

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE K. BABU

MONDAY, THE 10TH DAY OF JULY 2023 / 19TH ASHADHA, 1945

WP (CRL.) NO. 1029 OF 2022

PETITIONER:

K.KRISHNAN,
AGED 69 YEARS,
S/O.UNNIKELU, NEETHU NIVAS, NANAMCHIRAKKAL,
KAKKOVE, VAZHAYOOR.P.O, MALAPPURAM-673633.
BY ADVS.
SUMAN CHAKRAVARTHY
K.R.RIJA
AMJATH A.R

RESPONDENTS:

- 1 STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682031.
- 2 THE DIRECTOR GENERAL OF POLICE AND STATE POLICE
CHIEF,
POLICE HEADQUARTERS, VAZHUTHACAUD,
THIRUVANANTHAPURAM-695004.
- 3 ADDITIONAL DIRECTOR GENERAL OF POLICE (CRIMES),
CRIME BRANCH HEADQUARTERS,
THIRUVANANTHAPURAM-695014.
- 4 THE DISTRICT POLICE CHIEF,
MALAPPURAM-676509.

BY ADV
SMT.M.K.PUSHPALATHA, PUBLIC PROSECUTOR
SRI.JOHN.S.RALPH, AMICUS CURIAE
SRI.RENJITH.B.MARAR, AMICUS CURIAE

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR
ADMISSION ON 10.07.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

'C.R'

K.BABU, J.

W.P(Crl).No.1029 of 2022

Dated this the 10th day of July, 2023

JUDGMENT

The petitioner seeks an effective investigation into the death of his daughter Geethu. She married Vipin Chandran on 30.04.2017. Geethu was found hanging in her bedroom on 25.11.2021, where her three-year-old son Ishan Dev was near her. Tirur Police registered Crime No.1304/2021 under the caption 174 of the Code of Criminal Procedure, 1973 (for short 'the Code'). The proceedings are now pending before the Sub Divisional Magistrate, Tirur. Before her death, Geethu had complained of harassment from the family of Vipin Chandran in connection with dowry and other marital issues. The death occurred within seven years of her marriage. The Police have not included any cognizable offence.

2. The petitioner filed a complaint before the District Superintendent of Police seeking an effective investigation into the matter. He got reliable information that the Police were trying to

close the matter as unnatural death.

3. The procedure being followed by the Police in cases where inquiry is conducted under Section 174 of the Code is also under vehement challenge in this proceedings. The concern raised is that as the report under Section 174(2) of the Code does not reach the Judicial Magistrate concerned and is forwarded to the Executive Magistrate, the near relatives of the victim are deprived of the opportunity to challenge the conclusions arrived at in the inquiry. It is submitted that the informants and the near relatives in such cases are kept in the dark regarding the proceedings.

4. Considering the importance of the issue, this Court appointed Advocates Sri.John.S.Ralph and Sri.Ranjith.B.Marar as Amici Curiae to assist the Court.

5. Heard Sri.Suman Chakravarthy, the learned counsel appearing for the petitioner, Sri.John.S.Ralph and Sri.Ranjith.B.Marar, the learned Amici Curiae and Smt.M.K.Pushpalatha, the learned Public Prosecutor.

Submissions

6. Sri.Suman Chakravarthy made the following submissions:

Once an FIR under Section 174 of the Code is registered regarding a case of suicide, registration of a fresh FIR within the meaning of Section 154 of the Code is not required when a cognizable offence is made out during inquiry or after that. The practice followed in the State of Kerala is to register FIR under Section 174 of the Code, and when it is revealed that a cognizable offence is committed, the said FIR is requested to be transferred to the Judicial Magistrate concerned after incorporating the necessary penal provisions. The report contemplated under Section 174 of the Code, which is to be sent to the Executive Magistrate, is not an FIR as contemplated in Section 154 of the Code.

