

IN THE COURT OF PRINCIPAL SESSIONS JUDGE, KISHTWAR.

Present: *Y.P. Kotwal.*

Jammu and Kashmir District Bar Association Kishtwar through its General Secretary, Advocate Anees Mir.

Applicant.

Vs.

1. District Magistrate (Deputy Commissioner) Kishtwar.
2. Senior Superintendent of Police, District Kishtwar.
3. Station House Officer, Police Station Chatroo.

Non-applicants.

In the matter of:

Application with a prayer for seeking direction upon Chief Judicial Magistrate Kishtwar to hold an enquiry with respect to the custodial death of one Abdul Latief S/o Mohd Ramzan R/o village Parna Chingam, Tehsil Chatroo, District Kishtwar, in Police custody of Police Station Chatroo on 06.03.2022, in terms of Section 176 (1A) of Cr.P.C.

07.04.2022:

ORDER

1. The applicant, District Bar Association Kishtwar has filed the present application seeking direction upon Chief Judicial Magistrate Kishtwar to hold an enquiry with respect to the custodial death of one Abdul Latief S/o Mohd Ramzan R/o village Parna Chingam, Tehsil Chatroo, District Kishtwar, in Police custody of Police Station Kishtwar on 06.03.2022, in terms of Section 176 (1) (a) of Cr.P.C, on the ground that as per the information received through Print and Electronic Media, one Abdul Latief S/o Mohd Ramzan R/o village Parna

Chingam, Tehsil Chatroo was arrested by the Police of Police Station Chatroo, of whom the non-applicant No. 2 is the controlling authority, whereas the non-applicant No. 1 is the head of Police organization in the District in consonance with the Police Act and Police Rules framed there under, in FIR No. 18/2022 under relevant provisions of NDPS Act registered at the said Police Station, subsequent to the arrest of said Abdul Latief, he had been produced before the Court vested with special powers under the NDPS Act and consequently on the application of concerned Police and the grounds mentioned therein, the said accused (deceased) had been remanded to the custody of Police concerned of Police Station Chatroo subject of course to the adherence of guidelines laid down by the Hon'ble Supreme Court in D.K.Basu's case and the other statutory provisions laid down under Police Rules in respect of the accused arrested by the Police as regard to the safety of their life as guaranteed under the Constitution of India. It is further alleged that he was again remanded to Police custody by this Court with a direction to produce him before the competent court on the expiry of remand period, consequent upon his having been remanded to the custody of Police concerned, the concerned Police of Police Station Chatroo headed by its Station House Officer, under the controlling and supervisory authority of non-applicants No. 1 and 2 was under legal and statutory obligation to ensure safety of said accused (deceased), however, by ignoring the mandate of law and acting in dereliction of its duty, the

said accused (deceased) was reported to be dead while in Police lock-up of Police Station Chatroo.

2. It is further alleged that the aforesaid Abdul Latief S/o Mohd Ramzan has died in the suspicious circumstances while in the custody of the Police and as per the mandate of law, the concerned Police Station headed by Station House Officer as also the non-applicants No. 1 and 2 being the controlling and supervisory authority of the Police Organization in District Kishtwar were under legal and statutory obligation to make a written report of the same to the Court under whose orders the said accused had been remanded to the custody of Police concerned and consequently thereafter in terms of sub clause 1 (A) of Section 176 Cr.P.C., in addition to the enquiry or investigation held by the Police, an enquiry was required to be conducted by the Judicial Magistrate within whose local jurisdiction the offence has been committed, however, the police concerned in dereliction of their duties as warranted under mandate of Police Act/Police Rules as also the Criminal Procedure Code, has neither reported about the said suspicious custodial death of the accused Abdul Latief, nor any request for holding an enquiry by the Judicial Magistrate concerned, has been made, thereby have violated the mandatory provisions of Sub Clause 1 (A) of Section 176 Cr.P.C.
3. Upon the filing of the said application, report from Police Station Chatroo was called. Upon filing of the said report and on perusal of the same, notice was issued to the non-applicants for their appearance and filing of the reply to the instant application. The non-

applicants have caused their appearance through Mr. Rajesh Sharma Advocate and filed their reply to the present application.

