

KARNATAKA STATE HUMAN RIGHTS COMMISSION

1-4th Floor, M.S Building, 5th Stage, Bengaluru-560001

H.R.C. No: 4911/10/31/2018 c/w
4912/10/31/2018

Date:02/06/2022

PRESENT

Justice D.H. Waghela
Chairperson

Shri R K Dutta
Member

Informant: Deputy Commissioner of Police,
East Division,
Bengaluru.

V.

Respondent: Additional Chief Secretary,
Department of Home,
Govt. of Karnataka.

Opinion, Report and Recommendations

- 1) This proceeding has been initiated upon Fax-message of Deputy Commissioner of Police, east Division, Bengaluru. It was reported that on 02.12.2018 at 12.00 p.m. P. Krishnamurthy s/o Perumal, aged 53 years, resident of Ex-Servicemen Colony, Banasawadi was brought to the Ramamurthy nagara police station, Bengaluru on suspicion in connection to Cr. No. 524/18 under Section 302 and 392 of

IPC alongwith his brother Suresh and father Perumal. The murder was of Smt. Megaladevi W/o P. Krishnamurthy on 20.11.2018. P. Krishnamurthy had confessed to have committed murder of his wife. P. Krishnamurthy agreed to voluntarily recover the weapon used and the jewellery. So, he was taken to Kalkere by Mr. Sanjeevarayappa, Police Inspector, Ramamurthynagara in presence of panchas. The accused suddenly fell down and complained of chest pain at around 10.00 p.m.. He was immediately rushed to Koshy's Hospital, Ramamurthynagara for medical help. The doctor declared him dead at 10.45 p.m.. The Police Inspector of Ramamurthynagara has registered UDR No. 74/18 under Section 174 of Cr.P.C. The case was transferred to the ACP, Pulakeshinagara for investigation.

- 2)** Upon perusal of the record and in view of the recent letter dated 11.02.2022 of D.G.P, C.I.D, and in view of absence of video recording of post mortem, the investigation by Karnataka State Human Rights Commission was required and the investigation wing was called upon to investigate further, so as to bring out the facts related to death of the victim in Crime no. 524/2018 and custodial death of the victim. Accordingly, a comprehensive report dated 16.05.2022 is

submitted with statements, records and other material running into 147 pages. The elaborate report is leading to the conclusion that death of P. Krishnamurthy due to “PULMONARY EDEMA CONSEQUENT upon liver and kidney disease cannot be ruled out” even as few minor external injuries were noted as non-fatal. In the peculiar facts and circumstances of the case, further enquiry is not called for.

- 3)** However, it is observed and noted that the videography of post-mortem of deceased was not done and maintained and it was sought to be explained away by the plea that it was the responsibility of the Doctor who conducted the post-mortem. Since, the videography was not done by the doctor while conducting the post-mortem and C.D of videography could not be provided to CID, it amounted to clear violation of guidelines issued by National Human Rights Commission.
- 4)** By letter dated 27.03.1997 the National Human Rights Commission had already recommended that “With a view to preventing such frauds, the Commission recommended to all the States to video-film the post-mortem examination and send the cassettes to the Commission.” Earlier on 10.08.1995 the National Human Rights Commission had expressed its view in the following terms:

“The Commission is of a prima-facie view that the local doctor succumbs to police pressure which leads to distortion of the facts. The Commission would like that all post-mortem examinations done in respect of deaths in police custody and in jails should be video-filmed and cassettes be sent to the Commission along with the post-mortem report. The Commission is alive to the fact that the process of video-filming will involve extra cost but you would agree that human life is more valuable than the cost of videofilming and such occasions should be very limited.

“We would be happy if you would be good enough to immediately sensitise the higher officials in your state police to introduce video-filming of post mortem examination with effect from 1st October, 1995.”

- 5)** By virtue of judgment of the Apex Court in “People’s Union for Civil Liberties and Another V. State of Maharashtra and Others(2014) 10 SCC 635, it is clearly directed as under:

“31.3. An independent investigation into the incident/encounter shall be conducted by the CID or police team of another police station under the

supervision of a senior officer (at least a level above the head of the police party engaged in the encounter). The team conducting inquiry/investigation shall, at a minimum, seek:

“(a) To identify the victim; colour photographs of the victim should be taken;

“(b) To recover and preserve evidentiary material, including bloodstained earth, hair, fibres and threads, etc. related to the death;

“(c) To identify scene witnesses with complete names, addresses and telephone numbers and obtain their statements (including the statements of police personnel involved) concerning the death;

“(d) To determine the cause, manner, location (including preparation of rough sketch of topography of the scene and, if possible, photo/video of the scene and any physical evidence) and time of death as well as any pattern or practice that may have brought about the death;

“(e) It must be ensured that intact fingerprints of deceased are sent for chemical analysis. Any other fingerprints should be located, developed, lifted and sent for chemical analysis;

*“(f) Post-mortem must be conducted by two doctors in the district hospital, one of them, as far as possible, should be incharge/head of the district hospital. **Post-mortem shall be videographed and preserved;***

“(g) Any evidence of weapons, such as guns, projectiles, bullets and cartridge cases, should be taken and preserved. Wherever applicable, tests for gunshot residue and trace metal detection should be performed.

“(h) The cause of death should be found out, whether it was natural death, accidental death, suicide or homicide.”

- 6)** It is clear from the above guidelines and the order of the Apex Court, that videography of the post-mortem and preservation of the videograph are absolutely essential and it is the inescapable duty of the investigating agencies to ensure that the post-mortem in such cases is videographed and the record is preserved. Therefore, in the facts of the present case plea of the police that it was responsibility of the Doctor who conducted the post-mortem to ensure videography of the post-mortem and preservation thereof, cannot be accepted. Instead, it amounts to serious lapse, deliberate or otherwise

on the part of the police officers investigating the case. Although, such cases are exceptional, they need to be checked which exceptional severity and the police officers concerned need to be disciplined by appropriate disciplinary action in accordance with law as also the applicable service rules.. The lapse in this case also amounts to violation of the guidelines of National Human Rights Commission and may even amount to contempt of the Hon'ble Supreme Court.

- 7)** It is therefore, recommended that, the State Government should take appropriate disciplinary action in accordance with law against the police officials concerned and issue necessary standing instructions by a circular to all the police officers to ensure videography of the post-mortem and photographs by the officers concerned and preservation thereof in cases of custodial death or death in an encounter.

In the peculiar facts of this case no order to award of compensation is made.

- 8)** It may be appropriate to point out at the end that under the provisions of Sec.18(e) of The Protection of Human Rights Act, 1993, the State Government or the authority concerned is duty bound to forward within a month, its comments on

this report and also report the action taken or proposed to be taken. It is hereby brought to kind notice of the authorities concerned that, under the provisions of Regulation 22 of the Karnataka State Human Rights Commission (Procedure) Regulations 2020, if any application seeking modification or review of order or proceeding passed by this Commission is received, it may be considered by the Commission for appropriate order.

- 9)** A copy of this Opinion, Report and Recommendations shall be sent to the informant and respondent forthwith.

Sd/-
(Justice D. H. Waghela)
Chairperson

Sd/-
(Shri R. K. Dutta)
Member

PSD