BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on 04.09.2018	Delivered on 17.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE **N. ANAND VENKATESH**

CRL.OP (MD).Nos.15515 and 11764 of 2017 &11802 of 2018

Manohari ... Petitioner in Crl.O.P.No.15515/2017

S.Salomai Mary ... Petitioner in Crl.O.P.No.11764/2017

Mrs.Kowsalya ... Petitioner in Crl.O.P.No.11802/2018

.Vs.

1.The District Superintendent of Police,
Sivagangai District,
Sivagangai.

2.The Inspector of Police,
Poovanthi Police Station,
Poovanthi,
Sivagangai District.

3.The Inspector of Police,
District Crime Branch,
Sivagangai. ... Respondents in Crl.O.P.No.15515/2017

1.The District Superintendent of Police,
Thanjavur District,
Thanjavur.

2.The Inspector of Police,
Pattukottai Police Station,
Pattukkottai,
Thanjavur District.

3.The Inspector of Police,
CBCID, Pattukottai,
Thanjavur District. ... Respondents
in Crl.O.P.No.11764/2017

1.The District Superintendent of Police,
Thanjavur District, Thanjavur.

2.The Inspector of Police,
Thanjavur Taluk Police Station,
Thanjavur.
... Respondents
in Crl.O.P.No.11802/2017

Prayer in Crl.O.P.No.15515 of 2017:

Criminal Original Petition filed under Section 482 of Cr.P.C., to direct the 1st respondent to transfer the investigation in Crime No.146 of 2016 dated 07.09.2016 to the 3rd respondent police in accordance with law.

Prayer in Crl.O.P.No.11764 of 2017:

Criminal Original Petition filed under Section 482 of Cr.P.C., to direct the 2nd respondent police to transfer the investigation in Crime No.95 of 2016 dated 05.03.2016 to the 3rd respondent police in accordance with law.

Prayer in Crl.O.P.No.11802 of 2017:

Criminal Original Petition filed under Section 482 of Cr.P.C., to direct the 2nd respondent to alter the Section 174 of Cr.P.C. to 302 of I.P.C. by considering the petitioner's representation dated 03.02.2018.

For Petitioner : Mr.K.Kumaravel in CrlOP(MD)No.11802 of 2018
: Mr.J.John in CrlOP(MD)Nos.15515 of 2017 and 117604 of 2017
For Respondents : Mr.M.Chandrasekaran,
Additional Public Prosecutor

For MMBA : Mr.M. Subash Babu
For Madurai
BAR Association : Mr.Rajamohammed

COMMON ORDER

An important issue has arisen for consideration in these cases with regard to the procedure that is being followed by the Police in a case where an FIR is registered under Section 174 of Criminal Procedure Code. The learned Government Advocate (Crl.Side) appearing for the Police submitted that as a routine practice, in all cases registered under Section 174 of the Code of Criminal Procedure, if in the Course of investigation, the Police finds that no offence has been made out, the Final Report is filed only before the Executive Magistrate and the entire case is closed thereafter. By adopting such a procedure, it was noticed that the Final Report does not reach the concerned Magistrate Court within whose jurisdiction the FIR was registered. Therefore, the de facto complainant in all such cases are kept in dark and they are not even aware about the fate of the case. Neither the Executive Magistrate nor the Police inform about the Final Report filed

by the Investigating Officer to the de facto Complainant. In almost all cases registered under Section 174 of Cr.P.C, the victim would have lost his son or daughter or husband or wife or father or mother and other close kith and kin and they will be completely unaware as to the fate of the complaint given by them.

2.In some of the cases, the victim approaches this Court by filing a petition under Section 482 of Cr.P.C seeking for a direction to transfer the Investigating Agency or seeking for a direction to the Police to file a Final Report and at that point of time, they come to know that the Investigating Officer had already closed the case and filed a Final Report before the Executive Magistrate. This Court found this practice to be erroneous and in violation of the provisions of the Code of Civil Procedure.

3.In order to set right this erroneous practice and in order to issue proper guidelines to be followed in a case registered under Section 174 of Criminal Procedure Code, this Court thought it fit to get the views of the legal fraternity.

4.This Court framed the following question and sought for the views of the various Bar Associations and requested them to assist the Court.

> i)Where a First Information Report is registered under Section 174 of Criminal Procedure Code and in the course of investigation, the police finds that no offence has been made out, where should the final report be filed? In the instant case, it is found that the final report has been filed by the police before the Revenue Divisional Officer, Thanjavur. In this regard, the learned Government Advocate (Criminal Side) appearing for the respondents submits that this is the procedure that is being followed in all cases, wherever the First Information Report is registered under Section 174 of Criminal Procedure Code and the police on investigation finds that no offence has been made out.

5.The provisions of Section 174 of Criminal Procedure Code is extracted hereunder:

> **S.174. (1)** *When the officer-in-charge of a police station or some other police officer specially empowered by the State Government in that behalf receives information that a person has committed suicide, or has been killed by another or by an animal*

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

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

(3) When—

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

(ii) the case relates to the death of a woman within seven years of her marriage in any

circumstances raising a reasonable suspicion that some other person committed an offence in relation to such woman; or

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

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

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

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

6.Sections 174, 175 and 176 of Criminal Procedure Code deal with inquiries into suicide or inquiries into sudden, violent or unnatural deaths. Section 174 provides for such inquiries by the Police and

Section 176, by Judicial Magistrates. The object of the Inquest Proceedings is merely to ascertain whether a person has died under unnatural circumstances or an unnatural death and if so, what is the cause of death. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted, is foreign to the ambit and scope of proceedings under Section 174 of Criminal Procedure Code. Infact the names of the assailants and the manner of assault are not even required to be mentioned in the Inquest Report. The purpose of holding an inquest is very limited. It is done in order to ascertain as to 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.

