

**(2012) 09 SC CK 0092**

**In the Supreme Court Of India**

**Case No :** Criminal Appeal No. 1491 of 2012 (Arising out of Special Leave Petition (Criminal) No. 4002 of 2006) and Criminal Appeal No. 1492 of 2012 (Arising out of Special Leave Petition (Criminal) No. 1946 of 2007)

Om Prakash and Others

APPELLANT

Vs

State of Jharkhand and Another <BR>Kailashpati Singh Vs  
Rajiv Ranjan Singh and Another

RESPONDENT

**Date of Decision :** 26-09-2012

**Acts Referred:**

Arms Act, 1959 — Section 25(1), 25(1B), 26, 27, 35  
Criminal Procedure Code, 1973 (CrPC) — Section 132, 164, 197, 197(1), 197(2)  
Explosive Substances Act, 1908 — Section 4, 5, 6  
Government of India Act, 1935 &m

**Citation :** (2012) BomCR(Cri) 339 : (2012) 4 JLJR 166 : (2012) 9 JT 642 :  
(2012) MLJ(Cri) 433 : (2012) 4 PLJR 89 : (2012) 9 SCALE 291 : (2012) 12 SCC  
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**Hon'ble Judges :** Ranjana Prakash Desai, J;Aftab Alam, J

**Bench :** Division Bench

**Advocate :** K.V. Vishwabathan, Colin Gonsalves, Mukul Rohtagi, Naveen Kumar, Abhishek Kaushik, Tariq Adeeb, Jyoti Mendiratta, Ratan Kumar Choudhuri, Vishwajit Singh, Abhindra Maheshwari, Pankaj Singh and Veera Kual Singh, for the Appellant;

**Final Decision :** Dismissed

**Judgement**

Ranjana Prakash Desai, J.—Leave granted.

2. In both these appeals, by special leave, judgment and order dated 1/5/2006 delivered by the Jharkhand High Court in Criminal Misc. Petition No. 822 of 2005 and Criminal Misc. Petition No. 640 of 2005 filed u/s 482 of the Code of Criminal Procedure (for short, "the Code") is challenged. Criminal Misc. Petition No. 640 of 2005 was filed by Shri Rajiv Ranjan Singh, Deputy Superintendent of Police, (Dy. S.P.) Headquarter(II), Jamshedpur. Criminal Misc. Petition No. 822 of 2005 was filed by the police personnel posted at Jamshedpur in different capacities. In the

petitions, before the High Court, the prayer was for quashing the criminal proceedings in Complaint Case No. 731 of 2004 and order dated 14/06/2005, passed thereon by the Judicial Magistrate First Class, Jamshedpur, taking cognizance of the offences alleged in the complaint.

### 3. Brief facts of the case need to be stated:

Appellant Kailashpati Singh is the complainant. On 23/7/2004, he filed a complaint in the Court of C.J.M, Jamshedpur being Complaint Case No. 731 of 2004 against (1) Rajiv Ranjan Singh, Dy. S.P.-II, (2) Pradeep Kumar, S.I., (3) Omprakash, S.I., (4) Shyam Bihari Singh, constable and (5) Bharat Shukla, constable. In the complaint, the complainant alleged that his son Amit Pratap Singh @ Munna Singh (for convenience, "deceased Munna Singh") was killed in a fake encounter by the accused named in the complaint including three others on 1/7/2004 at about 10.30 p.m. at Domohani, Sonari, Jamshedpur. According to the complainant, he received telephonic message on 2/7/2004 from one Sanjay Kumar of Jamshedpur that his son was killed in an encounter. This news was also published in the local newspapers of Jamshedpur. As per the newspaper report, along with the deceased, three others viz. Rajib Dubey, Babloo Prasad and Rambo were also killed. According to the complainant, he rushed to Jamshedpur with his eldest son Krishna Singh and contacted the Jamshedpur Police Authorities for the purpose of receiving the dead body of his son for cremation. However, the police refused to handover the dead body. Therefore, the complainant's eldest son Krishna Singh reported the matter to the Deputy Commissioner, East Singhbhum, Jamshedpur. However, the police did not hand over the dead body of the deceased in spite of repeated requests made to the proper authorities. It is the complainant's case that he later on came to know that the police had obtained signature of one Sanjay Kumar under coercion on a challan, showing that the dead body was received by him. Instead of handing over the dead body to Sanjay Kumar, according to the complainant, it was cremated at Parvati Ghat, Adityapur. The complainant and members of his family were kept in dark. This was done to destroy the evidence and manufacture the story of police encounter. It is the case of the complainant that deceased Munna Singh was not involved in any criminal activities. He used to provide his jeep to people on rent at Jamshedpur and other places and earn his livelihood. According to the complainant, deceased Munna Singh was falsely involved in Sonari P.S. Case No. 15 of 1994 dated 6/3/1994 u/s 392 of the Indian Penal Code (for short, "the IPC"). As a matter of fact, on that day, he was only 9 years old. The complainant stated that the postmortem report shows that three bullets were found in the chest of deceased Munna Singh indicating that he was killed by the police by firing from close range. The complainant took exception to the fact that the autopsy was not video-graphed. The complainant also contended that the accused committed the offence not in discharge of their official duties, therefore, no sanction was required to prosecute them u/s 197 of the Code. According to the complainant, the accused have thus committed offence under Sections 120-B, 203 and 302 read with Section 34 of the Indian Penal Code.

4. The other version which also needs to be stated is disclosed from the FIR lodged on 1/7/2004 by one Jeevan Prasad Naredi, a dealer in scrap that on 1/7/2004 at 9.50 p.m. some miscreants came to his house riding on motor cycles. They were armed with firearms. They fired at his office situated in his house and ran away. This was done to threaten him and to force him to yield to their ransom demand. It is the case of the police personnel as disclosed in the FIR lodged by the Dy. S.P. Rajiv Ranjan Singh that, having received information about this incident, the police set out to arrest the accused. They traced them and asked them to surrender. However, instead of surrendering, they fired at the police. The police had to retaliate to save themselves and, in that, four criminals were killed. The rest escaped. Son of the complainant was one of those who were killed.