7. Sri.John.S.Ralph, the learned Amicus Curiae, made the following submissions:

When information is lodged about suicide, since no cognizable offence mentioned in any of the statutes is reported, the Police Officer cannot register an FIR. In a case of suicide, if the Police Officer gets an information that it is a case of abetment of suicide under Section 306 IPC or a case of dowry death under Section 304-B, both being cognizable offences, he is bound to register an FIR

and investigate the matter. In a case of an apparent suicide, if information is received that it is a case of homicide, the Police Officer has to register a case and investigate. In all these situations, the Officer can investigate the case only after registering a crime and sending a report to the Magistrate under Section 157 of the Code. Information regarding a suicide is not information regarding a cognizable offence, and therefore, the Police do not conduct investigation into any offence. The Police only conduct an inquiry regarding the same. When a report of inquiry into the case of unnatural death is submitted before an Executive Magistrate under Section 174 of the Code, the only course open to the Magistrate is to accept it. If the report is submitted before the Judicial Magistrate, the Court can accept, reject or direct the Police to continue investigating the matter. The Police, on the conclusion of the investigation, shall file a final report under Section 173(2) of the Code only before the jurisdictional Magistrate and not before the Executive Magistrate, whether the final report is a positive report or a closure report. The decision of the Madras High Court in **Manohari and Ors. v. The District Superintendent of Police and**

Ors. (MANU/TN/5225/2018) supports this view.

8. Sri.Renjith B.Marar, the learned Amicus Curiae, made the following submissions:

8.1. The scope of investigation under Sections 174 and 154 of the Code are starkly different, and the procedure of registering an FIR under Section 174 of the Code is not supported by the words of the statute and the judicial precedents. The provisions of Sections 174 to 176 of the Code form a complete code in themselves and are self-contained and the question of sending a final report after conduct of inquest under Section 174 of the Code to the Judicial Magistrate is not the correct procedure in law. Therefore, the law laid down by the Madras High Court in **Manohari and Ors. v. The District Superintendent of Police and Ors.** does not seem to be correct. In the present procedure, no specific provision gives the victim or complainant the right to lodge a protest against the filing of negative final report before the Executive Magistrate. This vacuum occurred because, unlike the old Code, the inquest report reaches the Executive Magistrate under the present Code. In the old Code, all inquest reports would reach the Judicial Magistrate as

a matter of course. Under the present Code, except for inquests under Section 176(1-A), all other reports would reach only the Executive Magistrate holding the office of the District Magistrate or Sub-divisional Magistrate. The present Code is completely silent on what is to be done in cases where the Police officer, upon investigation of an unnatural death, drops further proceedings.

8.2. During the conduct of inquest or investigation under Section 174 of the Code, if a cognizable offence is made out, the Police Officer is duty bound to register an FIR under Section 154 of the Code. In case the Police Officer receives information of the commission of a non-cognizable offence in the course of the inquest, he shall immediately prefer an application under Section 155(2) of the Code for permission to investigate the same and leave it to the discretion of the Magistrate concerned. In case the Executive Magistrate receives information of a cognizable offence, he shall immediately inform the Officer-in-Charge of the Police Station, who shall register an FIR under Section 154 of the Code. The Executive Magistrate may also inform the jurisdictional Magistrate the fact that such an offence has been

committed with a view to proceed under Section 190(c) of the Code.

9. Smt.M.K.Pushpalatha, the learned Public Prosecutor, submitted the following:

Different situations may arise in a case registered under Section 174 of the Code. What is undertaken by the Police is an inquiry under Section 174 of the Code, which is limited to the extent of finding whether the death is natural or unnatural. Submission of the report to the Executive Magistrate after this limited fact-finding inquiry is the mandate of sub-section (2) of Section 174 of the Code. If the Police fail to get any information relating to the commission of a cognizable offence, the proceedings end with submitting the report as mentioned above. If the Police get information relating to the commission of a cognizable offence within the meaning and import of Section 154 of the Code, they proceed to conduct investigation under Section 157 of the Code after incorporating the relevant penal provisions. The FIR initially registered under Section 174 of the Code will be transformed as an FIR within the meaning of Section 154 of the Code. The process of investigation is different in both circumstances. The investigation after the registration of the

FIR under Section 154 of the Code will end in a final report under Section 173(2) of the Code. The final report under Section 173(2) of the Code, whether positive or negative, always reaches the jurisdictional Magistrate concerned. The procedure being adopted in the State of Kerala in this regard is in accordance with the provisions of the Code.

10. Before considering the facts of the case, I shall first consider the questions raised from the Bar on the procedure to be followed when an FIR is registered under Section 174 of the Code.