7.The legal position in this regard has been well settled and this Court does not want to burden this order by quoting all the judgments on this subject. It is enough to site the judgment of the Hon'ble Supreme Court in ***Radha Mohan Singh Alias Lal Saheb And Others .V. State of U.P.*** reported in ***[2006 (2) SCC 450]*** in this regard. The relevant paragraphs of the judgment is extracted hereunder.

"14.The language of the aforesaid statutory provision is plain and simple and there is no ambiguity therein. An investigation under Section 174 is limited in scope and is confined to the ascertainment of the apparent cause of death. It is concerned with discovering whether in a given case the death was accidental, suicidal or homicidal or caused by animal and in what manner or by what weapon or instrument the injuries on the body appear to have been inflicted. It is for this limited purpose that persons acquainted with the facts of the case are summoned and examined under Section 175. The details of the overt acts are not necessary to be recorded in the inquest report. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted or who are the witnesses of the assault is foreign to the ambit and scope of proceedings under Section 174. Neither in practice nor in law it is necessary for the person holding the inquest to mention all these details.

15. In Podda Narayana v. State of A.P. AIR 1975 SC 1252 it was held that the proceedings under Section 174 have a very limited scope. The object of the proceedings is merely to ascertain whether a person has died under suspicious circumstances or an unnatural death and if so what is the apparent cause of the death. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted is foreign to the

ambit and scope of the proceedings under S. 174. Neither in practice nor in law was it necessary for the police to mention those details in the inquest report. It is, therefore, not necessary to enter all the details of the overt acts in the inquest report. Their omission is not sufficient to put the prosecution out of Court. In Shakila Khader v. Nausher Gama AIR 1975 SC 1324 the contention raised that non-mention of a person's name in the inquest report would show that he was not a eye- witness of the incident was repelled on the ground that an inquest under Section 174 Cr.P.C. is concerned with establishing the cause of death and only evidence necessary to establish it need be brought out. The same view was taken in Eqbal Baig v. State of Andhra Pradesh AIR 1987 SC 923 that the non-mention of name of an eye-witness in the inquest report could not be a ground to reject his testimony. Similarly, the absence of the name of the accused in the inquest report cannot lead to an inference that he was not present at the time of commission of the offence as the inquest report is not the statement of a person wherein all the names (accused and also the eye-witnesses) ought to have been mentioned. The view taken in Podda Narayana v. State of A.P. (supra) was approved by a three-Judge Bench in Khujji @ Surendra Tiwari v. State of Madhya Pradesh AIR 1991 SC 1853 and it was held that the testimony of an eye-witness could not be discarded on the ground that their names did not figure in the inquest report prepared at the earliest point of time.

The nature and purpose of inquest held under Section 174 Cr.P.C. was also explained in Amar Singh v. Balwinder Singh 2003 (2) SCC 518. In the said case the High Court had observed that the fact that the details about the occurrence were not mentioned in the inquest report showed that the investigating officer was not sure of the facts when the inquest report was prepared and the said feature of the case carried weight in favour of the accused. After noticing the language used in Section 174 Cr.P.C. and earlier decisions of this Court it was ruled that the High Court was clearly in error in observing as aforesaid or drawing any inference against the prosecution. Thus, it is well settled by a catena of decisions of this Court that the purpose of holding an inquest is very limited, viz., to ascertain as to 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. There is absolutely no requirement in law of mentioning the details of the FIR, names of the accused or the names of the eye-witnesses or the gist of their statement nor it is required to be signed by any eye-witness. In Meharaj Singh v. State of U.P. (supra) the language used by the legislature in Section 174 Cr.P.C. was not taken note of nor the earlier decisions of this Court were referred to and some sweeping observations have been made which are not supported by the statutory provision. We are,

therefore, of the opinion that the observations made in paras 11 and 12 of the reports do not represent the correct statement of law and they are hereby over-ruled. The challenge laid to the prosecution case by Shri Jain on the basis of the alleged infirmity or omission in the inquest report has, therefore, no substance and cannot be accepted".

8.Section 174 of Criminal Procedure Code peremptorily requires that the Police Officer holding an inquest on a dead body should do so at the spot. This mandate is clear from the usage of the word "there" occurring in sub Section 1 of Section 174. Section 174 (3) also requires the Police Officer to forward the dead body, with a view to its being examined, to the nearest Medical Officer appointed in this behalf, by the State Government.

9.An Inquest Report is a report required to be made by the Inquest Officer with respect to the apparent cause of death. It is to be prepared in the presence of two or more respectable inhabitants of the neighborhood and has to describe the wounds, fractures, bruises and other marks of injuries as are found on the dead body and stating in what manner or by what weapon or instrument [if any], such marks appear to have been inflicted. Therefore, by a very reading of Section 174(1) of Cr.P.C, it is clear that an Inquest Report need not even state

the manner in which the incident took place or the names of the accused who caused the death .

