

IN THE COURT OF THE JUDGE, FAMILY COURT CUM- IV-ADDITIONAL
DISTRICT AND SESSIONS JUDGE AT ADILABAD

Present:

Smt. G.V.N. Bharatha Laxmi,
Spl. Judge for trial of cases under SCs/STs [POA] Act
Cum-V- Addl. District and Sessions Judge, Adilabad
FAC: Judge, Family Court-cum-IV Addl.
District & Sessions Judge, Adilabad

Thursday, the 15th day of February, 2018.

Criminal Revision Petition No.19/2015

&

Criminal Revision Petition No.24/2015

Criminal Revision Petition No.19/2015

Between:

K.Padma W/o Late C.Raj Kumar, Age: 57 yrs.,
R/o Swetcha Apartments, Bagh Amberpet,
Hyderabad-13.

.. Revision Petitioner.

//And//

State of Andra Pradesh, Central Bureau
Of Investigation, Hyderabad represented
by Public Prosecutor, Hyderabad.

.. Respondent.

Criminal Revision Petition No.24/2015

Between:

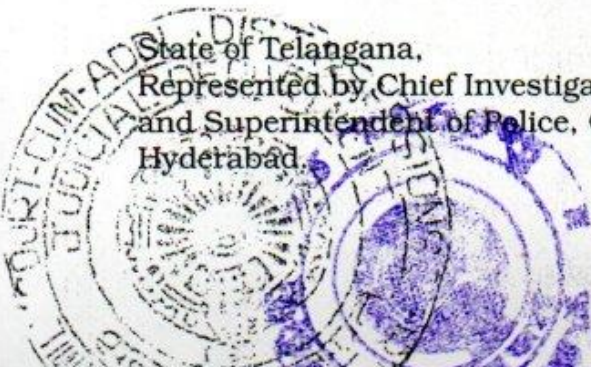
Bineetha Pandey W/o Hemachandra Pandey, Age: 35 yrs.,
Occ: Journalist, R/o Haldwani, Naintal district,
Uttarakhand State.

.. Revision Petitioner.

//And//

State of Telangana,
Represented by Chief Investigating Officer
and Superintendent of Police, CBI,
Hyderabad.

.. Respondent.



ON REVISION FROM THE COMMON ORDER DATED 24.03.2015 PASSED BY
THE LEARNED JUDICIAL MAGISTRATE OF FIRST CLASS AT ADILABAD.

In

C.F.R.No.1816/2013 and 1817/2013

In

R.C.14 (S) 2011- CBI/HYD.

Between:

1. Bineetha Pandey W/o Hemachandra Pandey
2. K.Padma W/o Late Cherukuri Raj Kumar, Age: 52 yrs., R/o Presently Flat No.301, Thirumala Residency, Ramnagar Gundu, Hyderabad.

.. Petitioners

//And//

State of Andhra Pradesh Represented by Chief Investigating Officer and Superintendent of Police, CBI, HYDERABAD.

.. Respondents/complainant

This Criminal Revision Petition have been finally heard on 24.01.2018 in the presence of Sri D.Suresh Kumar, Sri P.Vishnu, Sri Sameer, Sri B.Ganga Reddy, Advocates for revision petitioner/K.Padma and of Sri V.Raghunath, Ch.Ramachandra and Sri A.A.Raheem, Advocates for revision petitoiner/Bineetha Pandey and of Sri B.Alexander Lenin Raja, Public Prosecutor for CBI/respondent and upon hearing both sides and having stood for consideration till this day, this court delivered the following:

COMMON ORDER IN CRIMINAL REVISION PETITIONS No.19/2015 and 24/2015

In

RC 14 (S)/2011-CBI/HYD.

1. Aggrieved by the common order passed in two protest petitions vide CFR No.1816/2013 and CFR No.1817/2013 in RC 14 (S) 2011-CBI/HYD, dated.24.03.2015 on the file of learned Judicial Magistrate of First Class, Adilabad protested petitioners No.1/Bineetha Pandey W/o Hemachandra Pandey and No.2/K.Padma W/o late C.Raj Kumar have preferred these two criminal revision petitions vide Crl.R.P.No.19/2015 and Crl.R.P.No.24/2015 respectively,