5. By the impugned judgment and order, the High Court allowed the petition filed by Rajiv Ranjan Singh, Dy. S.P., on the ground that sanction required u/s 197 of the Code was not obtained. The order impugned before the High Court to the extent it took cognizance of the offences against him, was quashed. So far as the other police personnel are concerned, the High Court dismissed their petition on the ground that no notification issued u/s 197(3) of the Code was produced by them to show that they were protected against prosecution in respect of any offence alleged to have been committed while acting or purporting to act in discharge of their official duties.

6. Being aggrieved by the rejection of their prayer for quashing the complaint, Appellants Om Prakash and Ors. have come to this Court. Being aggrieved by the impugned judgment and order of the High Court, to the extent it quashed the proceedings against Rajiv Ranjan Singh, Dy.S.P.-II, the complainant has come to this Court. As both the appeals challenge the same judgment and order and they arise out of the same facts, we dispose them of by this common judgment.

7. We have heard Mr. K.V. Viswanathan, senior advocate for Appellants Om Prakash and Ors., Mr. Colin Gonsalves, senior advocate for complainant Kailashpati Singh and Mr. Mukul Rohtagi, senior advocate for the Respondent-State and Dy. S.P. Rajiv Ranjan Singh.

8. Before we deal with the rival contentions, it is necessary to state one admitted fact which leads us to conclude that the reason given by the High Court for not quashing proceedings against Appellants Om Prakash and Ors. namely that no notification u/s 197(3) of the Code was produced by them protecting them from prosecution in respect of any offence alleged to have been committed while acting or purporting to act in discharge of their official duties, is incorrect. We have been shown a copy of the Notification dated 16/5/1980 issued by the State of Bihar which extends the protection of Sub-section (2) of Section 197 of the Code to all the members of the police force as it includes both officers and men. Mr. Gonsalves, learned senior counsel for the complainant has not disputed this position. It is, therefore, not necessary to dilate further on this issue.

9. It would be appropriate to begin with the submissions of Mr. Gonsalves, learned senior counsel appearing for the complainant, because the complainant's case is that his son was killed in a fake encounter. Counsel submitted that the postmortem notes disclose that deceased Munna Singh had received injuries on chest. This is indicative of firing from close range. The nails of deceased Munna Singh were blackened, which militates against the theory of genuine encounter. Counsel submitted that it was necessary for the police to videograph the postmortem as per the Guidelines issued by the National Human Rights Commission ("NHRC"). Counsel further submitted that the body of deceased Munna Singh was not handed over to his brother-in-law as alleged. His signature was taken under duress on a receipt created to show that the body was handed over. Deceased Munna Singh was cremated without informing the members of his family. Counsel further submitted that in the FIR lodged by Jeevan Naredi, it is stated that blood was found at the site of occurrence. However, no such blood was found. Counsel submitted that the police diaries do not show the movements of the police during the period of encounter. Falsity of the encounter theory is evident because none of the members of the police party received injuries. Counsel pointed out that there are no credible private witnesses, to depose about the alleged encounter. The police have asserted that deceased Munna Singh was involved in a serious crime which took place in 1994. Relying on the certificate issued by Bihar School Examination Board in which birth date of deceased Munna Singh is shown as 10/1/1985 [Annexure P-1 in the appeal filed by the complainant], counsel contended that deceased Munna Singh was only nine years of age in 1994. Therefore, this is really a concocted case. Counsel pointed out that after the complainant filed a complaint on 27/7/2004, on 31/8/2004, three challans were filed against deceased Munna Singh just to show that he was a dreaded criminal. All these circumstances show that the police have made desperate efforts to cover up the cold blooded murders committed by them. They are trying to concoct a case of a genuine encounter.

10. As regards requirement of sanction, counsel submitted that there is intrinsic evidence to show that the police are guilty of cold blooded murders. By no stretch of imagination, it can be said that when deceased Munna Singh was shot dead, the police were discharging their public duty. Therefore, there is no question of obtaining sanction to prosecute the police personnel involved in this case. Counsel submitted that when the question of sanction is raised, it must be studied with reference to the complaint and not with reference to the documents produced by the accused to set up a plea of self defence. Counsel submitted that the plea of self defence can only be raised in the trial court. Counsel submitted that whether there is false encounter or not, must be considered only on the basis of the complaint and testimonies recorded before the charge is framed. No material produced by the accused should be taken into account when there is unimpeachable evidence to show that the police are guilty of false encounter. In such case, sanction is not required. In support of his submissions, counsel relied on the judgment of the Federal Court in AIR 1939 43 (Federal Court) judgments

of this Court in Matajog Dobey Vs. H.C. Bhari, Pukhraj Vs. State of Rajasthan and Another, Nagraj Vs. State of Mysore, Raj Kishor Roy Vs. Kamleshwar Pandey and Another, , K. Satwant Singh Vs. The State of Punjab, and State of Orissa through Kumar Raghvendra Singh and Others Vs. Ganesh Chandra Jew, . Counsel also relied on Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others, on the question of nature of powers of the High Court u/s 482 of the Code.

11. On the other hand, Mr. Vishwanathan, learned senior counsel appearing for the Appellants Om Prakash and Ors. and Mr. Mukul Rohtagi, learned senior counsel appearing for the State of Jharkhand and Dy. S.P. Rajiv Ranjan Singh placed heavy reliance on Sankaran Moitra Vs. Sadhna Das and Another, and submitted that sanction is a condition precedent for successful prosecution of a public servant when the provision is attracted. It was submitted that in this case, there are unimpeachable circumstances which establish that deceased Munna Singh along with others had fired at the house of Jeevan Naredi and fled from there. The police tried to arrest them. They fired at the police. The police fired in defence and in performance of their duty. They cannot, therefore, be prosecuted without sanction. The prosecution initiated against the police personnel without sanction must, therefore, be quashed. Counsel refuted each and every allegation made by Mr. Gonsalves.

