IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 9th OF MAY, 2025

MISC. CRIMINAL CASE No. 31252 of 2024

PARIMAL SINGH GURJAR

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Aditya Singh Ghuraiya, Advocate for applicant.

Shri Mohit Shivhare, Public Prosecutor for respondent No.1/State.

Shri V.D. Sharma, Advocate for respondent Nos. 2 and 3.

ORDER

This application, under Section 482 of the CrPC, has been filed against the order dated 24.6.2024 passed by Third Additional Sessions Judge, Morena in S.T. No. 315 of 2023, by which application filed by the applicant under Section 193 of the Cr.P.C has been rejected.

2. It is submitted by counsel for applicant that complainant Ramvilas Gurjar lodged an FIR that on 1.6.2021, at about 4:00 a.m., he was going from Morena to Vindwa on his Motorcycle along with applicant Parmal. Dharmendra Singh Kansana was also going by his separate motorcycle. As soon as they reached in front of farmhouse of Hakim Baghel situated at

Piparsa Station Road, they saw that Badshah, Rakesh, Rahul, and Lalla alias Janavar were standing along with Lathi in their hand. On account of old enmity, all the four persons started abusing them with filthy language in the name of mother and sister. When applicant objected to it, then Badshah fired a gunshot which hit on the back side of waist of Parmal/applicant, as a result he fell down. Rakesh fired a gunshot which also caused injury on the back side of the waist of Dharmendra and he also fell down. All the four persons ran away after leaving their Scooty on the spot. Registration No. of scooty is MP06-S-9988. Information of the incident was given by complainant Ramvilas to Mohan Singh Gurjar on phone. Thereafter Mohan Singh Gurjar came on the spot and thereafter both the injured persons, i.e., applicant Parmal and Dharmendra, were taken to District Hospital, Morena on Motorcycles, from where both of them were referred to Gwalior and after admitting them in Apollo Hospital, Gwalior, complainant Ramvilas lodged the FIR.

3. It is submitted by counsel for applicant that police, after concluding the investigation, filed charge sheet against Rahul Dandotiya and Lalla alias Janavar Dandotiya and did not file charge sheet against Badshah Dandotiya and Rakesh Dandotiya on the ground that Badshah and Rakesh had given a complaint to senior officers alleging their false implication. Rakesh had also produced the documents pertaining to medical ailment on account of COVID-19 pandemic. The statements of various persons were also recorded and CCTV footage was also collected and accordingly charge sheet was not filed against Badshah Dandotiya and Rakesh Dandotiya/respondent No.s 2 and 3.

It is submitted by counsel for applicant that an application filed by the applicant under Section 190 of CrPC for taking cognizance against respondent Nos. 2 and 3 was rejected by the committal Court on the ground that it has no jurisdiction to try the offence under section 307 of IPC. Thereafter, applicant filed an application under Section 193 of Cr.P.C for taking cognizance against

Badshah Dandotiya and Rakesh Dandotiya, which was rejected by order dated 24.6.2024.

It is submitted by counsel for applicant that whether Badshah Dandotiya and Rakesh Dandotiya were present or not on the spot is a question which is to be decided by the trial court after considering the evidence led by accused persons. It is further submitted that defence of plea of alibi is to be proved by leading cogent evidence. In the present case, FIR specifically contains allegation that it was Badshah Dandotiya and Rakesh Dandotiya who fired two different shots causing injuries to Parimal and Dharmendra, and under these circumstances, the police committed a material illegality by relying upon the medical prescription of Rakesh Dandotiya to hold that he was medically sick on the date of incident.

It is further submitted that so far as CCTV footage of house of neighbour is concerned, the same cannot be said to be conclusive evidence in favour of accused persons because the time and date in the DVR of CCTV system is fed manually and the scene can be recreated by feeding incorrect date and time.

4. *Per contra*, application is vehemently opposed by counsel for respondent Nos. 2 and 3. It is submitted that earlier applicant had filed an application under Section 190 of CrPC which was rejected by the committal Court, and once the committal court had played an active role, then power under Section 193 of Cr.P.C comes to an end and the trial court could have exercised its power under Section 319 of the CrPC only.

5. Considered the submissions made by learned counsel for the parties.

6. So far as plea of alibi is concerned, Supreme Court in the case of **Harjinder Singh vs. State of Punjab and another** decided on **6.5.2025** in **SLP (Criminal) No. 1891 of 2024**, has held as under:

10. Hence, in our considered opinion, the power under Section 319 CrPC is triggered not by conjecture but by "evidence" that surfaces in Court. In the present case, narrated in detail how, on the morning of 10 May 2016, respondent no. 2, together with others, stopped a car, confronted the deceased and, in the Punjabi vernacular, told him that he and his family ought to drown themselves for failing to retaliate. PW-1 further described the immediate impact of those words: the deceased broke down, secluded himself, and a few hours later left home never to return alive.

