
(2012) 06 P&H CK 0054

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 286 of 2012

Wali Ahmed

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 01-06-2012

Acts Referred:

Constitution of India, 1950 — Article 21, 22, 227, 235
Criminal Procedure Code, 1973 (CrPC) — Section 174, 176
Penal Code, 1860 (IPC) — Section 34, 393, 399, 402

Citation : (2012) 06 P&H CK 0054

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Advocate : P.S. Ahluwalia, Amicus-curiae, for the Appellant; Ajay Jain, Addl. A.G., Haryana, for the State, for the Respondent

Judgement

Ranjit Singh, J.—Serious concern shown by the Courts and strict measures to check custodial death or use of criminal force during investigation/interrogation, has not deterred the police force to mend its way and go in for scientific investigation of a crime. Use of violence by police sometime leading to death has apparently gone unabated, despite concerns having been expressed by various Courts in this regard from time to time. The facts in the present case are indicative of a custodial death, though police has made elaborate and detailed efforts to give it a colour of crime on the part of the deceased boy, who has lost his life at the young age of about 17 years. The case of alleged custodial death has apparently come to the notice of this Court on the basis of telegram initiated by Wali Ahmed, a resident of Gurgaon, alleging that his minor son, named Ali Mohammad, was picked up by the police on 26.1.2012 at about 3 P.M. from Khandsa road. The telegram initiated on 3.2.2012 and received in the Chief Justice Secretariat of this Court on 8.2.2012, was put up on the judicial side and was treated as Criminal Writ Petition No. 286 of 2012. The contents of the telegram may need reproduction for easy assimilation of the allegations made:

Sub: Regarding illegal detention.

The police of P.S. Sector 10 A, Gurgaon and other police official of Gurgaon Police lifted away my minor son (DOB 03.10.1995) namely Ali Mohd s/o Sh. Wali Ahmed on 26.01.2012 at about 3.00 PM from the Khandsa Road detained illegally torturing him mercilessly. Condition serious and wants to involve in a false and frivolous case and not produced in any court immediate action prayed for Wali Ahmed Father of Sh. Ali Mohd R/o Village Biharipur P S Baheri Tehsil and District Bareilly UP.

2. It may need a notice here that subsequently the petitioner Initiated another telegram on 29.2.2012, which was received on 1.3.2012, where he has alleged that his son has been murdered and this telegram was in continuation of the earlier telegram dated 3.2.2012. In this telegram, the petitioner has named Inspector/SHO Ramesh Kumar and ASI Rakesh Kumar of Police Station Sector 10, Gurgaon, to have committed murder of his son. This was treated as Criminal Writ Petition No. 485 of 2012 and ordered to be heard with the earlier Criminal Writ Petition No. 286 of 2012. Thus, both the writ petitions are being decided by this common order.

3. Number of such communications are routinely received in this Court, some of which are put up on judicial side. This communication was accordingly placed on the judicial side and came up for hearing on 9.2.2012. A routine action followed and notice was issued for 15.2.2012. On the asking of Court, Deputy Advocate General for the State of Haryana accepted notice on behalf of the State and prayed for time to have instructions. The grievance made in the telegram was noted by the Court, where it was also alleged that the son of the petitioner was not only illegally detained but was being tortured mercilessly. The father had feared false implication of his son, which he had expressed in the telegram itself.

4. What followed thereafter was an eye opener.

5. Unlike usual lethargy, as is shown by the police in such cases to respond, the police had been rather prompt in filing reply in this case on the first date when the petition came up for hearing on 16.2.2012. Perhaps, the police was seeking a decent burial of this case in hurry so that it could avoid minute examination of the facts. Rather, the petitioner is accused of approaching the Court with unclean hands and to have twisted the material facts. To substantiate this allegation, it is stated that FIR No. 34 dated 30.1.2012, under Sections 393/34 IPC was got registered at Police Station Sector 10-A by one complainant, Leeladhar. This person was working as a Guard in the premises of Plot No. 135-136, Sector 37, Gurgaon. Through him, this FIR was recorded on 30.1.2012, making vague and unsubstantiated allegation against some unknown persons. Leeladhar has alleged that on the intervening night of 28/29.1.2012, he was on a Guard duty at the premises of the plot referred above, when at 1.30 A.M, 3-4 young persons attempted to enter in the premises of the plot. May sound strange, but he has stated that they did so with an intention to commit robbery. How he could get into the minds of these persons to allege intention of robbery on their part appears to have remained unexplained. If the events are true, those would

sound more intriguing than surprising. The complainant states to have fired in the air and then states to have heard a noise telling `Ali" to hurry up and run away as otherwise they would be caught. The complainant has then gone on to make a prophesy by stating that the fire might have caused injury on the person of any of them. The contents of the complaint may leave enough indication about the complaint being made up story.

