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**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR**

**BEFORE  
HON'BLE SHRI JUSTICE VISHAL DHAGAT  
ON THE 6<sup>th</sup> OF MARCH, 2024**

**MISC. CRIMINAL CASE No. 56005 of 2023**

**BETWEEN:-**

**LAKHAN DIGARSE S/O SHRI KAPURCHAND, AGED  
ABOUT 68 YEARS, OCCUPATION: BUSINESS, RESIDENT  
OF SHANKARNAGAR, PANDHURNA, DISTRICT  
CHHINDWARA (MADHYA PRADESH)**

**.....PETITIONER**

**(BY SHRI MANISH DATT - SENIOR ADVOCATE WITH SHRI ESHAAN DATT  
- ADVOCATE)**

**AND**

**THE STATE OF MADHYA PRADESH THROUGH POLICE  
STATION PANDHURNA, DISTRICT CHHINDWARA  
(MADHYA PRADESH)**

**.....RESPONDENT**

**(BY SHRI D.K. PAROHA - GOVT. ADVOCATE FOR RESPONDENT/STATE)**

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*This application coming on for admission this day, the court passed the  
following:*

**ORDER**

Petitioner has filed this petition under Section 482 of Code of Criminal Procedure challenging order dated 21.09.2022 passed by Court of Judicial Magistrate First Class, Tehsil Pandhurna, District Chhindwara in criminal case No.884/2022.

2. By impugned order dated 21.09.2022, case was referred to Chief Judicial Magistrate exercising its power under Section 325 of Cr.P.C. as Magistrate could not pass sentence sufficiently severe commensurate with offence committed. Offence under Section 461 is punishable up to 10 years of

imprisonment and Magistrate was of opinion that he cannot pass sufficiently severe order in the case, therefore, matter was referred to Chief Judicial Magistrate for passing appropriate sentence and orders.

3. Learned senior counsel appearing for petitioner submitted that Section 325(1) of Cr.P.C. would be applicable only if accused is held guilty. Opinion under Section 325 of Cr.P.C. has to be formulated after considering the evidence available on record. Reliance was placed upon judgment passed by this Court in M.Cr.C. No.40253/2023. Order passed by Court below is perverse and bad in law. Magistrate does not indicate that he has applied its mind. Judicial Magistrate First Class has passed order mechanically and referred the matter to Chief Judicial Magistrate after lapse of more than 16 years and order per se is illegal and deserves to be quashed.

4. Government Advocate appearing for State supported the order passed by the Court below and submitted that the opinion has been formed by the Magistrate. As sufficiently severe sentence cannot be imposed upon the accused, therefore, matter has been referred under Section 325(1) of Cr.P.C. Magistrate has exercised the jurisdiction vested in it by law. No illegality or impropriety has been committed by Magistrate. Petition filed by petitioner be dismissed.

5. Heard the counsel for the parties.

6. Perused impugned order dated 21.09.2022. As per Section 325 of Cr.P.C., Magistrate is required to form an opinion on basis of hearing of evidence of prosecution and accused that accused is guilty and he ought to have received the punishment of different kind and more severe than he is empowered to inflict. Magistrate after forming opinion has to forward the

accused to Chief Judicial Magistrate. Chief Judicial Magistrate may examine parties and recall and examine any witness who had already given evidence and may take any further evidence and pass such judgment, sentence or order in the case as he thinks fit in accordance with law. Requirement under section 325 of Cr.P.C. is to formulate opinion and not to give finding. Section 325 is so drafted by legislature because Chief Judicial Magistrate is not acting as an Appellate or Revisional Court. If any finding is given by Magistrate, then Chief Judicial Magistrate, who is acting as Court of original jurisdiction, cannot review the finding as there is no provision of review in Code of Criminal Procedure. Chief Judicial Magistrate not being an Appellate or Revisional Court cannot alter the findings given by the Magistrate, therefore, legislature deem it appropriate to lay down in Section 325 that Magistrate is only required to form an opinion regarding guilt and no finding is required to be given by Magistrate. Chief Judicial Magistrate has to write judgment and has to impose sentence on the accused in accordance with law.

7. On going through order dated 21.09.2022, it is found that no appropriate reasons have been given and evidence has not been discussed to formulate opinion of guilt. Merely opinion is given in order dated 21.09.2022 without discussing evidence and giving reasons for formulating opinion. Magistrate is not required to discuss in detail entire evidence as if Magistrate is writing a judgment, but skeletal evidence on basis of which he is formulating opinion must have been discussed by the Magistrate in the order. Order passed by Magistrate is defective and is not in accordance with Section 325(1) of Cr.P.C.

8. In view of same, impugned order dated 21.09.2022 is set aside. Matter is remanded back to Magistrate to pass a reasoned order under section 325 of

the Cr.P.C. after discussing evidence in the case. Magistrate is free to take independent decision after examining the evidence and exhibits in the case and formulate an opinion. Entire exercise be carried out by J.M.F.C. within a period of 15 days from receipt of copy of order.

9. With aforesaid direction, case is **disposed off**.

(VISHAL DHAGAT)  
JUDGE

sp/-

