HIGH COURT OF MADHYA PRADESH
MCRC 9291/2014
Rakesh Kumar and Others vs. State of MP and Anr.

Gwalior, dtd. 25/04/2018

Shri R.K.Sharma, Senior Counsel with Shri Sanjay Gupta and Shri MK Chaudhary, counsel for the applicants.

Shri RVS Ghuraiya, Public Prosecutor for the respondent No.1/ State.

Shri Vijay Dutt Sharma, counsel for the respondent No.2.

This application under Section 482 of CrPC has been filed against the order dated 11/09/2014, passed by Fourth ASJ, Morena in Criminal Revision No.97/2014, thereby affirming the order dated 16/07/2014 passed by Chief Judicial Magistrate, Morena in Crime No.509/2012, by which the closure report filed by the police was not accepted and the cognizance was taken for offence under Sections 307, 341, 34 of IPC.

The necessary facts for the disposal of the present application in short are that the applicant no.3 Rajkumar Sharma had lodged a FIR against the respondent No.2 and three more accused persons to the effect that on 05/10/2012, at 07:30 in the morning when his son Pawan was coming back to his house and the applicant No.3 was following his son, at that time, the respondent No.2 came there and instructed that although the dispute of the applicant No.3 as well as his son Pawan is going on with Amresh Sharma the applicant No.2, but since respondent No.2 has taken over the Cold Store as well as two bigha land from Amresh Sharma, therefore, now the applicant No.3 and his son should not cultivate the said land. When the applicant No.3 Rajkumar Sharma and Pawan replied that they would continue to cultivate the said land, then the other three accused persons, namely, Munna, Mukesh and Indraveer came on the spot. The respondent No.2 fired a gunshot causing injury on the right thigh of Pawan. Pawan was taken to Ambah Hospital, from where he was referred to District

Hospital, Morena and on arrival at District Hospital, Morena, the doctor declared deceased Pawan as dead. On the report of applicant No.3, the police registered a Crime No.505/2012 against the respondent No.2 and three more accused persons, namely, Muna, Indraveer and Mukesh for offence under Sections 307, 294, 323, 34 of IPC. The statements of the witnesses were recorded in the said case and the witnesses in their case diary statements have also stated that while fleeing away, an indiscriminate firing was done by the accused persons in Crime No.505/2012 and they were also saying that now the complainant party should also be falsely implicated for causing gunshot injuries. The police after concluding the investigation has filed charge sheet against the respondent No.2 as well as three more co-accused persons. It is submitted that in order to create a counter-evidence, the respondent no.2 by causing a self-inflicted injury, lodged a FIR against the applicants. The police after concluding the investigation, came to a conclusion that a false report has been lodged and accordingly, filed the closure report. The closure report was not accepted by the Magistrate by order dated 23/09/2013 and accordingly, a direction for further investigation was given. After making further investigation, the police once again filed the closure report pointing out that no offence is made out. However, the second closure report was not accepted by the Magistrate by order dated 22/03/2014 on the ground that earlier, the police was directed to carry out the further investigation, but the closure report which has been filed by the police once again indicates that no further investigation has been done, accordingly, the matter was again remanded back. The police thereafter carried out the further investigation and for the third time filed the closure report. The CJM, Morena by order dated 16/07/2014, rejected the third closure report filed by the police and took cognizance against the applicants. Challenging the order dated 16/7/2014 passed by CJM,

Moena, the applicants had filed a criminal revision which too has suffered dismissal by order dated 11/09/2014 passed by 4th ASJ, Morena in Criminal Revision No.97/2014.

Before commencement of the arguments the counsel for the applicants was asked about the stage in the trial. The counsel for the applicants fairly conceded that during the pendency of this application,the charges have been framed, but submitted that only one witness has been partially examined so far and the trial has not reached to an advance stage. It is further submitted by the counsel for the applicants that in the light of law laid down in the cases of **Sathish Mehra Vs. State (NCT of Delhi)** reported in **(2012) 13 SCC 614** and **Ravikant Dubey and Others Vs. State of M.P. and another,** reported in **2014 Cr.L.R. (M.P.) 162**, it is clear that the petition under Section 482 of CrPC cannot be rejected merely on the ground that trial has begun and even some other witnesses have also been examined during pendency of this petition.