4. The non-applicant No. 1 in his reply/objections has submitted that the present application is not maintainable as the applicant has no locus standi to file the present application, which has been filed without personal knowledge and based on hearsay and media report and the same cannot be taken as substantive proof to file the application, as such, the application is bereft of truth. It is further submitted that the applicant has filed the present application seeking directions to the CJM Kishtwar to hold an enquiry with respect to custodial death of one namely Abdul Latief who reportedly committed suicide in the Police Station Chatroo on 6th of March 2022, since the non-applicant who is the District Magistrate after receiving the telephonic message qua the suicide committed by the said accused, immediately issued an order vide No. DM/K/PS/22/2270-78 dated 07.03.2022, directing the SDM Marwah to conduct enquiry and furnish report within 15 days regarding the incident. It is further submitted that from the bare perusal of the provisions of Section 176 (1A), the Court under the Code in addition to the enquiry or investigation held by the Police and an enquiry shall be held by Judicial Magistrate or Metropolitan Magistrate as the case may be within whose the local jurisdiction the offence has been committed. The enquiry has already been conducted by the enquiry officer, but kept in a sealed cover in view of the pendency of the present application before this Court. The non-applicant has no

objection if the enquiry is conducted by the Judicial Magistrate. It is further submitted that as held by the Hon'ble Supreme Court in various judgments the party must have the locus standi to invoke the jurisdiction of the court for seeking direction, the present application which is in the shape of PIL, the Courts are required to see that behind the beautiful veil of public interest an ugly malice, vested interest and publicity seeking is not lurking. It is further submitted that since the enquiry has been completed and the decision is yet to be taken by non-applicant, therefore, the present application is premature and liable to be rejected.

5. The non-applicants No. 2 and 3 in their reply/objections have submitted that on 26.02.2022, on the written report of ASI Mohd Ayoub Khan against Abdul Latief S/o Mohd Ramzan Ahanger R/o Parna Chingam Chatroo, FIR No. 18/2022 under Section 8/20 NDPS Act was registered at Police Station Chatroo. It is further alleged that following the due procedure of law provided under Criminal Procedure Code and NDPS Act, the accused Abdul Latief was formally arrested in the case FIR No. 18/2022, he was informed of his legal/statutory rights, his relatives were also informed and he was produced before Medical Officer at PHC Chatroo on the same date, the accused was medically examined and produced before the Court of learned JMIC Kishtwar through PSI Rohit Kumar PID No. ExJ-196569, the learned JMIC Kishtwar after judicial examination of record granted 04 days Police remand and also apprised the accused of his right to engage counsel, accused engaged counsel and moved

an application for bail, on receipt of said bail application for report, the detailed report has been submitted before the Court of learned JMIC Kishtwar. It is further submitted that cannabis 08 kg. 900 gms was recovered from the illegal possession of the accused, the quantity of contraband being commercial, as such, the learned counsel had withdrawn the bail application on 04.03.2022, the accused was again produced before the Medical Officer at PHC Chatroo on 28.02.2022 and thereafter the accused was produced before this Court on 28.02.2022 for further Police remand and the Hon'ble Court was pleased to grant 08 days Police remand, following the mandate of law and the directions of the Court the accused was produced for medical check up on 02.03.2022, 04.03.2022 and 06.03.2022 at PHC Chatroo. It is further alleged that accused during his arrest was kept in safe custody at P/S Chatroo and was provided with proper logistics food etc., the relatives of the accused were allowed to meet him as and when they approached P/S Chatroo under proper procedure, the lock-up at P/S Chatroo is situated at ground floor and proper guard was kept intact according to the Police Manual, accused Abdul Latief during his arrest/remand from 26.02.2022 to 06.03.2022 never complained to the Police, Doctor or the Court regarding any mental or physical illness and was behaving very properly till he on 06.03.2022 at 09.45 PM hanged himself. It is further submitted that on 06.03.2022 said Abdul Latief was kept in Lock-up at P/S Chatroo under the care of HC Shakoor Ahmed No. 81/Ktr and HC Mushtaq Ahmed PID No. ExJ-965701, the said Abdul