2. These are the facts as per the record that there was an exchange of fire during the intervening night of 01.07.2010 and 02.07.2010 between the police



party and suspected Maoists at Sarkepalli-Velgi forest area in Wankidi Mandal of Adilabad district and in the said exchange of fire two persons namely Sri Cherukuri Raj Kumar @ Azad, Central Committee Member and Polit Bureau Member of CPI (M) and Sri Hemchandra Pandey, Journalist died of fire arm injuries. The case was registered by the local police vide Crime Number 40/2010 under section 148, 307, 149, 147 IPC, Section 25 (1-B) and 27 of Arms Act and Section 174 Cr.P.C against unknown CPI (Maoist) on 02.07.2010 at 0930 hrs., Smt.Bineeta Pandey W/o Late Sri Hemchandra Pandey R/o New Delhi and Swamy Agnivesh, Social Activist, New Delhi filed Writ Petition (Crl.) No.1/2011 and Writ Petition (Crl.) No.3/2011 respectively before the Hon'ble Supreme Court of India alleging that late Sri Cherukuri Raj Kumar @ Azad, Central Committee Member and the Spokesperson of banned Communist Party of India (Maoist) and late Sri Hemchandra Pandey, a freelance journalist from New Delhi were killed in fake encounter by the Andhra Pradesh Police on the intervening night of 01.07.2010 and 02.07.2010 at Sarkepalli-Velgi forest are in Adilabad district of Andhra Pradesh in violation of their Rights under Article 21 of the Constitution of India. The Hon'ble Supreme Court of India on 26.04.2011 after hearing of the writ petitions (Crl.Nos.1 and 3 of 2011) filed by Smt.Bineeta Pandey W/o Late Hemchandra Pandey and Sri Swamy Agnivesh respectively, directed the Director, Central Bureau of Investigation (CBI) to constitute a team to investigate the case relating to the circumstances and the manner in which Sri Cherukuri Raj Kumar @ Azad and Sri Hemchandra Pandey met with their death.

3. In pursuance of the directions of the Hon'ble Court, CBI registered a case vide RC-14 (S)/2011 U/sec.120-B r/w 302 IPC against the then police officers of Andhra Pradesh and others who participated in the alleged encounter on



19.05.2011 at CBI, Hyderabad and carried out extensive investigation on the allegations as mentioned in the Writ Petitions filed by Stm.Bineeta Pandey and Swamy Agnivesh. As per the orders of the Hon'ble Supreme Court of India, CBI filed final report with volumes of 196 pages before learned Judicial Magistrate of First Class, Adilabad wherein CBI has examined 79 witnesses and collected 78 documents. After filing CBI final report before learned Judicial Magistrate of First Class, Adilabad the lower court ordered notices to the objection petitioners, after receiving notices the present revision petitioners K.Padma W/o late C.Raj Kumar (D1) filed a petition U/sec.190 CrPC vide CFR No.1817/2013 to take cognizance of offence against the accused basing on the police report filed by Chief Investigating Officer and another one Bineetha Pandey filed a petition vide CFR No.1816/2013 to reject the final report of the CBI and to take cognizance of the offence against the accused. In supporting of their allegation both the revision petitioners have examined their selves as PW1 and PW2 and also got examined PW3/Swamy Agnivesh who allegedly mediated the peace talks in between Maoists (CPI) and the Central Government and PW4/Dr.Neelakanteshwar Rao who conducted post mortem examination over the dead body of the deceased and and also got marked Ex.C1/post mortem examination report of Sri Cherukuri Raj Kumar @ Azad . Ex.C2 minutes of meeting by Forensic department, dt.08.06.2011. After considering the oral and documentary evidence on the record the lower Court vide its order, dt.24.03.2015 has dismissed the protest petitions vide CFR No.1816/2013 & 1817/2013. U/sec.203 Cr.P.C. Aggrieved by the said orders, the protest petitioners have preferred this criminal revision petitions on hand on the grounds raised in the revision petitions.



4. No evidence lead by both the parties at this appeal stage.
5. Heard arguments of both the side counsels.
6. In the light of the rival contentions and material available on record, the point stood for consideration are:

Whether there are any grounds to interfere with the finding recorded by the learned Judicial Magistrate of First Class, Adilabad in her impugned order, dated 24.03.2015?

