Chief Judicial Magistrate once again asked the accused persons as to whether they have any complaint, but all the persons answered in the negative. Again when they were produced on 14.12.2024, no complaint was made regarding the ill treatment and then they were taken in Magisterial custody till 27.12.2024. Around 19.40 p.m. on 27.12.2024, it appears that they were admitted to District Prison at Parbhani. Here, the order that was passed by learned Judicial Magistrate First Class, Parbhani on 14.12.2024 would show that the accused persons including Somnath were produced before him at 12.45 p.m. When the learned Judicial Magistrate First Class Court is in Parbhani and the District Prison is in Parbhani, then why it should take the police to give the custody of all the accused persons under the jail warrant that too collectively around 19.40 hours, would be a question. Now, learned Judicial Magistrate First Class has conducted a detailed inquiry as contemplated under



Section 196 of Bhartiya Nagrik Suraksha Sanhita (earlier Section 176 of the Code of Criminal Procedure). When an accused person dies in jail or in police custody, such inquiry under Section 176 of the Code of Criminal Procedure/Section 196 of the Bhartiya Nagrik Suraksha Sanhita, is mandatory. Further, it can also be seen that the learned Judicial Magistrate First Class was present when the postmortem was done. The Executive Magistrate/Naib Tahsildar and other officers along with two panchas and the doctors, who were conducting the postmortem, were also present and the entire process of postmortem has been videographed. Even in the inquest panchanama, various injuries on the person of Somnath have been reported. The staff at the Civil Hospital has also been inquired by learned Judicial Magistrate First Class. Therefore, the entire record then shows that there were injuries on the person of deceased and the copy of the postmortem report which has been made available would show that on the person of deceased, there were 24 visible injuries. Of course, there are internal injuries also. The question would then arise as to who has caused those injuries and it is stated that the age of those injuries i.e. of contusions and abraded contusions is between few hours to four days before death and all abrasions were between 2 to 4 days before death. The team of seven doctors has given a probable cause of death as “shock following multiple injuries”.

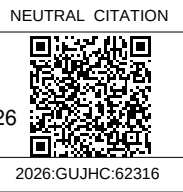
11. What has been seen is that if the inquiry officer or the investigating officer has any query to make the medical officer in respect of death of a person, they usually approach those medical officers, who conducted the autopsy. Here, interestingly, the Deputy Superintendent of Police, State CID, has taken his own decision to make queries and seek opinion from team of medical experts from J.J. Hospital, Mumbai and said Committee appears to have given report on 28.04.2025 to Deputy Superintendent of Police, State CID, Parbhani.



We may not express our opinion in this respect at this stage, yet the question that is required to be gone into is, as to why he had not approached the seven members team from Aurangabad, who conducted the autopsy, for the opinion in respect of queries.

12. Deceased Somnath was in judicial custody and, therefore, was in jail as aforesaid. Now, when there was prima facie material on record i.e. on the basis of inquest panchanama, postmortem report, report of learned Judicial Magistrate First Class under Section 196 of the Bhartiya Nagrik Suraksha Sanhita and the complaint application by the petitioner, a cognizable offence was made out and, therefore, State ought to have registered the FIR. The guidelines in *Lalita Kumari v. State of U.P.*, (2014) 2 SCC 1, were prima facie made out. When the petitioner went to police station and tried to lodge the FIR, her FIR was not recorded. She has given the complaint application and the copy of the same to the superior and, therefore, we are of the opinion that those material which she was placing before the police, were sufficient for registration of the FIR.

13. We would like to take note of the decision of the Coordinate Bench in *Anna Maruti Shinde v. The State of Maharashtra*, [Criminal Writ Petition No. 4107 of 2024 decided on 07.04.2025], (the case of encounter of Late Akshay Shinde in Badlapur), wherein almost similar submissions were made on behalf of the State and the decision in *People's Union for Civil Liberties v. State of Maharashtra*, [(2014) 10 SCC 635], was harped upon and it was tried to be submitted that the inquiry report of a Magistrate is not binding on the State and thus guidelines of the Supreme Court have been strictly adhered to in the present case also. The Coordinate Bench has referred to paragraph No. 31 of the *People's Union for Civil Liberties (Supra)* regarding the 16 point



guidelines to be followed in the matters of investigating police encounters in cases of death and the Standard Operating Procedure. Of course, here, in the present case, the police encounter is not in strict sence, but it is a death when Somnath was in custody, but prior to that he was in the police custody when it is alleged that he was subjected to brutality. In Lalita Kumari (Supra), it has been held that when a cognizable offence is disclosed on the basis of a complaint application, then the police are duty bound to register the FIR and take up the investigation. In Anna Maruti Shinde (Supra), registration of the FIR was directed and Special Investigation Team was constituted.

14. Here, at this stage, by way of interim order, we are constrained to direct respondent No. 1 and Police Inspector Mondha Police Station, Parbhani to register the FIR on the basis of the complaint application dated 18.12.2024 given by the petitioner. Such FIR be registered within a period of one week and Superintendent of Police, Parbhani is directed to handover the investigation to a police officer of the rank of Deputy Superintendent of Police.