Latief using the border of blanket which was given to him, hanged himself with the window of lock up room, as soon as the officials on duty saw him hanging, they promptly informed the other officials including SHO P/S Chatroo, acting promptly, said Abdul Latief was shifted to PHC Chatroo for medical assistance, the Doctors and Para-Medical Staff available at PHC Chatroo examined him and declared him dead, the dead body was retained by Hospital authorities for further legal proceedings, Police guard was kept at Hospital and the inquest proceedings as mandated under Section 174 Cr.P.C were initiated, the relatives and the respectable inhabitants were immediately informed about the incident, they all came to PHC Chatroo. It is further submitted that the District Magistrate Kishtwar, SDM Chatroo, Tehsildar Chatroo were immediately informed and the inquest proceedings which were initiated vide DDR No. 25 dated 06.03.2022 was entrusted to Dy.S.P DAR DPL Kishtwar, who reached on spot and started enquiry, the enquiry officer through written application requested BMO Chatroo to constitute a Medical team for conducting the post-mortem of the deceased, accordingly BMO Chatroo constituted a Board for conducting the post mortem, the District Magistrate Kishtwar vide order No. DM/K/PS/22/2270-78 dated 07.03.2022, appointed Dr. Mohsin Raza (JKAS) SDM Marwah to conduct Magisterial enquiry into the cause of death of Abdul Latief S/o Mohd Ramzan, Dr. Mohsin Raza during the enquiry physically visited P/S Chatroo, inspected the spot, conducted vedigraphy/photography of the spot, also seized the relevant

articles like blanket and border of the blanket which was used as noose, the relevant documents of P/S Chatroo were also seized by the Enquiry Officer who was given full and fair co-operation by the Police to conduct the enquiry. It is further submitted that on 07.03.2022, post-mortem was conducted by the team of doctors at PHC Chatroo and the post-mortem proceedings were properly video graphed and photographed in presence of Dy. SP DAR Kishtwar and Executive Magistrate. Statement of witnesses including the relatives of the deceased Abdul Latief were also recorded. It is further submitted that the investigation and inquest proceedings have been conducted following the due process of law and without any intentional or deliberate omission.

6. Perusal of Police report called from Police Station Chatroo reveals that on 26.02.2022, a docket was received at Police Station Chatroo from ASI Mohd Ayub Khan Incharge Patrolling party camp Parna Chingam, for registration of FIR alleging therein that on the said day when they were on patrolling duty at Parna Chingam area, at about 9.00 hours in the morning they noticed a person who was coming from Parna towards Chingam having a white coloured gunny bag on his shoulder, on checking the said bag, 8/9 kilograms of crushed leaves of cannabis were found, the said person disclosed his name as Abdul Latief S/o Mohd Ramzan Ahangar R/o Parna Chingam. Upon the receipt of said docket FIR No. 18/2022 for commission of offence under Section 8/20 NDPS Act was registered at Police Station Chatroo and investigation of the case was entrusted to one PSI Rohit