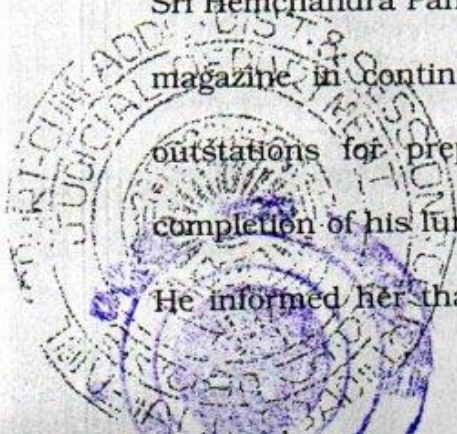
7. As per the evidence on record the lower Court ordered for 202 CrPC inquiry wherein and whereby both the revision petitioners K.Padma and Bineetha Pandey deposed their sworn statements and also statements of two others namely Swamy Agnivesh and Dr.Neelakanteshwar Rao were recorded and Ex.C1 and Ex.C2 are marked. The main allegation of the both the protested petitioners that this is a cold blood murder of both the deceased namely late Sri Cherukuri Raj Kumar @ Azad and late Sri Hemchandra Pandey in the hands of 29 police personal of Andhra Pradesh and this is a fake encounter as such they are opposing the conclusion of CBI final report in not charge sheeting all the accused.

8. On perusal of evidence the sworn statement of protest petitioner/K.Padma has revealed the following facts in brief that she is wife of late Sri Cherukuri Raj Kumar @ Azad by that time of his killing he was Polit Bureau member of CPI (Maoist) and also spokes person. In view of proposals of peace talks initiated by Swamy Agnivesh, Sri Cherukuri Raj Kumar @ Azad responded positively as spokesperson. While proposals are going on Sri Cherukuri Raj Kumar @ Azad wanted to discuss with his party colleagues in

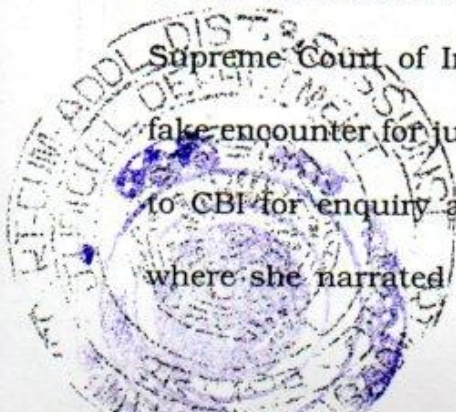


the forest area for which on 30.06.2010 at about 1.00 p.m he left the house to catch Gondwana express to go to Nagpur where he will be received by one person named Sahadev on 01.07.2010 morning. On the next day on 02.07.2010 she saw her husband was killed through Television news in Adilabad Sarkepally forest area. She was shocked with she heard the version of A.P Police about the killing of her husband that he was in Adilabad forest area with a party dalam because he was supposed to meet one person at Nagpur, so he will not touch route of A.P so party also gave statement that the Sahadev went alone back without Azad. Then she strongly believed that the version of A.P Police was false and he must have kidnapped either before or after reaching Nagpur and killed and thrown into the forest of Adilabad area. As her husband has very poor eye sight and he got sight defect in right eye it is utterly false that he used fire arms during intervening night of 01.07.2010 and 02.07.2010. So she strongly believed that A.P Police cooked up story of encounter whereas infact they caught and killed her husband late Cherukuri Raj Kumar @ Azad in cold blooded manner and 29 police personnel participated in the killing of her husband along with conspirators, per-planner of his killing and all those are responsible persons for killing of her husband and along with her husband one journalist by name Sri Hemchandra Pandey also killed.

9. Whereas the sworn statement of Smt. Bineetha Pandey W/o late Sri Hemchandra Pandey revealed the following facts in brief that she is wife of late Sri Hemchandra Pandey and her husband has joined as sub editor in Chethana magazine in continuation by doing freelance journalist. He used to go to outstations for preparation of articles. On 30.06.2010 her husband after completion of his lunch went to Nizamuddin railway station along with his bag. He informed her that to ready breakfast on 02.07.2010 as he has got return