The relevant issues are the following:

- (i) Can an FIR be registered under Section 174 of the Code?
- (ii) Is the procedure of submitting a report under Section 174 of the Code by the Investigating Officer before the Executive Magistrate erroneous?
- (iii) Should the Investigating Officer file a report after conducting an inquiry under Section 174 of the Code before the Judicial Magistrate

concerned?

The Statutory Scheme under Sections 174 to 176 of the Code

11. Sections 174 to 176 of the Code, being the relevant provisions, are extracted below:

“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 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.

175. Power to summon persons.—(1) A police officer proceeding under section 174 may, by order in writing, summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case and every person so summoned shall be bound to attend and to answer truly all questions other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(2) If the facts do not disclose a cognizable offence to which section 170 applies, such persons shall not be required by the police officer to attend a Magistrate's Court.

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.

(1-A) Where,—

(a) any person dies or disappears, or

(b) rape is alleged to have been committed on any woman,

while such person or woman is in the custody of the police

or in any other custody authorised by the Magistrate or the Court, under this Code, in addition to the inquiry or investigation held by the police, an inquiry shall be held by the Judicial Magistrate or the Metropolitan Magistrate, as the case may be, within whose local jurisdiction the offence has been committed.

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

(3) Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.

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

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

12. When the Station House Officer or the Officer empowered receives information that a person has committed suicide, or has been killed by another or by an animal or by machinery or by accident, or has died under the circumstances raising a reasonable suspicion that some other person has committed an offence, he shall give intimation thereof to the Executive Magistrate concerned and proceed to make an investigation and draw up a report of the

apparent cause of death and the report has to be sent to the District Magistrate or the Sub-divisional Magistrate under sub-section (2) of Section 174 of the Code. Sub-section (3) of Section 174 of the Code requires that in cases involving a woman's death within seven years of marriage, the body must be sent for post-mortem examination. The Officer who is conducting investigation under Section 174 of the Code has the power to summon the witnesses and to question them. The witnesses are bound to answer all the questions truthfully, except those questions which tend to expose them to a criminal charge, or a penalty of forfeiture. There is a special provision for inquests to be held by the Executive Magistrate in cases involving the death of a woman within seven years of marriage under Section 176(1) of the Code. This inquest or inquiry shall be either instead of, or in addition to, the investigation conducted by the Investigating Officer. In cases where the death or rape of a woman is alleged to have occurred in custody, inquiry is to be conducted exclusively by a Judicial Magistrate.

13. Under sub-section (2) of Section 174 of the Code, the Investigating Officer shall send the inquiry report to the District

Magistrate or Sub-divisional Magistrate as the case may be. There is no similar provision to the forwarding of inquiry reports by the Executive Magistrate or the Judicial Magistrate under Section 176 of the Code.

The scope of Section 174 of the Code

14. The scope of inquiry or investigation under Section 174 of the Code is limited. The object of the proceedings is merely to ascertain whether a person has died under suspicious circumstances or died of an unnatural death and, if so, what is the apparent 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 the proceedings under Section 174 of the Code. In the inquest report, it is not necessary for the Police to mention those details. When making the inquiry under Section 174 of the Code, the only information available to the Investigating Officer is that an unnatural death occurred. The Investigating Officer at that time does not know whether any offence has been committed.

15. In **Pedda Narayana v. State of Andhra Pradesh [(1975) 4**

SCC 153], the Supreme Court held that the proceedings under Section 174 of the Code has a very limited scope and the purpose of the same is only to find out whether a person has died under unnatural circumstances or suspicious circumstances and to find out what is the apparent cause of the death.

16. In **Shakila Khader v. Nausheer Cama [(1975) 4 SCC 122]**, the Supreme Court considered the question of non-mention of the name of a witness in the inquest report and held that an inquest under Section 174 of the Code is concerned with establishing the cause of the death, and only evidence necessary to establish it need be brought out. In **Eqbal Baig v. State of A.P. [(1986) 2 SCC 476]**, the same view was taken by the Supreme Court. A three-Judge Bench in **Khujji v. State of M.P. [(1991) 3 SCC 627]** approved the view taken in **Pedda Narayana**. In **Amar Singh v. Balwinder Singh [(2003) 2 SCC 518]**, the Supreme Court ruled that the Court cannot draw any inference against the prosecution based on the fact that the details about the occurrence were not mentioned in the inquest report. In **Radha Mohan Singh v. State of U.P. [(2006) 2 SCC 450]**, overruling the contrary view taken by a two-Judge Bench in **Meharaj Singh v.**

State of U.P. [(1994) 5 SCC 188], a three-Judge Bench of the Supreme Court settled the law and held that an investigation under Section 174 of the Code is limited in scope and only concerned with ascertaining 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. The Supreme Court observed that 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 statements nor it is required to be signed by any eye witness.