Kumar, the said I/O took Naib Tehsildar alongwith him at the place of occurrence, weighed the contraband which came to be 08 kilogram 900 grams, seized the same, prepared samples and sent the same to FSL Jammu for chemical examination. The accused was got medically examined at Chatroo Hospital, he was produced before learned JMJC (Munsiff) Kishtwar, and learned Magistrate granted four days Police remand which was expiring on 01.03.2022, which was a holiday. On 28.02.2022, the accused was again medically examined at PHC Chatroo, produced before learned Principal Sessions Judge Kishtwar, he was again remanded to Police custody for 08 days. On 02.03.2022, the accused was again got medically examined at Chatroo Hospital. Perusal of the Police report further reveals that on 04.03.2022, the accused was again got medically examined at Chatroo Hospital and after his examination he was kept in Police lock-up. On 06.03.2022, as usual the accused was again got medically examined at Chatroo hospital and kept in Police lock-up. However, the accused at about 2145 hours, taking benefit of loneliness, tore the border of the blanket and hanged himself with the window of lock up room, as soon as the Sentry on duty saw him hanging, he and other officials shifted the accused to PHC Chatroo for medical assistance, where the Doctors examined him and declared him dead, the dead body was kept in mortuary room by Hospital authorities for further legal proceedings, regarding which the higher officers including District Magistrate Kishtwar were informed, the legal heirs of the deceased were also informed through telephone about the

death of the deceased. Perusal of Police report further reveals that proceedings under Section 174 Cr.P.C are being carried by Dy.SP DAR. It also appears that District Magistrate Kishtwar vide order No. DM/K/PS/22/2270-78 dated 07.03.2022, appointed Dr. Mohsin Raza (JKAS) SDM Marwah to conduct Magisterial enquiry into the cause of death of deceased, who is conducting the inquiry into the matter under Section 176 of Cr.P.C.

7. Heard Mr. I.A. Hamal, Sr. Advocate for the Bar Association Kishtwar and Mr. Rajesh Sharma Advocate for the non-applicants and perused the record placed on the file.
8. Before moving ahead in the matter, I would like to address the plea/objection raised by non-applicant No. 1 (District Magistrate Kishtwar) regarding locus standi of the Bar Association to file the present application.
9. The Bar Association is a statutory body under Bar Council of India Rules, and is very much concerned with the fundamental rights of the citizen of India and domicile of the Union Territory of Jammu and Kashmir, as enshrined in the Constitution of India and laws made thereunder. It is well settled that where a legal wrong or a legal injury is caused to a person or to a determined class of persons by reason of violation of any Constitutional or legal right or any illegal injury is caused to a person or determined class of persons and such person or persons, by reason of poverty or disability or socially or economically disadvantaged position is unable to approach the Court for relief, any member of the public can maintain application for

appropriate directions, as such, under the facts and circumstances of the present case, the Bar Association being a statutory body under Bar Council of India Rules is very much competent to file the present application seeking direction for conducting judicial inquiry in terms of Section 176 (1A) of the Code of Criminal Procedure. Hence the plea/objection raised by the non-applicant No. 1 is misconceived and is accordingly rejected.

10. From the narration of facts including the Police report and stand taken by the applicant against the non-applicants, it emerges that when the deceased allegedly committed suicide and died, he was very much in the custody of Police. Now, the question is whether the deceased has committed suicide or is a victim of the alleged torture or ill-treatment by the Police.

11. This Court, like a trial Court, cannot venture upon to resolve this factual dispute. The rival contentions require a thorough investigation/inquiry in order to unearth the truth. The Dy.S.P DAR Police Lines Kishtwar is conducting inquest proceedings, whereas SDM Marwah is holding inquiry in terms of Section 176 (1) Cr.P.C, however, they have not submitted their reports till date.

12. Now in order to see, as to whether in addition to the inquest proceedings and inquiry being conducted by the Executive Magistrate, inquiry is required to be conducted by the Judicial Magistrate, I would like to have a survey of the legal scenario prior to the introduction of Sub-section (1-A) of Section 176 of the code of Criminal Procedure. Prior to the introduction of Sub-section (1-A) of

Section 176 of the Code of Criminal Procedure, by the Amendment Act of 25 of 2005, with effect from 23.06.2006, the enquiry into the case in respect of custodial death were to be made by the Executive Magistrate, but after introduction of Sub-section (1-A) of Section 176 of the Code, the power of the Executive Magistrate to hold such inquiry in respect of custodial death has been taken away and instead such power has been given only to the jurisdictional Judicial Magistrate. However, such an inquiry to be held by the Judicial Magistrate is not a substitute for the investigation to be conducted by the Police and it is only in addition to the investigation to be done by the Police.