The Supreme Court in the case of **Satish Mehra (supra)** has held as under:-

> "**13.** Though a criminal complaint lodged before the court under the provisions of Chapter XV of the Code of Criminal Procedure or an FIR lodged in the police station under Chapter XII of the Code has to be brought to its logical conclusion in accordance with the procedure prescribed, power has been conferred under Section 482 of the Code to interdict such a proceeding in the event the institution/continuance of the criminal proceeding amounts to an abuse of the process of court. An early discussion of the law in this regard can be found in the decision of this Court in R.P. Kapur v. State of Punjab wherein the parameters of exercise of the inherent power vested by Section 561-A of the repealed Code of Criminal Procedure, 1898 (corresponding to Section 482 CrPC, 1973) had been laid down in the following terms: (AIR p. 869, para 6)
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> (i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;

(ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding e.g. want of sanction;
(iii) where the allegations in the first information report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and
(iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge.

14. The power to interdict a proceeding either at the threshold or at an intermediate stage of the trial is inherent in a High Court on the broad principle that in case the allegations made in the FIR or the criminal complaint, as may be, prima facie do not disclose a triable offence, there can be reason as to why the accused should be made to suffer the agony of a legal proceeding that more often than not gets protracted. A prosecution which is bound to become lame or a sham ought to interdicted in the interest of justice as continuance thereof will amount to an abuse of the process of the law. This is the core basis on which the power to interfere with a pending criminal proceeding has been recognized to be inherent in every High Court. The power, though available, being extra ordinary in nature has to be exercised sparingly and only if the attending facts and circumstances satisfy the narrow test indicated above, namely, that even accepting all the allegations levelled by the prosecution, no offence is disclosed. However, if so warranted, such power would be available for exercise not only at the threshold of a criminal proceeding but also at a relatively advanced stage thereof, namely, after framing of the charge against the accused. In fact the power to quash a proceeding after framing of charge would appear to be somewhat wider as, at that stage, the materials revealed by the investigation carried out usually comes on record and such materials can be looked into, not for the purpose of determining the guilt or innocence of the accused but for the purpose of drawing satisfaction that such materials, even if accepted in its entirety, do not, in any manner, disclose the commission of the offence alleged against the accused.

15. The above nature and extent of the power finds an exhaustive enumeration in a judgment of this Court in State of Karnataka v. L. Muniswamy (1977) 2 SCC 699 which may be usefully extracted below : (SCC pp. 702-03)

> "7. The second limb of Mr Mookerjee's argument is that in any event the High

> Court could not take upon itself the task of assessing or appreciating the weight of material on the record in order to find whether any charges could be legitimately framed against the respondents. So long as there is some material on the record to connect the accused with the crime, says the learned counsel, the case must go on and the High Court has no jurisdiction to put a precipitate or premature end to the proceedings on the belief that the prosecution is not likely to succeed. This, in our opinion, is too broad a proposition to accept. Section 227 of the Code of Criminal Procedure, 2 of 1974, provides that:
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> * * *

This section is contained in Chapter XVIII called "Trial Before a Court of Session". It is clear from the provision that the Sessions Court has the power to discharge an accused if after perusing the record and hearing the parties he comes to the conclusion, for reasons to be recorded, that there is not sufficient ground for proceeding against the accused. The object of the provision which requires the Sessions Judge to record his reasons is to enable the superior court to examine the correctness of the reasons for which the Sessions Judge has held that there is or is not sufficient ground for proceeding against the accused. The High Court therefore is entitled to go into the reasons given by the Sessions Judge in support of his order and to determine for itself whether the order is justified by the facts and circumstances of the case. Section 482 of the New Code, which corresponds to Section 561-A of the Code of 1898, provides that:

* * * *******

In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of

mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realization of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."

16. It would also be worthwhile to recapitulate an earlier decision of this court in Century Spinning & Manufacturing Co. vs. State of Maharashtra (1972) 3 SCC 282 noticed in L. Muniswamy's case (Supra) holding that: (SCC p. 704, para 10)

> "10 …. the order framing a charge affects a person's liberty substantially and therefore it is the duty of the court to consider judicially whether the materials warrant the framing of the charge. It was also held that the court ought not to blindly accept the decision of the prosecution that the accused be asked to face a trial."