6. This also did not impress the Court and it found huge gaps and holes in the story. The Court then passed a detailed order as the reply revealed a death of a young boy, who had reportedly died at a hospital, which was sought to be linked to the use of fire arm by complainant, Leeladhar. The police was not only found to be too prompt in coming up with this response but was further quick in investigating and solving this FIR at supersonic speed. This FIR appeared to be a procured complaint as the minute analysis of the facts and allegations would ultimately reveal.

7. This Court, after noticing the facts in detail as reflected in the reply, passed the following order on 16.2.2012:-

A telegraphic communication received through post makes an allegation that the minor son of the complainant was lifted by police of Gurgaon on 26.01.2012. Allegation further is that he has been illegally detained and is being tortured mercilessly. The petitioner-father has further expressed his apprehension that his son is likely to be involved in some false case.

Notice was issued to the State counsel. On behalf of the respondent-State, reply has been filed by Naresh Kumar, Inspector, SHO Police Station, Sector 10A, Distt. Gurgaon. In the reply, it is disclosed that FIR No. 34, dated 30.1.2012, is lodged by complainant Leeladhar under Sections 393/34 IPC, at Police Station Sector 10-A, Gurgaon, alleging that on the intervening night of 28.1.2012/29.1.2012, the complainant was on duty as Guard in the premises of Plot No. 135-36, Sector 37, Gurgaon. At about 1:30 A.M. three/four young persons tried to enter in the premises with intention to commit robbery. The complainant had statedly fired in the air. One of person was heard naming Ali telling him to hurry up and run away, as otherwise they would be caught. The complainant states that the gun shot might have caused injuries to one of the young man. It is then disclosed in the reply filed that son of the petitioner was found admitted in hospital and has ultimately died on 6.2.2012 at Delhi. The petitioner's son has died of bullet injury.

Inspector Naresh Kumar, who has come to assist the State counsel, has referred to some record to show that the police had made an attempt to record the statement of the deceased, while he was in the hospital, but the deceased was termed unfit to make a statement.

The story as projected in the reply is rather disturbing. A young boy has been done to death due to gun shot and the police instead of properly investigating the case has rather accused the deceased of attempted robbery. The

investigating agency apparently has hurriedly concluded so. This cannot be easily explained. How would the guard know that the person had come to commit robbery. The guard had fired in the air. He had hit one person who has died. This death has easily been explained in this manner which would not inspire confidence. How the police reached and traced the deceased to various hospitals would also appear a bit surprising. As per the police, the deceased was taken to hospital by his companions. None had reported to the police about the whereabouts of the deceased. Father of the deceased has made allegations of illegal detention and has accused the police for torturing his son. Prima facie, the story as projected by the police in the reply, does not appear convincing. A human being has been killed and the police apparently has failed to investigate the case from all angles. Even the cause of death is not ascertained. In view of the allegations made by the petitioner, the case may call for a thorough probe. Since the allegations are against a police official and it is a case of death, there may even be a need of judicial inquiry to unearth the true state of affairs.

The State may file further response, if required. It is considered appropriate to request a counsel of this Court to assist the Court in this case as *amicus curiae*. Mr. P.S. Ahluwalia, Advocate, is present in the Court, and has consented to appear as *amicus curiae* to assist the Court. Complete set of paper book be supplied to the *amicus curiae*. Further reply, if any, be filed by the adjourned date.

The entire record of police investigation be handed over the State counsel, who shall seal it and send it to the Commissioner of Police, Gurgaon. The State counsel shall also further convey the directions to the Commissioner of Police, Gurgaon, to seal the entire case file of the case and all other connected documents including the record of both the hospitals.

Adjourned to 7.3.2012.

Copy of the order be provided to State counsel under the signatures of the Special Secretary of this Court.

8. It was rather disturbing for the Court to notice that a young boy was done to death due to gun shot injury and the police instead of investigating and taking the gunman Leeladhar to task foisted a case of attempted robbery on to the deceased. This conclusion has been recorded so hurriedly that these would sound unreal and made up one. It was rightly noticed that the Guard could not have possibly imagined that these persons had come to commit robbery. He had allegedly fired in air and thereafter had gone to make a prophesy that this fire might have hit any person, leading to his death. If the victim was so seriously injured, obviously he could not have moved from that place to a hospital, where he ultimately has died. No efforts apparently were made by the police to carry out investigation from Leeladhar, who had admitted to have fired, killing a person. Was not he required to be questioned if he could kill a person in this brazen manner by use of fire arm, just on hearing a noise. This can not be taken

as a normal way, the investigating agency would act. No explanation was forthcoming as to how the police could trace the deceased to various hospitals, ultimately to find him at Delhi Hospital. The police made an attempt to record the statement of injured but he was found unfit to make a statement. If the injuries suffered by the deceased were so serious, he obviously could not have been able to leave the place of the incident. Police indeed is relating this death to the injuries caused by use of fire arm by Leeladhar.