11. The primary argument of Respondent no. 2 rests on his alibi. An alibi, however, is a plea in the nature of a defence; the burden to establish it rests squarely on the accused. Here, the documents relied upon, parking chit, chemist's receipt, OPD card, CCTV clip, have yet to be formally proved. Until that exercise is undertaken, they remain untested pieces of paper. To treat them as conclusive at the threshold would invert the established order of criminal proceedings, requiring the Court to pronounce upon a defence before the prosecution is allowed to lead its full evidence. Even assuming the documents will eventually be proved, their face value does not eclipse the prosecution version. The parking slip is timed at 06:30 a.m.; the chemist's bill and CCTV images are from 12:09 p.m. The confrontation is alleged at 08:30 a.m. A road journey from Jagowal to Chandigarh of roughly ninety kilometres in a private vehicle can comfortably be accomplished within the intervening window. More importantly, abetment to suicide is not an offence committed at a single moment. It may consist of a build-up of psychological pressure culminating in self-destruction, and the law punishes that build-up wherever and whenever it occurs.

14. We believe that the High Court, in interfering under Section 482 CrPC, placed decisive reliance on the investigation dossier and characterised the 10 May 2016 episode as mere "teasing". Such a description underplays both the content and the effect of the words spoken. If the allegations is true, telling a physically challenged man that he and his family should die, and doing so in the immediate aftermath of a grievous acid attack, is not banter. Sensitivity to the social context, where honour and shame weigh heavily, was called for. The offence, no doubt, will have to be established at the trial. The Trial Court will also decide whether on facts the offence is established,

keeping in view the law laid down by this Court in **Mahendra Awase vs. State of Madhya Pradesh** and other judgments interpreting Section 306 IPC.

15. Having regard to the purpose of Section 319 CrPC, we see no infirmity in the order of the Trial Court. On the contrary, non-summoning of respondent no. 2 would have risked a truncated trial and a possible failure of justice. The High Court, by elevating unproved defence documents above sworn testimony, adopted an approach that was neither consistent with the text of Section 319 CrPC nor consonant with the realities of a case involving a vulnerable victim. The Court's intervention, in effect, foreclosed the prosecution from testing the alibi and deprived the Trial Court of jurisdiction expressly conferred upon it."

7. This Court in the case of **Mukesh Singh Rawat vs. State of Madhya Pradesh** decided on **3.8.2022** in Criminal Revision No. **2319 of 2022** has held as under:

"32. This Court has already come to a conclusion that it cannot be said that the person seen in the videograph of the CCTV footage collected from the house of the applicant is that of the applicant. Furthermore, in the light of the possibility of the manipulation by manually manipulating the date and time of the recording, coupled with the fact that no certificate under Section 65-B of the Evidence Act was collected from Smt. Krishna Rawat from whose possession, CCTV footage of the DVR installed in the house of the applicant was taken and in absence of identification of the applicant in the CCTV footage of the ATM of 27/05/2021 at 00:26 hours, coupled with the fact that no explanation has been given by the applicant as to why he went to ATM to withdraw the amount of Rs.5,000/- in the wee hours, this Court is of the considered opinion that the police has failed to collect sufficient material to show that the applicant was in Bhopal at the time of incident. Furthermore, it is well established principle of law that the defence of plea of *alibi* is to be proved by the accused by leading cogent and reliable evidence. The evidence which has been collected by the police is not sufficient and in fact, the police has filed closure report on surmises and conjectures without there being any foundation."

The aforesaid order was affirmed by Supreme Court by order dated 7/11/2022 passed in Special Leave to Appeal (Crl.) No. 10484/2022

8. Similar view was taken by this Court in **Chandrakant Yadav and another V. State of M.P. and another** decided on 30.7.2024 in MCRC No. 25903 of 2024 while sitting at Principal Seat at Jabalpur. The said order was affirmed by the Supreme Court by order dated 16.12.2024 passed in the case of Jagdish Prasad Dixit vs. State of M.P. & another in SLP (Criminal) Diary No. 48079/2024.

9. Even if the evidence collected by police with regard to plea of alibi of respondent Nos. 2 and 3 is considered, then it is clear that it is not sufficient to draw an inference that respondent Nos. 2 and 3 were not present on the spot at the time of incident. So far as medical prescription of Rakesh in respect of Corona infection in the month of April 2021 and therefore he was not in a position to move out of the house even after one month is concerned, the same is beyond imagination and is also not supported by any document. If Rakesh Dandotiya was bedridden on account of COVID-19 infection, then he should have placed the said document on record to show that he was unable to move and he was confined to bed. Nothing of that sort has been filed.