17. In **Madhu v. State of Karnataka [(2014) 12 SCC 419]** the Supreme Court held that the report under Section 174 of the Code would not be a substantive piece of evidence. This position has been reiterated in **Bimla Devi v. Rajesh Singh [(2016) 15 SCC 448]** and **Yogesh Singh v. Mahabeer Singh [(2017) 11 SCC 195]**.

Investigation after registering an FIR under Section 154 of the Code.

18. The scope of investigation on receipt of information under

Section 154 of the Code is different. An FIR in the meaning of Section 154 of the Code is registered only on receipt of information of the commission of a cognizable offence by the Investigating Officer. Then, he is empowered under Section 156 of the Code to investigate without an order of the Magistrate. The Investigating Officer has to send a report immediately to the Judicial Magistrate and proceed to investigate the facts and circumstances of the case. The scope of the investigation in a proceeding under Section 154 of the Code is very wide and touches on all aspects and all circumstances surrounding the case.

'Investigation' after registration of FIR under Section 154 of the Code and 'investigation' in the inquiry under Section 174 of the Code.

19. The investigation after registration of FIR under Section 154 of the Code is an investigation into an offence. In contrast, the investigation under Section 174 of the Code is an investigation on an “inquiry” into the apparent cause of death.

20. The heading of Section 174 of the Code reads thus: “Police to inquire and report on suicide, etc.” This is self-explanatory as to the scope of the provision. Sections 174 to 176 of

the Code only contemplate inquiry into the cause of death. Though the phrase 'investigation' is used in Section 174 of the Code, it is only an investigation in the inquiry. As stated above, the investigation contemplated in Section 174 of the Code, is limited in scope and is confined to the ascertainment of the apparent cause of death. It is only concerned with discovering whether, in a given case, the death was accidental, suicidal or homicidal or caused by an animal and in what manner or by what weapon or instrument the injuries on the body appear to have been inflicted. Only for this limited purpose are the persons acquainted with the facts examined and summoned under Section 175 of the Code. The question regarding the details as to how the deceased was assaulted or who inflicted injuries on him and under what circumstances somebody assaulted him is foreign to the scope of the proceedings under Section 174 of the Code. The Police in the course of the investigation as provided in Section 174 of the Code need not mention those details in the inquest report. It is this report which is forwarded to the Executive Magistrate to facilitate the Executive Magistrate concerned to hold an inquest

independently. These proceedings are in the nature of a fact-finding inquiry. The object of the inquiry is nothing more than to furnish materials on which action might be taken, and the report is only recommendary in nature. The report in no way determines the rights of the parties. This report is forwarded to the Police, which will form part of the materials collected during the investigation. The report of the Police after conducting inquiry or investigation, as contemplated in Section 174 of the Code does not have the character of a 'positive or negative' report nor the character of a 'closure report'. It is only the report containing the result of a fact-finding inquiry.

21. It is trite that the report of the inquest will in no way interfere with the power of the Police to investigate. The inquest report prepared by the Executive Magistrate will also in no way interfere with the freedom of the Police to proceed with the investigation.

22. The investigation of a cognizable offence begins when a Police Officer in charge of a Police Station has reason to suspect the commission of a cognizable offence. Whatever the conclusions in the inquest report provided under Section 174 of the Code, where

a reasonable suspicion of the commission of a cognizable offence exists, the SHO must immediately send a report of the circumstances creating the suspicion to the Magistrate having the power to take cognizance of such an offence on a police report. The investigation of the cognizable offence by the Police may result in either of the circumstances mentioned in Section 169 or 170 of the Code. If, upon investigation, it appears to the officer-in-charge of the Police Station that there is no sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such Officer shall release him. If there is sufficient evidence or reasonable grounds to justify the forwarding of the accused to a Magistrate, the SHO shall forward the accused to the competent Magistrate. After completing the investigation, the Police file a report under Section 173(2) of the Code. If the report alleges the commission of a crime by an accused, the report is commonly called "charge sheet" and if the report does not allege the commission of a crime a report commonly called "refer report" is submitted.