13. As referred above, as of now, an inquiry by an Executive Magistrate into the cause of death as provided under Section 176 (1) of the code does not extend to the death of a person while in custody of the police. While so amending sub-section (1) of Section 176 of the Code, the legislature has introduced a new sub-section, that is, (1A) to Section 176 of the Code which reads as follows:-

*"176. Inquiry by Magistrate into cause of death. (1)
(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 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 offences has been committed."*

14. A plain reading of Section 176 (1-A) of Cr.P.C, makes it clear that the death or disappearance of any person, when such person is in custody of Police or rape is alleged to have been committed on any woman, while such woman is in Police or Judicial custody, it shall be enquired by a Judicial Magistrate or Metropolitan Magistrate, within whose local jurisdiction the offence has been committed.
15. A comparison of the language used in sub-section (1) and sub-section (1A) of Section 176 of the Code would go to show that so far as Section 176 (1) of the Code is concerned, the inquiry is confined only to the cause of the death. Therefore, the Executive Magistrate cannot travel beyond the cause of death to give any other find on the disputed facts.
16. In sub-section (1A) of Section 176 Cr.P.C, a different language has been consciously used by the legislature. Here the legislature has not confined the inquiry only into the cause of the death or cause for the disappearance or cause for rape while in custody of the police. The qualifying words like inquiry "into the cause of the death" as it is found in sub-section (1) of Section 176 of the Code have been consciously omitted in sub-section (1A) of Section 176 of the Code thereby indicating that the inquiry by a Judicial Magistrate under sub-section (1A) is not confined only to the cause of death or cause for the disappearance or cause for rape. Thus, this inquiry has got a wider scope. As per sub-section (2) of Section 176 of the Code, the Magistrates, both the Executive Magistrate as well as the Judicial Magistrates/Metropolitan Magistrates, shall record evidence on

oath. Sub-section (5) of Section 176 of the code is more elaborate which states that the Judicial Magistrates/Metropolitan Magistrates or the Executive Magistrates or Police Officers holding an inquiry or investigation, as the case may be, under sub-section (1A) shall, within twenty-four hours of such death, forward the body for postmortem.

17. In case P. Pugalenti Vs. State represented by the Director General of Police, Myalpore, Chennai and others, reported in 2014 SCC OnLine Mad 12704, the Hon'ble Madras High Court while considering the scope of sub-section (1-A) of Section 176 of Cr.P.C. has held as under:-

"7. The scope of such inquiry under Sub-Section (1A) of Section 176 Cr.P.C., and the scope of police investigation have been dealt with by this Court in various cases. One such case is CrI. O.P. No. 20008 of 2013 (Smt. R. Kasthuri v. State) wherein, by order dated 19.12.2014, this Court has held as follows:-

"40. To sum up, the conclusions are as follows:-

(1) Any information relating to the death or disappearance of any person or rape of a woman while such person or woman was in the custody of the police or in any other custody authorized by a Magistrate or Court, shall be registered as a case under Section 154 of the Code.

(2) Soon after the registration of the case, the Station House Officer shall forward the FIR to the jurisdictional Judicial Magistrate/Metropolitan Magistrate.

(3) The jurisdictional Magistrate shall thereafter hold an inquiry under Section 176 (1A) of the Code.

(4) During such inquiry under Section 176 (1A) of the Code the Judicial Magistrate/Metropolitan Magistrate shall have power to record evidence on oath.

(5) On completing the inquiry the Judicial Magistrate/Metropolitan Magistrate shall draw a report

and keep the statements of the witnesses, documents collected and the report drawn by him as part of case records.

(6) The Judicial Magistrate/Metropolitan Magistrate shall furnish copies of the statements of the witnesses recorded during inquiry under Section 176 (1A) of the Code, the documents collected and the report drawn by him to the investigating police officer without delay.

