

**(2020) 08 MP CK 0158**

**In the Madhya Pradesh High Court**

**Case No :** Miscellaneous Criminal Case No. 19763 Of 2020

Suraj Singh Tomar

APPELLANT

Vs

State Of M.P.

RESPONDENT

**Date of Decision :** 31-08-2020

**Acts Referred:**

Indian Penal Code, 1860 — Section 34, 302

Code Of Criminal Procedure, 1973 — Section 161, 482

Scheduled Castes And Scheduled Tribes (Prevention Of Atrocities) Act, 1989 — Section 3(2)(Va)

Evidence Act, 1872 — Section 65B

**Citation :** (2020) 08 MP CK 0158

**Hon'ble Judges :** Rajeev Kumar Shrivastava, J

**Bench :** Single Bench

**Advocate :** Sarwesh Singh Chauhan, Devendra Pathak, Yash Sharma

**Final Decision :** Dismissed

## Judgement

1. This petition under Section 482 of the Code of Criminal Procedure has been filed by the petitioner seeking quashment of First Information Report (FIR) registered at Crime No.195/2020 on 06/03/2020 by Police Station Bahodapur, District Gwalior (M.P.) for the offence punishable under Sections 302, 34 of IPC read with Section 3(2)(Va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred to as "SC/ST Act").

2. The facts in nutshell are that complainant Balram Khatik, (respondent No.6 herein) along with his friend Akash Jatav reported to Police Station Bahodapur, Gwalior that on 05/03/2020 at around 11:30PM they had gone to attend the marriage of their friend's sister at Swayamvar Vatika Marriage Garden, where at around 2:00AM (midnight of 05.03.2020 - 06.03.2020) fight occurred in between Baratees and guard of the said marriage garden on the issue of firing of crackers. When they tried to pacify the dispute, guard Shyam Tomar raised his gun on Gaurav and the petitioner, who is the Director/owner of the marriage garden, told the guard Shyam Tomar to fire upon Gaurav, then Shyam Tomar fired with

his gun, due to which Gaurav died at the spot. On this report, police has registered FIR against the present petitioner and co-accused Shyam Tomar. It is further submitted that on the report of guard Shyam Tomar, FIR at Crime No.220/2020 has also been registered by the police station Bahodapur, Gwalior. However, by this petition under Section 482 of Cr.P.C., petitioner has prayed for quashing the FIR registered against him at Crime No.195/2020.

3. Learned counsel for the petitioner has submitted that on the date and time of incident, the petitioner, who is the owner of Swayamvar Vatika Marriage Garden, was not present at the place of occurrence and only guard Shyam Tomar was present there. This fact finds corroboration from the CCTV footage, which also reflects that at the time of incident, the petitioner - Suraj Singh Tomar was not present on the spot. Hence, no case is made out against the present petitioner. In support of his submissions, learned counsel for the petitioner has relied upon the judgments passed by Hon'ble Apex court in Rajiv Thapar & others Vs. Madan Lal Kapoor [(2013) 3 SCC 330] and in Tomaso Bruno and Anr. v. State of Uttar Pradesh, [(2015) 7 SCC 178]. It is further submitted that FIR has been registered arbitrarily under influence of the respondents ignoring the actual facts available on record. Hence, learned counsel for the petitioner prays for quashing of FIR and all other consequential proceedings.

4. Learned State counsel as well as learned counsel for the complainant-respondent No.6 have vehemently opposed the submissions made by learned counsel for the petitioner and have submitted that at this stage, the plea of alibi taken by the petitioner cannot be considered. It is further submitted that there is a certificate issued under Section 65-B of Evidence Act and the witnesses relating to the CCTV footage as well as eye-witnesses have specifically mentioned the name of present petitioner. Therefore, no interference by this Court in the present petition as well as in fair investigation of the matter is warranted. Hence, prays for rejection of present petition relying upon the decisions of Hon'ble Apex Court in State of Karnataka Vs. L. Muniswamy & others [AIR 1977 SC 1489], Aleque Padamsee Vs. Union of India [(2007) 6 SCC 171], Sakiri Vasu Vs. State of U.P. & others [(2008) 2 SCC 409], Sudhir Bhaskarrao Tambe Vs. Hemant Yashwant Dhage and others [(2016) 6 SCC 277].

5. Heard learned counsel for the parties at length and considered the arguments advanced by them and perused the record available.

6. In Rajendra Singh Vs. State of U.P. and others, (2007) Cr.L.J. 4281, it is held that on account of plea of alibi raised by the accused, the statements of various witnesses recorded under Section 161 of Cr.P.C. cannot be discarded. The plea of alibi should be proved by the accused during recording of evidence before the trial Court. It is also settled law that plea of alibi is not conclusive in nature. The CCTV footage has only a corroborative value of evidence, which is required to be proved before the trial Court during evidence. Furthermore, as submitted by learned counsel for the respondents, there is a specific certificate issued under Section 65-B of Evidence Act.

7. On the basis of aforesaid discussion, there is no reason to invoke the inherent power of this Court in favour of the petitioner. The case is registered under Sections 302, 34 of IPC read with Section 3(2)(Va) of SC/ST Act and this Court is not having authority to interfere in the fair investigation of the matter. Resultantly, present petition filed under Section 482 of Cr.P.C. sans substance and is hereby dismissed being devoid of merit.