In the case of **Ravikant Dubey (supra)** a Co-ordinate Bench of this Court has held as under :-

"**8.** In view of the above, the questions of law which requires consideration are as follows: (i) Whether petition preferred by the petitioners under Section 482 of the Code for quashing the FIR can be entertained, when trial has been started and evidence of some witnesses have also been deposed before the Trial Court ? (ii) Whether evidence recorded by Trial Court during trial can be considered for quashing the FIR ? (iii) Whether any ground is available for quashing the FIR in view of the facts and laws available on record ? Regarding question of law no. (i) :- 9. Learned Senior Counsel for the petitioners submitted that inherent powers can be used at any stage to prevent abuse of process of any Court or otherwise to secure the ends of justice. It makes no different whether trial has been started or not and whether some evidence has been deposed before the Trial Court or not. In support of his contention he placed reliance in the case of Sathish Mehra (supra) and Joseph Salvaraja Vs. State of Gujrat and others, (2011) 7 SCC 59.

* * * *

12. Therefore, in the considered view of this Court this petition is maintainable also even when trial is at advance stage. The question is answered accordingly."

Considering the submissions made by the counsel for the applicants that the trial might have begun and even some witnesses might have been examined, but still the petition filed under Section 482 of CrPC can be considered, therefore, the parties are heard on merits.

It is submitted by the counsel for the applicants that respondent No.2 Umesh Singh Tomar has lodged a report against the applicants alleging that at about 08:00 am while he was coming back to his house in his Scorpio four wheeler from the warehouse and reached in front of the house of one Lajjaram Gaur, then his vehicle was stopped by the applicants by parking a tractor in the mid of the road. When he came down from the vehicle, then the accused persons started assaulting him. Amresh came along with a gun and exhorted that the respondent No.2 should be caught and therefore, Amresh with intention to kill to the respondent No.2 fired a gunshot from his 315 bore gun from a distance of 15 feet, causing injury on his left leg. The neighbours had shut the doors of their houses. The respondent No.2 rushed to his house from where he has been brought to Ambah Hospital, and he was referred to District Hospital, Morena and now he is at Gwalior and Dehati Nalishi was recorded at JA Group of Hospital, Trauma Centre, Gwalior.

Challenging the FIR lodged by the respondent No.2, it is submitted by the counsel for the applicants that the said FIR was lodged by way of counter-blast to the FIR lodged by the applicants in Crime No.505/2012. As per Crime No.505/2012 which was lodged by the applicant No.3 that the deceased Pawan was shot by the respondent No.2 at 07:30 am on the public way, whereas according to the present FIR lodged by the respondent No.2, the incident is alleged to have taken place at 08:00 am. It is not possible because by that time, deceased Pawan had already suffered a gunshot injury and he was already brought to Ambah Hospital where even the Dying Declaration of the deceased Pawan was also recorded

at 08:00 am. The deceased Pawan was admitted in Ambah Hospital. Therefore, it is clear that deceased Pawan had already reached to Hospital Ambah prior to it. It is further submitted that even otherwise the doctor had opined that the injury sustained by the respondent No.2 could have been a self-inflicted injury because it was shot from a very short distance whereas according to the FIR, the applicant No.2 Amresh had fired a gunshot from a distance of 15 feet and the allegations made in the FIR do not corroborate with the medical evidence. It is submitted by the counsel for the applicants that as per the query report given by the doctor, the direction of the injury sustained by the injured respondent No.2 Umesh Singh Tomar was parallel to the earth, that means either somebody while sitting on the ground had fired a gunshot or it was a self-inflicted injury, therefore, the direction of the injury was parallel to the earth and somebody else, from very close range while sitting on the ground, had caused that injury or it was self-inflicted injury. If somebody is standing and fires at anybody else, then the direction of the bullet track would be from upward to downward and it would never be parallel to the earth. Even as per the FSL report, the gunshot was fired from a close range i.e less than 3 feet. It is further submitted that the FIR has been lodged by way of counter-blast to the FIR lodged by the applicant No.3. It is submitted that the respondent No.2 has killed the son of the applicant No.3 and in order to create a false defence, a false FIR has been lodged.