23. As stated above, an inquiry under Section 174 of the Code

is very limited, and the same cannot be equated to an investigation under Section 157 of the Code. The investigation on an inquiry under Section 174 of the Code differs from the investigation contemplated in Section 154 of the Code relating to commission of a cognizable offence. The practice followed in the State of Kerala is that when it is revealed that a cognizable offence is committed, the FIR registered under the caption 174 of the Code is requested to be transferred to the jurisdictional Magistrate incorporating the relevant penal provisions of law. The purpose of registration of FIR under Section 174 of the Code would be over on preparation of an inquest report and submission of the report of the apparent cause of death, describing the wounds as may be found on the body of the deceased, and stating in what manner or by what weapon or instrument, if any, such wounds appear to have been inflicted. The moment it is revealed that a cognizable offence is committed, the FIR registered under the caption 174 of the Code gets transformed to an FIR under Section 154 of the Code, and the scope of investigation thereafter would be under Section 157 of the Code.

24. Sri.John.S.Ralph, the learned Amicus Curiae, submitted

that when a report of inquiry into the cause of an unnatural death is submitted before the Executive Magistrate under Section 174 of the Code, the only course open to him is to accept it, whereas if the report is submitted before the Judicial Magistrate concerned he can accept, reject or direct the Police to continue with the investigation. Relying on **Manohari and Ors. v. The District Superintendent of Police and Ors.**, it is submitted that a guideline be issued to all concerned to follow the procedure of submitting the report before the Judicial Magistrate.

25. Sri.Renjith.B.Marar, the learned Amicus Curiae, submitted that sending a report after the conduct of inquest under Section 174 of the Code to the Judicial Magistrate concerned may not be a proper procedure as per law.

26. The learned Amici Curiae submitted that in all cases registered under Section 174 of the Code, if in the course of investigation, the Police find that no offence is made out, the report submitted before the Executive Magistrate ends in its closure. The defacto complainant or the relatives of the deceased are kept in the dark. No notice is issued to the defacto complainant or the

relatives of the deceased if a closure report is submitted, keeping them unaware of the proceedings. It is also submitted that in the present scheme of the Code, there is no specific provision that gives a right to the victim or complainant to protest the filing of a negative report before the Executive Magistrate. A right of hearing at that stage is also not prescribed by the Code. It is submitted that necessary guidelines in this regard would take care of the vacuum that is left behind by the provisions under Sections 174 to 176 of the Code.

27. Relying on **Manohari and Ors. v. The District Superintendent of Police and Ors.**, Sri.John.S.Ralph, the learned Amicus Curiae and the learned counsel for the petitioner, submitted that in all circumstances, after an inquiry or investigation as provided in Section 174 of the Code, the report shall be filed before the Judicial Magistrate having jurisdiction so that the parties concerned would be given the opportunity either to request for a further investigation or to file a protest complaint whereas if such a report is filed before the Executive Magistrate, he has no power to order further investigation.

28. Sri.John.S.Ralph, the learned Amicus Curiae, submitted that if the conclusions in **Manohari and Ors. v. The District Superintendent of Police and Ors.** are followed, it would take care of the vacuum in the proceedings under Section 174 of the Code.

29. The learned counsel for the petitioner and Sri.John.S.Ralph, the learned Amicus Curiae, heavily relied on **Manohari and Ors. v. The District Superintendent of Police and Ors.** I have gone through the findings and conclusions in the said decision. I believe that the Madras High Court in **Manohari and Ors. v. The District Superintendent of Police and Ors.** has not held that a report after the inquiry under Section 174 of the Code shall be submitted before the Judicial Magistrate.

30. The conclusions in **Manohari and Ors. v. The District Superintendent of Police and Ors.** are extracted below:-

“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 register 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 neighbourhood.

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 v. Irshad Ali, reported in [MANU/SC/1101/2012 : 2013 (5) SCC 762]."