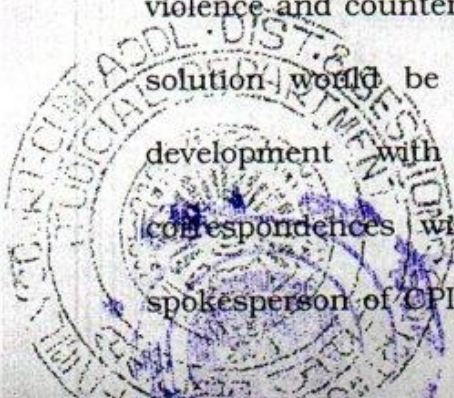


journey ticket. On 30.06.2010 at about 4.00 p.m her husband telephoned her from Nizamuddin railway station from his cell phone 9711016500 to her cell phone No.9711954599 and informed her to ready breakfast to him on 02.07.2010 on arrival of him but now at present train is late. Later she has not received either any call or message from his phone and when she telephoned to her husband she got answer "not reachable" on several occasions. She also sent messages to her husband cell number several times. On 02.07.2010 her husband was supposed to come back for breakfast for that she waited till 10.00 a.m on that day. She also made enquiry in railway station of New Delhi and came to know about the arrival of the train from Nagpur to Delhi. Then she informed about non-arrival of her husband to her cousin Vijaywardhan who is working in ETV in Pithodagat in Uttharakand state. She also informed the same fact to her journalist friends. On 03.07.2010 while she was attending Gandhi peace foundation meeting she came to know through the senior journalist that one Azad was died in fake encounter and the same discussion was going on where she found Eenadu paper contending photo of said Azad and other unnamed photo belongs to her husband and she identified unnamed photo belongs to her husband and got shocked. On 05.07.2010 herself and her brother in law ie., brother of her husband by name Rajiv Pandey went to Hyderabad in view of taking of her husband dead body and came to Mancherial. Later along with her husband dead body they all went to Delhi. All the journalists, Advocates, vilekars and political leader condemned about the killing of her husband in fake encounter. Later she filed petition before Hon'ble Supreme Court of Indian by mentioning about the killing of her husband in fake encounter for judicial enquiry but the Hon'ble Supreme Court handed over to CBI for enquiry and to file enquiry report. Then the CBI, Delhi called her where she narrated the facts about the entire incident to CBI. On perusal of



postmortem report of her husband she came to conclusion that her husband was killed with in the close range of manner by shooting him. It is a cold blood murder as per plan with intentionally murdered her husband. At that time might be taking the interview of Azad by her husband being only the eye witness ie., screening of evidence for that reason they killed both of them ie., Azad and her husband. Police said false story by mentioning the facts that her husband was armed with fire arm by that time by placing the fire arm adjacent to his dead body and prayed the Hon'ble Court to peruse the material already filed by CBI and oral evidence and to find out evidence about the murder of her husband. It clearly constitutes the commission of offences of kidnap, conspiracy, murder. Hence prayed to take action against all the accused who are responsible for the death.

10. The sworn statement of Swamy Agnivesh shows the facts as follows that he is working as social worker and he was very much inspired by the teachings of Swamy Dayanand and the spiritual message of the Vedas ie., truth, love, compassion and justice being God. Then he left his job, mother, everyone to launch a similar movement of justice in Haryana on 25.03.1968 but very peacefully and succeeded in organizing the landless labour, peasant, brick kiln workers, stone quarry workers. When he came to know that the Government of India together with eight chief ministers of different states in India have organized operation Green Hunt to crush the Maoist movement, then he felt violence and counter violence was not going to serve any purpose and the best solution would be to initiate a dialogue to bring about the peace and development with justice. Accordingly he made negotiations and correspondences with the then Central Government as well as Mr.Azad spokesperson of CPI (Maoist). While the proposals are being made he received



shocking news on the night of 02.07.2010 and early morning of 03.07.2010 that late Sri Cherukuri Raj Kumar @ Azad had been killed in some encounter. In spite of his requests made to several Government Officials as well as Political leaders he could not get any orders for judicial enquiry in respect of cause of death of late Sri Cherukuri Raj Kumar @ Azad. From his own sources as well as the information from print and electric media he came to know that late Sri Cherukuri Raj Kumar @ Azad and late Sri Hemchandra Pandey were killed in cold blood in Nagpur itself by the police and their dead bodies were taken to the forest of Sankepally of Adilabad in car with tented glass. Hence requested to order some very impartial enquiry.

11. The brief facts of sworn statement of Dr.Neelakanteshwar Rao/PW4 are that he is working as Deputy Civil Surgeon, Area Hospital, Mancherial also he worked as Civil Assistant Surgeon, Area Hospital, Mancherial from June, 2009 to June, 2010. On the requisition given by Tahasildar, Wankidi he has conducted Post mortem examination over the dead body of Sri Cherukuri Raj Kumar @ Azad on 03.07.2010 at about 10.00 a.m at Area Hospital, Mancherial along with his colleague Dr.Chandraiah and found the following internal and external injuries which are anti-mortem in nature

I- External injuries:

1. Entry wound 1 cm., oval shape wound with darkening burned edges of the wound with inverted edges, present at the left second inter costal space 3 cm., lateral left edge of the sternum.

