

**ABC 2020 (I) 141 HP**  
**ACQUITTAL & BAIL CASES**  
**HIGH COURT OF HIMACHAL PRADESH**

(L. Narayana Swamy & Jyotsna Rewal Dua, JJ.)

CWP No 2908 of 2017

Decided on 21 December, 2019

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**S. ALEXANDER XAVIER**

*- Petitioner(s).*

*Versus*

**STATE OF H.P. & ORS.**

*- Respondent(s).*

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**Law Covered:-** (A) *Constitution of India – Article 226 – Code of Criminal Procedure, 1973 – Sections 156 & 174 – Indian Penal Code, 1860 – Section 304A – Death by negligence – Petition for reinvestigation & lodging of FIR – Postmortem report – cause of death – is acute coronary insufficiency due to narrowing of coronary vessels & due to Atherosclerosis – The inquiry by a committee of ONGC did not implicate respondents – regular inquiry conducted by retired D.I.G. (C.B.I.) did not hold respondents No. 4 & 5 guilty – Inquest u/s 174 Cr. P. C. filed by police – Post Mortem Report – indicates a specific cause of death – The petitioner had not taken recourse to provisions of Sec. 156 Cr.P.C. – but directly invoked the extra-ordinary jurisdiction of the High Court – Held, where facts are highly disputed – it is not in the domain of the Writ Court in exercise of jurisdiction u/Art. 226 to direct re-investigation & lodging of FIR – However, it is open to the petitioner to avail appropriate remedy in accordance with law before the Court of competent jurisdiction. (Para 4)*

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(B) *Medical Jurisprudence – Atherosclerosis – meaning & consequences of – A disease in which, plaque builds up inside the arteries over a period of time – plaque is a sticky substance made up of fat, cholesterol, calcium & other substances found in the blood – over the time, plaque hardens and narrows the arteries which in turn limits the flow of oxygen-rich blood to the body – atherosclerosis can lead to serious problems, including Coronary artery disease in which, the arteries supplying blood to the heart can get blocked – any person could suffer angina or a heart attack. (Para 4)*

(C) *Code of Criminal Procedure, 1973 – Sections 156 – Scope – the Section provides for filing of complaint seeking registration of FIR – which thereafter is to be processed in accordance with law. (Para 4)*

(D) Code of Criminal Procedure, 1973 – Sections 154 vis-à-vis 157 – Power under – the code gives power to the police to close a matter both before & after investigation – A Police Officer can foreclose an FIR before an investigation u/s 157 – if it appears to him that there is no sufficient ground to investigate the same. (Para 4) a

(E) Code of Criminal Procedure, 1973 – Sections 157 – Interpretation of – The Section itself states that a police officer can start investigation when he has 'reason to suspect the commission of offence.' (Para 4) b

(F) Code of Criminal Procedure, 1973 – Sections 154 vis-à-vis 157 – Launching an investigation – requirement for – standard of – Held, the requirements of launching an investigation u/s 157 are higher than the requirement of Section 154. (Para 4) c

(G) Code of Criminal Procedure, 1973 – Sections 157 & 173 – Power of police officer – The police officer can also, in a given case, investigate the matter & then file a final report u/s 173 – seeking closure of the matter. (Para 4) d

(H) Jurisprudence – Negligence – in Civil law vis-à-vis in Criminal law – Held, jurisprudential concept of negligence differs in civil & criminal law – What may be negligence in civil law may not be necessary be negligence in criminal law. (Para 4) e

**Facts:-** Alleging that the death of his son was due to negligence of respondents No. 4 & 5, petitioner filed the present petition seeking direction to the State to investigate the matter in light of Section 304-A, IPC and to register the FIR against them. The deceased was a trainee of ONGC who went for mountaineering alongwith other trainees. It was alleged that at night, the trainees were made to stay in tents in open valley; on account of rain, the tents were drenched exposing the trainees to extreme cold, the temperature had dropped down; all this gave sleepless night to the trainees including the son of the petitioner. The trainees, in the morning, reached the institute hostel, where the son of the petitioner fell sick and started to cough vigorously. Unable to move and complaining breathlessness, he was taken by his batch mates to the hospital where the doctors declared him brought dead. The petitioner filed a complaint to the NHRC. However, relying on the reports of the State Police and ONGC Ltd the Commission observed that the death occurred due to heart problem and the case was closed. Considering this it was observed by the hon'ble Court, when the facts are disputed it is not in the domain of the Writ Court in exercise of jurisdiction u/Art. 226 of the Constitution to direct re-investigation of the matter and then to register the FIR. f g h

**Law of relief:-** When facts are disputed it is not in the domain of the Writ Court in exercise of jurisdiction u/Art. 226 to direct re-investigation & then to register the FIR.