31. After referring to clause (i) as extracted above, it is submitted that the Madras High Court concluded that in all cases of inquiry and investigation conducted under Section 174 of the Code, the report shall be filed before the jurisdictional Magistrate.

32. The expressions "investigation" and "final report" referred to in clauses (g), (h) and (i) extracted above do not refer to "investigation" and "report" referred to in Section 174 of the Code. In the discussions above, I have made it clear that the phrase 'investigation' used in Section 174 of the Code is the 'investigation in the inquiry' and also there is no 'final report' in the proceeding under Section 174 of the Code.

33. The expression "investigation" used in the extracted clauses refers to the investigation by the Police after the registration of FIR within the meaning of Section 154 of the Code.

The final report referred to therein is the 'police report' as defined in Section 2(r) of the Code. The final report referred to therein is undoubtedly the 'police report' as defined in the Code submitted under Section 173(2) of the Code. Such a report can only be submitted before the Judicial Magistrate concerned.

34. It appears that the Madras High Court might have come across instances where the Police, on the conclusion of the investigation, filed final report under Section 173(2) of the Code before the Executive Magistrates.

35. We have never come across a situation where the Police submitted a report under 173(2) of the Code before the Executive Magistrate. Invariably, in all cases, the Police submit a report under Section 173(2) of the Code, whether it is a positive report or closure report before the Judicial Magistrate empowered to take cognizance of the offences. This is the mandate of Section 173(2) of the Code. In the case of closure report, the Court serves notice to the victim before accepting the report.

36. The report under Section 174(2) of the Code after the inquiry regarding the apparent cause of death, distinct from the

report under Section 173(2) of the Code, shall be filed before the Executive Magistrate. As stated above, such a report does not have the character 'positive' or 'negative'.

37. The procedure of submitting report under Section 174(2) of the Code before the Executive Magistrate perfectly complies with the statutory provisions. The Investigating Officer need not file report after conducting inquiry under Section 174 of the Code before the Judicial Magistrate concerned in any circumstances. If a cognizable offence is revealed, the Investigating Officer has to proceed to investigate under Section 157 of the Code in which case the report under Section 174(2) of the Code will also form part of the material to be collected by the Investigating Officer. The result of the above discussion is that I find no reason to issue any directions in line with the conclusions in **Manohari and Ors. v. The District Superintendent of Police and Ors.**

38. Now, I turn to consider the contention raised by Sri.John.S.Ralph, the learned Amicus Curiae, that no FIR can be registered under Section 174 of the Code as no offence is suspected. The FIR registered under Section 174 of the Code cannot

be construed as an FIR within the meaning of Section 154 of the Code. The practice now followed is that in the case of an unnatural death, FIR is registered under Section 174 of the Code. If the commission of a cognizable offence is revealed, the FIR is requested to be transferred to the jurisdictional Magistrate incorporating the relevant penal provisions. Since the FIR registered under Section 174 of the Code is not an FIR within the meaning of Section 154 of the Code, registration of a further FIR based on information regarding a cognizable offence is legally maintainable {See Premkumar v. State of Kerala [(2008) 17 SCC 264] and Muhammed Shiraz v. State of Kerala (2023 (3) KLT 384)}.

39. The afore discussions lead me to the following conclusions:

- (1) The provisions of Sections 174 to 176 of the Code form a complete Code in themselves.
- (2) Section 174 of the Code contemplates an inquiry, which is limited as the purpose of the inquiry is to find out the apparent cause of death.
- (3) The FIR registered under Section 174 of the Code

cannot be construed as an FIR within the meaning of the provisions of Section 154 of the Code. The purpose of registration of the FIR under Section 174 of the Code is over with the preparation of the report containing the apparent cause of death as provided in Section 174(2) of the Code.

- (4) The phrase “investigation” used in Section 174 of the Code is only an “investigation in the inquiry”. This investigation's scope is limited to finding out the apparent cause of death.
- (5) The report under Section 174(2) of the Code is not a 'final report' under the Code. Such a report is not treated as “positive or negative”.
- (6) The report of inquest under Section 174(2) of the Code and the inquest report prepared by the Executive Magistrate shall not in anyway interfere with the power and freedom of the Police to investigate the commission of a cognizable offence.