Per contra, it is submitted by the counsel for the respondent No.2 that it is incorrect to say that the FIR by the respondent No.2 has been lodged by way of counter-blast to the FIR lodged by the applicant No.3. In fact, the respondent No.2 was shot by the applicants and in order to create a false evidence, a false FIR was lodged against the respondent No.2 and unfortunately, the deceased Pawan lost his life because of self-inflicted injury. It is further submitted that whether the

FIR lodged by the respondent No.2 is by way of counter-blast or not; and whether the FIR lodged by the applicant No.3 is by way of counter-blast, is a question of fact, which is yet to be decided by the trial Court after appreciating and evaluating the evidence tested on the anvil of cross-examination and, therefore, it is a question of fact that whether one FIR was lodged by way of counter-blast to the earlier FIR or not; and the same cannot be decided while exercising power under Section 482 of CrPC.

Heard the learned counsel for the parties.

It is submitted by the counsel for the applicants that the Supreme Court in the case of **D.P. Gulati, Manager Accounts, M/s. Jeking Infotrain vs. State of Uttar Pradesh and another,** reported in **AIR 2015 SC 3760** has held that if a complaint has been filed by way of counter-blast and to pressurize the accused persons, then it is a clear case of abuse of process of law and, therefore, the complaint filed by the complainant is liable to be quashed. It is further submitted that a similar proposition of law has been laid down by the Supreme Court in the case of **Anjani Kumar vs. State of Bihar and Another, reported in (2008) 2 SCC (Cri) 582** as well as in the case of **Satyavati Ramprasad Ruia vs. New India Assurance Ltd** reported in **AIR 2017 SC 2596.** It is further submitted that where the allegations made in the charge sheet are so absurd that no reasonable man would accept the same, the High Court could not have no reasonable mind should accept the mind. The High Court must look into allegations with openness and then to decide the petition in exercise of power under Section 482 of CrPC and to buttress his submissions, the counsel for the applicants has relied upon the judgment passed by the Supreme Court in the cases of **Manoj Mahavir Prasad Khaitan vs. Ram Gopal Poddar and Another,** reported in **(2011) 1 SCC (Cri) 94** and **Ramesh Rajagopal vs. Devil Polymers Private Limited,** reported in **(2016) 2 SCC (Cri)**

567. It is further submitted by the counsel for the applicants that the dying declaration is not required to be elaborated and exhausted and to buttress his submissions, the counsel for the applicants has relied upon the judgment of the Supreme Court in case of **Charipalli Shankarrao vs. Public Prosecutor, High Court of Andhra Pradesh, Hyderabad** reported in **AIR 1995 SC 777.**

In order to consider the submissions made by the counsel for the parties, it would be necessary to consider the evidence which has been collected by the police during the investigation and whether that material was properly appreciated by the Magistrate while rejecting the closure report and taking cognizance of the matter or not, is to be considered.

The undisputed facts are that the FIR was lodged by the applicant No.3 against the respondent No.2 as well as three more accused persons to the effect that his son Pawan was shot by the respondent No.2 at 07:30 in the morning and this fact cannot be disputed because the incident took place in Village Barehi and at 08:00 am, the dying declaration of deceased Pawan was recorded at Hospital Ambah. Thus, it is clear that at 08:00 am, the deceased Pawan was already in the hospital, whereas the FIR which has been lodged by the respondent No.2, according to him, the incident took place at 08:00 am, when the gunshot, in the same vicinity, was caused to him by the applicant No.2 by firing from his 315 bore gun. It is not the case of the respondent No.2 that the respondent No.2 was attacked by the applicants by committing house trespass. On the contrary, the case of the respondent No.2 is that while he was coming back from the warehouse in his Scorpio Four Wheeler, he was stopped on the way and then, gunshot was fired by Amresh the applicant no.2. It is a matter of common knowledge that where a person had sustained a gunshot injury, then naturally the members of that injured would rush to the

hospital so that the medical treatment can be provided to the injured and they would not stay back on the spot waiting for arrival of the respondent No.2. Had it been a case that after sustaining a gunshot injury by deceased Pawan, the family member of the deceased Pawan had attacked the house of the accused persons causing injury to the respondent No.2, then the said allegations could have been said to be probable as the relative of victim, out of anger and anguish can react to the criminal activity of the accused persons. But it is absurd to say that in stead of taking the injured to the Hospital when he has sustained gunshot injuries, the family members would stay back calmly in the house waiting for arrival of the accused and then to attack. However, this sole circumstance cannot be said to be sufficient for quashing the FIR against the applicants or for holding that the FIR lodged against the applicants is by way of counter-blast. Therefore, further circumstances are required to be considered and the cumulative effect of all the circumstances is to be considered.