2. The corresponding exit wound which is 3 x 3 present at the 9th and 10th inter vertebral space 1 inch lateral to the spinal vertebrae on left side.

The wound is antemortem in nature caused by fire arms depth in 9 inches.



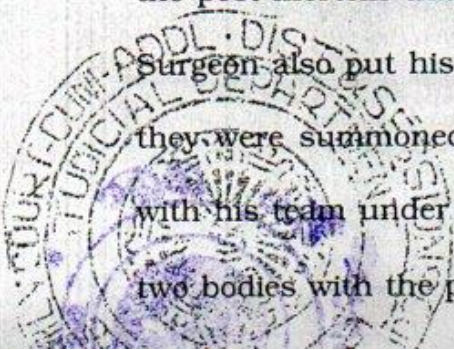
3. entry wound 1 cm in diameter oval shaped wound on the posterior aspect of right deltered region. Exit wound 2 cm., away from the entry wound 1 1/2 cm x 1 1/2 cm in size depth is only 2 inches. Antemortem in nature caused by fire arms.
4. Abrasion on the right inter phalavgeat region 1 x 1.

On his additional observation found there is a artificial glass eye ball on the left side.

II- INTERNAL INJURIES

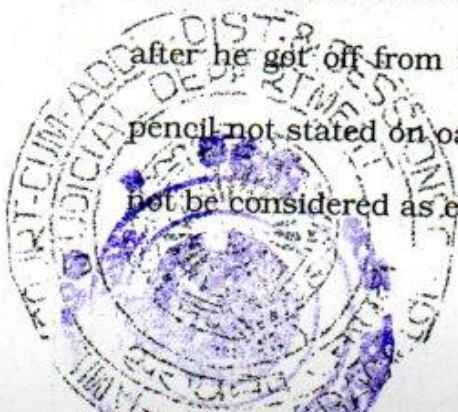
Perfated wound at 2 cm., inter costial space entering into the superior media sternum inferior venacav descending aorta. Posterior part of diaphragm. Mucosal injury to the oesophagus. Left broncus cut. One litre of blood collected in the pluaural cavities. Laceration and contusion of the apical region. There is peri cardiam. Collected blood in the stomach. Small intestine-pale distended, large intestine, vermiform appendix and mesentery pale distended. Liver, gall bladder-pale, Pancrea-NA, spleen-pale, kidney and uterus right and left pale.

He is of the opinion that the approximate time of death is 24 to 36 hours., the cause of death to the best of his knowledge is viscera was preserved and opinion was reserved waiting for FSL report. On his dictation one Dr.Chandraiah, Civil Assistant Surgeon, Area Hospital, Mancherial drafted the post mortem examination of Cherukuri Raj Kumar @ Azad and he has conducted post mortem examination of the same and he put his signature on the post mortem examination report as well as Dr.Chandraiah, Civil Assistant Surgeon also put his signature on the same marked as Ex.C1. On 08.06.2011 they were summoned by the professor of Forensic Professor T.D.Dogra along with his team under the camera of CBI. They discussed about the injuries on two bodies with the professor along with his other three colleagues at All India