10.As a general proposition of law an F.I.R loses its authenticity if it is lodged after the Inquest Report is recorded. However, there may be cases where a Police Officer may receive a telephonic message or information to the effect that the deceased person is lying in a serious condition. In such cases the Police Officer may have to rush to the spot and the situation may warrant him to conduct an inquest and prepare a report on the spot, and thereafter a F.I.R may be registered under Section 174 of Criminal Procedure Code. That by itself does not make the F.I.R lose its authenticity. The reason is not far to seek. A combined reading of Section 2(h) and Section 157 of Cr.P.C makes it clear that where an information regarding the cognizable offence is furnished to the Police, that information will be regarded as the FIR and all the inquiries held by the Police subsequent there to would be treated as an investigation, even though the formal registration of the F.I.R takes place only later. Therefore, in such cases the Inquest Report prepared by the Police Officer will be valid even though the F.I.R came to be registered later.

11.The above discussion makes it clear as to what an Inquest Report is all about. It is this Inquest report that is contemplated under Section 174 (2) of Criminal Procedure Code, that is to be forwarded to the District Magistrate or the Sub Divisional Magistrate. On receipt of such Inquest Report from the Police, Section 174 (4), independently, empowers certain categories of Magistrates to hold inquest. The legislature has thought it fit that it is necessary that inquest should also be conducted by an independent authority apart from the Police. This power conferred under Section 174 of Criminal Procedure Code is more in the nature of a fact finding inquiry and it does not have the characteristic of a Judicial or Quasi Judicial proceeding. The object of the inquiry is nothing more than to furnish materials on which action might be taken and the report by itself given by such Magistrate is more recommendatory and it does not amount to a decision or determination of rights of parties. Such report ultimately will have to be submitted only to the Police. This report will form part of the materials collected by the Police in the course of investigation. Ultimately, the Police will have to independently investigate the case and file a Final Report after completion of the investigation under Section 173 of Criminal Procedure Code.

12.All the learned counsel appearing for the petitioners and also for the respective Bar Associations, unanimously submitted that the Police have wrongly understood the term "report" used in Section 174 (2) of Cr.P.C and has given it the meaning of a Final Report. Where as the meaning to be assigned to the said report is only the Inquest Report prepared by the Police under Section 174(1) of Criminal Procedure Code. It was also submitted that the purpose of the Inquest Report prepared under Section 174(1) of Cr.P.C by the Executive Magistrate is only to aid the Investigating Officer, in the course of investigation. Therefore, it was submitted that a Final Report whether it is a positive report or a Closure Report, can be submitted by the Investigating Officer only before the concerned Jurisdictional Magistrate under Section 173(2) of Criminal Procedure Code.

13.Mr.M.Subash Babu, learned counsel representing for MMBA submitted the following judgments and the relevant paragraphs are extracted hereunder.

1.Crl.O.P.No.8696 of 2014 dt.11.04.2014 ***[K.Chandrasekaran .Vs. State Represented by Inspector of Police, Ooty Rural Circle, Udhagamandalam]***.

3..... Instead of filing the reports and documents in the case before the jurisdictional Magistrate, the respondent has sent the same to Tahsildar, Ooty. Stating as above, learned cousnel prays for issuance of a direction to the respondent to file concerned documents in the case before the jurisdictional Magistrate.

4.Learned Additional Public Prosecutor submits that the case has been registered under Section 174 (3)(iv) Cr.P.C. in Crime No.04/2012. Upon due enquiry, it is found that there is no truth in the complaint and hence, the enquiry had been closed. He submits that where a case stands registered under Section 174 Cr.P.C. and on enquiry therein no offence is found to have been committed, the police do not file a refer charge sheet/negative final report before the jurisdictional Magistrate.

5.In cases covered under Section 174 Cr.P.C. the legislature has found it necessary that inquest be conducted by an independent authority as distinct from the investigative agency. For the rest, the procedure contemplated in chapter XII of the Cr.P.C. is to be followed i.e, pursuant to investigation a final report in keeping with Section 173 Cr.P.C. is to be filed before the jurisdictional Magistrate. Judicial scrutiny of conduct of the investigative agency cannot be avoided.

6.The respondent is directed to file a final report in this case before the jurisdictional Magistrate within a period of one week from the date of receipt of a copy of this order. The petitioner

shall be at liberty to apply and obtain a copy thereof before the concerned Magistrate.

2..Crl.O.P.No.5928 of 2015 dt.07.07.2015 ***[Rajappa .V. The Commissioner of Police & Another***]

5.Be that as it may, the respondent police appears to have filed Closure Report before the Tahsildar, Salem. Under such circumstances, this Court directs the Tahsildar, Salem to forward the entire report to the learned Judicial Magistrate III, Salem within one week, from the date of receipt of a copy of this order.

6. The copies of the Postmortem Report, Inquest Report and other reports shall be furnished to the petitioner by the respondent police. Liberty is given to the petitioner to file a protest application before the learned Judicial Magistrate III, Salem and on such protest application being filed, the same shall be considered by the learned Magistrate, in the light of the law laid down by the Supreme Court in Vinay Tyagi Vs Irshad Ali reported in 2013 [5] SCC 762.

