IN THE HIGH COURT OF MADHYA PRADESH

AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE DINESH KUMAR PALIWAL

ON THE 8th OF APRIL, 2024

MISC. CRIMINAL CASE No.36063/2022

BETWEEN:-

1. DEVI SINGH MEENA S/O HARIRAM MEENA, R/O VILLAGE BARAI P.S. KATARA HILLS BHOPAL (MADHYA PRADESH)

2. JEEVAN SINGH MEENA S/O DEVI SINGH MEENA R/O VILLAGE BARAI POLICE STATION KATARA HILLS BHOPAL (MP) (MADHYA PRADESH)

3. SHRIMATI OMWATI MEENA W/O DEVI SINGH MEENA R/O VILLAGE BARAI KATRA HILS BHOPAL DISTRICT BHOPAL (MADHYA PRADESH)

…...PETITIONERS

(*BY SHRI SANKALP KOCHAR - ADVOCATE)*

AND

1. THE STATE OF MADHYA PRADESH THROUGH POLICE STATION KATARA HILLS BHOPAL (MADHYA PRADESH)

2. OMBABU MEENA S/O LATE MAHARAJ SINGH MEENA, AGED ABOUT 29 YEARS, VILLAGE BARRAI, THANA KATARA HILLS, (MADHYA PRADESH)

...RESPONDENTS

(BY SHRI MANOJ KUSHWAHA – PANEL LAWYER) (SHRI RAJENDRA KUMAR SINGH – ADVOCATE FOR RESPONDENT NO.2)

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

ORDER

This petition has been filed to invoke the inherent powers under Section 482 of Cr.P.C. assailing order dated 28.04.2022, passed in Criminal Revision No.75/2022 (Devi Singh Meena & Others Vs. State of M.P.) by 25th District and Additional Sessions Judge, Bhopal arising out of order dated 13.12.2021, passed by Shri Krishanpal Singh Sisodiya, JMFC by which in exercise of powers under Section 190(1)(a) of Cr.P.C, the Magistrate has taken cognizance against the applicants for offence punishable under Section 302/34 of IPC.

2. The necessary facts for disposal of this petition are that on 20.10.2020 at around 2:50 P.M. Ombabu Meena resident of village Barai, Police Station Bhopal informed Purendra Singh, Police Inspector/SHO Police Station Katara Hills that he is resident of Barai and is a farmer. Today at around 2:00 P.M. he was working in his compound in front of his house. His wife Jyoti and sister Seema were sitting in the V*arandah* of the house. His mother was roaming outside the *Varandah*. In the meantime his uncle Devi Singh's son Raju Meena armed with axe along with his elder brother Jeevan Meena and father Devi Singh Meena uttering abuses came. Uncle Devi Singh exhorted Raju and asked him to eliminate all as they always raise disputes about land and compound (Bada). On the basis of exhortation given by uncle Devi

Singh, Raju Meena with an intention to kill his mother gave axe blow on her neck due to which she fell down on the earth but Raju repeatedly hit her. Owing to fear, his wife Jyoti and sister fled away and bolted the house from inside. Jeevan was also exhorting Raju saying that today they have to eliminate all. Upon hearing screams, when number of villagers reached there, Devi Singh, his son Jeevan and Raju fled away from the spot. His mother had died. On account of old enmity with regard to land and compound dispute they all in furtherance of common intention had come and on the basis of exhortation given by Devi Singh and Jeevan, Raju murdered his mother Shanta Bai. Devi Singh and Jeevan had played active role in murder of his mother. On the basis of narration given by Ombabu Meena within 50 minutes of the incident, Dehati Nalsi was recorded and on the basis of Dehati Nalsi FIR No.213/2020 was registered at Police Station Katara Hills, Bhopal for commission of offence under Section 302/34 of IPC. Same day Ombabu Meena's statement under Section 161 of Cr.P.C. was recorded. His wife and sister's statements were recorded on 24.10.2020. In postmortem examination 16 injuries were found on the dead body of the deceased. On 11.01.2021, Police filed charge sheet only against Raju @ Rajkumar Meena for commission of offence under Section 302 of IPC. Charge sheet was not filed against present applicants as investigation under Section 173(8) of Cr.P.C was shown to be going on.