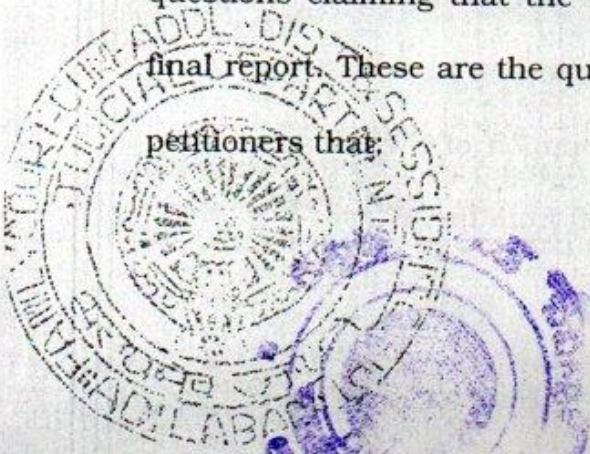
Institute of Medical Science, Forensic Department, New-Delhi. The injuries which have been described and impression and interpretation given by the Professor Dogra are all on his own and not by him entirely. When they have conducted investigation at Sarkepally forest, they have not called the medical officers who conducted post mortem examination. There is another letter of clarification from SDPO, Jagityal on 25.08.2010 addressed to the Medical Officer, Government Area Hospital, Mancherial and the clarification was given by his colleague Dr.Chandraiah but not by him. They should have sought opinion by prime doctor who conducted post mortem examination over the dead body of late Sri Cherukuri Raj Kumar @ Azad. If the CBI or primary investigation would have asked their expert opinion as was done in this case to forensic department of Gandhi Medical College, Osmania Medical College and All India Institute of Medical Sciences but taking them in front of the forensic department professors natural being in front of the professor he cannot express his own opinion separately this is what he has noticed during their investigation. He wanted to submit one CD which contained the photographs of post mortem examination of Sri Cherukuri Raj Kumar @ Azad and the same is submitted. His opinion varies from the opinion given by the experts opinion under the minutes of meeting of Forensic Department, New Delhi, dt.08.06.2011 Delhi marked as Ex.C2.

His further opinion in his sworn statement is written with pencil. But as per the note mentioned by the learned Judicial Magistrate of First Class, Adilabad that the witness has added the said three lines in his sworn statement after he got off from the witness box. Since the opinion of PW4, written with pencil not stated on oath, and added after he got off from the witness box, shall not be considered as evidence.



12. Here the learned counsel for the revision petitioners/protest petitioners have argued vehemently that admittedly this is the case of unnatural death of late Sri Cherukuri Raj Kumar @ Azad and late Sri Hemchandra Pandey wherein death occurred during the course of exchange of fire as per the version of A.P Police in Cr.No.40/2010 of P.S.Wankidi as well as the final report of CBI which has made extensive investigation as per the directions of the Hon'ble Supreme Court of India and disputing the A.P Police version and opposing the conclusion of the CBI final report. Further argued that both the revision petitioners filed their protest petitions and petition U/sec.190 CrPC for taking cognizance and to proceed further against the accused as per the Law inspite of closing as such the learned lower Court enable the protested petitioners to bring their evidence to examine the witnesses and postponed the issue of process to the accused though conducted enquiry U/sec.202 CrPC. As per Law and after examining the witnesses brought by the petitioner, the Court has looked into the materials brought by the protest petitioners and if sufficient material is there prima facie cognizance of offence has to be taken against the accused but at this stage it is not necessary the evidence should be let in as full fledged trial.

13. Further in view of the facts and circumstances mentioned in CBI final the learned counsels for revision/protest petitioners have raised sixteen fatal questions claiming that the same were unanswered in the CBI investigation final report. These are the questions raised by the learned counsel for revision petitioners that:

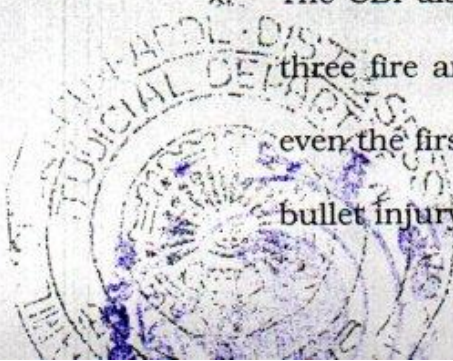


- i. Much before this inquest the police declared to the press that Maoist leader Sri Cherukuri Raj Kumar @ Azad killed, how did they know before his identification that he was Azad.
- ii. How those two who started from Delhi 30.06.2010 were missing from Nagpur from 1st morning alone happened to be killed while the Maoist armed squad of 20 to 25 were surrounded in a gun battle that went half an hour could manage to escape.
- iii. Why only two kit bags were recovered and not trace of gathering of 20 to 25 was there at all.
- iv. late Sri Cherukuri Raj Kumar @ Azad was Spokesperson of CPI (Maoist) and was engaged in peace talks with Home Minister. The Ministry of Home Affairs is the cadre controlling authority of IPS Officers deputed to the CBI, therefore it has factual control over the functioning of the CBI and can manipulate investigations as has been seen in numerous cases.
- v. When the Hon'ble Supreme Court entrusted the investigation of the encounter to the CBI it had decided to monitor the investigation and that is the reason the petitioners did not press further for judicial enquiry at this stage. However, when the CBI filed its final report there are many glaring lacunae in it.
- vi. The investigation by CBI revealed that both the deceased traveled together from Nizamuddin to Nagpur in the same train but could not establish how they both reached the same night to the Adilabad forest hill top crossing Maharashtra borders. CBI investigation aimed at to disprove the Writ petitioner allegations rather than making an impartial and independent enquiry as directed by the Apex Court to



know the cause and circumstances that led the death of late Sri Cherukuri Raj Kumar @ Azad and late Sri Hemchandra Pandey.

