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**(2013) 09 MP CK 0120**  
**In the Madhya Pradesh High Court**  
**Case No : Writ Petition No. 3254 of 2008**

Smt. Vinita

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

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**Date of Decision :** 06-09-2013

**Acts Referred:**

Constitution of India, 1950 — Article 227

**Citation :** (2013) 09 MP CK 0120

**Hon'ble Judges :** Sujoy Paul, J

**Bench :** Single Bench

**Advocate :** K.S. Shrivastava, for the Appellant; Nidhi Patankar, Govt. Advocate for the respondents No. 1 to 3/State, Shri Prashant Sharma, Advocate for the respondent No. 4 and Shri D.S. Raghuvanshi, Advocate for the respondent No. 5, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Sujoy Paul, J.—By invoking the jurisdiction of this Court under Article 227 of the Constitution, the petitioner, a widow of Vikas Singh alias Kalla, prayed that a case be registered against the respondents No. 4 and 5 for false encounter of Kalla. It is also prayed that an independent judicial enquiry be conducted in the matter of encounter of Kalla. Shri K.S. Shrivastava, learned counsel for the petitioner, submits that he is not pressing the relief regarding CBI enquiry and he will be satisfied if judicial enquiry is ordered.

2. It is contended that the police conducted a false encounter on 13.6.2008 and Kalla was brutally murdered by the police team. In support of his contention, learned counsel for the petitioner relied on the FIR and post mortem report. It is contended that the FIR shows less number of bullet fired by the police party and if this number is examined, it will show that only four round of fire was made by the police party whereas as per post mortem report, there are 24 gun shot injuries on the body of the deceased Kalla. He submits that as per the story of police narrated in the FIR, there were three persons including Kalla, who were

riding a motorcycle and two could escape from the place of encounter and Kalla alone was murdered. He submits that how two persons can escape when all the three were riding same motorcycle. It is further contended that report of Human Right Commission is bogus as also the report of Additional District Magistrate dated 30.9.2008. He relied on (2005) 5 SCC 517 (Sanjiv Kumar vs. State of Haryana and others) and Bhanwar Singh Vs. Pura and Others, to submit that in the manner Kalla was killed in a false encounter, there is no question to apply the principle of right of private defence.

3. No other point is pressed by learned counsel for the petitioner.

4. Smt. Patankar, learned Government Advocate submits that the petition is meritless. By drawing attention on Annexure R/4, it is contended that Kalla had criminal antecedents. By placing reliance on seizure memo (Annexure R/3), it is contended that the firearms, bullets etc. were seized from the place of incident. She also relied on the report of Human Right Commission, which found no flaw in the police action. It is also contended that by order dated 15.3.2008 an award was declared against Kalla, which was enhanced on 11.6.2008. The police party in compelling circumstances had to open fire, which cannot be questioned.

5. Shri Prashant Sharma, learned counsel for the respondent No. 4 also relied on the antecedents of Kalla and took almost same stand which was taken by Smt. Patankar, learned Government Advocate.

6. I have heard learned counsel for the parties and perused the record.

7. This is settled in law that judicial enquiry or CBI enquiry cannot be directed as a matter of course. Unless it is shown and established that the investigation, enquiry or a magisterial enquiry is totally unreliable or suffers from serious infirmities, directions cannot be issued to conduct judicial enquiry.

8. Shri Shrivastava, learned counsel for the petitioner, submits that petitioner has no faith on the magisterial enquiry and, therefore, judicial enquiry be directed to be conducted. In my opinion, the contention cannot be accepted. Such orders cannot be passed on mere asking. The petitioner has to satisfy that the magisterial enquiry suffers from any serious flaw because of which such enquiry cannot be relied upon. The FIR is examined in juxtaposition to the post mortem report and I am unable to agree with the contention of Shri Shrivastava that there were 24 gun shot injuries on the body of Kalla. The said argument repeatedly advanced is not matching with the post mortem report. Thus, I am unable to accept this contention. The Human Right Commission also took cognizance of the matter and prepared its detailed report dated 10.6.2009. In this 13 page report, the Human Right Commission gave opinion that police officers and employees are not guilty. The magisterial enquiry was also found to be in order. The judgments cited by Shri Katara have no application in the facts and circumstances of the case. In this view of the matter, I am unable to hold that the magisterial enquiry was bad in law or mandamus can be issued for judicial enquiry to enquire about the encounter of Kalla. There is no merit in the

petition. It is accordingly dismissed. No costs.