3.Crl.O.P.No.28941 of 2013 dt.29.04.2014 ***[B.A.Mahalingam .Vs. State of Tamil Nadu, Rep.by the Inspector of Police, Chennai-39]***.

"6.This Court may conclude by stating that in cases covered under Section 174 Cr.P.C. the legislature has found it necessary that inquest be

conducted by an independent authority as distinct from the investigative agency. For the rest, t he procedure contemplated in Chapte XII of the Cr.P.C. is to be followed i.e., pursuant to the investigation a final report in keeping with section 173 Cr.P.C. is to be filed before the jurisdictional Magistrate. Judicial scrutiny of conduct of the investigative agency cannot be avoided.

14.By citing the above judgments, the learned counsel would submit that this Court has consistently taken the stand that Final Report should be filed only before the concerned jurisdictional Magistrate and not before the Executive Magistrate and such a procedure is erroneous. The learned Counsel would further submit that a victim will know the fate of the case only if a R.C.S notice is served on him by the Police after filing a Closure Report before the jurisdictional Magistrate Court, in order to enable the victim to file a protest Petition, if necessary, and prosecute the case in accordance with law.

15.Mr.Rajamohammed, learned Counsel representing Madurai Bar Association brought to the notice of this Court, the following judgments from which the relevant paragraphs are extracted hereunder.

1.***Madhu alias Madhurantha & Anr***. .Vs. ***State of Karnataka*** reported in ***[AIR 2014 SCC 394]***.

13. It has been canvassed on behalf of the appellants that the provisions of Sections 174 and 176(3) Cr.P.C. had not been complied with and the body had been exhumed by the IO without the permission of the Executive Magistrate and therefore, the investigation had not been conducted in accordance with law. Sub-section (1) of Section 174 Cr.P.C. only puts an obligation on the part of the IO to intimate the Executive Magistrate empowered to hold inquest but there is nothing in law which provides that investigation cannot be carried out without his permission in writing or in his absence. Even otherwise, the provision stands qualified "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." The object of the inquest proceeding is merely to ascertain whether a person has died under unnatural circumstances or an unnatural death and if so, what is the cause of death. More so, the inquest report is not a piece of substantive evidence and can be utilised only for contradicting the witnesses to the inquest examined during the trial. Neither the inquest report nor the post-mortem report can be termed as basic or substantive evidence and thus, any discrepancy occurring therein cannot be termed as fatal or suspicious circumstance which would warrant benefit of doubt to the accused.

(Vide: Pooda Narayan & Ors. v. State of A.P., AIR 1975 SC 1252; Rameshwar Dayal & Ors. v. State of U.P., AIR 1978 SC 1558; Kuldeep Singh v. State of

Punjab, AIR 1992 SC 1944; George & Ors. v. State of Kerala & Anr., AIR 1998 SC 1376; Suresh Rai & Ors. v. State of Bihar, AIR 2000 SC 2207; and Munshi Prasad & Ors. v. State of Bihar, AIR 2001 SC 3031).

2.***Sarah Mathew .V. Institute of Cardio Vascular Diseases By Its Director Dr.K.M.Cherian And Others*** reported in ***[(2014) 2 SCC 62]***

33. After referring to the provisions of the Cr.P.C. quoted by us herein above, in S.K. Sinha, Chief Enforcement Officer, this Court explained what is meant by the term 'taking cognizance'. The relevant observations of this Court could be quoted:

"19. The expression "cognizance" has not been defined in the Code. But the word (cognizance) is of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means "become aware of" and when used with reference to a court or a Judge, it connotes "to take notice of judicially". It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone.

20. "Taking cognizance" does not involve any formal action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance is taken prior to commencement of criminal proceedings. Taking of

cognizance is thus a sine qua non or condition precedent for holding a valid trial.

Cognizance is taken of an offence and not of an offender. Whether or not a Magistrate has taken cognizance of an offence depends on the facts and circumstances of each case and no rule of universal application can be laid down as to when a Magistrate can be said to have taken cognizance." In several judgments, this view has been reiterated. It is not necessary to refer to all of them.

34. Thus, a Magistrate takes cognizance when he applies his mind or takes judicial notice of an offence with a view to initiating proceedings in respect of offence which is said to have been committed. This is the special connotation acquired by the term 'cognizance' and it has to be given the same meaning wherever it appears in Chapter XXXVI. It bears repetition to state that taking cognizance is entirely an act of the Magistrate. Taking cognizance may be delayed because of several reasons. It may be delayed because of systemic reasons. It may be delayed because of the Magistrate's personal reasons.

16.The learned counsel would submit that the Investigating Officer has to proceed even in a case registered under Section 174 of Cr.P.C, only as per Chapter XII of Criminal Procedure Code and ultimately the Final Report has to be filed before the concerned

jurisdictional Magistrate on completion of the investigation. The learned counsel would further submit that it is only a Judicial Magistrate who can take cognizance of the Final Report under Section 190 of Cr.P.C and not an Executive Magistrate. The intimation given to the Executive Magistrate is only to enable an independent inquest and a report arising there from will only form part of the investigation conducted by the Police. The learned counsel would further submit that a Magistrate takes cognizance when he applies his mind or takes judicial notice of an offence with a view to initiate proceedings in respect of an offense which is said to have been committed. Therefore, the learned counsel would submit that such an important function has been assigned only to a Judicial Magistrate, and not to an Executive Magistrate, and therefore, the Investigating Officer has to necessarily submit the Final Report only before the jurisdictional Magistrate and not before the Executive Magistrate.