12. Certain material facts which can be gathered from the documents, which are on record need to be stated. It would be necessary first to refer to the FIR lodged by Jeevan Prasad Naredi, whose house was attacked by the criminals because it is first in point of time. In his FIR dated 1/7/2004 lodged at PS Bistupur at 2330 hrs, Naredi stated that he is a scrap dealer, who purchases scrap from Telco and Tisco to supply the same to Telco Foundry Jamshedpur. He stated that on 1/7/2004 in the night at 9.45 p.m., he was in his office which is situated in his residence. Suddenly, at 9.50 p.m., some rounds of fire were fired at the room used by him as office. The bullets hit the outer wall of the said room and the wall of the gate of his house. He directed the members of his family to remain inside the house. On hearing the gun shots, his neighbour shouted. He mustered courage and went outside the house after opening the main gate. His neighbour told him that 2 to 3 motor cyclists had come there. They came from Regent Hotel road side towards his house and suddenly started firing at the wall of the room used by him as office. He found marks of firing at two places on the outer wall of the said room and also on the front side main wall of the gate of his house. He found empty cartridges and one bullet lying at the place of incident. He further stated that the dreaded criminal Babloo Prasad had given him threat. He had demanded ransom from him. Out of fear, he had changed his telephone number. Therefore, Babloo Prasad could not contact him and, out of frustration, he along with his associates had attacked his house so that ransom amount could be recovered from him.

13. It is also necessary to refer to the FIR filed by Dy. S.P. Rajiv Ranjan Singh

dated 2/7/2004 at 0015 hrs. As per this FIR, on 2/7/2004, he received information at 2125 hours that within Bistupur Police Station, some firing incident had occurred. He along with the task force officers left in a Sumo Car to verify the said information. On verification, he came to know that some criminals riding motor cycles came to the house of one Jeevan Naredi, a businessman dealing in scrap, fired bullets at his house and moved towards Rani Kudar, which comes within the jurisdiction of Kadma Police Station. He along with his police team left the Headquarters to trace the criminals. At that time, he received information that some boys riding motor cycles in a great speed had gone towards Matin Drive. He immediately informed SHO, Sonari D.K. Srivastava about the incident and asked him to start a search for the accused, who had gone towards Matin Drive. He also reached Sonari, Jhunjani. In the light of the Sumo Car, he saw five to six boys standing on the Pucci road with motor cycles. He stopped his car and ordered constable Bharat Shukla and constable Shyam Bihari Singh (the Appellants before us) to ask the boys, as to who they were and why they were standing there. On being so questioned, one of the boys asked a counter question to them as to who they were. The constables replied that they were from the police force. As soon as they heard this, suddenly, one of them took out a pistol from his vest and fired. A shot hit the glass of Sumo Car. The police party was miraculously saved. Dy. S.P. Rajiv Ranjan Singh got out of the car and told his police team to take safe positions. He asked the criminals to surrender, but they divided themselves into two pairs and started firing at the police team. The police also started firing in defence. At that time, SHO, D.K. Srivastava, PO Sonari also came there along with other police personnel. Dy. S.P. Rajiv Ranjan Singh gave a call on his mobile to PCR and Patrol Officer about the encounter. The criminals had taken positions behind a tree. The firing continued for 15 to 20 minutes. Thereafter, they ran towards Nirmal Basti. Dy. S.P. Rajiv Ranjan Singh and Ors. went to the spot and found that two criminals were lying dead near riverside and two criminals were lying in injured condition behind the tree.

14. On receiving information about the encounter, Superintendent of Police Jamshedpur, Assistant Superintendent of Police Saket Kumar, City Police Superintendent, Superintendent of Police, etc. came there. Articles lying at the scene of offence were seized. They included firearms of foreign make. The complaint of Dy. S.P. Rajiv Ranjan Singh further stated that it appeared that all these criminals had gathered at Dumjani after firing at the house of Jeevan Naredi for ransom and were planning further action. During that period, police party reached there. The criminals armed with illegal weapons started firing at the police to kill them. The police in order to defend themselves and to effect legal arrest of the criminals fired in retaliation. During this encounter, four criminals died and two unknown criminals ran towards Nirmal Basti.

15. Some of the articles seized by the police are described in the seizure memo as under:

Details of seized items:

- i) 9 mm empty cartridge lying around the Chabutara - 6 Nos.
- ii) Bullet Pillet - lying nearby Chabutara along the Sartua tree - 2 Nos.
- iii) Black color Hero Honda Motorcycle (without number plate) Engine No. 01B 18M20712 Chassis No. 01B20C21175 lying in the west side of the Board of Nirmal Mahto Udyan.
- iv) A iron made pistol lying along the wheel of motorcycle - 'Made in Western Germany Auto Pistol 57914' marked on the Barrel and 'Made in Western Germany and Auto Pistol 9 Round CAL 765A 57914' marked on body. Length of the barrel is about 9 fingers and But - 6 finger having magazine fitted at the bottom. On opening, one empty cartridge entangled in its chamber and 4 live cartridges of 7.65 bore loaded in the Magazine.
- v) xxx xxx xxx
- vi) Near the right hand of deceased Rajeev Dubey, a one barrel country-made. 315 bore pistol measuring 8 fingers in length, 5 fingers in body having wooden handle. On opening, 'KF 8mm' mark was found in the barrel. One cartridge entangled in pistol. One live cartridge 8 mm in the right pocket of trouser of Rajeev Dubey and one used cartridge lying near the dead body and two used cartridges 7.65 bore near the head of the dead body.
- vii) xxx xxx xxx
- viii) Western-North from here - Without number plate Hero Honda Splendor bearing Engine No. 97K17E05846 Chessis No. 97K19F5777 with broken brake light.
- ix) xxx xxx xxx
- x) From the pocket of Munna Singh, Samsung Mobile phone in running condition. EMEI No. of the mobile set - 35236200608952/6-19 in which SIM No. 9835413435 was installed. In addition, three SIM cards wrapped in a piece of paper kept in the plastic cover of mobile bearing No. 9835186118, 9835374951, 9431066524. From the rear pocket of Munna Singh, a ballet marked 'Bihar Police' on it containing Rs. 500x8+50x1+10x1 total Rs. 4,060 and an identity card of Bihar Police showing Munna Singh in police uniform with following details: Name Saroj Kumar Singh; Post - Arakshi (729) with seal of Arakshi Adhikshak, Rohtas. An ATM Card of HDFC Bank of Amit Pratap Singh bearing No. 4386241704739313, two telephone diaries, one Receipt Book of Jamshedpur Cooperative College bearing No. 02192 of Amit Pratap Singh 9, A-1 Roll No. 337, a railway ticket of Bhagalpur Surat Express train No. 9048 dated 28.6.2004 for Rs. 781 of PNR No. 613-9472666 from Jamalpur Junction to Baxar and other papers.
- xi) xxx xxx xxx