3. On 23.10.2020, one Arun Meena, S/o Bharat Singh Meena, resident of Village Surod, District Vidhisa submitted an application in writing before Additional Superintendent of Police, Bhopal stating false implication of Devi Singh and Jeevan in the alleged crime. In the course of investigation

with regard to Devi Singh, Jeevan and Omvati Police got recorded the statement of Jitendra Meena, Shubham Sahu, Ashok Meena and Devki Bai under Section 161 and 164 of Cr.P.C. They stated that at the time of commission of offence Devi Singh, Jeevan and Omwati were not present on the spot. Police also recorded the statement of Om Prakash Meena and Om Prakash Sharma. It collected mobile location of the Mobile No.982775428 and footage of one camera of Traffic Police Control Room, Raisen. As per Police in CCTV footage, Jeevan Meena's car bearing registration No. MP-04-CL-5092 at 2:50 P.M is seen. Police also recorded the statement of Arun Meena, Neeraj Lodhi, Jitendra Meena, Harnam Singh Yadav and Babribhan Meena who stated that on the date of incident at 2:30 P.M. Jeevan Meena was with them. As per police at 2:58 P.M., Jeevan is seen in camera of AU Bank, Raisen. As aforesaid witnesses stated that aforesaid three persons were not present on the place of occurrence and at 2:50 P.M Jeevan Meena's car was seen at Raisen and at 2:58 P.M. he was seen in bank and Devi Singh's location was found in village Amrawat (Raisen) almost 125 Kilometer from the place of occurrence. Therefore, police did not file charge sheet against the aforesaid three persons and relying on the statements of the witnesses it filed closure report.

4. The learned Judicial Magistrate first class in exercise of powers conferred under Section 190 of Cr.P.C. came to the conclusion that in light of statements of eye witnesses i.e. complainant/eye witness Ombabu Meena, his sister Seema Meena and Jyoti Meena cognizance has to be taken against the applicants for the offence punishable under Section 302/34 of IPC. Learned Magistrate also observed that closure report in favour of the

applicant has been filed only on the basis of *alibi* and on the basis of statements of some persons recorded after 15 days and onwards of date of incident. He observed that plea of *alibi* is a matter of evidence and only after recording of the evidence it can be ascertained whether the applicants were involved or were present on the spot of occurrence at the time of commission of offence or not. Thus, he on the basis of statements of eye witnesses took cognizance against the applicants. The said order dated 13.12.2021 was challenged by the applicants by filing a criminal revision. The criminal revision filed by the applicants was dismissed by the impugned order dated 28.04.2022 which is under challenge.

5. It is submitted by learned counsel appearing for the petitioners that if the statement of witnesses particularly Jitendra Meena, Shubham Sahu and Ashok Meena are considered then it would be clear that all these witnesses have specifically stated that applicants Devi Singh, Jeevan and Omwati were not present on the spot and therefore the question of their participation in the alleged crime does not arise. Further it is submitted that learned counsel for the petitioners that in Surveillance Camera of Traffic Police Control Room Raisen Jeevan Meena's car bearing registration No. MP-04-CL-5092 at 2:50 PM is seen in Raisen and in footage of 2:58 P.M. of AU Bank, Raisen he is seen present in the bank. It is also his contention that witnesses Neeraj, Arun, Harnam, Malkhan and Babribhan have stated that on 2:30 P.M. Jeevan Meena was present with them. It is also submitted by counsel for the petitioners that Devi Singh's mobile number 98277 5428's location at 7:36 AM is found in Katara hills but at 2:19 PM his tower location was found at Amrawat, District Raisen and Om Prakash Meena and Om Prakash Sharma

resident of Bharkachha in their statement have stated that on 20.10.2020 right from 12 O'clock to 2:00 P.M. Devi Singh was present in the village with them in temple. Therefore, before exercising power under Section 190 of Cr.P.C. the trial Magistrate was required to have considered the aforesaid material collected by the Police and should have given an opportunity of hearing to the applicants as aforesaid material on the basis of which closure report has been filed by the Police has not been considered by the learned Magistrate while taking cognizance under Section 190 of Cr.P.C and opportunity was not extended to the applicants. Therefore, the order is liable to be quashed on the said grounds.