**Held:-** 4 (iii). In the postmortem report, the cause of death is acute coronary insufficiency due to narrowing of coronary vessels and due to Atherosclerosis, which according to the reply filed by respondent No.3 is a disease in which, plaque builds up inside the arteries over a period of time; plaque is a sticky substance made up of fat, cholesterol, calcium and other substances found in the blood; over the time, plaque hardens and narrows the arteries which in turn limits the flow of oxygen-rich blood to the body; atherosclerosis can lead to serious problems, including Coronary artery disease in which, the arteries supplying blood to the heart can get blocked and any person could suffer angina or a heart attack as in the present case.

4 (iv). The inquiry by a committee of five senior level officers of ONGC regarding incident of unfortunate death of the son of the petitioner did not implicate respondents No. 4 & 5 with any dereliction of duties.

4 (v). The regular inquiry conducted by retired D.I.G. (C.B.I.) did not hold respondents No. 4 & 5 guilty of the charges levelled against them. The inquiry report has been accepted by the competent authority and respondents No. 4 & 5 have been exonerated from the charges.

4(vi). A perusal of the so called final police report dated 19.09.2015 (Annexure P-4) submitted by Station House Officer, Manali to the Sub Divisional Magistrate, Manali, District Kullu makes it evident that this report was submitted only under Section 174 Cr. P. C. The report, thus, was an inquest under Section 174 Cr. P. C.

4 (vii). Section 156 Cr. P. C provides for filing of complaint seeking registration of FIR which thereafter is to be processed in accordance with law.

4 (viii). It was observed in paragraph 111 of the above judgment that the code gives power to the police to close a matter both before and after investigation. A Police Officer can foreclose an FIR before an investigation under Section 157 of the code, if it appears to him that there is no sufficient ground to investigate the same. The Section itself states that a police officer can start investigation when he has '*reason to suspect the commission of offence.*' Therefore, the requirements of

launching an investigation under Section 157 of the Code are higher than the requirement of Section 154 of the Code. The police officer can also, in a given case, investigate the matter and then file a final report under Section 173 of the Code seeking closure of the matter. a

In the instant case, it is not the case of the petitioner that he had taken recourse to provisions of Section 156 Cr.P.C. Petitioner has directly invoked the extra-ordinary jurisdiction of this Court, where facts are highly disputed. In (2005) 6 SCC 1, titled *Jacob Mathew vs. State of Punjab*, it has been held that jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not be necessary be negligence in criminal law. When facts are disputed, it is not in the domain of the Writ Court in exercise of jurisdiction under Article 226 of the Constitution of India to direct the respondents to re-investigate the matter and then to register the FIR against respondents No. 4 & 5, more so, when in the facts of instant case Post Mortem Report indicates a specific cause of death, i.e. 'acute coronary insufficiency due to narrowing of coronary vessels and due to Atherosclerosis; complaint filed by the petitioner has been closed by National Human Rights Commission; Special Inquiry as well as Regular Inquiry conducted by ONGC Ltd. have not found respondents No. 4 & 5 guilty of charges levelled against them; respondents No. 4 & 5 have been exonerated from the charges. However, in the light of the law discussed above, it is open to the petitioner to avail appropriate remedy in accordance with law before the Court of competent jurisdiction. With these observations, the writ petition is disposed of accordingly. Pending application(s), if any, also stand disposed of. (Para-4) b  
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**Counsel:-** For Petitioner(s): Mr. Lovneesh Kanwar, Adv.