10. So far as plea of alibi of Badshah and Rakesh in CCTV footage is concerned, it is suffice to mention here that statement of father of accused persons as well as neighbours is of no consequence to draw an adverse inference against the prosecution. The CCTV footage of a system installed in a house can be interpolated very easily. The date and time in the DVR is fed manually and therefore the scene of getting inside the house and going outside the house can be recreated by interpolating date and time. Under these circumstances, this Court is of considered opinion that the material which was relied upon by the Police to hold that respondent Nos 2 and 3 were not present

on the spot is not sufficient to draw such an inference.

11. So far as jurisdiction of trial court to take cognizance under Section 193 of CrPC is concerned, it is suffice to mention here that committal Court never actively considered the question of taking cognizance under Section 190 of CrPC. The role played by committal Court in the present case was passive. When an application under Section 190 of CrPC was filed, it was dismissed by the committal Court by order dated 30.9.2023 by holding that committal Court has no jurisdiction to take cognizance and its duty is only to commit the case and whether any case is made out against respondent Nos 2 and 3 or not, and whether respondent Nos 2 and 3 were involved in commission of offence or not can only be decided by the Sessions court. (It is clarified that order dated 30.9.2023 is not on record and certified copy of the said order was provided by counsel for respondent Nos. 2 and 3.)

12. The Supreme Court in the case of **Balveer Singh v. State of Rajasthan** reported in **(2016) 6 SCC 680** has held as under:

> "**24.** Keeping in view the aforesaid legal position, we may now discuss the circumstances under which the cognizance was taken by the Sessions Judge. Here is a case where the police report which was submitted to the Magistrate, the investigating officer had not included the appellants as accused persons. The complainant had filed application before the learned Magistrate with prayer to take cognizance against the appellants as well. This application was duly considered and rejected by the learned Magistrate. The situation in this case is, thus, not where the investigation report/charge-sheet filed under Section 173(8) of the Code implicated the appellants and the appellants contended that they are wrongly implicated. On the contrary, the police itself had mentioned in its final report that case against the appellants had not been made out. This was objected to by the complainant who wanted the Magistrate to summon these appellants as well and for this purpose the application was filed by the complainant under Section 190 of the Code. The appellants had replied to the said application and after hearing the arguments, the application was rejected by the Magistrate. This shows that the

> order of the Magistrate was passed with due application of mind whereby he refused to take cognizance of the alleged offence against the appellants and confined it only to the son of the appellants. This order was not challenged. Normally, in such a case, it cannot be said that the Magistrate had played "passive role" while committing the case to the Court of Session. He had, thus, taken cognizance after due application of mind and played an "active role" in the process. The position would have been different if the Magistrate had simply forwarded the application of the complainant to the Court of Session while committing the case. In this scenario, we are of the opinion that it would be a case where the Magistrate had taken the cognizance of the offence. Notwithstanding the same, the Sessions Court on the similar application made by the complainant before it, took cognizance thereupon. Normally, such a course of action would not be permissible."

13. Thus, it is clear that where magistrate had played an "active role" by considering as to whether cognizance against the persons who have not been charge-sheeted by the police can be taken or not, then Sessions Court may not consider similar application made by the complainant and the only option which will be left with the Sessions Court would be to exercise its power under Section 319 of CrPC. In the present case, this Court has already summarised the reasons assigned by the Magistrate. At the cost of repetition, it is once again pointed out that Magistrate has not considered the merits of the case and simply held that offence under Section 307 of IPC is triable by the Court of Session and whether respondent Nos. 2 and 3 were involved or not and whether they were falsely implicated or not can be looked into by Sessions Court only. Therefore, it is held that the Committal Court did not play an "active role" but it played a "passive role" merely by committing the case to the Court of Session. Under these circumstances, the power under Section 193 of CrPC was available with the Sessions Court. Therefore, the contention of counsel for respondent Nos. 2 and 3 that Sessions Court was otherwise having no jurisdiction under Section 193 of CrPC is misconceived and is hereby

rejected.

14. Considering the totality of the facts and circumstances of the case, this Court is of considered opinion that the Sessions Court committed a material illegality by not taking cognizance against respondent Nos. 2 and 3. Accordingly, order dated 24.6.2024 passed by Third Additional Sessions Judge, Morena in S.T. No. 315 of 2023 is hereby **set aside**.

The application filed by applicant under Section 193 of CrPC is allowed. The trial court / Third Additional Sessions Judge, Morena is directed to take cognizance against respondent Nos 2 and 3 for offences under Sections 307 and 294 of IPC as well as any other offence which may be made out under the facts and circumstances of the case.

15. With aforesaid observations, the application is allowed.

(G.S. Ahluwalia)
Judge

(and)