6. ***Per contra***, it is submitted by learned counsel for the State as well as counsel for the victim that in the FIR as well as in the case diary statement the complainant/eye witness has specifically narrated about the presence and overt act on the part of the applicants/accused. The allegations made in the FIR as well as in the case diary statement finds full corroboration with the postmortem report. At the stage of taking cognizance under Section 190 of Cr.P.C, meticulous appreciating of evidence is not permissible. It is also the submission of learned counsel that plea of *alibi* cannot be taken into consideration at the time of taking cognizance. The applicants would be free to prove their *alibi* before the trial Court at the time of defence evidence and therefore, they may raise all the objections at appropriate stage before the trial Court. As at the stage of taking cognizance under Section 190 of Cr.P.C. meticulous appreciation of evidence is not permissible and if the Magistrate has taken cognizance against the applicants/accused persons on the basis of of FIR as well as case diary statement of the eye witnesses then it cannot be

said that Court of Magistrate has committed any illegality.

7. I have heard learned counsel for the parties and perused the case diary and material available on record.

8. So far as the contention of learned counsel for the petitioners that prior to exercising the powers conferred under Section 190 of Cr.P.C. the Magistrate is under obligation to extend the opportunity of hearing to the persons against whom the cognizance was to be taken is concerned, suffice it to say that there is no provision in Code of Criminal Procedure which provide for grant of such an opportunity to the persons against whom the Magistrate is inclined to take cognizane.

9. The Supreme Court in the case of **Anju Chaudhary v. State of Madhya Pradesh** reported in **(2013) 6 SCC 384** has held as under:-

> ***"30. Section 154 of the Code places an unequivocal duty upon the police officer in charge of a police station to register FIR upon receipt of the information that a cognizable offence has been committed. It hardly gives any discretion to the said police officer. The genesis of this provision in our country in this regard is that he must register the FIR and proceed with the investigation forthwith. While the position of law cannot be dispelled in view of the three Judge Bench Judgment of this Court in State of Uttar Pradesh v. Bhagwant Kishore Joshi [AIR 1964 SC 221], a limited discretion is vested in the investigating officer to conduct a preliminary inquiry preregistration of an FIR as there is absence of any specific prohibition in the Code, express or implied. The subsequent judgments of this Court have clearly stated the proposition that such discretion hardly exists. In fact the viewtaken is that he is duty bound to register an FIR. Then the question that arises is whether a suspect is entitled to any preregistration hearing or any such right is vested in the suspect.***
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> ***31. The rule of audi alteram partem is subject to exceptions. Such exceptions may be provided by law or by such necessary implications where no other interpretation is possible. Thus rule of natural justice has an application, both under the civil and criminal jurisprudence. The laws like detention and others, specifically provide for post detention hearing***

and it is a settled principle of law that application of this doctrine can be excluded by exercise of legislative powers which shall withstand judicial scrutiny. The purpose of the Criminal Procedure Code and the Indian Penal Code is to effectively execute administration of the criminal justice system and protect society from perpetrators of crime. It has a twin purpose; firstly to adequately punish the offender in accordance with law and secondly, to ensure prevention of crime. On examination, the scheme of the Criminal Procedure Code does not provide for any right of hearing at the time of registration of the First Information Report. As already noticed, the registration forthwith of a cognizable offence is the statutory duty of a police officer in charge of the police station. The very purpose of fair and just investigation shall stand frustrated if pre-registration hearing is required to be granted to a suspect. It is not that the liberty of an individual is being taken away or is being adversely affected, except by the due process of law. Where the Officer Incharge of a police station is informed of a heinous or cognizable offence, it will completely destroy the purpose of proper and fair investigation if the suspect is required to be granted a hearing at that stage and is not subjected to custody in accordance with law. There would be the pre-dominant possibility of a suspect escaping the process of law. The entire scheme of the Code unambiguously supports the theory of exclusion of audi alteram partem pre-registration of an FIR. Upon registration of an FIR, a person is entitled to take recourse to the various provisions of bail and anticipatory bail to claim his liberty in accordance with law. It cannot be said to be a violation of the principles of natural justice for two different reasons: firstly, the Code does not provide for any such right at that stage, secondly, the absence of such a provision clearly demonstrates the legislative intent to the contrary and thus necessarily implies exclusion of hearing at that stage. This Court in the case of Union of India v. W.N. Chadha (1993) Suppl. (4) SCC 260 clearly spelled out this principle in paragraph 98 of the judgment that reads as under:

> *"98. If prior notice and an opportunity of hearing are to be given to an accused in every criminal case before taking any action against him, such a procedure would frustrate the proceedings, obstruct the taking of prompt action as law demands, defeat the ends of justice and make the provisions of law relating to the investigation lifeless, absurd and selfdefeating. Further, the scheme of the relevant statutory provisions relating to the procedure of investigation does not attract such a course in the absence of any statutory obligation to the contrary."*

10. Thus, it is clear that no opportunity of hearing is required to be extended to the persons against whom the Court proposes to take cognizance under Section 190 of Cr.P.C.

11. Now, the question for consideration is that whether at the time of taking cognizance under Section 190 of Cr.P.C., meticulous appreciation of evidence is permissible or plea of *alibi* has to be considered or the Magistrate is only required to see there is some material available on record to take cognizance.

12. Adverting to the facts of the case, it is to be noted that in the final report submitted against Rajkumar on 11.01.2021 investigation against the present applicants was kept pending under Section 173(8) of Cr.P.C., but in final report dated 10.03.2021 it was stated about the present applicants that they had no role in commission of murder of Shanta Bai as at 2:50 P.M. Jeevan Meena's car was seen in the surveillance camera of Traffic Police Control Room, Raisen and at 2:58 P.M. he is seen in AU Bank, Raisen's CCTV footage. As far as Devi Singh Meena is concerned, the report is stated to have been based on the statements of Omprakash Meena and Om Prakash Sharma that he was present in Bharkachha and Amarawat and his mobile location was of other place.

13. It is to be noted that the investigation officer's report is focused merely on the CCTV footage, mobile tower mapping/location and witnesses' statement that Jeevan Meena and Devi Singh were present at Raisen and Amrawat rather than the witnesses statement of complainant/eye witnesses and two eye witnesses who were present at the spot when the crime was committed. It is worth to mention that incident has taken place between

2:13 P.M. to 2:20 P.M at Barai, while Jeevan Meena's presence at 2:50 P.M. and 2:58 P.M is stated at Raisen. As per the documents annexed in the case diary it is apparent that distance of Raisen from Barai is only 30-35 K.M. and a person can easily reach from the car from the place of occurrence to Raisen in a period of 30-35 minutes. In this regard the statements of witnesses Dayal Singh Thakur and Kamlesh Singh available on record cannot be overlooked and they have clearly stated that at around 2:20 P.M. they had seen Devi Singh and Jeevan Singh Meena going towards Raisen Bypass and when they reached near Barai Village they came to know about murder of Shanta Bai.

14. In this case it has to be noted that Dehati Nalisi/FIR has been recorded within 50 minutes of the incident. The complainant/eye witnesses is not only son of the deceased but is also the son of Devi Singh's deceased brother. He is cousin of Jeevan Meena. They resides in the same locality and are well known to each other. FIR has been promptly lodged. While statement of Jitendra Meena and others have been recorded almost after 15 days of the incident. At this stage recitals of promptly lodged FIR and statements of eye witnesses that Devi Singh and Jeevan Meena were present on the spot and they had exhorted Raju to commit murder of Shanta Bai cannot be ignored. Dehati Nalisi/ FIR attributes specific roles to applicants in the commission of crime the statement of eye witnesses recorded under Section 161 and 164 of Cr.P.C. depicts about the role played by the applicants. It is settled position of law that material at the stage of taking cognizance cannot be examined with a fine tooth comb in a manner of criminal trial. If present case is considered in the light of material on record,

it is apparent that FIR has been promptly lodged within a period of 50 minutes of the incident and in FIR Devi Singh and Jeevan Meena are named. FIR finds support from the statements of eye witnesseses under Section 161 and 164 of Cr.P.C. On the other hand applicants have relied on the *alibi* that they were not present at the scene of crime. The trial is yet to took place where the evidence adduced by the prosecution will be appreciated and the veracity of the defence can be determined only after appreciation of the evidence. At the present stage, FIR and statement of three eye witnesses under Section 161 and 164 are consistent. Two witnesses Dayal Singh and Kamlesh just after incident had seen them to be going towards Raisen side.