The police after registering the FIR, had prepared a spot map and did not find any blood on the place of incident. Although the spot map was prepared on 17/10/2017 i.e. after 12 days of the incident, and non-finding of any blood on the place of incident, may not be a very crucial because after 12 days of the incident the blood may not be found on the spot, but in Crime No.505/2009 (lodged by the applicant No.3), the spot map was prepared on the very same day i.e. 05/10/2012. As per the FIR, in Crime No.505/2012 (lodged by applicant No.3) as well as Crime No.509/2012 (lodged by respondent No.2) the vicinity of both the incidents is the same. According to the FIR lodged in Crime No.505/2009, the incident took place where the street merges with the road, which comes from village Bareh and joint to public way. On both the sides of the road, various houses are situated including that of the deceased and the applicants as well as the respondent No.2 and other co-accused persons. While

preparing the spot map in Crime No.505/2009, on 05/10/2012 the police appears to have conducted a detailed search of the area and had found bloodstains or blood-marks at various places, which have been duly reflected in the spot map but even on 05/10/2012, although blood was found on various places in the same vicinity, but no blood was found on the spot at which the respondent No.2 has claimed that he was shot. Therefore, if the spot map prepared by the police in Crime No.509/2012 on 17/10/2012 is considered in the light of the spot map prepared by the police of the same vicinity in Crime No.505/2012 on 05/10/2012, it is crystal clear that no blood was found even on 05/10/2012 at the place where the respondent No.2 claims to have been shot by the applicants. Thus, there is another circumstance which indicates towards the falsity of the FIR lodged by the respondent No.2.

The another circumstance is that although the respondent No.2 had suffered a gunshot injury on his left thigh, but according to the doctor, the track of bullet was parallel to the ground and secondly, the injury could have been self-inflicted. The police during investigation had raised certain queries to the doctor and had sent the following queries by letter dated 13/10/2012 to the Chief Medical Officer, Civil Hospital Ambah which read as under:-

प्रति,

मुख्य चिकित्सक अधिकारी
सिविल अस्पताल अम्बाह

विषय– थाना अम्बाह के अपराध कं. 509/12 धारा 307,341,34 ताहि के मजरूब उमेश पुत्र मुन्न लाल की दिनांक 05.10.12 को की गई एमएलसी रिपोर्ट पर क्यौरी प्रतिवेदन भिजवायें जाने विषयक।

उपरोक्त विषयान्तर्गत लेख है कि थाना अम्बाह पर दिनांक 05.10.12 के समय 8.00 बजे की घटना में मजरूब उमेश पुत्र मुन्ना लाल तोमर उम्र 29 वर्ष की प्री एमएलसी आपके अस्पताल में पदस्थ डॉ0 आर0के0 दास द्वारा समय सुबह 09.05 बजे की गई है। जिसमें मजरूब के आई चोट कं. 01 में व्लेकनिंग आना लेख किया गया है। तथा चोट कं. 02 स्पष्ट नही की गई है।

अतः मजरूब की गई प्री एमएलएसी में आई चोटों पर निम्नांकित बिन्दुओं पर क्यौरी अभिमत दिये जाने का कष्ट करें।

01— मजरूब के गोली कितनी दूरी से मारी गई है। जिस कारण ब्लैकनिंग आया है दूरी स्पष्ट करें। ?

02— क्या मजरूब के आई चोट प्राण घातक है। ?

03— मजरूब के पैर में गोली किस एंगल से लगना प्रदर्शित करती है स्पष्ट करें। ?

04— क्या मजरूब के आई चोट से मृत्यु होना सम्भावित है। ?

05— क्या चोट स्वयं के द्वारा या मजरूब की सहमती से पहुॅचाई जाना सम्भाावित है। ?