xii) xxx xxx xxx

xiii) In the South-West across the road along the river - without number plate Hero Honda Splendor bearing Engine No. 18E00877 Chassis No. 01E20F50766

xiv) On the side of right hand of dead body of deceased Babloo Prasad, one iron made pistol (mauser) with inscription of 'State Property of the Italy Government CAL 765 A57391' on the body. On the left side of the barrel, CAL 9 mm A 57391' and on the right side of body, 'Auto Pistol 9 round only for public supply' written on it. Size measurement - 9 finger But with 6 finger magazine and one live cartridge lying along the dead body and 5 used cartridges of 7.65 bore spread all along.

xv) xxx xxx xxx

xvi) xxx xxx xxx

xvii) xxx xxx xxx

xviii) xxx xxx xxx

xix) In the South - 9 mm used cartridges - total 14 Nos. spread all along.

xx) One bullet from Sumo.

16. This seizure memo, in our opinion, indicates that the criminals had used motor cycles and they were armed with deadly fire arms. Three of the motor cycles were found at the scene of offence. The fire arms used by the criminals were of foreign make. There is no reason to doubt the veracity of this seizure memo because it is difficult for the police to concoct such a scene and plant such weapons.

17. From the two FIRs, it is clear that the criminals riding on the motor cycles armed with deadly firearms had attacked the house of businessman Naredi. Naredi lodged a complaint at Vistupur Police Station. Upon receiving information, the police machinery had swung into action. Dy. S.P. Rajiv Ranjan Singh left his office along with his team to trace the criminals. They could trace the criminals. They asked the criminals to surrender. The criminals instead of surrendering fired at them. The police had to launch a counter attack to save themselves and also to nab the criminals, which was their legal duty and in this counter attack, four of the criminals received bullet injuries and succumbed to those injuries. The death of four criminals in the firing was preceded by an attack by them on businessman Naredi's house and also an attack on the police personnel. There is no doubt that the criminals had set out on a mission to attack Naredi's house so as to recover ransom. From the weapons found lying at the scene of occurrence, we feel that the criminals had taken to the life of crime and were not novices. The past record of the criminals support this conclusion of ours.

18. In this connection, it is necessary to refer to the affidavit of Dy. S.P. Mr. S.K. Kujur. It brings certain important facts on record. Mr. Kujur has begun by

describing the attack made by the deceased along with his friends on businessman Jeevan Naredi for extortion on the night of 1/7/2004 at around 9.15 p.m. He has referred to Jeevan Naredi's FIR lodged with Bistupur Police Station which was registered as Bistupur Police Station Case No. 134 of 2003. He has then stated how after the incident the criminals fled from the house of Jeevan Naredi and how after receiving information about the firing incident, Dy.S.P. Rajiv Ranjan Singh and his police party chased them. He has also stated that in the encounter, four criminals died and two managed to escape. He has described the weapons and other articles which were seized from the place of occurrence. He has stated that all the criminals were members of the dreaded criminal Akhilesh Singh's gang. He has further stated that after the incident, senior police officers reached the place of occurrence and the then S.P., East Singhbhum Mr. Arun Oraon, I.P.S. supervised the case. The inquest was done by the Magistrate and FIR was registered on the basis of self Assessment of Dy. SP (Hq.), which was registered as Sonari P.S. Case No. 53 of 2004 dated 2/7/2004 u/s 307/427/353/34 Indian Penal Code read with Section 25(1b) (A)/26/27/35 of the Arms Act corresponding to G.R. Case No. 1065 of 2004. He has confirmed that on the written request made by the complainant's son-in-law Mr. Sanjay Narayan Singh, dead body of deceased Munna Singh was handed over to him after the postmortem examination was done and it was finally cremated at Parvati Ghat. Relevant documents are annexed to the affidavit. He has laid stress on the fact that the complainant filed his complaint 23 days after the incident. He has added that the case was supervised by the then S.P. Mr. Arun Oraon and after due investigation, charge sheet has been submitted against the deceased criminals showing them as dead accused.

19. After setting out the activities of Akhilesh Singh Gang, Dy.S.P. Kujur has given a chart indicating the cases registered against the deceased criminals. It reads thus:

Accused Munna Singh (since deceased).

- a. Sakchi P.S. Case No. 208/02 u/s 307/34 Indian Penal Code & 27 Arms Act later on converted to u/s Indian Penal Code
- b. Sakchi P.S. Case No. 144/03 u/s 324/307/367/34 Indian Penal Code and Section 27 Arms Act.
- c. Telco P.S. Case No. 85/04 u/s 392 of the Indian Penal Code.
- d. Telco P.S. Case No. 109/04 u/s 379 Indian Penal Code and Section 392 Indian Penal Code.
- e. Adityapur P.S. Case No. 139/04 u/s 392/411 Indian Penal Code.

Accused Bablu Prasad alias Suman Kumar (since deceased).