15. As far the plea of alibi is concerned, it cannot be considered or determined at the stage of taking cognizance. In the case of ***Rajendra Singh Vs. State of U. P. and Others***, reported in ***(2007) 7 SCC 378*** it is held that plea of alibi has to be proved by the accused and by that plea statement of various witnesses recorded under Section 161 of Cr.P.C. cannot be discarded. The plea of *alibi* should be proved by accused at the stage of defence.

16. In the case of ***Mukesh and Another Vs. State (NCT of Delhi) and Others***, reported in ***(2017) 6 SCC 1***, has held as under :

> ***"247. Presently, we shall deal with the plea of alibi as the same has been advanced with immense conviction. It is well settled in law that when a plea of alibi is taken by an accused, the burden is upon him to establish the same by positive evidence after the onus as regards the presence on the spot is established by the prosecution. In this context, we may usefully reproduce a few paragraphs from Binay Kumar Singh v. State of Bihar***
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> ***"22. We must bear in mind that an alibi is not an exception (special or general) envisaged in the Penal Code, 1860 or any other law. It is only a***

rule of evidence recognised in Section 11 of the Evidence Act that facts which are inconsistent with the fact in issue are relevant. Illustration (a) given under the provision is worth reproducing in this context:

> ***(a) The question is whether A committed a crime at Calcutta on a certain date. The fact that, on that date, A was at Lahore is relevant."***

23. The Latin word alibi means 'elsewhere' and that word is used for convenience when an accused takes recourse to a defence line that when the occurrence took place he was so far away from the place of occurrence that it is extremely improbable that he would have participated in the crime. It is a basic law that in a criminal case, in which the accused is alleged to have inflicted physical injury to another person, the burden is on the prosecution to prove that the accused was present at the scene and has participated in the crime. The burden would not be lessened by the mere fact that the accused has adopted the defence of alibi. The plea of the accused in such cases need be considered only when the burden has been discharged by the prosecution satisfactorily. But once the prosecution succeeds in discharging the burden it is incumbent on the accused, who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. When the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally the court would be slow to believe any counter-evidence to the effect that he was elsewhere when the occurrence happened. But if the evidence adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused would, no doubt, be entitled to the benefit of that reasonable doubt. For that purpose, it would be a sound proposition to be laid down that, in such circumstances, the burden on the accused is rather heavy. It follows, therefore, that strict proof is required for establishing the plea of alibi. …"

[emphasis supplied]

The said principle has been reiterated in Gurpreeet Singh v. State of Harayana, Shaikh Sattar v. State of Maharashtra, Jitendra Kumar v. State of Haryana and Vijay Pal (supra)

17. It is well settled law that even if the investigating authority is of the view that no case has been made out against an accused, the Magistrate can

apply his mind independently to the materials contained in the police report and take cognizance thereupon in exercise of his powers under Section 190(1)(b) Cr.P.C that is precisely what has happened in the present case.

18. In the case of ***Nupur Tawlar Vs. Central Buraeau of Investigation, Delhi,*** reported in ***(2012) 2 SCC 188*** Hon'ble Supreme Court has held as under:

> ***"15. Now the question is: what should be the extent of judicial interference by this Court in connection with an order of taking cognizance by a Magistrate while exercising his jurisdiction under Section 190 of the Code?***
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> ***16. Section 190 of the Code lays down the conditions which are requisite for the initiation of a criminal proceeding. At this stage the Magistrate is required to exercise sound judicial discretion and apply his mind to the facts and materials before him. In doing so, the Magistrate is not bound by the opinion of the investigating officer and he is competent to exercise his discretion irrespective of the views expressed by the Police in its report and may prima facie find out whether an offence has been made out or not.***
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> ***17. The taking of cognizance means the point in time when a Court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence which appears to have been committed. At the stage of taking of cognizance of offence, the Court has only to see whether prima facie there are reasons for issuing the process and whether the ingredients of the offence are there on record.***
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> ***18. The principles relating to taking of cognizance in a criminal matter has been very lucidly explained by this Court in S.K.Sinha, Chief Enforcement Officer Vs. Videocon International Ltd. and Ors. - (2008) 2 SCC 492, the relevant observations wherefrom are set out:***
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> > ***"19. The expression 'cognizance' has not been defined in the Code. But the word (cognizance) is of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means 'become aware of' and when used with reference to a court or a Judge, it connotes' to take notice of judicially'. It indicates the point when a court or***

a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone.