- vii. Further, there is possibility of these two deceased being taken away by the SIB Police of AP as alleged by the Maoist Party as well as protest petitioners in her writ petition but the CBI has deliberately ignored all these as part of their investigation.
- viii. CBI ought to have noticed that normally Maoist party with a strength of 20 to 25 are present then in any ambush first they first save the civilian among them by giving way to him to escape or guard him with a safe passage. It is the same case even when a central committee leader of Azad rank who is especially engaged in peace talks is present they do save him.
- ix. Further above all it is really amusing to watch the simulated computerized animation where it was shown that it was late Sri Hemchandra Pandey who fires first at police party from the side of Maoists as if he was acting there as a sentry. Moreover this computer simulation goes to show that presence of 29 police party on one side and only late Sri Hemchandra Pandey and Azad on the other side exchanging fire. Its amazing that CBI deliberately ignoring the fact that is true that late Sri Hemchandra Pandey is not at all trained with any fire arms, then how can he be there in the forefront of the exchange of fire in a fierce gun battle.
- x. The CBI also failed to explain that Sri Hemchandra Pandey received three fire arm injuries all around chest but in reality after receiving even the first bullet shot, one will fell down and the possibility of other bullet injury around chest is highly doubtful.



- xi. The FIR says that the Superintendent of Police received information from the Special Intelligence Bureau, However, DIG (SIB) denied that SIB provided any such information. The CBI also has gone with the story that the intelligence regarding the Maoist party was provided by local intelligence termed as Special Intelligence Police (SIP) and not from SIB. Yet, the call records of the SP shows that infact seven calls were made between the SIB headquarter in Hyderabad.
- xii. Late Hemchandra Pandey traveled by Gondvana express to Nagpur which reached Nagpur at 10.00 a.m on 01.07.2010. The forest/place of incident is minimum of 4 hours by road, therefore, late Hemchandra Pandey could not reached there before 4 p.m. However, the SP claims to have been informed by 2.00 p.m about the exact location. How this would be possible unless the Maoist party remained at the same place from 2.00 p.m till 11.00 p.m which is not the FIR version.
- xiii. The three vehicles drop the police party at Lakhimpur near Sarkapally forst and gone back. Even after the encounter no vehicles or reinforcement are sent and the police party is supposed to have spent the night in the forest without even venturing near the site of the dead Maoists. Infact SP did not even ask the OSD to go to the site immediately but told him to go on the next day.
- xiv. Cell phone records of SP (Superintendent of Police), CI (Circle Inspector) and OSD had been examined for only after 2.30 p.m on 01.07.2010 and not before that but as per CBI report it has produced the cell phone records of SP for the whole of 01.07.2010 and 02.07.2010. The record of CI Rao shows that he reached the site of the alleged encounter by 7.23 p.m and there are no phone calls made



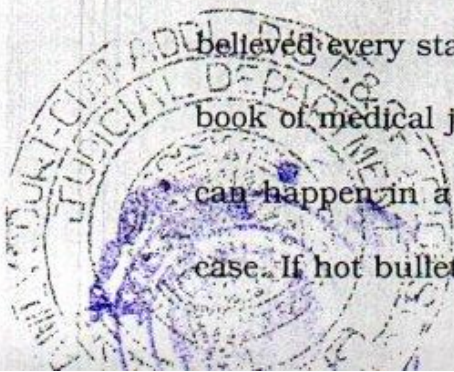
to and from this phone between 7.51 p.m and 11.31 p.m which is strange since the SP claims to have kept in constant touch with him. Curiously SP calls Rao at 11.30 p.m immediately after the alleged encounter and not vice-versa.

- xv. Manzoor Ahmed (police officer) called C.I Rao late at night on 01.07.2010 but CI did not inform him about the firing and just asked him to stay alert, why.
- xvi. CBI has noticed that Hemchandra Pandey had sent an SMS to his boss Avishek Ranjan at 10.03 a.m on 01.07.2010, this SMS was retrieved from his boss mobile set but strangely Pandey's mobile phone location disappears after Faridabad on the 30th evening at 6.05 p.m and no call records are available. CBI had no answer to why if Pandey's boss received the SMS it was not shown on his call records when SMS sent prior to 06.05 p.m were being shown.