17.Mr.M.Chandrasekaran, learned Additional Public Prosecutor would submit that there are two scenarios that will arise in a case registered under Section 174 of Cr.P.C. The first scenario is where the Police is able to find that an offence has been committed, in which case the Police will have to file the Final Report only before the jurisdictional

Magistrate. The second scenario is where the Police finds that no offence has been committed and such reports can be filed before the Executive Magistrate. The learned counsel would submit that in the second scenario the Executive Magistrate must give notice to the victim on the Closure Report and can also entertain a protest Petition. Therefore, according to the learned Additional Public Prosecutor, the procedure followed by the Police may not be wrong.

18.The learned Additional Public Prosecutor in order to substantiate the above submission relied upon the following unreported judgments:

1.W.P.No.24806 of 2005 dt.4.06.2013 ***[Kanthammal .Vs. The Director General of Police and Others]***.

2.Crl.O.P.No.10565 of 2008 dt.14.10.2008 ***[L.Rajabathar .Vs. State by the Inspector of Police, Pattinapakkam Police Station,Pattinapakkam, Chennai].***

3.***Babu Ram and Another. Vs. The State of Rajasthan on 9 December, 1992. [Rajasthan High Court] Equivalent citations : 1993 (1) WLC 476, 1992 (2) WLN 223***.

4.Crl.O.P.No.2321 of 2014 dt.2.7.2014 ***[G.Salomi .Vs. The State, rep.by the Commissioner of Police,Vepery, Chennai and Another]***.

19.This Court is not in agreement with the submission made by the learned Additional Public Prosecutor. None of the judgments cited by the learned Public Prosecutor propounds the ratio that a Final Report can be filed by the Police to an Executive Magistrate. In all those judgments, on facts, it is found that the Final Report has been filed before the Executive Magistrate and in some of the judgments the Court has also directed those Final Reports to be transferred to the Judicial Magistrate. Therefore, the above judgments cited by the learned Additional Public Prosecutor does not support his submission that a Final Report can be filed before an Executive Magistrate.

20.The learned Additional Public Prosecutor further submitted that if the Police has a reason to suspect the commission of an offence based on the Inquest Report, the Police can proceed further under Section 154 of Cr.P.C and start the investigation under Section 156 and 157 of Criminal Procedure Code and will also proceed to alter the F.I.R for the concerned offence and send it to the jurisdictional Magistrate and thereafter file a Final Report after the investigation under Section 173(2) of Cr.P.C. The learned Additional Public Prosecutor submitted

that this procedure is followed by the Police only when the F.I.R registered under Section 174 of Cr.P.C is subsequently altered, when the Police has reason to suspect the commission of an offence. In all other cases where no offence is made out after the investigation, the report is filed only before the Executive Magistrate. In the considered view of this Court this procedure is completely wrong and it violates the very scheme of the Code of Criminal Procedure.

21.This Court had an occasion to consider the scope of Section 176 [1A] of Criminal Procedure Code wherein an inquiry is conducted by the Judicial Magistrate in cases of death at the time of Police custody. The judgment was passed in ***R.Kasthuri .V. State by the District Collector, Cuddalore & District and Others*** reported in ***[(2015) 1 MLJ (Crl) 455]*** the relevant paragraphs of the judgment is extracted here under.

> *"24. As it has been explicitly stated in sub-section (1A) , the inquiry by a Judicial Magistrate / Metropolitan Magistrate shall be in addition to the inquiry or investigation conducted by the police. It needs to be mentioned that an inquiry by an Executive Magistrate under sub-section (1) of Section 176 of the Code is either instead of or in addition to the investigation by the police. Therefore, the inquiry held by a Judicial Magistrate /*

Metropolitan Magistrate shall not be a bar for the police to investigate simultaneously. Since an inquiry held by a Judicial Magistrate, though has got a wider scope than an inquiry held by an Executive Magistrate under sub-section (1) of Section 176 of Cr.P.C., such judicial inquiry cannot be equated to an investigation done by the police in respect of the crime. The inquiry by the Judicial Magistrate / Metropolitan Magistrate may not be a full-fledged one in all respects. For example, he can not go to various places to recover the material objects involved / connected to the crime or the criminal. No where, it is stated in the Code, that simply because the Judicial Magistrate is holding an inquiry under sub-section (1A) of Section 176 of the Code, the police shall stop investigating the matter. It is needless to point out that after holding inquest under sub-section (1) of Section 176 of the Code, in respect of the cause of death , the Executive Magistrate shall submit a report only to the police as per PSO 151 (Old PSO 145). The police without stopping the investigation or awaiting for the report of the Metropolitan Magistrate or Judicial Magistrate, as the case may be, shall simultaneously conduct investigation to unearth the truth and to bring to book the real perpetrators of the crime. Under sub-section (1A) of Section 176 , inquiry held by the Judicial Magistrate or Metropolitan Magistrate is in addition to the investigation held by the police and not in substitution of the police investigation. Neither the investigation made by the police shall preclude a