15. The interim order granted by this Court on 29.04.2025 asking Mr. Talpe not to come to the final conclusion and submit report would stand vacated, after the registration of the FIR as directed above.

16. We make it clear that for rest of the prayers, the writ petition is kept pending, for which additional affidavit-in-reply, if any, to be filed within a period of three weeks from today. Copy of the same be given to the other side in advance.”

14 Considering the aforesaid decision, which has been rendered after referring to various decisions of the



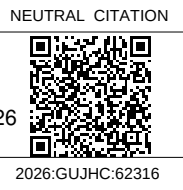
Apex Court, in the opinion of this Court, where the offence is alleged to have occurred against a person while in police custody, or in a case of custodial death, the approach of the Court is required to be different, particularly when the Court is required to act as a protector of the constitutional rights of a citizen who, by virtue of an order passed in a judicial process, is in custody. If such constitutional rights are violated by any officer or any other person in police custody, in jail or otherwise, the Court is required to intervene by directing the police authorities to register an FIR. The inquiry conducted by the local police under Section 174 of the Cr.P.C. suffers from various loopholes. During the course of such inquiry, the injuries noticed in the post-mortem report appear to have been considered as injuries sustained due to the deceased having jumped from the window, though the post-mortem report records as many as eleven injuries. It is also stated that the FSL report with regard to the mobile phone of the son of the petitioner, in which the conversation recorded at the time of the search is stated to have been captured, is still awaited. Further, the fact that the deceased was kept at the office premises from 19:00 hours, instead of producing him before the learned Magistrate as mandated under Section 167 of the Cr.P.C., also appears to have been overlooked. The explanation



offered that the deceased had not cooperated during the search by not providing the password of his mobile phone cannot, in any manner, justify non-production of the deceased before the learned Magistrate, as the CBI officers could have sought his remand by producing him before the learned Magistrate immediately after his arrest and obtaining appropriate orders in accordance with law. It is true that the maximum period prescribed for such purpose is twenty-four hours, however, the same cannot be construed to mean that the investigating agency is entitled to retain an accused in custody for the entire period of twenty-four hours without producing him before the learned Magistrate. Since no prejudice would be caused to any party, instead of entering into the details of such loopholes, it would be appropriate that the same be investigated by the competent authority during the course of investigation pursuant to an FIR, which shall be registered without naming any suspect.

15 At this stage, the reference of the decision rendered by the Apex Court in the case of **Lalita Kumari (supra)** is required to be referred wherein the Apex Court has held as under:

“102. The Committee on Reforms of Criminal Justice System headed by Dr Justice V.S. Malimath also noticed the plight faced by several people due to non-



registration of FIRs and recommended that action should be taken against police officers who refuse to register such information. The Committee observed:

“7.19.1. According to Section 154 of the Code of Criminal Procedure, the officer in charge of a police station is mandated to register every information oral or written relating to the commission of a cognizable offence. Non-registration of cases is a serious complaint against the police. The National Police Commission in its 4th Report lamented that the police ‘evade registering cases for taking up investigation where specific complaints are lodged at the police stations’. It referred to a study conducted by the Indian Institute of Public Opinion, New Delhi regarding ‘Image of the Police in India’ which observed that over 50% of the respondents mention non-registration of complaints as a common practice in police stations.

7.19.2. The Committee recommends that all complaints should be registered promptly, failing which appropriate action should be taken. This would necessitate change in the mind-set of the political executive and that of senior officers.

*

7.19.4. There are two more aspects relating to registration. The first is minimisation of offences by the police by way of not invoking appropriate sections of law. We disapprove of this tendency. Appropriate sections of law should be invoked in each case unmindful of the gravity of offences involved. The second issue is relating to the registration of written complaints. There is an increasing tendency amongst the police station officers to advise the informants, who come to give oral complaints, to bring written complaints. This is wrong. Registration is delayed resulting in valuable loss of time in launching the investigation and apprehension of criminals. Besides, the

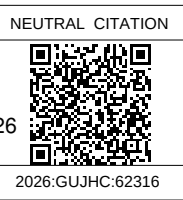
complainant gets an opportunity to consult his friends, relatives and, sometimes even lawyers and often tends to exaggerate the crime and implicate innocent persons. This eventually has adverse effect at the trial. The information should be reduced in writing by the SHO, if given orally, without any loss of time so that the first version of the alleged crime comes on record.

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7.20.11. It has come to the notice of the Committee that even in cognizable cases quite often the police officers do not entertain the complaint and send the complainant away saying that the offence is not cognizable. Sometimes the police twist facts to bring the case within the cognizable category even though it is non-cognizable, due to political or other pressures or corruption. This menace can be stopped by making it obligatory on the police officer to register every complaint received by him. Breach of this duty should become an offence punishable in law to prevent misuse of the power by the police officer.”

