

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

BEFORE HON. SHRI JUSTICE ALOK VERMA,J

Cr.R. No.415/2013

Ram Naresh Upadhyaya and another

Vs.

Asha Bai Chaudhury

Shri S.K. Vyas, learned senior counsel with Shri Atul Shreedharan, learned counsel for the applicants.

Shri Nitin Vyas, learned counsel for the respondent.

ORDER

(Passed on 11/05/2015)

This criminal revision is directed against order passed by the learned Judicial Magistrate First Class, Indore in Criminal Case No.7583/2013 whereby the learned JMFC took cognizance against the present applicants under section 304/34 IPC.

2. The factual background of the case is that on 15.10.2002, the present applicants were posted at Police Station Annapurna. Applicant No.1 was posted as Town Inspector while the applicant No.2 was posted as Head Constable. At about 10.30 pm., they received source information that the deceased yoghesh Chaudhury committed a loot on Rajesh Dubey and present applicants on such information proceeded to the spot

where the loot was alleged to have been committed. When they tried to catch hold of the deceased, he fired gun shot from his country revolver. Thereafter, the co-accused also inflicted knife injury on Nathuram. Deceased Yogesh Chaudhury again fired a gun shot due to which Shivpal Singh sustained gun shot injury. Thereafter, they fired one round each due to which the deceased sustained gun shot injury and subsequently died.

3. The complainant in the present case is mother of the deceased. She filed a criminal complaint before the learned Judicial Magistrate under sections 302/34, 364, 120-B, 166, 471 and 506 of IPC alleging that the said encounter was a false encounter and her son was murdered by the present applicants. After recording evidence and also taking into consideration the enquiry report conducted by Additional Collector, Indore the learned Magistrate took cognizance under section 304/34 IPC. Aggrieved by which the present revision is filed. The main contentions, inter-alia, of the present applicants are that the present applicants were on official duty and, therefore, they are protected by section 197 Cr.P.C. No permission for prosecution of the present applicants were obtained by the complainant and, therefore, cognizance taken by the present applicants was bad in law and also that they fired gun shot injuries in their self defence

and, therefore, under section 100 of IPC, they committed no crime.

4. While the application was pending, the complainant filed an application I.A. No.3400/2014 stating therein that the complainant filed an application before the Judicial Magistrate that she did not want to prosecute the complaint filed by her and she realize that the present applicants were not at fault and therefore, she prays that the present revision be allowed and cognizance taken against the present applicants be set aside.

5. Going through the record, I find that the applicants approached this Court without first approaching the Sessions Court in revision, though it is true that this Court has concurrent jurisdiction with the Court of Sessions, however, no exceptional grounds exist for approaching this Court directly by passing normal forum of Sessions Court available to the present applicants, therefore, in my opinion, without approaching the revisional court, approaching this Court directly under section 397 r/w section 401 Cr.P.C. is not proper.

6. So far as the application I.A. No.3400/2014 is concerned, scope of the revision being very limited and once cognizance by the Magistrate of cognizable evidence is taken, the complainant has no say in the matter. In this view of the

matter, this application has no force. So far as this revision is concerned. Accordingly, this revision is dismissed with direction and liberty to the present applicants to approach the Sessions Court in revision and thereafter, if, they so feel, they may approach this Court under appropriate provision of law.

7. Record of the lower court may be sent back to the trial Magistrate without further delay as this is a record of a pending case.

8. With this observation, direction and liberty the revision stands disposed of.

**(ALOK VERMA)
JUDGE**