अतः उक्त बिन्दुओं पर प्री एमएलसी का अवलोन कर स्पष्ट क्यौरी कर अभिमत देने का कष्ट करें।

सलग्नः— प्री एमएलसी की छाया प्रति (1)

अनुविभागीय अधिकारी
पुलिस अम्बाह

The queries raised by the police were duly replied by Dr.RK Das, Medical Officer, Community Health Centre, Ambah which read as under:-

1. मेंरे अनुसार चोट पर चयरिंग (कार्बन पर्टिकल) उपस्थित नहीं थे सिर्फ ब्लैकनिंग पायी गयी, इसलिये अतः मेरे अनुसार गोली लगने की रेंज पाक्डर ब्लास्ट की रेंज है।
2. मेरे मत अनुसार मजरूब के पैर की चोट प्राण घातक है की नही यह जिला अस्पताल मुरैना की रिपोर्ट के बाद ही बताया जा सकती है।
3. मेरे अनुसार मजरूब के पैर में लगी गोली जमीन के समानांतर प्रतीत होती है।
4. मेरे अनुसार मजरूब को आई चोट से मृत्यु होना संभावित है या नही यह जिला चिकित्सालय मुरैना की रिपोर्ट के बाद ही बताया जा सकता है।
5. मेरे मत अनुसार इस प्रकार की चोट स्वयं द्वारा यह सहमति से पहुंचाई जाना संभावित है।

According to the doctor, the injury sustained by the respondent No.2 could have been a self-inflicted injury and blackening was found around the entry wound. Thereafter, by letter dated 15/10/2012, the Police raised certain queries to Senior Scientific Officer, FSL Unit, Morena and the letter dated 15/10/2012 reads as under:-

प्रति,

वरिष्ठ वैज्ञानिक अधिकारी

एफएसएल यूनिट मुरैना

विषय—: थाना अम्बाह के अपराध क्रं. 509/12 धारा 307,341,34 ताहि में मजरूब के आई चोट किस प्रकार के वैपन से पहुंचाई जाने के

सम्बध में अभिमत दिये जाने बावत।

उपरोक्त विषयान्तर्गत लेख है कि थाना अम्बाह पर दिनांक 05.10.12 के समय 08:00 बजे की घटना में मजरूब उमेश पुत्र मुन्ना लाल तोमर उम्र 29 वर्ष की प्री एमएलसी अम्बाह अस्पताल में पदस्थ डॉ0 आर0के0दास द्वारा समय सुबह 09:05 बजे की गई है। जिसमें मजरूब के आई चोट कं. 01 में इन्वरटेट मार्जन ब्लेकनिंग एवाउट .5 x .5 से.मी. एवं चोट कं. 02 में एक्र्सटेड मार्जन एवउट .5 x .5 से.मी. लेख किया गया है।

अतः मजरूब के की गई प्री एमएलएसी में आई चोट पर निम्नांकित बिन्दुओं पर अभिमत दिये जाने का कष्ट करें।

01— मजरूब के गोली कितनी दूरी से दी जाना सम्भावित है। जिस कारण ब्लैकनिंग आया है। ?

02— मजरूब के आई इस प्रकार की चोट किस प्रकार के वैपन से पहुॅचाई जा सकती है। ?

03— क्या मजरूब के इस प्राकर की आई चोट प्राणा घातक हो सकती है। ?

अतः उक्त बिन्दुओ पर प्री एमएलसी का अवलोकन कर कूपया अपना अभिमत देने का कष्ट करें।

संलग्न — प्री एमएलसी की छाया प्रति (01)

अनुविभागीय अधिकारी

पुलिस अम्बाह

The Senior Scientific Officer, FSL Unit, Morena replied that that the gunshot was fired from a close range of less than 3 feet, however, for obtaining final opinion, the pant of the respondent No.2 should be sent to FSL, Sagar. It was observed that the opinion of the doctor may be obtained. The pant of the respondent No.2 was sent to FSL, Sagar and after examining the empty cartridge as well as gunshots found on the pant as well as on the underwear of the respondent No.2, it was opined by FSL, Sagar that the gunshot was fired from a distance of less than three feet. The report given by FSL, Sagar, dated 24/11/2012 is reproduced as under:-

परीक्षण प्रतिवेदन

प्राप्त प्रदर्श निम्नलिखित एक प्रदर्श आरक्षक भूपेन्द्र कमांक 468

थाना अम्बाह के द्वारा सील बंद हालत मे दिनांक 12.11.12 को प्राप्त हुए सील का विवरण–