For Respondent(s): Mr. Ashok Sharma, Mr. Ranjan Sharma, Ms. Ritta Goswami, Mr. Adarsh Sharma, Mr. Ashwani Sharma, Mr. Nand Lal Thakur, Mr. Anand Sharma, Mr. Karan Sharma, Adva. g

**Cases Referred:-**

1. *Lalita Kumari vs. Government of Uttar Pradesh & Ors.*, (2014) 2 SCC 1, (Para-4)
2. *Priyanka Srivastava & Anr. vs. State of U.P. & Ors.*, (2015) 6 SCC 287, (Para-4) h
3. *Jacob Mathew vs. State of Punjab*, (2005) 6 SCC 1, (Para-4)

**JUDGMENT**

**JYOTSNA REWAL DUA, J.:** - 1. Alleging that the death of his son on 25.05.2015 at Manali, District Kullu, H.P., was due to negligence of

January 2020

a respondents No. 4 & 5 (ONGC Officials), petitioner has instituted the present petition seeking direction to the respondents/State officials to investigate the matter in light of Section 304-A of Indian Penal Code and to register the FIR against respondents No. 4 & 5.

**2. Facts may be noticed hereinafter:-**

**b Death of son of the petitioner**

2(i) Shri A. Clifford Ligory, son of the petitioner was appointed as Assistant Executive Engineer (Instrumentation) on 5.11.2014 in Oil and Natural Gas Corporation Limited. He joined as such on 1.12.2014.

c 2(ii) After completion of offshore training at Mumbai, the son of the petitioner along with other trainees were taken from Dehradun to Manali for Out Bound Training on 20.5.2015. Respondents No. 4 & 5 were appointed as co-coordinators for the trainees.

d 2(iii) All the trainees reached at Atal Bihari Vajpayee Mountaineering Training Institute Manali, District Kullu, H.P on 21.5.2015. They were accommodated in the Institute Hostel at Solang Nala. On 24.5.2015, the trainees including the son of the petitioner were taken for trekking from Solang Nala to Dhundi. At night, the trainees were made to stay in tents in open valley; on account of rain, the tents  
e were drenched exposing the trainees to extreme cold, the temperature had dropped down; all this gave sleepless night to the trainees including the son of the petitioner. The trainees, on morning of 25.5.2015, reached the institute hostel, where the son of the petitioner fell sick and started to  
f cough vigorously. Unable to move and complaining breathlessness, he was taken by his batch mates to Mission Hospital Manali where the doctors declared him brought dead.

**3. Facts subsequent to 25.5.2015**

g 3(i) ONGC Ltd. suspended respondents No.4 and 5 on 10.12.2015. In accordance with its rules and regulations, the respondents-ONGC sanctioned Rs. 40 lacs as compensation on account of death of Sh. A. Clifford Ligory. As per the reply filed by  
h ONGC Ltd., the petitioner has received Rs. 23.90 lacs in two installments and the balance amount is yet to be paid in installments in accordance with applicable rules and regulations.

3(ii) Alleging that death of his son in Manali was due to negligence of the coordinators/respondents No. 4 & 5, petitioner filed a complaint to the National Human Rights Commission, New Delhi. The Commission sought the reports and responses of the State Police

Officials as well as of ONGC. Ltd. The case was closed on 20.10.2016 with following order:-

*According to the complainant his son A. Clifford Ligory, was killed during training at Kullu/Manali, due to negligence of the ONGC staff. Vide proceedings dated 30th January 2016, the Commission called for report from the concerned authorities.*

*In response, the Superintendent of Police, Kullu, Himachal Pradesh, vide his letter dated 17.05.2016, informed that during enquiry it was revealed that on 25.05.2015, an information was received at P.S. Manali that one dead body had been brought at Mission Hospital, Manali. On enquiry it was revealed that a group of 90 students from ONGC Dehradun reported at Atal Bihari Mountaineering Institute at Manali for adventure training, out of them 16 GT returned back and to GT fell ill, who remained in Manali Hostel and 72 students were undergoing training at various places in Manali area. On 25.05.2015 the deceased Clifford Ligory, was suffering from chest pain and breathing problem. He was taken to the hospital where he died. Postmortem was conducted and the cause of death was due to acute coronary insufficiency due to narrowing of coronary arteries. Accordingly no FIR was lodged in the case.*