Judicial Magistrate / Metropolitan Magistrate from holding an inquiry under sub-section (1A) of Section 176 nor such inquiry by Judicial Magistrate/ Metropolitan Magistrate shall preclude the police from investigating the case. In this regard, I may refer to Chapter VII of the Code. If any case is registered under Section 154 in Chapter VII of the Code, it should reach the logical end with the filing of a report under Section 173 of the Code before the jurisdictional Magistrate. There is no provision in the Code enabling the police to drop the investigation without taking the same to the logical end. Even in a case where the investigating officer finds that either there was no offence committed or for any other reason, no further action could be taken against any individual, he is required to file a negative final report before the jurisdictional Judicial Magistrate / Metropolitan Magistrate and it is for the said Magistrate to consider as to whether to take cognizance from out of materials available or to order for further investigation; or to accept the negative report. Therefore, if there is any death or disappearance or rape, while in police custody, and if it is an offence [as per the expression used in sub-section (1A)] the investigation shall be conducted by the police without being hindered in any manner by the inquiry held by the Judicial Magistrate or Metropolitan Magistrate, as the case may be, and the investigating officer on completing the investigation, shall submit a final report to the Judicial Magistrate or Metropolitan Magistrate under

Section 173 of Cr.P.C.

25. As I have already pointed out, the inquiry held by the Judicial Magistrate or Metropolitan Magistrate, cannot be , at any stretch of imagination equated to an investigation by the police. During investigation, the police officer shall enjoy enormous powers and skill to throughly investigate the matter and he has got lot of tools also to investigate; whereas the Judicial Magistrate or Metropolitan Magistrate may not have such tools. In this regard, we may refer to the judgment of the Hon'ble Supreme Court in Radha Mohan Singh alias Lal Saheb vs. State of U.P. (2006) 2 SCC 450. In that case, the Hon'ble Supreme Court was concerned with the inquiries under sub-sections (1) and (2) of Section 174 of the Code. In para 14 of the said judgment, the Hon'ble Supreme Court, after having analyzed the power of the police to investigate into a crime vis a vis the power of the Executive Magistrate to hold inquest, held as follows:-

"14. The language of the aforesaid statutory provision is plain and simple and there is no ambiguity therein. An investigation under Section 174 is limited in scope and is confined to the ascertainment of the apparent cause of death. It is concerned with discovering whether in a given case the death was accidental, suicidal or homicidal or caused by animal and in what manner or by what weapon or instrument the injuries on the body appear to have been inflicted. It is for this limited

purpose that persons acquainted with the facts of the case are summoned and examined under Section 175. The details of the overt acts are not necessary to be recorded in the inquest report. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted or who are the witnesses of the assault is foreign to the ambit and scope of proceedings under Section 174. Neither in practice nor in law it is necessary for the person holding the inquest to mention all these details. "

31. This conclusion requires some more elaboration. sub-section (1A) of Section 176 of the Code was introduced , as I have already pointed out, by taking away the power to hold inquiry by Executive Magistrate into the cause of death of a person in police custody. Such power has been now given to a Judicial / Metropolitan Magistrate. We have seen already that prior to separation of the Judiciary from the Executive, the inquiries held by the Magistrates were all judicial inquiries. After the separation of the Judiciary from the Executive, inquiries under Sections 174 and 176 of Code were pure and simple non judicial. Again by introducing sub-section (1A) , the original position has been restored, by which, inquiry under sub-section (1A) , now has taken the character of a judicial inquiry. Thus, we have gone back to square one again.

34. Then, What next? Often, this question as to what the Magistrate should do on completing the inquiry comes up for debate. The answer is very simple. The Judicial / Metropolitan Magistrate, after completing the inquiry, shall keep the record on his file along with the FIR and the other documents submitted by the police. But, the Magistrate shall furnish copies of the statements and other documents collected by him to the investigating officer as soon as the inquiry is over. The police officer shall not stop the investigation even for a moment after the registration of the FIR and he shall continue to conduct investigation swiftly and thoroughly. On receipt of the copies of the records from the Judicial / Metropolitan Magistrate relating to the inquiry under sub-section (1A) of Section 176 of the Code, the investigating officer shall use the same for his further investigation. This is like a Dying Declaration; Confession recorded under section 164 of the Code; Statements of Witnesses recorded under Section 164 of the Code and report of Test Identification Parade conducted by a Magistrate. Indisputably, the functions of the Magistrate viz., recording dying declaration, confession under section 164 of the Code, statements of the witnesses under Section 164 of the Code and conducting test identification parade do not form part of investigation and they do not in any manner impair the investigation. Like, the documents viz., dying declaration, confession and statements under 164 of the Code, report on test

identification parade that are kept along with the case records and copies are furnished to the police for taking forward the investigation in the right direction, the record of the proceeding under sub-section (1A) of the Code conducted by a Judicial/Metropolitan Magistrate shall also be kept as part and parcel of the case records. On completing the investigation, when police report is submitted under section 173 of the Code, the learned Judicial/Metropolitan Magistrate shall act according to Section 190 of the Code. For any reason if the accused is summoned, he shall be entitled for copies of the record of the proceedings under Section 176(1A) of the Code, as provided under Section 207 of the Code. This is irrespective of the fact whether the prosecution relies on such documents or not. As has been held by the Hon'ble Supreme Court in V.K.Sasikala v. State rep. by Superintendent of Police, 2012 (9) SCC 771 furnishing copies of the said record to the accused is in tune with the fair trial to be afforded to the accused under Article 21 of the Constitution of India. It is needless to point out that the statements of the witnesses recorded during inquiry under sub-section (1A) of Section 176 of the Code could be used either for corroboration or for contradiction of the makers of the statements during trial.

