

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5646 OF 2019

(Arising out of S.L.P.(C) No.5933 of 2009)

M/s. Andhra Pradesh Police Officers
Association Rep. by Its General Secretary

Appellant(s)

Versus

A.P. Civil Liberties Committee (APCLC)
Rep. by Its President and Others

Respondent(s)

W I T H

CIVIL APPEAL NO.5647 OF 2019

(Arising out of S.L.P.(C) No.15549 of 2009)

CIVIL APPEAL NOS.5648-5653 OF 2019

(Arising out of S.L.P.(C) Nos.18910-18915 of 2009)

O R D E R

Leave granted.

A five-Judge Bench of the Andhra Pradesh High Court while considering the procedure to be followed in investigating police encounters had thought it appropriate to issue the following directions:-

“(A) On Issue No.1: That where a police officer causes death of a person, acting or purporting to act in discharge of official duties or in self-defense as the case may be, the first information relating to such circumstance (even when by a Police/Public Official); whether an alleged perpetrator is

named or not) shall be recorded and registered as FIR, enumerating the relevant provisions of Law (u/Sec.154(1) Cr.P.C.) and shall be investigated (u/Sec.156/157 Cr.P.C.)

(B) On issue No.2: That the existence of circumstances bringing a case within any of the Exceptions in the Indian Penal Code including the exercise of the right of private defense (a General Exception in Chapter IV IPC), cannot be conclusively determined during investigation. The opinion recorded by the Investigating Officer in the final report forwarded to the Magistrate (u/Sec.173 Cr.P.C.) is only an opinion. Such opinion shall be considered by the Magistrate in the context of the record of investigation together with the material and evidence collected during the course of investigation. The Magistrate (notwithstanding an opinion of the Investigating officer, that no cognizable offence appears to have been committed; that one or more or all of the accused are not culpable; or that the investigation discloses that the death of civilian(s) in a police encounter is not culpable in view of legitimate exercise by the police of the right of private defense), shall critically examine the entirety of the evidence collected during investigation to ascertain whether the opinion of the Investigating Officer is borne out by the record of investigation. The Magistrate has the discretion to disregard the opinion and take

cognizance of the offence u/Sec.190 Cr.P.C.

(C) On Issue No.3: That a magisterial enquiry (inquest) (u/Sec. 174 to 176 Cr.P.C.) is neither a substitute nor an alternative to the obligation to record the information as FIR and to conduct investigation into the facts and circumstances of the case and if necessary to take measures for the discovery and arrest of the offender(s) (u/Sec.154(1), 156 and 157 Cr.P.C.) and

(D) On issue No.4: In view of the conclusions on issues Nos.1 to 3 and in view of our declaration [that the information conveyed to the officer in charge of a Police Station (u/Sec.154(1) Cr.P.C.) or a complaint made to the Magistrate (u/Chpt.XV Sec.200 Cr.P.C.), need not mention the name of the Police Officer(s) who the complainant believes is the perpetrator of the offence complained of], it is not necessary to pronounce on whether the State, the Police Establishment or a Police Officer has immunity from the obligation to disclose the identity (of a police officer who had committed an act causing the death of a person), to a person aggrieved by such death to effectively seek justice. Whether the investigating officer is required to disclose the names of the police officers who are involved in an operation resulting in civilian casualty when a request for such information is lodged by an individual, is an issue not

within the spectrum of the issues falling for our determination herein. This aspect is left open. The obligation to disclose to the Investigating Officer the identity of the police officer(s) so involved, is however absolute and there is no immunity whatsoever from this obligation. Withholding of any information or material that impedes effective or expeditious investigation violates several provisions of the Indian Penal Code and the Criminal Procedure Code (pointed out in our analyses on this issue)."

Aggrieved, three sets of appeals have been filed before us, wherein very broadly it is the first direction i.e. direction (A) that has been seriously disputed.

We have heard learned counsels for the parties and we have been taken through the contentions advanced before the High Court and the reasoning of the High Court which led to the issuance of directions mentioned above.

A subsequent decision of this Court in People's Union for Civil Liberties and Another vs. State of Maharashtra and Others (2014) 10 SCC 635, has been laid before us. We have perused the same. The said decision also deals with the procedure to be followed while investigating the cases of police encounters resulting in deaths of civilians.

After an exhaustive consideration of all the relevant aspects of the matter, this Court by its judgment in People's Union for Civil Liberties (para 31) laid down a detailed and exhaustive procedure to be followed in such cases. We find that not only the direction (A) on which contentions have been advanced before us, but even the other directions i.e. (B), (C) and (D) to be fully covered by what has been laid down by this Court in People's Union for Civil Liberties. The directions of this Court in People's Union for Civil Liberties have been ordered to be treated as law under Article 141 of the Constitution. Therefore, it is the judgment of this Court in People's Union for Civil Liberties that will hold the field in the matter of investigating police encounters. We order accordingly and dispose of the appeals in the aforesaid terms.

.....CJI.
[Ranjan Gogoi]

.....J.
[Deepak Gupta]

.....J.
[Aniruddha Bose]

New Delhi
July 18, 2019.

R E V I S E D

ITEM NO.104

COURT NO.1

SECTION XII-A

**S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S**

Petition(s) for Special Leave to Appeal (C) No.5933/2009

(Arising out of impugned final judgment and order dated 06-02-2009 in WP No. 15419/2006 passed by the High Court of A.P. at Hyderabad)

M/S A.P.POLICE OFFICERS ASSOCIATION REP.
BY ITS GENERAL SECRETARY

Petitioner(s)

VERSUS

A.P.CIVIL LIBERTIES COMMITTEE REP. BY
ITS PRESIDENT & OTHERS

Respondent(s)

(With appln.(s) for impleadment and ex-parte stay)

WITH S.L.P.(C) Nos.15549/2009 (XII-A)
S.L.P.(C) Nos.18910-18915/2009 (XII-A)
(With appln.(s) for impleadment)

Date : 18-07-2019 These matters were called on for hearing today.

CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE DEEPAK GUPTA
HON'BLE MR. JUSTICE ANIRUDDHA BOSE

For Petitioner(s) Mr. B. Adinarayana Rao, Sr. Adv.
Ms. Bina Madhavan, Adv.
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M/s. Lawyer S Knit & Co.

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Mr. A. Ramesh, Adv.
Ms. Aruna Gupta, Adv.
Mr. Syed Ahmad Naqvi, Adv.
Ms. G. Madhavi, AOR

Mr. G. N. Reddy, AOR

Mr. D. Mahesh Babu, AOR

Mr. Harin P. Raval, Sr. Adv.
Mr. P. Venkat Reddy, Adv.

Mr. Prashant Tyagi, Adv.
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Mr. R. Basant, Sr. Adv.
Mr. Vishnu Pazhanganat, Adv.
Mr. Mahfooz A. Nazki, Adv.
Mr. Avinash Tripathi, Adv.
Mr. Polanki Gowtham, Adv.
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Ms. C. K. Sucharita, AOR

Mr. Colin Gonsalves, Sr. Adv.
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Ms. Nitya Ramakrishna, Adv.
Mr. Trideep Pais, Adv.
Mr. N.K. Verma, Adv.
Ms. Anjana Chandrashekar, AOR

Mr. Guntur Prabhakar, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeals are disposed of in terms of the signed
order.

Pending application(s), if any, stand disposed of.

(Chetan Kumar)
A.R.-cum-P.S.

(Anand Prakash)
Court Master

(Signed order is placed on the file)

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