9. This incident is stated to be of the night intervening 28/29.1.2012. The FIR was lodged on 30.1.2012. The petitioner father of deceased boy, had initiated the present telegram, alleging that his son was picked up on 26.1.2012. If indeed, the deceased was taken to Kathuria Hospital, Gurgaon, with gun shot injuries, the police was bound to receive report. The deceased has ultimately died in Safdarjung Hospital, New Delhi. His condition being so serious that he was unfit to make statement. There may not be dearth of Govt. hospitals in Gurgaon. Taking the deceased to private hospital seems to be a handy work of someone, who was keen to cover its back. The story as projected by the police, thus, was not found convincing, when seen in the background that the petitioner had already approached this Court, alleging illegal detention and torture of his son by police. On this basis, it was considered essential to go deep into the issues and see if it was a case of custodial death to direct either a judicial enquiry or an investigation by an independent agency, so that truth could surface. State was given further time to file reply, if it so desired. The Court also appointed Mr. P.S. Ahluwalia, Advocate, as Amicus-curiae to assist the Court. The entire record of the police investigation was handed over to the State counsel on the direction of the Court and the Commissioner of Police, Gurgaon, was directed to seal the same and then hand over the record to the State counsel. The directions issued by the Court were duly complied with.

10. The case came up for hearing on 29.3.2012, when the counsel appearing for the petitioner as Amicus-curiae placed before the Court, the guidelines issued by National Human Rights Commission and various judgements to submit that in such like cases, the provisions of Sections 174 and 176 Cr.P.C would be attracted making an enquiry by Magistrate as incumbent as a statutory requirement. The Amicus-curiae has made submissions before the Court very fairly and without being involved to find gapping holes in the story projected by the police. On the request made by counsel appearing for the parties, the record of the investigation held in this case and kept in sealed cover was made accessible to them for inspection. Thereafter, the parties were given time to file further response.

11. In between, the State come up with another novel plea and moved an Miscellaneous Application seeking permission to compare pellets/cartridges and the gun of Leeladhar, private Security Guard from Forensic Science Laboratory, Madhuban. This was with an apparent aim to buy time and perhaps even to bypass the Court as well. The Court did not consider it essential even to issue

notice for passing any direction on such an application. The counsel for the petitioner was forthright in pointing out that the death in this case was due to pellets and that it is not possible to test pellets to co-relate with the gun from which these may or might have been fired. This would indicate the futile and unwise nature of the prayer made in the application, which was taken at aimed at delaying the disposal of this case, rather than any sincere move to investigate the case in fair and proper manner.

12. In this background, the case was finally heard on 17.5.2012. After inspection of the record, further reply in the form of affidavit has been filed by Assistant Commissioner of Police, Gurgaon. An attempt is made now to introduce some more details, which can be an after thought and may be an attempt on the part of the police to misdirect investigation and to mislead. The counsel appearing for the State was rather insistent in pleading that the police be permitted to conduct the investigation in this case and there is no need to direct investigation by any outside or any other agency. This invited a response from the Court as well as from the amicus that if the police was not involved in this case, why should it be afraid of investigation by any independent agency. Ofcourse, there was no answer forthcoming.

13. In the additional affidavit, the complaint of Leeladhar has been elaborately referred and it is now stated that 3/4 boys armed with iron rods and sticks were trying to intrude into the factory from the side of a vacant plot. What Mr. Leeladhar heard, is now reflected in a changed form and his words are now quoted in the reply i.e. "Ali run fast, otherwise you will be intercepted". The other portion of the stand is reflected in the same manner, where Leeladhar has expressed the possibility of shot fired in the air having caused pellet injury to someone but he found none on reaching the spot.