- (7) The report under Section 174 of the Code does not decide the rights and liabilities of the parties involved.
- (8) The investigation after registration of the FIR within the meaning of the provisions of Section 154 of the Code is an investigation into the commission of a cognizable offence which ends in the submission of the report under Section 173(2) of the Code. This investigation cannot be equated with the investigation under Section 174 of the Code.
- (9) The investigation after registration of FIR under Section 154 of the Code may result in either of the circumstances described in Section 169 or 170 of the Code by way of filing a report under Section 173(2) of the Code before the jurisdictional Magistrate.
- (10) Registration of an FIR within the meaning of the provisions of Section 154 of the Code after the

registration of the FIR under Section 174 of the Code is legal and sustainable as the latter cannot be construed as an FIR in the eye of law.

40. The concern raised from the Bar is that in cases of unnatural death, the result of inquiry or investigation under Section 174 of the Code is not being disclosed to the near relatives of the deceased. It is submitted from the Bar that when a closure report after the inquiry under Section 174 of the Code is submitted before the Executive Magistrate, the near relatives of the victim or the aggrieved are kept in the dark. I have mentioned above that the report, as provided under Section 174 of the Code, is only a fact-finding inquiry report which has nothing to do with the power of the Police Officer to conduct an investigation when a cognizable offence is made out. The report prepared under Section 174 of the Code generally need not be referred to as "closure" report. It only contains the apparent cause of death. Whatever the conclusions in the report, the aggrieved is entitled to furnish information, if any, regarding the commission of a cognizable offence before the Police, and when such an information is received, the Police are bound to

register FIR within the meaning of Section 154 of the Code and conduct an investigation and file a report under Section 173(2) of the Code before the jurisdictional Magistrate.

41. It is submitted from the Bar that there are circumstances in which even when information relating to cognizable offences is revealed to the Police they do not register FIR as provided under Section 154 of the Code. The answer to this concern is letting the law take its course. Time and again, the Supreme Court and this Court held that the Station House Officer is bound to register an FIR where information is received of the commission of cognizable offence.

42. Another concern of the Bar is that the conclusions of the proceedings under Section 174 of the Code are not revealed to the aggrieved persons.

43. It is trite that the victim cannot be treated as an alien or total stranger to the criminal proceedings. It must be fair, transparent and judicious, as it is the minimum requirement of the rule of law. The victim has the right to be informed of the conclusions of the inquiry.

44. This Court deems it fit that a direction be given to the Executive Magistrate concerned to inform the relatives of the deceased of the results of inquiry under Section 174 of the Code in cases where the matter culminates in the non-registration of the FIR under Section 154 of the Code on the ground that no cognizable offence has been revealed.

45. Sri.Renjith.B.Marar, the learned Amicus Curiae, further suggested that a direction be issued to the Executive Magistrate that in the course of inquiry under Sections 174 to 176 of the Code in case the information regarding the commission of a cognizable offence is revealed, he shall forward such information to the jurisdictional Magistrate concerned invoking Section 190(c) of the Code. Section 190 of the Code reads thus:

“Section 190 - Cognizance of offences by Magistrates.-

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence-

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offence as are within his competence to

inquire into or try.”

46. The expression “information received from any person other than a Police officer” refers to such information that does not constitute a complaint or a police report. This clause applies to the cases where complaint or report as provided in clauses (a) and (b) does not reach the jurisdictional Magistrate. There may be cases where the Police officer concerned refrains from registering FIR as provided under Section 154 of the Code even after receipt of information relating to the commission of cognizable offences during the inquiry as per the provisions of Sections 174 to 176 of the Code. There may also be cases where the aggrieved are unwilling or unable to prosecute the matter. There may be cases of unnatural death where the deceased may not have anybody in the category of 'relative' or 'aggrieved'. Section 190(c) of the Code is a provision of law which requires public officials like the Executive Magistrates to take care that justice may be vindicated notwithstanding the Police official responsible and the person as aggrieved are unwilling and unable to prosecute. Sri.Renjith.B.Marar, the learned Amicus Curiae, further suggested

that the Executive Magistrates must be sensitized to discharge their responsibilities successfully. In my view, the suggestions made by Sri.Renjith.B.Marar, the learned Amicus Curiae, may fill up the vacuum, if any, in the proceedings under the provisions of Sections 174 to 176 of the Code.