(7) The investigating police officer shall, without being hindered by the inquiry by the Judicial Magistrate/Metropolitan Magistrate, conduct investigation under Chapter XII of the Code thoroughly and submit a final report to the jurisdictional Magistrate/Court under Section 173 of the Code.

(8) If the case relates to police encounter, as directed by the Hon'ble Supreme Court in *People's Union for Civil Liberties v. State of Maharashtra, 2014 (11) Scale 119*, the investigation shall be entrusted to either CB CID or a police team of another police station under the supervision of a senior police officer (at least a level above the head of the police party engaged in the encounter).

(9) The Judicial Magistrate/Metropolitan Magistrate shall not forward the original records of the inquiry under Section 176 (1A) of the code either to the District Collector or to the Government.

41. In the result, the criminal original petition is allowed in the following terms:-

(i) The Letter of the Secretary to Government, Public (Law & Order) Department, Secretariat, Chennai, in Letter No. 4341/L&O.E/2011-1, dated 13.10.2011 is hereby set aside;

(ii) The Director General of Police, Tamil Nadu, is directed to nominate a police officer from CB CID, not below the rank of Deputy Superintendent of Police and hand over the investigation of the case in Crime No. 351 of 2010 on the file of the Inspector of Police, Kadampuliyur Police Station, Cuddalore District, for a thorough investigation.

(iii) The inquiry report of the Judicial Magistrate-II, Panruti, submitted to the District Collector and forwarded to the Government shall be returned to the learned Judicial Magistrate No. II, Panruti forthwith.

(iv) The learned Judicial Magistrate-II, Panruti, shall furnish copies of his proceeding under sub-section (1A) of Section 176 of Cr.P.C. to the Investigating police officer as indicated above."

8. *"As per the said law, in the instant case, inquiry should have been conducted by the Judicial Magistrate but, that was not done. But, strangely, in this case, the Revenue Divisional Officer who had no authority or power to hold inquiry has conducted inquiry assuming to himself power under Section 176 (1) Cr.P.C. Of course, as we have already noticed, prior to 23.06.2006, he had such power to inquire, but, not thereafter. Therefore, the inquiry held by the Revenue Divisional Officer, in this case, is wholly without jurisdiction. Apart from that, surprisingly, there was no investigation at all done by the police in this case, probably, under the mistaken impression that the inquiry held by the Revenue Divisional Officer was a bar for the police to hold investigation. Of course, under Section 176 (1) Cr.P.C., an inquiry by an Executive Magistrate is either instead of or in addition to the investigation. But, such inquiry under Section 176 (1) Cr.P.C., is confined only to the cause of death and the scope of such inquiry cannot be widened any more so as to equate the same to the police investigation."*

18. From the judgment referred hereinabove, it is very clear that after coming into force of sub-section (1-A) of Section 176 of Cr.P.C., power of inquiry into custodial death has been taken away from the Executive Magistrate, as such, the inquiry is required to be considered by the Judicial Magistrate.

19. As it has been explicitly stated in sub-section (1A), that the inquiry by a Judicial Magistrate/Metropolitan Magistrate shall be in addition to the

inquiry or investigation conducted by the police. It needs to be mentioned that an inquiry by an Executive Magistrate under sub-section (1) of Section 176 of the Code is either instead of or in addition to the investigation by the police. Therefore, the inquiry held by a Judicial Magistrate/Metropolitan Magistrate shall not be a bar for the police to investigate simultaneously. Since an inquiry held by a Judicial Magistrate, though has got a wider scope than an inquiry held by an Executive Magistrate under sub-section (1) of Section 176 of Cr.P.C., such judicial inquiry cannot be equated to an investigation done by the police in respect of the crime. Under sub-section (1A) of Section 176, inquiry held by the Judicial Magistrate or Metropolitan Magistrate is in addition to the investigation held by the police and not in substitution of the police investigation. Neither the investigation made by the police shall preclude a Judicial Magistrate/Metropolitan Magistrate from holding an inquiry under sub-section (1A) of Section 176 nor such inquiry by Judicial Magistrate/Metropolitan Magistrate shall preclude the police from investigating the case. In this regard, I may refer to Chapter VII of the Code of Criminal Procedure 1973. If any case is registered under Section 154 in Chapter VII of the code, it should reach the logical end with the filing of a report under Section 173 of the Code before the jurisdictional Magistrate. There is no provision in the code enabling the police to drop the investigation without taking the same to the logical end. Even in a case where the investigating officer finds that either there was no offence committed or for any other reason, no further action could be taken against any individual, he is required to file a negative final report before