14. The investigation conducted by the police is then reflected in the reply. It is now stated that investigation was started on the basis of entry dated 29.1.2012 in the roznamcha. Mention is made to the effect that information was received from Kharki Dhola, Police Station Gurgaon, about a ruqqa having been received from Kathuria Hospital, Gurgaon, regarding admission of one Ali Mohammad. Earlier it was stated that it is on the basis of FIR recorded on 30.1.2012. Now the case is that this ruqqa was sent to Police Station, Sector 10A, Gurgaon, since occurrence had taken place within the jurisdiction of this Police Station. It would be noticeable here that till this time, no FIR was lodged as the same was lodged by Leeladhar on 30.1.2012. How could ruqqa received from hospital could be linked with the information, which was yet to come and recorded as FIR would defy explanation. Still, the police wants to be trusted to conduct fair and independent investigation in this case.

15. The Investigating Officer (one would not know in which case) states to have gone to Kathuria Hospital, Gurgaon, where the Medical Officer opined that the patient was unfit to make a statement. It could be on 29.1.2012 as he claims to have again visited on 30.1.2012. None of his relatives or acquaintances were

found present with the injured and so again visited the hospital on 30.1.2012 and found the patient still unfit. As per reply affidavit, the FIR was recorded in the meantime by Leeladhar and promptly offences under Sections 393/34 IPC were added in this case. The time of receipt of this information is shown 1910 hours, which is late in the evening. The Investigating Officer has not indicated anything, if he had gone to record the statement of the unfit injured late in the evening or otherwise. The investigation agency further can not explain as to how they happened to link an unfit injured lying in a hospital with the FIR, which was recorded subsequent to the receipt of a ruqqa. This in fact, would expose the police of Police Station, Sector 10-A, Gurgaon.

16. The police appears to have managed this report on 30.1.2012. It apparently knew about an injured lying in the hospital not from ruqqa, which was received through another police station. Otherwise, they were in no position to link the injured with the FIR dated 30.1.2012, unless some acquaintance or friends were found present or some statement had been made by injured person. Not only this, the Police Station of Sector 10-A, Gurgaon has promptly solved the mystery and has found out the name of other person involved in the attempted robbery. It is disclosed that during investigation, it was found that Nazir Ahmad, Izaz, Salman had gone to plot Nos.135-136 with a view to commit robbery and Leeladhar on a suspicion fired a shot in the air and the pellet had hit Ali Mohammad, who had fled from the place of occurrence and got himself admitted in Kathuria Hospital, Gurgaon. The police is rather efficient in solving this mystery in shortest possible time, even without recording any statement of any person, friend or relative of the injured lying in the hospital and this fact is disclosed in the reply. Till that time, the police had not been able to get in touch with any of the relatives of the injured. How they solved this FIR in this manner so short a time, would rather deserve a medal. Strangely, it has also come to the notice of the Investigating Officer that Ali Mohammad was admitted in Intensive Care Unit at 5.30 A.M on 29.1.2012, where he was brought by Tanvir Mohammad. Where had he vanished after getting the injured admitted, is not explained in any manner.

17. What is not stated in the reply perhaps is revealed from the sealed record, which was permitted to be inspected by both the counsel. The amicus-curiae, on the basis of material on record, would point out that there is another FIR No. 36 registered on 31.1.2012 under Sections 399/402 IPC and Section 25 of the Arms Act. In this FIR, six boys, named, Mohammad Nazir, Tanvir etc. whose names are also linked with an attempt to robbery case lodged by Leeladhar, are named in this case. These six boys have promptly been shown arrested. One of them, named, Nazir has confessed an attempted robbery and so the case is shown to be solved. The counsel is further justified in submitting that all this would show a cover up. The prompt manner in which these six persons named in the FIR dated 31.1.2012 are shown to have been arrested, would tend to indicate that they perhaps were already in custody of the police and so also the deceased, who has ultimately died. Prompt recording of FIR, one by Leeladhar, another also of

robbery against these very persons would tend to show that there is something more than what is being disclosed and this death of young boy may not be on account of a cause and incident, which has been set up by the police and accepted by it as such.

18. The cause of death as reflected in the post mortem report is due to shock and hemorrhage with 30 pellet injuries. In this background, the amicus-curiae would strongly plead that to rule out the possibility of any foul play, there would be a need for independent probe. This prayer ofcourse has been strongly and vehemently opposed by the State counsel, who at times was found wanting in offering any explanation to various uncomfortable facts as were noticed with which he was confronted.

19. The counsel for the petitioner has placed before the Court various aspects and the legal provisions relevant in regard to determine the issues. He would first refer to the legislative intention for proper investigation of a custodial death. He has then referred to the various judgements on the custodial death and violence, which is considered to be an infringement of the right to life under Article 21 of the Constitution of India. The counsel has also referred to the guidelines issued by National Human Rights Commission on custodial deaths and guidelines issued by the Commission on the death caused by police action.