- a. Sitaramdera P.S. Case No. 62/01 u/s 379 Indian Penal Code
- b. Bistupur P.S. Case No. 244/01 u/s 379 Indian Penal Code

- c. Bistupur P.S. Case No. 248/01 u/s 379 Indian Penal Code
- d. Sonari P.S. Case No. 71/01 u/s 379 Indian Penal Code
- e. Sakchi P.S. Case No. 179/01 u/s 379 Indian Penal Code
- f. Bistupur P.S. Case No. 149/03 u/s 307/387/34/120(B) Indian Penal Code and Section 27 of the Arms Act.
- g. Sakchi P.S. Case No. 144/03 Under Sections 324/307/387/34 Indian Penal Code and 27 Arms Act.
- h. Parsudhih P.S. Case No. 182/03 u/s 414 Indian Penal Code and Section 25(1-B) (a)/26/35 of the Arms Act.
- i. Sonari P.S. Case No. 12/04 Under Sections 387/326/307/34 Indian Penal Code and Section 27 Arms Act.

Accused Prakash Anand alias Ramesh alias Rambo (since deceased).

- a. Telco P.S. Case No. 266/02 u/s 379 Indian Penal Code
- b. Saraikella P.S. Case No. 70/02 u/s 392/411 Indian Penal Code
- c. Telco P.S. Case No. 268/97 u/s 392/411 Indian Penal Code
- d. Telco P.S. Case No. 273/97 u/s 392/411 Indian Penal Code
- e. Bistupur P.S. Case No. 214/97 u/s 392 Indian Penal Code
- f. Telco P.S. Case No. 278/97 u/s 25(1-b)/A/26 of the Arms Act.
- g. Telco P.S. Case No. 258/92 u/s 394 and 397 Indian Penal Code

Accused Rajiv Kumar Dubey alias Raju Dubey.

- a. Sadar Chaibasa P.S. Case No. 10/01 Under Sections 307/120(B) Indian Penal Code and Section 4/5/6 of Explosive Substance Act.
- b. Bistupur P.S. Case No. 125/03 u/s 25 (1-b)/A/26/35 Arms Act.
- c. Adityapur P.S. Case No. 139/04 Under Sections 392/411 Indian Penal Code

20. Finally, Dy.S.P. Kujur has stated that the State of Jharkhand got the entire matter thoroughly inquired into by Deputy Commissioner, East Singhbhum, Jamshedpur and the report of the Deputy Commissioner was sent to the Deputy Secretary, Home Department vide letter dated 31/10/2006. A copy of the said letter is annexed to the affidavit at Annexure-R4 (Colly.). We have carefully perused Annexure-R4 (Colly.) which includes the report submitted by the Dy.S.P., East Singhbhum, Jamshedpur. In his report, Dy.S.P., Jamshedpur has, after giving details of the steps taken while conducting the inquiry, set out the antecedents of the deceased criminals. So far as the allegation that deceased Munna Singh had received bullet injuries on his chest is concerned, it is stated that as per the postmortem report, deceased Munna Singh had received only

three injuries during the encounter - one at the forearm, second at the wrist and third on the stomach. After examining all the circumstances, in their proper perspective, the report concludes thus:

It is clear from the records and investigation of other related points that firing was done by the criminals in the house of businessman Jiwan Naredi of Bishtupur for extortion and after the incident, the police team under the supervision of Shri Rajiv Ranjan Singh, Dy. SP (Hqrs) chased the criminals while performing their legitimate duty. Consequently, the encounter took place and Munna Singh, (son of the applicant) and three other dreaded criminals of the city, associated with Akhilesh Singh gang, were killed.

Therefore, the allegations made by the applicant are baseless and false. The original application along with inspection report is being sent for favour of information.

21. It appears that the complainant had made a complaint to the NHRC. Admittedly, on receipt of this complaint, NHRC directed CID to conduct an inquiry. Accordingly, Nagendra Choudhary, SP, CID, Jharkhand (Ranchi) conducted the inquiry and submitted his report to the Deputy Inspector General of Police, CID, Jharkhand, Ranchi. The report is exhaustive and we have carefully perused it. From the report, it appears that the Inquiry Officer recorded the statement of Krishan Pratap Singh the brother of deceased Munna Singh. He also recorded the statements of two independent witnesses namely Moni Borker and Vijay Singh. These witnesses have confirmed that the firing incident did take place. The Inquiry Officer also recorded the statements of witnesses to the seizure memo. The report further states that Mr. Sharma, learned Magistrate (Law & Order Jamshedpur) came to the spot and prepared the inquest report. Important extracts from the inquest report are noted in the report. So far as the deceased is concerned, the inquest report states that he had bleeding wounds on the right stomach, right leg and near the elbow of the right arm. Injuries appeared to be bullet injuries. Statement of Dr. Prof. Akhilesh Kumar Chaudhary attached to MGM Medical College, Jamshedpur who had performed postmortem of some of the deceased criminals was also recorded. It is stated in the report that Dr. Chaudhary stated that there was no charring, blackening etc. found on the body which confirms that the bullets were fired from some distance. Reference is made to the statement of Dr. Lalan Chaudhary who had done postmortem of deceased Munna Singh i.e. the son of the complainant. Dr. Lalan Chaudhary has stated in his statement that there was no charring, blackening on the dead body. Postmortem report is also discussed. Similarly there is a detailed discussion on the report of the Forensic Laboratory. It is stated that the bullets were fired from the three pistols recovered from the scene of occurrence. Statement of Jeevan Naredi, the businessman whose house was attacked by the criminals is also recorded. Jeevan Naredi has given detailed account as to how the criminals fired at his house and fled away from there. After considering inquest report, postmortem report, forensic laboratory report, the statements of

independent witnesses, the statement of the businessman whose house was attacked, the statement of the brother of the deceased and the antecedents of the deceased and other attendant circumstances, the report concludes that the encounter was genuine. There is no dispute about the fact that NHRC has accepted this report and has also come to a conclusion that this is not a case of fake encounter.