the jurisdictional Judicial Magistrate/Metropolitan Magistrate and it is for the said Magistrate to consider as to whether to take cognizance from out of materials available or to order for further investigation; or to accept the negative report. Therefore, if there is any death or disappearance or rape, while in police custody, and if it is an offence [as per the expression used in sub-section (1A)] the investigation shall be conducted by the police without being hindered in any manner by the inquiry held by the Judicial Magistrate or Metropolitan Magistrate, as the case may be, and the investigating officer on completing the investigation, has to submit a final report to the Judicial Magistrate or Metropolitan Magistrate under Section 173 of Cr.P.C.

20. The National Human Rights Commission while interpreting the provisions of sub-section (1-A) of Section 176 of Cr.P.C, has observed that Section 176 (1-A) of Cr.P.C has been inserted 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 in custody of Police or any other custody authorized by the Court and inquiry in such cases shall be conducted by Judicial Magistrate or Metropolitan Magistrate in addition to the inquiries or investigation held by the Police. The National Human Rights Commission has further observed;

“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."

21. In the present case, the deceased Abdul Latief who was involved in case FIR No. 18/2022 registered in Police Station Chatroo for commission of offence punishable under Section 8/20 of NDPS Act. The investigation of the case was in progress and the said Abdul Latief was in custody of Police on Police remand in Police Station Chatroo, where as per the report submitted by the Police, he has committed suicide. As per the mandate of law, as referred above, upon the aforesaid information relating to the death of the deceased Abdul Latief in Police custody a case under Section 154 of Cr.P.C. was required to be registered and soon after registration of the FIR, S.H.O of the Police Station was required to forward copy of the FIR to the jurisdictional Judicial Magistrate, whereafter the jurisdictional Magistrate would hold inquiry in terms of Section 176 (1-A) of the Code. However, neither any FIR regarding the occurrence has been registered in the concerned Police Station, nor copy of the same has been forwarded to the jurisdictional Magistrate nor the Police has informed this Court about

the death of the deceased Abdul Latief who was remanded to the Police custody by this Court on 28.02.2022.

22. For the discussion held above, this application is allowed and Chief Judicial Magistrate Kishtwar is directed to conduct inquiry under Section 176 (1A) of Cr.P.C preferably within two weeks. On completion of the inquiry the learned Chief Judicial Magistrate Kishtwar shall draw a report and keep the statements of witnesses, documents collected and report drawn by him as part of case record. He shall furnish copies of the statements of witnesses recorded during inquiry, the documents collected and the report drawn by him to the investigating officer. The inquiry held by the Chief Judicial Magistrate Kishtwar shall not be a bar to the Police to investigate simultaneously. So the investigating officer without being hindered by the inquiry conducted by learned Chief Judicial Magistrate Kishtwar shall conduct investigation thoroughly and submit a final report to the jurisdictional Magistrate under Section 173 of the Code of Criminal Procedure. The application is accordingly disposed of, be consigned to records after its due compilation. A copy of this order be forwarded to the learned Chief Judicial Magistrate Kishtwar for information and compliance.

Announced.

07.04.2022.

(Y. P. Kotwal)
Principal Sessions Judge,
Kishtwar.
(UID No. JK00051)

RD Sharma/EA.