*A similar report has been received from the Under Secretary, Ministry of Petroleum and Natural Gas, Government of India. In this connection, for failure in effectively organizing OBT, two Coordinators of Outbound Training were placed under suspension and initiated disciplinary action. ONGC has been advised to attach a team of doctors with each such batch in future. ONGC has also decided to modify its SOPs for GTs trainings (including OBT) and code of conduct for GTs.*

*The Commission has perused and considered the material placed on record. The allegations made in the complaint could not be substantiated during enquiry. The death occurred due to heart problem. Neither any foul play was not suspected by the police now was any suspicion expressed by the relatives of the deceased on the death of Clifford Ligory. In the light the report, no further intervention of the Commission is required in the matter. The case is hereby closed. Inform the complainant accordingly.*

3 (iii). The ONGC Ltd. at its own level also, sought the help for investigation in the matter by appointing an expert committee of five

a senior level officers of ONGC regarding unfortunate incident of death of Sh. A. Clifford Ligory. The committee after detailed examination submitted its finding that:-

b *it is a case of Sudden Cardiac Death (SCD) due to acute coronary insufficiency as a result of narrowing of coronary vessels due to atherosclerosis. This is a well-documented entity in the literature and applies for all age groups.*

3 (iv). Charge-sheet dated 14.1.2016 was served upon both the private respondents/coordinators containing following articles of charges:-

c 1. He failed to effectively organize and coordinate the Out Bound Training for Graduate Trainee Batch 2014 (V) at ABVIMAS, Manli during the period May 20-25, 2015.

d 2. He failed to provide support to Graduate Trainees during the Out Bound Training for Graduate Trainee Batch 2014(V) at ABVIMAS, Manali, during the period May 20-25, 2015.

e 3. He failed to ensure agreed upon facilities at ABVIMAS as per the terms of hiring of the institute, during Out Bound Training for Graduate Trainee Batch 2014(V) at ABVIMAS, Manali, during the period May 20-25, 2015.

f A full fledged inquiry into the charges was conducted by a retired D.I.G. (C.B.I.). Inquiry report was submitted on 19.8.2016 holding that charges were not proved against respondents No. 4 & 5. Both the private respondents were exonerated from the charges vide order dated 24.1.2017. Their period of suspension w.e.f. 10.12.2015 till 30.3.2016 was treated as on duty.

#### 4. Present petition:-

g 4 (i). Present petition has been filed by the petitioner alleging that the death of his son was attributable to the negligence on the part of respondents No. 4 & 5. Petitioner contends that respondent No.6/SHO Police Station Manali failed to investigate the matter in proper manner and submitted its report dated 19.09.2015 under Section 174 Cr.P.C to the Sub Divisional Magistrate, Manali, District Kullu, who h accepted the same without looking into reasons leading to cause of death. The contentions and prayers made in the writ petition have been opposed by the respondents.

4 (ii). We have heard learned counsel for the parties and gone through the appended record.

4 (iii). In the postmortem report, the cause of death is acute coronary insufficiency due to narrowing of coronary vessels and due to Atherosclerosis, which according to the reply filed by respondent No.3 is a disease in which, plaque builds up inside the arteries over a period of time; plaque is a sticky substance made up of fat, cholesterol, calcium and other substances found in the blood; over the time, plaque hardens and narrows the arteries which in turn limits the flow of oxygen-rich blood to the body; atherosclerosis can lead to serious problems, including Coronary artery disease in which, the arteries supplying blood to the heart can get blocked and any person could suffer angina or a heart attack as in the present case.

4 (iv). The inquiry by a committee of five senior level officers of ONGC regarding incident of unfortunate death of the son of the petitioner did not implicate respondents No. 4 & 5 with any dereliction of duties.

4 (v). The regular inquiry conducted by retired D.I.G. (C.B.I.) did not hold respondents No. 4 & 5 guilty of the charges levelled against them. The inquiry report has been accepted by the competent authority and respondents No. 4 & 5 have been exonerated from the charges.

4(vi). A perusal of the so called final police report dated 19.09.2015 (Annexure P-4) submitted by Station House Officer, Manali to the Sub Divisional Magistrate, Manali, District Kullu makes it evident that this report was submitted only under Section 174 Cr. P. C. The report, thus, was an inquest under Section 174 Cr. P. C.