47. Therefore, the following directions are issued:

- (i) In cases registered under Section 174 of the Code culminating in the non-registration of FIR under Section 154 of the Code on the ground that no cognizable offence is revealed, the Executive Magistrate shall inform the same to the relatives of the deceased.
- (ii) During inquiry under Sections 174 to 176 of the Code, in cases where the matter culminates in non-registration of the FIR under Section 154 of the Code, if the Executive Magistrate receives information of the commission of a cognizable offence, he shall immediately inform the same to the Judicial Magistrate concerned as provided in

Section 190(c) of the Code.

- (iii) The Judicial Magistrate concerned shall, upon receipt of the information, proceed in accordance with law.

48. I would wish to consider the suggestion of Sri.Renjith.B.Marar, the learned Amicus curie, to direct the competent authorities to impart periodic training to the Executive Magistrates in the relevant subjects. The State Government will ensure that the Executive Magistrates dealing with the inquiry under Sections 174 to 176 of the Code are sensitized to the relevant subjects.

The present case

49. Sri.John.S.Ralph, the learned Amicus Curiae, perused the case diary and submitted the facts revealed in the investigation as follows:

- (i) The marriage was solemnised on 30.04.2017.
- (ii) The wife committed suicide by hanging on the morning of 25.11.2021 in her bedroom, where her three-year-old minor son was also there.
- (iii) FIR was lodged by the father of the deceased, Mr.Krishnan, aged 68 years, regarding the death of his daughter Geethu, aged 26 years, by hanging at 8.45 hrs at her husband's house on 25.11.2021.
- (iv) Crime 1304/2021 of Tirur Police Station was

registered under Section 174 of the Code.

- (v) During the inquest, none of the witnesses stated about any serious issues between the parties.
- (vi) During the investigation, on 27.11.2021, WhatsApp messages between the parties were retrieved. WhatsApp calls were also there.
 - a. The chats till midnight of 24.11.21 were friendly.
 - b. By midnight of 24.11.2021, chats became hostile.
 - c. By 12.29 a.m, the deceased sent a message "നമ്മളെ റവിലെ അക്സക്ട് ഇൻവെസ്റ്റിഗേഷൻ ഓഫീസർ എല്ലാർക്കും കേൾക്കൂ"
 - d. for which he replied "നിനക്ക് എന്തു ചെയ്യാനാണ് നിന്നെ വീട്ടിൽ ആരെ ഇത് എന്ന് വിടാ".
 - e. By 1.30 a.m, the deceased expressed her intention to commit suicide."

50. Sri.John.S.Ralph, the learned Amicus Curiae, submitted that the facts revealed warrant registration of an FIR under Section 154 of the Code in the present case.

51. Sri.Renjith.B.Marar, the learned Amicus Curiae, submitted that the materials placed before this Court would prima facie reveal the ingredients of offence under Section 304-B or 306 of IPC. Sri.Renjith.B.Marar, the learned Amicus Curiae, further submitted that as there was already dereliction of duty on the part of the SHO concerned in not registering the crime and conducting the investigation, the ends of justice requires the investigation be transferred to the Crime Branch.

52. This is a case where a married woman committed suicide within seven years of her marriage. The petitioner, her father, pleaded that he had given gold ornaments as dowry, and there were further demands on the part of the husband of the deceased. Examination of the witnesses also revealed that there had been harassment of the deceased person before her death on account of dowry. This is very much enough to attract prima facie the ingredients of the offence under Section 304-B or 306 of IPC to register the FIR. WhatsApp chats between the deceased and her husband are also relevant, and hence the Police ought to have registered FIR and investigated. The learned Public Prosecutor submitted that the Police are about to submit a report stating that no cognizable offence has been revealed.

53. Therefore, the respondents are directed to proceed in accordance with law. The investigation into the matter shall be entrusted to a special team in the Crime Branch department.

54. The Writ Petition (Criminal) is allowed as above.

55. Before parting with this case, this Court places on record its appreciation to the learned Counsel Sri.John.S.Ralph and

Sri.Renjith.B.Marar, for their valuable assistance as Amici Curiae.

56. The Registry shall forward a copy of this judgment to the Chief Secretary, Government of Kerala for necessary action.

Post the matter on 11.08.2023.

Sd/-
K.BABU,
JUDGE

KAS