20. Any death by any form of violence would always need proper investigation, even if such person happens to be one who has violated law. If any person is found to have committed any offence, he is required to be brought before law in a legal and proper manner and no one has a right to deal with him in any manner, except as provided by law. Here, a 17 years old boy has lost his life and the police, which is required to act independently, is seen bending backward to show it as a justified death attributing it to the action of a Guard without in any manner going into the aspect to examine the role of a Guard. Police has even raised dispute about the age of the deceased by making reference to voters list. The police has failed to examine if the act of the Guard would attract an offence under any of the provision of Penal Code. Leeladhar is a Guard. Perhaps the police thinks that he has a licence to kill any one. Purposely, it is got recorded through him that he had fired in the air. This guarded version ultimately is aimed at saving Guard, Leeladhar. Obviously because the police has an interest to save him. If he has been used as a shield by the police to hide something then it would be too keen not to proceed against the guard or to record through him anything, which may boomerang on him later. They have not touched him because then he may spill the beans and come out with the true version and even with the fact that how he has been made to stand up to record this unsubstantiated and uncorroborated allegations.

21. The condition of the deceased, who had received 30 pellets in his body and was found unfit even after second day of the incident to make any statement would not have been so that he could move so far to the hospital. This condition perhaps was such that he was in no position to move from the place. The

possibility, therefore, is required to be ruled out that this death is not related to any action of the police as is alleged by the petitioner. It is not possible to expect from police to investigate its own role in the case. In the manner in which the police was promptly able to link the deceased lying injured in the hospital to an FIR, which was yet to be registered and also got hold of other person who had allegedly gone with the deceased to make an attempt of robbery in a yet another FIR, would indicate that this is not something, which would look straight. There is need to go into the depth of the issues and in case the police authorities are genuine in projecting their case, they should not fear a probe by any independent agency.

22. The police may not be conceding it to be a custodial death or a death which is attributed to any police action, yet one can not ignore the allegation made by hapless father of the deceased, who had initially given telegram about his son having been picked up by police and of his torture. Subsequently, he complained of his death and in this regard has named two police officers. The judicial conscious combined or otherwise of all concerned with rule of law would atleast require that a person who has come to the Court, complaining about death of his young sibling should be able to have and seek investigation into the case and such investigation ought to be fair, just and reasonable. Once the petitioner has made allegation of murder against two police officers serving at Police Station, Sector 10-A, Gurgaon, no fair or independent investigation can be expected from SHO, Incharge of that police station, who himself is being accused of murder. The investigation by any senior officer would also not inspire confidence in such a case, where it can be reasonably assumed that any police officer would carry favours for his subordinate or peer. To inspire confidence of public in the Courts and the investigating agency and rule of law, an investigation into this case by some independent agency, which would be capable of conducting fair investigation would be a loud call in this case.

23. The legislature intend in this regard is clearly reflected in Sections 174 and amended provisions of 176 Cr.P.C. As per Section 174 Cr.P.C., the police officer receiving information even about suicide or a person having been killed by another or by an animal or by a machinery or by an accident or who has died under circumstances raising a reasonable suspicion that some other person has committed an offence, then shall immediately give intimation thereof to nearest Executive Magistrate. Even if the present case is taken to be an accidental death and is raising a suspicion against someone, the police was required to inform the nearest Executive Magistrate, who was to hold inquest in this case. Apparently, this mandate of the statute was violated. Further, Section 176 Cr.P.C. further mandates to the Magistrate to hold an enquiry into the cause of death either instead of or in addition to the investigation held by the police officer and if he does not he will have all powers conducting it, which he would have in holding an enquiry into an offence. The provisions of Sections 174 and 176 Cr.P.C are noticed here as under for easy reference and assimilation:

174. Police to inquire 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 neighborhood shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises, and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted.

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

(3) [When

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

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

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

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

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

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

176. Inquiry by Magistrate into cause of death.

(1) When 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,

(I) any person dies or disappears, on

(II) 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 enquiry 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 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 causes 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 man 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.

24. Thus an enquiry by the Magistrate into the cause of death is a mandate of the statute, where any person dies or disappear or other eventualities as mentioned in the Section. Why the matter was not reported to the Magistrate as required u/s 174 read with Section 176 Cr.P.C defies logic and has not been explained in any manner.