4 (vii). Section 156 Cr. P. C provides for filing of complaint seeking registration of FIR which thereafter is to be processed in accordance with law. In *Lalita Kumari vs. Government of Uttar Pradesh & Ors. reported in (2014) 2 SCC 1*, Hon'ble Apex Court summarized following points in respect of registration of FIR:-

120 In view of the aforesaid discussion, we hold: i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary

a inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

b iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

c v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

d vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

a) Matrimonial disputes/ family disputes

b) Commercial offences

c) Medical negligence cases

e d) Corruption cases

e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

f The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

g vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

h viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.

4 (viii). It was observed in paragraph 111 of the above judgment that the code gives power to the police to close a matter both before

and after investigation. A Police Officer can foreclose an FIR before an investigation under Section 157 of the code, if it appears to him that there is no sufficient ground to investigate the same. The Section itself states that a police officer can start investigation when he has '*reason to suspect the commission of offence.*' Therefore, the requirements of launching an investigation under Section 157 of the Code are higher than the requirement of Section 154 of the Code. The police officer can also, in a given case, investigate the matter and then file a final report under Section 173 of the Code seeking closure of the matter.

4 (ix). Hon'ble Apex Court in respect to invoking the provisions of Section 156 Cr. P. C. in (2015) 6 SCC 287, titled as *Priyanka Srivastava & Anr. vs. State of U.P. & Ors.*, held as under:-

29. *At this stage it is seemly to state that power under Section 156 (3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the Code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellow citizens, efforts are to be made to scuttle and curb the same.*

30. *In our considered opinion, a stage has come in this country where Section 156 (3) CrPC applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That part, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in the routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.*

31. *We have already indicated that there has to be prior applications under Sections 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed.*

a The warrant for giving a direction that an application under Section  
156(3) be supported by an affidavit is so that the person making the  
application should be conscious and also endeavour to see that no  
false affidavit is made. It is because once an affidavit is found to be  
b false, he will be liable for prosecution in accordance with law. This  
will deter him to casually invoke the authority of the Magistrate  
under Section 156(3). That apart, we have already stated that the  
c veracity of the same can also be verified by the learned Magistrate,  
regard being had to the nature of allegations of the case. We are  
compelled to say so as a number of cases pertaining to fiscal sphere,  
matrimonial dispute/family disputes, commercial offences, medical  
negligence cases, corruption cases and the cases where there is  
d abnormal delay/laches in initiating criminal prosecution, as are  
illustrated in Lalita Kumari are being filed. That apart, the learned  
Magistrate would also be aware of the delay in lodging of the FIR.'

d In the instant case, it is not the case of the petitioner that he  
had taken recourse to provisions of Section 156 Cr.P.C. Petitioner has  
directly invoked the extra-ordinary jurisdiction of this Court, where  
facts are highly disputed. In (2005) 6 SCC 1, titled *Jacob Mathew vs.*  
e *State of Punjab*, it has been held that jurisprudential concept of  
negligence differs in civil and criminal law. What may be negligence  
in civil law may not be necessary be negligence in criminal law. When  
facts are disputed, it is not in the domain of the Writ Court in exercise  
of jurisdiction under Article 226 of the Constitution of India to direct  
f the respondents to re-investigate the matter and then to register the  
FIR against respondents No. 4 & 5, more so, when in the facts of  
instant case Post Mortem Report indicates a specific cause of death,  
i.e. 'acute coronary insufficiency due to narrowing of coronary vessels  
and due to Atherosclerosis; complaint filed by the petitioner has been  
g closed by National Human Rights Commission; Special Inquiry as  
well as Regular Inquiry conducted by ONGC Ltd. have not found  
respondents No. 4 & 5 guilty of charges levelled against them;  
respondents No. 4 & 5 have been exonerated from the charges.  
h However, in the light of the law discussed above, it is open to the  
petitioner to avail appropriate remedy in accordance with law before  
the Court of competent jurisdiction.

With these observations, the writ petition is disposed of  
accordingly. Pending application(s), if any, also stand disposed of.

**Result:-** Writ petition disposed of.