

**HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE**

**BEFORE HON.MR. JUSTICE ALOK VERMA, JUDGE**

**M.Cr.C. No.5711/2015**

**Zarina Godrej D/o Late Shri Noshewan Godrej**

**Vs.**

**State of Madhya Pradesh**

**O R D E R**

**Post for 31.08.2015**

**(ALOK VERMA)  
JUDGE**

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Shri Vivek Dalal, learned counsel for the applicant.

Shri C.S. Ujjainiya, learned counsel for the respondent/State.

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**O R D E R**

**( Passed on this 31<sup>st</sup> day of August, 2015 )**

This application under Section 482 Cr.P.C. is directed against the order dated 19.01.2015 passed by the Chief Judicial Magistrate, Indore vide which learned Chief Judicial Magistrate fixed the case for closure statements.

1. Facts giving rise to present application are that the applicant lodged a complaint at Police Station-Tukoganj, District-Indore on which crime No.671/2010 was registered under Sections 420, 467, 471 and 120-B of I.P.C. According to the complaint lodged by the applicant, the present applicant is daughter of original owner of building known as 'Aadil Villa Bhawan', situated at Racecourse Road, Indore belonged to Shri Noshewan Godrej. After due investigation, a final report (closure) under Section 173 (3) Cr.P.C. was filed by Police Station – Tukoganj before the Chief Judicial Magistrate, Indore. The learned Magistrate registered the case at closure case No.3/2013 and proceeded to record closure statements. By the impugned order, the learned Chief Judicial Magistrate issued summon against the present

applicant to record his statement as 'closure statement'. Being aggrieved by this order, this application has been filed.

2. Brief facts as stated in the complaint by the present applicant were that the said 'Aadil Villa Bhawan' belonged to her father Noshewan Godrej. According to the present applicant, an agreement to sell was prepared dated 12.01.2010 in favour of one Pushpindra Singh Solanki son of Chhatarpal Singh Solanki, which according to her was a forged agreement to sell. On the basis of this forged agreement to sell, the said Pushpinder Solanki executed another agreement to sell in favour of Rajiv Nayan Ghuwalewale. After this, the land was sold to Jai Kumar Chawla by agreement to sell dated 16.02.2010.

3. According to the applicant, the concerning Investigating Officer filed a closure report in which, it was stated that the alleged forged document was not made available by the applicant. During the investigation, it was also confirmed that about 50 lacs rupees was credited in the account of the applicant on various dates.

4. Learned counsel for the applicant submits that the document being a forged document and, therefore, the applicant cannot supply the same to the police. The forged document is in possession of the accused persons. He further argues placing reliance on the judgments of Hon'ble Apex Court in cases of **M/s Carat Pvt. Ltd. Vs. State of Karnataka and another 1989 (2) S.C.C. 132** and **Nupur Talwar Vs. Central Bureau of Investigation, Delhi and another (2012) (2) S.C.C. 188**, when a closure report is filed by the Investigating Officer under Section 173 (3) Cr.P.C., the course available to the Magistrate are that :-

- (i) he can accept the closure report after giving an opportunity to the complainant of hearing.
- (ii) he can take cognizance on the basis of the report and evidence already collected by the Investigating Officer.
- (iii) he can also order further investigation, if in his opinion further evidence is required and possible.

(iv) the principle laid down in the afore-mentioned cases is that he is not required to proceed under Section 200 and 202 of Cr.P.C. However, it is open to him to follow the procedure prescribed under Section 200, 202 Cr.P.C.

5. Learned counsel for the respondent/State opposes this application on the ground that complete investigation has already been done and no further investigation is possible.

6. In response, learned counsel for the applicant submits that according to the closure report dated 28.04.2013, it was mentioned therein that Inspector General of Police after perusal of the case-diary directed him to get the alleged forged document examined by a handwriting expert and also the necessary information of e-mails sent by late Noshawan Godrej to be collected. However, this could not be done due to non-cooperation of the present applicant. But according to the learned counsel for the applicant, no action was taken by the police on this account. The alleged document could easily be recovered from the accused person and it could have been got examined by the handwriting expert. However, no such action was taken.

7. After going through the order-sheet of the learned Chief Judicial Magistrate produced by the present applicant, it appears that the procedure followed by the learned Chief Judicial Magistrate is not in-line with the principle laid down by the Hon'ble Apex Court in afore-mentioned cases. The case is pending since the year 2013 for recording of closure statement, which are not prescribed and required under the provisions of Section 173 (3) Cr.P.C. and also the principle laid down by the Hon'ble Apex Court in above cases. In this view of the matter and considered view of this Court, the procedure followed by the Chief Judicial Magistrate is not proper.

8. Accordingly, this application is disposed of with direction to the learned Chief Judicial Magistrate to follow the principle laid down in aforementioned case and follow any one of course as stated above in this order.

9. With the aforesaid observations and direction, this application stands disposed of.

Certified copy, as per rules.

**(Alok Verma)**  
**Judge**

Chitranjan