36. Nextly, the Inspector of Police who registered the case, as it is seen from the counter, did not conduct investigation at all. Perhaps, he was

under the mistaken impression that the inquiry held by the learned Judicial Magistrate under sub-section (1A) of Section 176 of the Code was a bar for him to do investigation. I wish to reiterate that the investigation by the police and inquiry by a Judicial / Metropolitan Magistrate would not preclude each other as they operate in different spheres. The Inspector of Police ought to have investigated the case according to law".

22.It is very clear from the above judgment that the inquiry that is held by the Executive Magistrate under Section 174 of Criminal Procedure Code is a plain and simple non judicial function. The report submitted by the Executive Magistrate relating to the inquiry shall form part of the investigation conducted by the Police and such report shall be used by the Investigating Officer in the course of investigation. The investigation conducted by the Investigating Officer has to proceed independently in accordance with law and the inquiry conducted by the Executive Magistrate is not a bar for the Police to go ahead with the investigation.

23.From the above discussion, it is clear that the Police after registration of a FIR under Section 174 of Cr.P.C will have to conduct an inquest in accordance with Section 174(1) of Cr.P.C and submit a report

to the Executive Magistrate under Section 174(2) of Criminal Procedure Code. The Executive Magistrate will independently conduct an inquest in line with the power given under Section 174(4) of Cr.P.C. This power has been given to the Executive Magistrate, since the legislature thought that an inquest should be conducted by an independent authority distinct from the Investigating Agency. Where a report is prepared by the Executive Magistrate after the inquest, the same shall be submitted to the Investigating Officer who shall make it a part of his investigation and may also proceed to make further investigation based on the report. The powers of the Investigating Officer is not curtailed in any manner and he has to proceed independently like in every other case and file a Final Report. This Final Report must be filed only before the jurisdictional Magistrate and not before the Executive Magistrate.

24. In view of the above, this Court proceeds to answer the issue that was raised in this case as follows:

a)The Police on receipt of an information about the suspicious death shall registered an F.I.R under Section 174 of Criminal Procedure Code and thereafter he can proceed to the scene of occurrence and prepare an Inquest Report.

b)When a Police Officer receives an information to the effect that the deceased is lying in a serious condition, he can rush to the scene of occurrence, in order to see if he can save the victim and if in case the victim does not survive he can proceed to prepare the Inquest Report in accordance with Section 174(1) of Cr.P.C, and thereafter register an F.I.R under Section 174 of Cr.P.C. The Inquest Report has to describe the wounds, fractures, bruises and other marks of injuries as are found on the dead body and state in what manner, or by what weapon or instrument [if any], such marks appear to have been inflicted.

c)The Police Officer shall also prepare a Rough Sketch of the place of occurrence.

d)The Inquest Report and the Rough Sketch shall be prepared in the presence of two or more respectable inhabitants of the neighborhood.

e)The object of the Inquest Proceedings is merely to ascertain whether a person has died under unnatural circumstances or an unnatural death and if so, what is the cause of death. The Inquest Report need not contain details such as how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted and these facts are not within the scope of Inquest Proceedings and they fall within the scope of the investigation to be

conducted by the Police.

f)immediately after the preparation of the Inquest Report in accordance with Section 174(1) of Criminal Procedure Code, the Police shall submit the same to the Executive Magistrate under Section 174(2) in order to enable the Executive Magistrate to hold an independent inquest as contemplated under Section 174(4) of Criminal Procedure Code.

g)The Executive Magistrate on completion of the inquest shall submit a report to the Police and such report shall form part of the investigation conducted by the Police and the Police shall collect details from such report and conduct the investigation accordingly.

h)The power of the Police to investigate is in no way stopped or curtailed or interfered with by the inquest held by the Executive Magistrate and the freedom of the Police to proceed with the investigation will be left untouched.

i)The Police on the conclusion of the investigation shall file a Final Report under Section 173(2) of Cr.P.C only before the jurisdictional Magistrate and not before the Executive Magistrate. This will apply, in both cases, whether the Final Report is a positive report or is a Closure Report.

j)If in case the Police proceeds to file a Closure Report, the victim

shall be entitled to be served with a R.C.S notice in order to enable him to file a protest Petition before the concerned Magistrate.

k)On such protest Petition being filed, the concerned Judicial Magistrate shall act in accordance with law laid down by the Hon'ble Supreme Court in ***Vinay Tyagi .Vs. Irshad Ali***, reported in ***[2013 (5) SCC 762].***

24.It is made clear that in all future cases where the F.I.R is registered under Section 174 of Cr.P.C, the above procedure shall be scrupulously followed. A copy of this order may be sent to the Director General of Police, Chennai and also to the Inspector General of Police in the various Zones in order to enable them to sensitize the Police and give necessary instructions with regard to the manner in which the Police will have to proceed in all cases where an FIR is registered under Section 174 of Cr.P.C.

