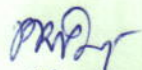


**“Interpretation of Section 176(1)(A) of Cr.P.C.”**

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It appears that on 12.01.2012, the order dated 04.09.2020 passed by the Hon'ble National Human Rights Commission with regard to **“Interpretation of Section 176(1)(A) of Cr.P.C.** has already been uploaded in the website of NHRC. Thus at present there is no impediment to upload the said order in our website also as per direction of our Hon'ble Chairperson.

Hence as per direction of the Hon'ble Chairperson, WBHRC, the full text of the order dated 04.09.2020 passed by the Hon'ble National Human Rights Commission in Case no. 41663/24/08-09-JCD is being uploaded today in the website of WBHRC as an attachment herewith.

  
01.02.2021  
Registrar

NATIONAL HUMAN RIGHTS COMMISSION  
MANAV ADHIKAR BHAWAN, INA, NEW DELHI  
(Full Commission)

Interpretation of Section 176(1)(A) of Cr.P.C.

Date 4-9-2020 :

CORAM

Justice Shri H.L.Dattu, Chairperson  
Justice Shri P.C.Pant, Member  
Mrs. Jyotika Kalra, Member  
Dr.D.M.Mulay, Member

PROCEEDINGS

In case No.41663/24/26/08-09-JCD, the Full Commission while considering an interpretation of Section 176(1)(A) Cr.P.C. on 5.4.2010 has been pleased to observe, *inter-alia*, as follows:-

*"The interpretation of law has to be reasonable. A Judicial Magistrate should be called upon to hold an enquiry into the cases where serious questions of law are likely to arise. It looks incongruous if serious cases like those mentioned in clauses (i) or (ii) of sub-section [3] of Section 174 are to be enquired into by an Executive Magistrate but simple cases of natural death in custody are to be enquired into by a Judicial Magistrate or a Metropolitan Magistrate.*

*In our opinion, the correct position of law is that an enquiry by Judicial Magistrate or Metropolitan Magistrate is mandatory only in those cases of custodial deaths where there is reasonable suspicion for foul play or well-founded allegation of commission of an offence. All other cases of custodial deaths where the death is natural or caused by disease may be inquired into by an Executive Magistrate.*

*This clarification be circulated to all the States and Union Territories.”*

Section 176 Cr.P.C. was amended by Amendment Act of 25 of 2005 and it came into force with effect from 23.6.2006, whereby, sub-section 1(A) has been inserted. It says as follows:-

*“[1A] Where, -*

- (a) any person dies or disappears, or*
- (b) rape is alleged to have been committed on any woman, while such person or woman is in the custody of the police or in any other custody authorized 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."*

According to Sub-Section 1(A) of Section 176 Cr.P.C., in any death in the custody of the police or in any other custody authorized by the court, an inquiry shall be held by the Judicial Magistrate or the Metropolitan Magistrate. Inquiry by Judicial Magistrate is also made mandatory where rape is alleged to have been committed on any woman whether under police custody or any other custody authorized by the court.

Andhra Pradesh High Court in the case of Mohamad Nazma Begum .vs. Government of Andhra Pradesh while referring the guidelines of the NHRC dated 5.4.2010, has been pleased to observe, as follows:-

*"A plain reading of section 176 (1A) of Cr.P.C. itself makes it clear that the death or disappearance of any person when such person is in the custody of the police or in any lawful custody, it shall be enquired by a Judicial Magistrate or the Metropolitan Magistrate, within whose local jurisdiction the offence has been committed. Since the said provision came into force with effect*

*from 23.6.2006, prior to the occurrence of the present event i.e. on 16.7.2008, it is imperative that the investigation be conducted by a Judicial Magistrate since the death occurred while the deceased was in the Police Station.”*

Both the Rajasthan High Court and Gujarat High Court have taken similar view in respect of Section 176 [1A] of Cr.P.C.

Having found the anomaly in the guidelines issued by the Commission in case No.41663/24/26/08-09-JCD dated 5.4.2010, qua judicial pronouncement by the various High Courts, revisit of the guidelines of the Commission was warranted with a view to make a harmonious interpretation of provision of Section 176 (1A) of Cr.P.C..

Vide proceedings dated 29.7.2019, the matter was referred to the PRP & P Division of the Commission for vetting the note of Law Division dated 26.7.2019 pertaining to the interpretation of Section 176 (1A) of Cr.P.C. The Research Division has given its findings, as under:-

“All cases of custodial deaths, disappearances of persons from the custody, crime of rape in the custody must invariably be investigated by the Judicial Magistrate/Metropolitan Magistrate as the

case may be irrespective of whether cases are suspicious of foul play or not. If this interpretation is adopted and implemented in its correct spirit keeping in mind the principle of equality, this would ensure as a deterrent and also prevail a sense of fear in the minds of those who exercise their powers exceedingly."