22. We shall now deal with Mr. Gonsalves' attack on the police. Mr. Gonsalves contended that the dead body was not handed over to the complainant's family. We have already referred to the affidavit in reply filed by Mr. S.K. Kujur, Dy.S.P. From his affidavit and the documents annexed to it, it is clear that on the written request of the complainant's son-in-law Sanjay Narayan Singh on 2/7/2004, the dead body of deceased Munna Singh was handed over to him in the presence of Ripunjay Kumar Singh and Asha Shankar Singh. The body was finally cremated at Parvati Ghat by members of the family of deceased Munna Singh. Our attention is drawn to the copy of the application made by the brother-in-law of deceased Munna Singh requesting that the dead body may be handed over to him for cremation. It is counter signed by the brothers of deceased Munna Singh. The dead body was handed over to Sanjay Narayan Singh, the brother-in-law of deceased Munna Singh and a receipt dated 02/07/2004 to that effect was given by him to the police. The copy of the receipt is seen by us. It is counter signed by Asha Shankar Singh, brother of deceased Munna Singh. There is on the record a declaration made by the relative of deceased Munna Singh - one Raja Narayan Singh that deceased Munna Singh was cremated at Parvati Ghat, Bistupur, Jamshedpur. The declaration is made on the certificate issued by Parvati Ghat authorities.

23. Mr. Gonsalves contended that deceased Munna Singh's name was shown in a case registered in 1994 when he was only 9 years old. This shows that the police have fabricated a case to show that he was a dreaded criminal. We notice that in the postmortem notes, his age is shown as 28 years. It is not the case of the police that deceased Munna Singh was involved in any case of the year 1994. It is true that in the copy of the letter addressed by Dy.S.P. Jamshedpur to Superintendent of Police, Jamshedpur, Sonari P.S., Case No. 15 of 1994 dated 6/3/1994 is shown to have been registered u/s 392 of the Indian Penal Code against deceased Munna Singh. But as of today, it is the case of the police that he was not involved in this case. Perhaps, the information was related to some other person or the information was incorrect. It is not possible for us to hold that the police have made an attempt to involve him in Case No. 15 of 1994. List of several other serious crimes in which according to the police, the deceased was involved, is given by Dy.S.P. Mr. Kujur in his affidavit in reply. We have reproduced it in the earlier part of this judgment.

24. The contention that no blood stains were found at the site of occurrence when PUCL visited the same has no merit. There is on record the detailed seizure memo which speaks about the recovery of blood stained soil. The inquest report,

which is reproduced in the report of the CID confirms that the deceased had received bleeding injuries. The PUCL visited the scene of occurrence after four days in rainy season. Therefore, assuming blood stains were not found at the scene of occurrence after four days, that does not disprove the occurrence.

25. It is then contended that police movements are not recorded in police diaries. This is not correct. Extracts of police station diary of P.S. Sonari show the police movements of the relevant period. These extracts are annexed to the affidavit of Dy. S.P. Kujur.

26. It was submitted that the deceased received injuries on chest. The doctors' statements have been reproduced in the CID report. It is stated by the doctors that there was no blackening or charring suggesting that the deceased were shot at from a close range. The postmortem report also does not show that deceased Munna Singh had received chest injuries. It is true that the police personnel did not receive any bullet injuries. However, the Sumo vehicle was hit by a bullet. Mercifully, the police did not receive injuries because they had taken safe positions. From this, it cannot be said that no such incident had taken place. It is submitted that there are no independent eye witnesses supporting the version of police. This is wrong. Statements of Moni Boker and Vijay Singh have been recorded u/s 164 of the Code. This is evident from the CID report.

27. It is submitted that all challans in respect of deceased Munna Singh were filed on the same day. There is a reasonable explanation given for this. The deceased was wanted in the cases of 2002 and 2003. He was absconding when he died. A report was required to be filed to inform the court that he was dead. It is the case of the police that in these circumstances three challans were prepared and filed on the same day. These are not challans but final forms. In the circumstances, we are unable to come to a conclusion that this was done purposely with mala fide intention to create record against the deceased.

28. Mr. Gonsalves contended that nails of the deceased were blackened. This is not borne out by the postmortem report or the inquest conducted by the Magistrate. It is true that the postmortem was not videographed. In this case, the Magistrate conducted the inquest. The CID has fully investigated and submitted its report stating that it was a genuine encounter. NHRC is also satisfied with the postmortem. Therefore, it is not possible to infer that postmortem was not videographed because the police wanted to suppress something. We would like to make it clear that we have independently examined the relevant documents, like FIRs, postmortem notes, inquest report, seizure memo and extracts of FSL report and we are of the view that this is not a case of false encounter. We reject the case of the complainant that the police are guilty of killing deceased Munna Singh in cold blood in fake encounter.

29. The true test as to whether a public servant was acting or purporting to act in discharge of his duties would be whether the act complained of was directly connected with his official duties or it was done in the discharge of his official

duties or it was so integrally connected with or attached to his office as to be inseparable from it. (K. Satwant Singh). The protection given u/s 197 of the Code has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection. (Ganesh Chandra Jew). If the above tests are applied to the facts of the present case, the police must get protection given u/s 197 of the Code because the acts complained of are so integrally connected with or attached to their office as to be inseparable from it. It is not possible for us to come to a conclusion that the protection granted u/s 197 of the Code is used by the police personnel in this case as a cloak for killing the deceased in cold blood.

30. We must now deal with the submission of Mr. Gonsalves that the question of sanction must be studied with reference to the complaint and not with reference to the documents produced by the accused to set up a plea of self defence. In support of this submission, Mr. Gonsalves heavily relied on Hori Ram Singh. In that case, the Federal Court was considering the expression "Act done or purporting to be done in execution of duty as servant of Crown" appearing in Section 270(1) of the Government of India Act, 1935. The following observations of the Federal Court are material:

As the consent of the Governor, provided for in Section 270(1), is a condition precedent to the institution of proceedings against a public servant, the necessity for such consent cannot be made to depend upon the case which the accused or the Defendant may put forward after the proceedings had been instituted, but must be determined with reference to the nature of the allegations made against the public servant, in the suit or criminal proceedings. If these allegations cannot be held to relate to "any act done or purporting to be done in the execution of his duty" by the Defendant or the accused "as a servant of the Crown," the consent of the authorities would, prima facie, not be necessary for the institution of the proceedings. If, in the course of the trial, all that could be proved should be found to relate only to what he did or purported to do "in the execution of his duty," the proceedings would fail on the merits, unless the Court was satisfied that the acts complained of were not in good faith. Even otherwise, the proceedings would fail for want of the consent of the Governor, if the evidence established only official acts.