16This Court has also referred the decision rendered by the Apex Court in the case of **Nilabati Behera**, reported in **(1993) 2 SCC 746** wherein the challenge was made by the appellant with regard to the direction for lodging an FIR against particular persons in the case of custodial death as under:

"Considering, that it was alleged to be a case of custodial death, at the hands of those who are supposed to protect the life and liberty of the citizen, and which if established was enough to lower the flag of civilization to fly half-mast, the report of the District Judge was scrutinized and analysed by us with the assistance of Mr. M.S. Ganesh, appearing amicus curiae for the Supreme Court Legal Aid Committee and Mr.



Altaf Ahmad, the learned Additional Solicitor General carefully.

Verma J., while dealing with the first question i.e. whether it was a case of custodial death, has referred to the evidence and the circumstances of the case as also the stand taken by the State about the manner in which injuries were caused and has come to the conclusion that the case put up by the police of the alleged escape of Suman Behera from police custody and his sustaining the injuries in a train accident was not acceptable. I respectfully agree. A strenuous effort was made by the learned Additional Solicitor General by reference to the injuries on the head and the face of the deceased to urge that those injuries could not be possible by the alleged police torture and the finding recorded by the District Judge in his report to the contrary was erroneous. It was urged on behalf of the State that the medical evidence did establish that the injuries had been caused to the deceased by lathi blows but it was asserted that the nature of injuries on the face and left temporal region could not have been caused by the lathis and, therefore, the death had occurred in the manner suggested by the police in a train accident and that it was not caused by the police while the deceased was in their custody. In this connection, it would suffice to notice that the Doctor, who conducted the postmortem examination, excluded the possibility of the injuries to Suman Behera being caused in a train accident. The injuries on the face and the left temporal region were found to be post-mortem injuries while the rest were ante-mortem. This aspect of the medical evidence would go to show that after inflicting other injuries, which resulted in the death of Suman Behera, the police with a view to cover up their crime threw the body on the rail-track and the injuries on the face and left temporal region were received by the deceased after he had died. This aspect further

exposes not only the barbaric attitude of the police but also its crude attempt to fabricate false clues and create false evidence with a view to screen its offence. The falsity of the claim of escape stands also exposed by the report from the Regional Forensic Science Laboratory dated 11.3.1988 (Annexure R-8) which mentions that the two pieces of rope sent for examination to it, did not tally in respect of physical appearance, thereby belying the police case that the deceased escaped from the police custody by chewing the rope. The theory of escape has, thus, been rightly disbelieved and I agree with the view of Brother Verma J. that the death of Suman Behera was caused while he was in custody of the police by police torture. A custodial death is perhaps one of the worst crimes in a civilised society governed by the Rule of Law. It is not our concern at this stage, however, to determine as to which police officer or officers were responsible for the torture and ultimately the death of Suman Behera. That is a matter which shall have to be decided by the competent court. I respectfully agree with the directions given to the State by Brother Verma. J. in this behalf. On basis of the above conclusion, we have now to examine whether to seek the right of redressal under Article 32 of the Constitution, which is without prejudice to any other action with respect to the same matter which way be lawfully available, extends merely to a declaration that there has been contravention and infringement of the guaranteed fundamental rights and rest content at that by relegating the party to seek relief through civil and criminal proceedings or can it go further and grant redress also by the only practicable form of redress by awarding monetary damages for the infraction of the right to life. It is exiomatic that convicts, prisoners or under-trials are not denuded of their fundamental rights under Article 21 and it is only such restrictions, as are permitted by law, which can be imposed on the enjoyment of the fundamental right by such persons. It



is an obligation of the State, to ensure that there is no infringement of the indefeasible rights of a citizen to life, except in accordance with law while the citizen is in its custody. The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, under trials or other prisoners in custody, except according to procedure established by law. There is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is not deprived of his right to life. His liberty is in the very nature of things circumscribed by the very fact of his confinement and therefore his interest in the limited liberty left to him is rather precious. The duty of care on the part of the State is strict and admits of no exceptions. The wrongdoer is accountable and the State is responsible if the person in custody of the police is deprived of his life except according to the procedure established by law. I agree with Brother Verma, J. that the defence of 'sovereign immunity' in such cases is not available to the State and in fairness to Mr. Altaf Ahmed it may be recorded that he raised no such defence either."

17Considering the overall factual background of the case and the aforesaid ratio, in the opinion of this Court, the ends of justice would be met if a direction is issued for registration of an F.I.R. against an unknown person and the further investigation is entrusted to an independent officer. Since the investigation has already been conducted by the SIT headed by the ACP, it would be appropriate to entrust the further investigation to an independent agency/officer so as to ensure that all concerned,



including the relatives of the deceased, are fully assured that the investigation is being conducted fairly, independently, expeditiously and without being influenced by any individual. Accordingly, the investigation shall be carried out under the supervision of the DIG, CID Crime, who shall ensure that the investigation is conducted in accordance with law and with due promptitude. For the aforesaid purpose, an appropriate report shall be concluded within a period of three months from today, and the said report shall also be forwarded to the Registry of this Court for being placed before this Court for perusal. With the aforesaid directions, the present petition stands disposed of accordingly. Record and proceedings shall be sent back forthwith.

(M. K. THAKKER,J)

M.M.MIRZA