This Court will now proceed to deal with the independent cases.

Crl.O.P.No.15515 of 2017

In this case the petitioner's son died on 07.09.2016 by committing suicide at about 03.30 a.m., and this was informed to be petitioner who is the mother at about 06.00 a.m. The information was

given by the daughter-in-law who was 8 months pregnant at the time of incident. The respondent Police have registered a F.I.R in Crime No. 146 of 2016 under Section 174 of Cr.P.C.

2.The petitioner has expressed suspicion on the death of her son and she has a very strong suspicion on the daughter-in-law for the death of her son. The suspicion of the petitioner is more due to the fact that the postmortem report reveals that rigor mortis was spread over the entire body within 10 hours when the postmortem was conducted. Therefore, the petitioner suspects that the death of the son had happened much prior to 3.30 a.m. Therefore, she wants the investigation to be conducted by some other Police Officer.

3.In this case it is seen that the Police have filed the Closure Report before the Executive Magistrate at Tiruppovanam and a R.C.S. Notice has also been issued in this regard. The procedure adopted by the Police is in violation of the guidelines given by this Court herein above.

4.In the facts and circumstances of the case, there shall be a direction to the first respondent to conduct a fresh investigation in

Cr.No.146/2016 in accordance with the guidelines given by this Court, and file a Final Report as expeditiously as possible. The second respondent is directed to hand over the entire files to the first respondent immediately in order to enable the first respondent to proceed further with the fresh investigation.

5.The Criminal Original Petition is disposed of with the above direction.

Cr.O.P.No.11764 of 2017

6.This petition has been filed by the mother of the deceased who was 9 months pregnant at the time of her death on 01.10.2014. The petitioner received the information from the son-in-law and also from her brother. According to the petitioner her daughter has died only due to the assault made by her son-in-law, as a result of which her daughter and a 9 month baby were done to death.

7.Based on the complaint a F.I.R was registered in Cr.No.95/2016. Even for registering this F.I.R, the petitioner was made to struggle by approaching this Court and only after a direction was given by this Court, the F.I.R was registered.

8.The F.I.R was registered under Section 174 of Cr.P.C. The investigation is done by the second respondent. The R.D.O has submitted a report to the effect that the death was not as a result of any dowry demand. The investigation has been pending from 2016 onwards, and no progress has been made by the second respondent till today. The counter affidavit filed by the second respondent reveals that only three witnesses have been examined and the material witnesses are yet to be examined by the Police.

9.This Court is not satisfied in the manner in which the investigation is conducted by the second respondent. The deceased person had died with a 9 month baby in her womb and a poor mother has been running from pillar to post to get justice and to find the reason as to how her daughter died. Right from the beginning the second respondent Police has acted in an insensitive manner in this case.

10.The Criminal Original Petition is disposed of with a direction to the second respondent to hand over the C.D file to the third respondent immediately. The investigation shall stand transferred to the third respondent and the third respondent shall conduct a fresh investigation in this case and file a Final Report as expeditiously as possible.

Cr.O.P.No.11802 of 2018

11.In this case the petitioner's daughter Monica died on 14.10.2017, by committing suicide and this was informed to the petitioner by the Ex.Panchayat President of Kasavalanadu. The petitioner immediately went to the place of occurrence and found that her daughter's left hand wrist has been fractured and there was bleeding in the front portion of the neck.

12.The respondent Police registered a F.I.R in Cr.No.375/2017 under Section 174 of Cr.P.C. The death has taken place within 8 months from the date of marriage.

13.It is seen that the second respondent has filed a Closure Report in this regard before the Executive Magistrate on 23.11.2017. This procedure followed by the second respondent is completely in violation of the guidelines issued by this Court herein above. This Court is also not satisfied with the manner in which the investigation was conducted by the second respondent. This is a fit case where a fresh investigation has to be ordered by some other Police Officer.

14.The Criminal Original Petition is disposed of with a direction to the first respondent to nominate a Deputy Superintendent of Police to investigate the matter in Cr.No.375/2017 immediately. The second respondent shall immediately hand over the entire case records to the first respondent. The D.S.P who is nominated has to investigate this case shall independently carry on with a fresh investigation and file a Final Report as expeditiously as possible.

15.This Court places on record its appreciation to the learned counsel who had assisted the Court efficiently and enabled this Court to lay down the guidelines in cases registered under Section 174 of Cr.P.C. This Court also appreciates the effective assistance rendered by the learned Additional Public Prosecutor in these cases.

17.09.2018

Internet: yes/No

Index: Yes/No

Speaking Order/Non Speaking Order

kp

To
1.The Director General of Police,
Chennai.

2.The Inspector General of Police,
All Zones.

3.The Inspector of Police,
Poovanthi Police Station,
Poovanthi,
Sivagangai District.

4.The Inspector of Police,
District Crime Branch,
Sivagangai.

5.The Inspector of Police,
Pattukottai Police Station,
Pattukkottai,
Thanjavur District.

6.The Inspector of Police,
CBCID, Pattukottai,
Thanjavur District.

7.The Inspector of Police,
Thanjavur Taluk Police Station,
Thanjavur.

8.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

N. ANAND VENKATESH,. J

KP

Pre-Delivery Common Order in
CRL.OP (MD).Nos.15515,11764
and 11802/2017

17.09.2018