31. In Matajog Dobey, the Constitution Bench of this Court was considering what is the scope and meaning of a somewhat similar expression "any offence alleged to have been committed by him while acting or purporting to act in discharge of his official duty" occurring in Section 197 of the Code of Criminal Procedure (Act v. of 1898). The Constitution Bench observed that no question of sanction can arise u/s 197 unless the act complained of is an offence; the only point to

determine is whether it was committed in the discharge of official duty. On the question as to which act falls within the ambit of above-quoted expression, the Constitution Bench concluded that there must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable, but not a pretended or fanciful claim that he did it in the course of performance of his duty. While dealing with the question whether the need for sanction has to be considered as soon as the complaint is lodged and on the allegations contained therein, the Constitution Bench referred to Hori Ram Singh and observed that at first sight, it seems as though there is some support for this view in Hori Ram Singh because Sulaiman, J. has observed in the said judgment that as the prohibition is against the institution itself, its applicability must be judged in the first instance at the earliest stage of institution and Varadachariar, J. has also stated that the question must be determined with reference to the nature of the allegations made against the public servant in the criminal proceeding. It is pertinent to note that the Constitution Bench has further observed that a careful perusal of the later parts of the judgment however show that learned judges did not intend to lay down any such proposition. The Constitution Bench quoted the said later parts of the judgment as under:

Sulaiman, J. refers (at page 179) to the prosecution case as disclosed by the complaint or the police report and he winds up the discussion in these words: "Of course, if the case as put forward fails or the defence establishes that the act purported to be done is in execution of duty, the proceedings will have to be dropped and the complaint dismissed on that ground". The other learned Judge also states at page 185, "At this stage we have only to see whether the case alleged against the Appellant or sought to be proved against him relates to acts done or purporting to be done by him in the execution of his duty". It must be so. The question may arise at any stage of the proceedings. The complaint may not disclose that the act constituting the offence was done or purported to be done in the discharge of official duty; but facts subsequently coming to light on a police or judicial inquiry or even in the course of the prosecution evidence at the trial, may establish the necessity for sanction. Whether sanction is necessary or not may have to be determined from stage to stage. The necessity may reveal itself in the course of the progress of the case.

The legal position is thus settled by the Constitution Bench in the above paragraph. Whether sanction is necessary or not may have to be determined from stage to stage. If, at the outset, the defence establishes that the act purported to be done is in execution of official duty, the complaint will have to be dismissed on that ground.

32. In Raj Kishor Roy, the Appellant had filed a complaint against Respondent 1 therein, who was a police officer that he had assaulted him and leveled false charges against him. The Judicial Magistrate, Bhagalpur, issued summons. Respondent 1 filed a petition for quashing the order issuing summons on the

ground that sanction u/s 197 of the Code has not been obtained. The High Court quashed the said order on the ground that there was no sanction to prosecute Respondent 1. In the facts before it, this Court observed that the question whether Respondent 1 acted in discharge of his duty, could not have been decided in a summary fashion. This Court observed that it was the Appellant's case that Respondent 1 had brought an illegal weapon and cartridges and falsely shown them to have been recovered from the Appellant. This Court observed that this is the type of case where the prosecution must be given an opportunity to establish its case by evidence and an opportunity be given to the defence to establish that he had been acting in the official course of his duty. There is thus a clear indication that this Court had restricted its observations to the facts before it. It is pertinent to note that this Court referred to the Constitution Bench judgment in Matajog Dobey and observed that in that case, the Constitution Bench has held that need for sanction u/s 197 of the Code is not necessarily to be considered as soon as the complaint is lodged and on the allegations contained therein and the question may arise at any stage of the proceedings.

33. In Pukhraj, the Appellant, who was a clerk in the Head Post Office, Jodhpur had filed a complaint against Respondent 2, who was the Post Master General, Rajasthan, alleging offences under Sections 323 and 502 of the Indian Penal Code. Respondent 2 filed an application praying that the court should not take cognizance of the offence without the sanction of the Government as the acts alleged, if at all done by him, were done while discharging his duties as a public servant. The Rajasthan High Court held that Respondent 2 could not be prosecuted unless prior sanction of the Central Government has been obtained. The order taking cognizance was quashed. This Court referred to Hori Ram Singh as well as Matajog Dobey. This Court reiterated that whether sanction is necessary or not may have to be decided from stage to stage but in the facts of the case before it, this Court set aside the High Court's order.

34. In Nagraj, the appeal was directed against the order of the High Court rejecting the reference made by the Sessions Judge Shimoga Division recommending the quashing of the commitment order of the Magistrate committing the accused to the Sessions trial of offences under Sections 307 and 326 of the Indian Penal Code on the ground that the Magistrate could not have taken cognizance of the offences without sanction of the State Government in view of the provisions of Sections 132 and 197 of the Code of Criminal Procedure of 1898. The Appellant therein was a Sub-Inspector. He along with another person had severely beaten up one Thimma and had wantonly fired from revolver at other persons. It was contended that if the question of sanction is not decided in the very first instance when a complaint is filed or when the accused alleges that he could not be prosecuted for the alleged offences without sanction of the Government, the protection given by law will be nugatory as the object of giving this protection is that the police officer is not harassed by any frivolous complaint. It is important to note that this Court in the context of the peculiar facts before it, noted that there may be some such harassment of the accused,

but it had no means to hold in the circumstances alleged that the prosecution of the Appellant was in connection with such action as the complaint did not disclose the necessary circumstances indicating that fact and the bare word of the accused cannot be accepted to hold otherwise. It is in this background that the court observed that the jurisdiction of this Court to proceed with the complaint emanates from what is alleged in the complaint and not from what is finally established in the complaint as the result of the evidence recorded. Pertinently this Court made reference to the Constitution Bench judgment in Matajog Dobey where it is observed that whether sanction is necessary or not may have to be determined from stage to stage. In our opinion, the observation of this Court that the mere allegation made by the Appellant-police officer that the action taken by him was in performance of his duty, will not force the court to throw away his complaint of which it had properly taken cognizance on the basis of the allegations in the complaint will have to be read against the peculiar facts of the case and not as stating something which runs counter to the law laid down by the Constitution Bench in Matajog Dobey.