The views of the Law Commission's 152<sup>nd</sup> report is relevant, which is stated below:-

*The Law Commission picked up the issue of 'Custodial Crimes' for its 152<sup>nd</sup> report published in 1994 and stated that, "Despite constitutional and statutory provisions safeguarding the liberty and the life of an individual, the growing incidence of custodial torture and death have become a disturbing factor in the society and the gory tales of de-humanizing torture, assault and death in the custody of police being reported almost in every morning newspaper." The Law Commission had observed that Executive Magistrates or the District Collectors only looked at these investigations as formalities and "the findings did not inspire confidence.*

Based on the report of the Law Commission, the Parliamentary Standing Committee also submitted its 28<sup>th</sup> Report seeking amendment to the existing law regarding inquiry by Magistrate into cases of death by observing that the executive magisterial enquiry to be highly inadequate and, therefore, recommended mandatory judicial enquiries after amending section 176 (1A) Cr.P.C.

Therefore, the opinion of the Research Division is that the special provision of inquiry inserted in Section 176 by way of Amendment Act of 25 of 2005 in a situation where any person dies or disappears or rape is alleged to have been committed on any woman while in custody cannot be diluted by putting a rider that in suspicious circumstances only the inquiry to be conducted by Judicial Magistrate, otherwise the Executive Magistrate is empowered to enquire all kinds of custodial deaths.

Section 176 Cr.P.C. envisages that the Magistrate empowers to hold inquest in respect of a death other than natural shall be 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 while he does so, he shall have all powers in conducting such inquiry where element of offence can also be attributed.

Section 176 (1A) of Cr.P.C. has been inserted by way of amendment with a view to deal with the cases of special circumstances which are mentioned therein when a person dies or disappears or rape is alleged to have been committed on any woman while such person is in the custody of police or any other custody authorized by the court.

Inquires shall also be held by Judicial Magistrate or the Metropolitan Magistrate in addition to the inquiries or investigations held by the police within the local jurisdiction where the offence has been committed. So the inquiry is the condition precedent to determine an offence and unless the inquiry is conducted by Judicial Magistrate or the Metropolitan Magistrate in cases where any person dies or disappears or rape is alleged to have been committed on any woman, while such person or woman in police or judicial custody, there seems to be no scope to determine that such incident of custodial death, disappearance or rape as the case may be, is an offence. Therefore, to give more sanctity to such inquiry, the power has been given to the Judicial Magistrate/Metropolitan Magistrate by inserting new amended provision in Section 176 Cr.P.C.

Alternatively, it can be viewed that the contemplation of legislature is that in three circumstances viz. death, disappearance or rape alleged to have been committed on any woman within the police or judicial custody, there must be an



inquiry to be conducted by the Judicial Magistrate or Metropolitan Magistrate, in whose jurisdiction, the incident has taken place. The purport and meaning of 'offence' as inserted in 176 (1A) Cr.P.C., presumably, the death, disappearance or rape alleged to have been committed on any woman, while the person is in police or judicial custody, is that, the Judicial Magistrate or the Metropolitan Magistrate by holding an enquiry must come to a conclusion whether the death in custody, is due to torture, ill-treatment or negligence by the concerned public servant culminating to an offence or a natural death. Therefore, before holding an inquiry by the Judicial Magistrate or the Metropolitan Magistrate, nothing can be attributed as to the cause of death, disappearance or rape alleged to have been committed on any woman, qua offence. Therefore, the interpretation, as suggested in proceedings dated 5.4.2010, has given a restrictive meaning, where only in suspicious circumstances or in case, any foul play is found out, the inquiry to be conducted by the Judicial Magistrate or the Metropolitan Magistrate, in whose jurisdiction, the death, disappearance or alleged rape have been committed on any woman while the person is in custody and, therefore, it is not in conformity with the scheme of the amendment made in Section 176 Cr.P.C. Thus to read down the provision of Section 176 (1A) Cr.P.C. is outside the scope of the scheme of the Section 176 (1A) Cr.P.C.

There is apparent ambiguity in the interpretation of Section 176 (1A) Cr.P.C., circular dated 5.4.2010 issued by the Commission may be withdrawn since in every case falling within the section 176 (1A) shall require a Judicial Magistrate or Metropolitan Magistrate to mandatorily hold inquiry.

Accordingly, the circular of the Commission issued on 5.4.2010 in case No. 41663/24/26/08-09-JCD is revoked and withdrawn in reference to the amended provision of the Section 176 (1A) Cr.P.C., which was inserted by an Act of Parliament, 25 of 2005. A notification to that effect may be issued to all the State Governments and Union Territories.