25. Besides, this alleged custodial death ought to have been investigated in a fair and proper manner by the Commissioner of Police, Gurgaon, who has a responsibility in this regard. He ought to have realized that the custodial death has been taken to be a worst crime in a civilized society governed by rule of law. The Hon''ble Supreme Court in *Joginder Kumar Vs. State of U.P. and others*, observed it so and the fact that the right inherent in Articles 21 and 22 of the Constitution required to be jealously and scrupulously protected. The Hon''ble Supreme Court rightly held that we can not wish away this problem. Any form of torture, inhuman or d-grading treatment would fall within the ambit of Article 21 of the Constitution, whether it occurs during investigation, interrogation or otherwise. As held by the Supreme Court, if the functionaries of the Government become law breakers, it is bound to breed contempt for law and would encourage lawlessness and every man would then have the tendency to become law on to himself, thereby leading to anarchy. In this regard, the Hon''ble Supreme Court raised various posers as is noted in *Joginder Singh's* case (supra):

Does a citizen shed off his fundamental right to life, the moment a policeman arrests him? Can the right to life of a citizen be put in abeyance on his arrest? These questions touch the spinal cord of human rights jurisprudence. The answer, indeed, has to be an emphatic 'No'. The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicted undertrials, detenues and other prisoners in custody, except according to the procedure established by law by placing such reasonable restrictions as are permitted by law.

26. In *D.K. Basu Vs. State of West Bengal*, the Supreme Court has laid down various guidelines to prevent and to reduce the incidents of custodial Violence. The measures taken by the police to scuttle proper investigation of custodial death cases were noticed by the Hon''ble Supreme Court in *D.K. Basu's* case (supra) as can be seen from the following observations:-

Instances have come to out notice were the police has arrested a person without warrant in connection with the investigation of an offence, without recording the arrest, and the arrest person has been subjected to torture to extract information from him for the purpose of further investigation or for recovery of case property or for extracting confession etc. The torture and injury caused on the body of the arrestee has sometime resulted into his death. Death in custody is not generally shown in the records of the lock-up and every effort is made by the police to dispose of the body or to make out a case that the arrested person died after he was released from custody. Any complaint against such torture or death is generally not given any attention by the police officers because of ties of brotherhood. No first information report at the instance of the victim or his kith and kin is generally entertained and even the higher police officers turn a blind eye to such complaints. Even where a formal prosecution is launched by the victim or his kith and kin, no direct evidence is available to substantiate the charge of torture or causing hurt resulting into death as the police lock-up where

generally torture or injury is caused is away from the public gaze and the witnesses are either police men or co-prisoners who are highly reluctant to appear as prosecution witness due to fear of retaliation by the superior officers of the police. It is often seen that when a complaint is made against torture, death or injury, in police custody, it is difficult to secure evidence against the policemen responsible for resorting to third degree methods since they are incharge of police station records which they do not find difficult to manipulate. Consequently, prosecution against the delinquent officers generally results in acquittal.

27. The difficulty faced to get direct ocular account of complicity of police person in a case of police torture or a custodial death was duly noticed by the Hon''ble Supreme Court in State of State of M.P. Vs. Shyamsunder Trivedi and Others, . In this regard, the Court observed as under:

Rarely in cases of police torture or custodial death, direct ocular evidence of the complicity of the police personnel would be available,.....Bound as they are by the ties of brotherhood, it is not unknown that the police personnel prefer to remain silent and more often than not even pervert the truth to save their colleagues,...

28. These observations have subsequently been reiterated in Smt. Shakila Abdul Gafar Khan Vs. Vasant Raghunath Dhoble and Another, and Munshi Singh Gautam (D) and Others Vs. State of M.P.,

29. In Ramesh Kumari Vs. State (N.C.T. of Delhi) and Others, the Hon''ble Supreme Court expressed a view that the allegations being against the police personnels, the interest of justice would be better served if the case is registered and investigated by an independent agency like C.B.I.

30. In Sube Singh Vs. State of Haryana and Others, again an independent investigating agency like Human Rights Commission or C.B.I was preferred for entrusting to investigate the complaint of custodial violence against police personnels for taking stern and speedy action, followed by prosecution wherever necessary. The Supreme Court also noticed the need for restrained in entering upon the details of the case, lest it prejudiced any party. The relevant observations made in this regard in R.S. Sodhi Vs. State of U.P., AIR 1994 Supreme Court 28 are as under:

We have perused the events that have taken place since the incidents but we are refraining from entering upon the details thereof lest it may prejudice any party but we think that since the accusations are directed against the local police personnel it would be desirable to entrust the investigation to an independent agency like the Central Bureau of Investigation so that all concerned including the relatives of the deceased may feel assured that an independent agency is looking into the matter and that would lend the final outcome of the investigation credibility. However, faithfully the local police may carry out the investigation, the same will lack credibility since the allegations are against them. It is only with

that in mind that we having thought it both advisable and desirable as well as in the interest of justice to entrust the investigation to the Central Bureau of Investigation forthwith and we so hope that it would complete the investigation at an early date so that those involved in the occurrences one way or other may be brought to book. We direct accordingly. In so ordering we mean no reflection on the credibility of either the local police or the State Government but we have been guided by the larger requirements of justice.