चपड़ा सील का विवरण :– आर्टि ए पर CHARITABLE DISPENSARY AMBAH अंकित सील लगी पायी गयी। जो प्रमाणित सील नमूना से मिलती है।

आर्टिकल ए इसमें एक पेन्ट एक अण्डरवियर प्राप्त हुये इन्हे यहां पर क्रमशःप्रदर्श C1 से C2 तक अंकित किया गया इनके साथ इसमें 8 x 57mm बोर का एक चले कारतूस का खोखा प्राप्त हुआ इसे यहां पर प्रदर्श EC1 से अंकित किया यगा।

प्रदर्शो का परीक्षण :–

प्रदर्श EC1 यह 8 x 57mm बोर का S&B का चले कारतूस का खोखा है। इसमे अन्दर की ओर सूक्ष्म रासायनिक परीक्षण करने पर नाइट्राईट की उपस्थिति धनात्मक पायी गयी।

प्रदर्श C1 यह एक स्लेटी भूरे रंग का फुल पेन्ट है। इस पर रबत जैसे पदार्थ के दाग लगे है। इस पर सामने बायी ओर मध्य से उपर की तरफ एक छिद्र लगभग 0.3 x 0.3 आकार का उपस्थित पाया गया। इसके किनारों पर सूक्ष्म रासायनिक परीक्षण करने पर लैड धातू व कापर धातु की उपस्थित धनात्मक पायी गयी। इसके चारो ओर लगभग 15 x 15 क्षेत्र के फेलाब में अनके पिन हैड आकार के छिद्र पाये गये इनमें कुछ गन पावडर के अधजले कप फसे पाये गये जिसका सूक्ष्म रासायनिक परीक्षण करने पर नाइट्राईट की उपस्थिति धनात्मक पायी गयी। इसे घेरकर H1 अंकित किया गया। इस पर पीछे बांयी ओर मध्य से उपर की तरफ एक छिद्र लगभग 0.3 x 0.4 आकार का उपस्थित पाया गया। इसके किनारों पर सूक्ष्म रासायनिक परीक्षण करने पर लैड धातु व कापर धातु की उपस्थित धनात्मक पायी गयी। इसे घेरकर H2 अंकित किया गया।

प्रदर्श C2 यह एक हरे पट्टे का अण्डरवियर है। इस पर रबत जैसे पदार्थ के दाग लगे है। इस पर सामने बायी और नीचे की तरफ एक छिद्र लगभग 0.3 x 0.3 आकार का (.Not legible---------- इसे घ ेरकर H1 अंकित किया गया ।

अभिमत

प्रदर्श EC1 यह 8 x 57mm बोर का चले कारतूस का खोखा है। इसे किसी 8 x 57mm बोर के फायर आर्म से चलाया गया है।

पेट प्रदर्श C1 मे चिन्हित छिद्र H1 व H2 तथा अण्डरवियर प्रदर्श C2 में चिन्हित छिद्र H1 गन शॉट छिद्र है। जो लेड कोर युक्त कापर जेकेटेड बुलेट के लगने से बने है। पेट प्रदर्श C1 मे चिन्हित छिद्र H1 के आसपास गन पावडर मार्कस की उपस्थिति को देखते हुये किसी प्रमाणिक फायर आर्म से फायर होने की स्थिति में फायर करने की दूरी तीन फिट से कम रही होगी।

परीक्षित एवं सीबंद किये गये प्रदर्शो
पर लगी चपडा सील का नमूना

Thus, it is clear that according to the scientific assessment of the case, the gunshot sustained by the respondent No.2 was fired from a very close range of less than 3 feet and it is the assessment of the doctor that the

injury could be a self-inflicted injury. The allegation made in the FIR, that the gunshot was fired by the applicant No.2 Amresh from a long range of 15 feet, automatically gets falsified in view of the scientific evidence collected by the police during investigation. Thus, it is clear that the allegations made in the FIR that the applicant No.2 had fired a gunshot from a distance of 15 feet does not find corroboration from the medical evidence collected by the police and on the contrary ,the scientific evidence discloses that the gunshot was fired from a very close range of less than 3 feet and the said injury could be a self-inflicted injury.