20. 'Taking Cognizance' does not involve any formal action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance is taken prior to commencement of criminal proceedings. Taking of cognizance is thus a sine qua non or condition precedent for holding a valid trial. Cognizance is taken of an offence and not of an offender. Whether or not a Magistrate has taken cognizance of an offence depends on the facts and circumstances of each case and no rule of universal application can be laid down as to when a Magistrate can be said to have taken cognizance."

19. The correctness of the order whereby cognizance of the offence has been taken by the Magistrate, unless it is perverse or based on no material, should be sparingly interfered with. In the instant case, anyone reading the order of the Magistrate taking cognizance, will come to the conclusion that there has been due application of mind by the Magistrate and it is a well reasoned order. The order of the High Court passed on a Criminal Revision under Sections 397 and 401 of the code (not under Section 482) at the instance of Dr. Mrs. Nupur Talwar would also show that there has been a proper application of mind and a detailed speaking order has been passed.

20. In the above state of affairs, now the question is: what is the jurisdiction and specially the duty of this Court in such a situation under Article 136?

22. Reference in this connection may be made to a three Judge Bench decision of this Court in the case of M/s. India Carat Private Ltd. Vs. State of Karnataka & Anr. (1989) 2 SCC 132. Explaining the relevant principles in paragraphs 16, Justice Natarajan, speaking for the unanimous three Judge Bench, explained the position so succinctly that we would rather quote the observation as under:-

"The position is, therefore, now well settled that upon receipt of a police report under Section 173(2) a Magistrate is entitled to take cognizance of an offence under Section 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate

can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer; and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, in exercise of his powers under Section 190(1)(b) and direct the issue of process to the accused…"

These well settled principles still hold good. Considering these propositions of law, we are of the view that we should not interfere with the concurrent order of the Magistrate which is affirmed by the High Court."

19. In the case of ***Sunil Bharti Mittal Vs. Central Bureaeu of Investigation***, reported in ***(2015) 4 SCC 609,*** Honble Apex Court has held as under:

"***Person who has not joined as accused in the charge-sheet can be summoned at the stage of taking cognizance under Section 190 of the Code. There is no question of applicability of Section 319 of the Code at this stage (See SWIL Ltd. V. State of Delhi [21]). It is also trite that even if a person is not named as an accused by the police in the final report submitted, the Court would be justified in taking cognizance of the offence and to summon the accused if it feels that the evidence and material collected during investigation justifies prosecution of the accused (See Union of India v. Prakash P. Hinduja and another [22]). Thus, the Magistrate is empowered to issue process against some other person, who has not been charge-sheeted, but there has to be sufficient material in the police report showing his involvement. In that case, the Magistrate is empowered to ignore the conclusion arrived at by the investigating officer and apply his mind independently on the facts emerging from the investigation and take cognizance of the case. At the same time, it is not permissible at this stage to consider any material***

other than that collected by the investigating officer ”

20. In light of the above discussion in the fact and circumstances of the present case taking of cognizance of offence against the petitioners by the trial Court cannot be said to be illegal warranting interference by this Court that too on the ground of plea of alibi. Further Raisen is only 30-35 K.M. away from the place of occurrence, Jeevan and his car is seen in CCTV footage almost after a period of 35-40 minutes of occurrence and such distance can be covered through car within the said period. Therefore, it is for applicants to prove their *alibi* by producing cogent and reliable evidence that at the time of commission of offence they were not present on the spot. Hence, it is held that neither the Court of Magistrate, nor revisional Court has committed any illegality, impropriety or error by passing the order under challenge.

21. Consequently, this petition fails and is hereby **dismissed.**

(DINESH KUMAR PALIWAL)
JUDGE

Jasleen