31. The amicus has not only placed these judgements before the Court to plead for need of investigation by independent agency like CBI but has referred to the guidelines issued by the National Human Rights Commission on custodial death cases. As per these guidelines, every incident of custodial death/rape is to be reported to the National Human Rights Commission. District Magistrate and Superintendent of Police of every District is under obligation to report to the Secretary General of the Commission of any incident of custodial death. Importantly, failure to report promptly is to give rise to a presumption that there has been an attempt to suppress the incident. On being deeply disturbed over the rising incidents of deaths in police lock up and jail, the Commission has issued direction for Video recording of postmortem. As per the Commission, scrutiny of reports in respect of all these custodial deaths very often showed that the postmortem in many cases had not been done properly. It was noticed that the reports were drawn up casually and did not help in forming an opinion as to the cause of death. The Commission, thus, was of the impression that a systematic attempt is being made to suppress the truth and report is merely the police version of the incident. Since postmortem report is considered to be a most valuable record and is of considerable importance for drawing conclusion about the death, was required to be given due importance. The Commission has formed a prima-facie view that local doctors succumbs to police pressure which leads to distortion of facts and accordingly, the Commission has required that all postmortem examinations done in respect of deaths in police custody and in jail should be video filmed and cassettes be sent to the Commission alongwith the postmortem report. The Commission was alive about the extra cost involved in doing this exercise but still did not consider it more valuable then the human life. Not only that, the Commission also recommended a Model Autopsy Report as the existing autopsy report form was not considered comprehensive enough and left scope for doubts and manipulation. After having discussed with the experts and ascertaining the views of the State, a UN Model Autopsy Protocol is prepared as a Model Autopsy Form, which is enclosed with the report. Then guidelines have also been issued by National Human Rights Commission on the deaths caused by police action. In this regard, the Commission has recommended modified procedure to be followed by the State Government in all cases of death in the course of police action, which is as under:

A. When the police officer in charge of a Police Station receives information about the death in an encounter between the Police party and others, he shall enter that information in the appropriate register.

B. Where the police officers belonging to the same Police Station are members of the encounter party, whose action resulted in deaths, it is desirable that such cases are made over for investigation to some other independent investigating agency, such as State CBCID.

C. Whenever a specific complaint is made against the police alleging commission of a criminal act on their part, which makes out a cognisable case of culpable homicide, an FIR to this effect must be registered under appropriate sections of the I.P.C. Such case shall invariably be investigated by State CBCID?

D. A Magisterial Inquiry must invariably be held in all cases of death which occur in the course of police action. The next of kin of the deceased must invariably be associated in such inquiry.

E. Prompt prosecution and disciplinary action must be initiated against all delinquent officers found guilty in the magisterial enquiry/police investigation.

F. Question of granting of compensation to the dependents of the deceased would depend upon the facts and circumstances of each case.

G. No out-of-turn promotion or instant gallantry rewards shall be bestowed on the concerned officers soon after the occurrence. It must be ensured at all costs that such rewards are given/recommended only when the gallantry of the concerned officer is established beyond doubt.

H. A six monthly statement of all cases of deaths in police action in the State shall be sent by the Director General of Police to the Commission, so as to reach its office by the 15th day of January and July respectively. The statement may be sent in the following format along with post-mortem reports and inquest reports, whenever available and also the inquiry reports:-

1. Date and place of occurrences
2. Police Station, District.
3. Circumstances leading to deaths:
 - i. Self defence in encounter
 - ii. In the course of dispersal of unlawful assembly
 - iii. In the course of effecting arrest.
4. Brief facts of the incident
5. Criminal Case No.
6. Investigating Agency
7. Findings of the magisterial Inquiry/enquiry by Senior Officers:
 - a. disclosing in particular names and designation of police officials, if found responsible for the death; and

b. whether use of force was justified and action taken was lawful.