Furthermore, as per opinion given by the doctor, the direction of gunshot was parallel to the earth. If this circumstance is considered, then it clearly indicates that either the injury sustained by the respondent No.2 was a self-inflicted injury or somebody else by sitting on the ground had caused that injury on the thigh of the respondent No.2 and that is why, the direction and the track of the movement of bullet was parallel to the ground. If the bullet was fired from a distance of 15 feet by a person, then the direction of bullet or track of the bullet cannot be parallel to the earth and the direction has to be from upward to downward. Even assuming that the direction could have been parallel to the earth but since the distance of firing gunshot as alleged against the respondent No.2 does not find corroboration from the medical evidence as well as scientific evidence collected by police which clearly shows that the injury sustained by respondent No.2 was a self-inflicted injury and the only intention was to create a false evidence in his defence.

Under these circumstances, if the police, after concluding the investigation had filed the closure report for three times, this Court is of the considered opinion that the Magistrate by ignoring the above-mentioned facts, had relied upon the ocular evidence of the witnesses and took cognizance of the matter. Whether the FIR has been lodged

by way of counter-blast or not, cannot be decided solely on the basis of ocular evidence. If the medical as well as the scientific evidence collected by the police during investigation belies the ocular evidence, then in a case where one has lost his life and the second FIR lodged by the accused persons alleging that the incident took place half an hour after the first incident, then it may be a case of counter-blast. Here, considering the cumulative effect of all circumstances as observed by this Court in the forgoing paragraphs, this Court is of the considered opinion that the FIR lodged by the respondent No.2 in Crime No.509/2012 was nothing, but was lodged by way of counter-blast to the FIR lodged by the applicant No.3 against the respondent No.2 as well as three more accused persons and further the material collected by the police also belies the allegations.

Thus, under the facts and circumstances of the case, this Court is of the considered opinion that the Magistrate did not apply its mind in its entirety in rejecting the closure report filed by the police.

The Supreme Court in the case of **D.P. Gulati (supra)** has held as under:-

> **''7**.We have carefully considered the rival submissions made before us. From bare perusal of Section 482 of the Code, it is clear that the object of exercise of power under the Section is to prevent abuse of process of law, and to secure ends of justice. In Rajiv Thapar and others v. Madan Lal Kapoor (2013) 3 SCC 330, this Court has enumerated the steps required to be followed before invoking inherent jurisdiction by the High Court under Section 482 of the Code as under:-
>
> "30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482, Cr P C:
>
> 30.1. Step one : whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?
>
> 30.2. Step two : whether the material relied

> upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?
> 30.4. Step four whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?
> 30.4. Step four whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?
> 30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482. CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused."

The Supreme Court in the case of **Rishipal vs State Of U.P. & Anr,** reported in **AIR 2014 SC 2567** has held that it is no doubt true that the Courts have to be very careful while exercising the power under Section 482 Cr.P.C. At the same time, the Courts should not allow a litigant to file vexatious complaints to otherwise settle their scores by setting the criminal law into motion, which is a pure abuse of process of law and it has to be interdicted at the threshold.

The Supreme Court in the case of **State of Haryana and Others vs. Ch. Bhajanlal and Others** reported in **AIR 1992 SC 604** has held as under:-

> ''Though the scope for interference while exercising jurisdiction under Sec.482 Cr.P.C. is limited and illustrative examples laid down are as follows:
> (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Sec.156(1) of the Codeexcept under an order of a Magistrate within the purview of Sec.155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Sec. 155 (2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Codeor the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Codeor the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

The Supreme Court in the case of **Sunder Babu vs. State of Tamil Nadu** reported in **AIR 2009 SC (Supp) 2087** has held as under:-

''(7) The parameters for exercise of power under Sec.482 have been laid down by this Court in several cases.

(8) The Section does not confer any new power on the High Court. It only saves the inherent power which the Court possessed before the

> enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice.''

Accordingly, the order dated 16/10/2014 passed by CJM Morena and the order passed by 4th ASJ, Morena in Criminal Revision No.97/2014 are hereby set aside. The closure report filed by the police is hereby accepted. As a consequence

thereof, all the criminal proceedings arising out of Crime No.509/2012 against the applicants are hereby quashed.

The application succeeds and is hereby **allowed.**

(G.S. Ahluwalia)
Judge

MKB