35. In Abdul Wahab Ansari Vs. State of Bihar Another, this Court was again considering the question as to when the plea that sanction was required to be obtained u/s 197 (1) of the Code can be raised. This Court reiterated that previous sanction of the competent authority being a precondition for the court in taking cognizance of the offence if the offence alleged to have been committed by the accused can be said to be an act in discharge of his official duty, the question touches the jurisdiction of the Magistrate in the matter of taking cognizance and, therefore, there is no requirement that an accused should wait for taking such plea till the charges are framed.

36. In our opinion Sankaran Moitra puts doubts, if any, to rest. In that case the complainant had filed a complaint before the Deputy Commissioner of Police that she had come to know from the members of the public that her husband was beaten to death by the police. She arrayed Assistant Commissioner of Police and other police personnel as accused and prayed for stern action against them. Accused 1 filed a petition u/s 482 of the Code before the High Court for quashing of the complaint on the ground that the complaint could not have been entertained for want of sanction u/s 197(1) of the Code. The High Court dismissed the petition. Before this Court it was argued that want of sanction u/s 197 of the Code did not affect the jurisdiction of the Court to proceed, but it was only one of the defences available to the accused and the accused can raise the defence at the appropriate stage. This Court considered Hori Ram Singh, Constitution Bench judgment in Matajog Dobey and several other judgments on the point and rejected the said submission. We must reproduce the relevant paragraph.

Learned Counsel for the complainant argued that want of sanction u/s 197(1) of the Code did not affect the jurisdiction of the Court to proceed, but it was only one of the defences available to the accused and the accused can raise the

defence at the appropriate time. We are not in a position to accept this submission. Section 197(1), its opening words and the object sought to be achieved by it, and the decisions of this Court earlier cited, clearly indicate that a prosecution hit by that provision cannot be launched without the sanction contemplated. It is a condition precedent, as it were, for a successful prosecution of a public servant when the provision is attracted, though the question may arise necessarily not at the inception, but even at a subsequent stage. We cannot therefore accede to the request to postpone a decision on this question.

This Court also observed that postponing a decision on the applicability or otherwise of Section 197(1) of the Code can only lead to the proceedings being dragged on in the trial court and a decision by this Court here and now would be more appropriate in the circumstances of the case especially when the accused involved are police personnel and the nature of the complaint made is kept in mind.

37. The upshot of this discussion is that whether sanction is necessary or not has to be decided from stage to stage. This question may arise at any stage of the proceeding. In a given case, it may arise at the inception. There may be unassailable and unimpeachable circumstances on record which may establish at the outset that the police officer or public servant was acting in performance of his official duty and is entitled to protection given u/s 197 of the Code. It is not possible for us to hold that in such a case, the court cannot look into any documents produced by the accused or the concerned public servant at the inception. The nature of the complaint may have to be kept in mind. It must be remembered that previous sanction is a precondition for taking cognizance of the offence and, therefore, there is no requirement that the accused must wait till the charges are framed to raise this plea. At this point, in order to exclude the possibility of any misunderstanding, we make it clear that the legal discussion on the requirement of sanction at the very threshold is based on the finding in the earlier part of the judgment that the present is not a case where the police may be held guilty of killing Munna Singh in cold blood in a fake encounter. In a case where on facts it may appear to the court that a person was killed by the police in a stage-managed encounter, the position may be completely different.

38. It is not the duty of the police officers to kill the accused merely because he is a dreaded criminal. Undoubtedly, the police have to arrest the accused and put them up for trial. This Court has repeatedly admonished trigger happy police personnel, who liquidate criminals and project the incident as an encounter. Such killings must be deprecated. They are not recognized as legal by our criminal justice administration system. They amount to State sponsored terrorism. But, one cannot be oblivious of the fact that there are cases where the police, who are performing their duty, are attacked and killed. There is a rise in such incidents and judicial notice must be taken of this fact. In such circumstances, while the police have to do their legal duty of arresting the criminals, they have also to protect themselves. Requirement of sanction to prosecute affords

protection to the policemen, who are sometimes required to take drastic action against criminals to protect life and property of the people and to protect themselves against attack. Unless unimpeachable evidence is on record to establish that their action is indefensible, mala fide and vindictive, they cannot be subjected to prosecution. Sanction must be a precondition to their prosecution. It affords necessary protection to such police personnel. Plea regarding sanction can be raised at the inception.

39. In our considered opinion, in view of the facts which we have discussed hereinabove, no inference can be drawn in this case that the police action is indefensible or vindictive or that the police were not acting in discharge of their official duty. In *Zandu Pharmaceutical Works Limited*, this Court has held that the power u/s 482 of the Code should be used sparingly and with circumspection to prevent abuse of process of court but not to stifle legitimate prosecution. There can be no two opinions on this, but, if it appears to the trained judicial mind that continuation of a prosecution would lead to abuse of process of court, the power u/s 482 of the Code must be exercised and proceedings must be quashed. Indeed, the instant case is one of such cases where the proceedings initiated against the police personnel need to be quashed. In the circumstances, we dismiss the appeal filed by the complainant Kailashpati Singh. We allow the appeal filed by Om Prakash, Pradeep Kumar, Shyam Bihari Singh and Bharat Shukla and set aside the impugned order to the extent it dismisses Cr.M.P. No. 822 of 2005 filed by them for quashing order dated 14/06/2005 passed by Judicial Magistrate, 1st Class, Jamshedpur, in Complaint Case No. 731 of 2004 issuing process against them. We quash Complaint Case No. 731 of 2004 pending on the file of Judicial Magistrate, 1st Class, Jamshedpur.