32. That being the importance given to a fair and proper investigation into a custodial death or even any violent death where allegation is made against the police, call for fair and a proper investigation is a loud cry in this case. The wailing father of the deceased can not be allowed to go unheard despite having noticed such gapping holes in the story as projected before this Court. The guidelines and safety measures were given a complete go-bye. Having learnt of the complaint and prima-facie noticing the lack of fair investigation on the part of police, the Court can not be a silent spectator or can not otherwise gloss over this situation. The responsibility expected from High Court has recently been noticed by the Hon''ble Supreme Court in the case of R.K. Anand Vs. Registrar, Delhi High Court, . In this case, the Supreme Court has noticed the indifferent and passive attitude of the High Court in permitting the case to go astray. Talking about the role of the High Courts, who are required to exercise supervisory jurisdiction over the courts under its jurisdiction, the Hon''ble Supreme Court has said that time has come to add another dimension to the supervisory jurisdiction and power of the High Court over its subordinate courts for monitoring and protection of criminal trials. As is observed in this case, every trial that fails due to external interference is a tragedy for the victim(s) of a crime. It is also observed that more importantly, every frustrated trial defies and mocks the society based on the rule of law and that every subverted trial leaves a scar on the criminal justice system. As per the Court, repeated scars make the system unrecognisable and it then loses the trust and the confidence of the people. The Hon''ble Supreme Court has clearly not approved the indifferent and passive attitude shown by the High Court in the cases. The Court has noticed that every now and then one would come across reports of investigation deliberately botched up or of the trial being hijacked by some powerful and influential accused, either by buying over or intimidating witnesses or by creating insurmountable impediments for the trial court and not allowing the trial to proceed. The Court perhaps has noticed the concern that unfortunately such reports would seldom. If ever, be taken note of by the collective consciousness of the Court. It is observed that the High Court would continue to carry on its business as if everything under it was proceeding normally and smoothly. Such trials, as per the Hon''ble Supreme Court, would fail because it was not protected from interference. Further elaborating, the Hon''ble Court has noted that every failed trial is also, in a manner of speaking, a negative comment on the State's High Court which is entrusted with responsibility of superintendence, supervision and control over the lower courts. The Court has then gone on to highlight the role and responsibility of the High Court as under:

It is, therefore, high time for the High Courts to assume a more proactive role in such matters. A step in time by the High court can save a criminal case from going astray. An enquiry from the High Court Registry to the quarters concerned and it will not tolerate any nonsense. Even this much would help a great deal in insulating a criminal case from outside interference. In view few cases where

more positive intervention is called for, if the matter is at the stage of investigation the High Court may call for status report and progress reports from police headquarter or the Superintendent of Police concerned. That alone would provide sufficient stipulation and pressure for a fair investigation of the case.

33. The Hon"ble Supreme Court has not only advocated such monitoring on the administrative side but has even observed that if the High Court is not satisfied by the status/progress reports then it may consider it taking up the matter on judicial side. The role of the High court when the case reaches the stage of trial has been referred to be far wider. In this regard it is observed that:

It can assign the trial to some judicial officer who has made a reputation for independence and integrity. It may fix the venue of the trial at a proper place where the scope for any external interference may be eliminated or minimised. It can give effective directions for protection of witnesses and victims and their families. It can ensure a speedy conclusion of the trial by directing the trial court to take up the matter on a day-to-day basis.

34. Advocating monitoring of the cases by the High Court, the Hon"ble Supreme Court has observed as under:-

The High Court has got ample powers for all this both on the judicial and administrative sides. Article 227 of the Constitution of India that gives the High court the authority of superintendence over the subordinate courts has great dynamism and now is the time to add to it another dimension for monitoring and protection of criminal trials. Similarly, Article 235 of the Constitution that vests the High court with the power of control over subordinate courts should also include a positive element. It should not be confined only to posting, transfer and promotion of the officers of the subordinate judiciary. The power of control should also be exercised to protect them from external inference that may sometimes appear overpowering to them and to support them to discharge their duties fearlessly.

Thus, this Court can not sit as a silent spectator to an investigation which apparently is bouted up in this case. There is a need to ensure proper and fair investigation in this case and this surely is to be done by some independent agency so that faith of public at large in the rule of law is kept inviolate and intact. There is a need to direct investigation in regard to this death by some independent agency, which is not under the influence of State machinery or the hierarchy of police in the State. The fair and proper investigation in this case, thus, can be expected from agency like Central Bureau of Investigation. Accordingly, directions are hereby issued to the Commissioner, Police Gurgaon, to hand over the case file for investigation to the Director, CBI (Headquarters), Lodhi Road, New Delhi, who is requested to take over the investigation of this case and make an endeavour to complete the same within a period of three months from the date these are commenced. The CBI Officer, who is to be detailed to investigate this case, would collect the sealed record summoned by

this Court, from the Registry of this Court. The further action would follow on the basis of such report, which may be placed before the Court as well.

Both the writ petitions are disposed of in the above terms.