14. Further both the learned counsels have argued in force on the medical ground that as per as the bullet injuries concerned:

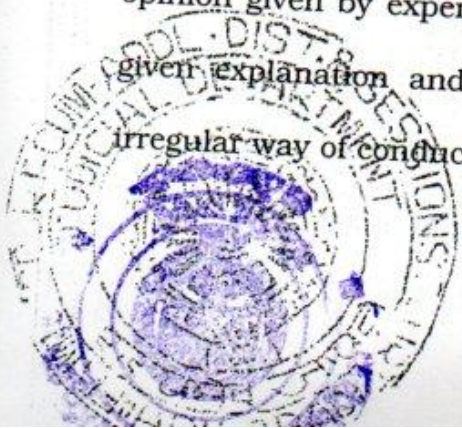
“ As per the post mortem report of late Sri Cherukuri Raj Kumar @ Azad the bullet entry wound in the chest at the left second intercostals space had darkening burnt edges, which is an indication of the flame from the gun, which indicates that the bullet was fired from very close range”.

AIIMS team lead by Dr.T.G.Dogra explained the blackening and the burnt injuries on the dead bodies as due to “ hot bullet” and “ friction of spin” is believed every standard text book of medical jurispendence. There is no text book of medical jurisprudence which says that burnt edges and blackening can happen in a long range bullet wound of 25 meters as claimed in this case. If hot bullet or friction due to spin could cause burnt edges in a shirt



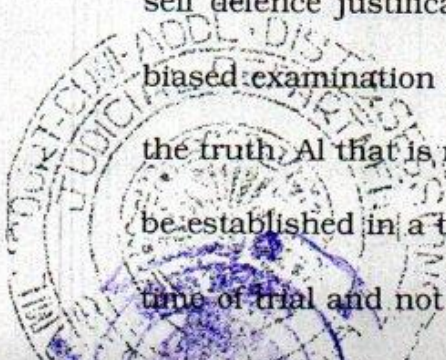
or skin then surely some standard text book would have mentioned it. The encounter team used standard self loading rifle or AK-47. All text books say that burn edges or blackening cannot happen at a distance of more than 4.5 feet that is 1.37 meters. So the opinion of Dr.T.G.Dogra, Head of the team from AIIMS is markedly divergent from any standard text book on Forensic science. He has earlier given many such controversial reports for example in the Shopian, Ishrat Jahan and Batla House encounter cases.

15. Further the learned counsels for revision petitioners objected to Dr.Neelakanteshwar Rao statement not being taken by the CBI even though he had been in charge of the post mortem examination, the CBI produced an alleged statement Under Section 161 of Dr.Neelakanteshwar Rao in which the first two pages just stated that it was the statement of Dr.Neelakanteshwar Rao, that he had conducted the post mortem examination and dictated the report to Dr.Chandraiah and described the injuries on the bodies of the two deceased persons as such to bring on record. Accordingly Dr.Neelakanteshwar Rao was summoned and examined for the petition of protest petitioners. While he was deposing in his evidence when he wanted to give clarification and explanation the lower Court took objection saying that no explanation and clarification would be permitted. On the other side CBI says that Dr.Neelakanteshwar Rao also concurred with the opinion of experts but in sworn statement Dr.Neelakanteshwar Rao categorically stated that his opinion varies from opinion given by experts. However, not permitting Dr.Neelakanteshwar Rao to give explanation and clarifications by the lower Court is nothing but an irregular way of conducting the proceedings as against the Law.



16. Further the learned counsels for both the revision/protest petitioners have argued with a stubborn voice that very plea of the accused policemen's rights of private defense available for them can be taken by them only at the trial stage of the case and not before a pre-trial stage but the lower Court wisdom of law is extended to the Court witness Dr.Neelakanteshwar Rao in objecting his depositions but the same wisdom is not extended to the Policemen in wrongly allowing them to make use of Right of Private Defense at a pre trial stage to exonerate themselves from further legal consequences.

17. Further the learned counsels for the revision/protest petitioners have argued with force that the very case before this Hon'ble Court is an unnatural death that occurred in exchange of fire with the Policemen as per their own records, going by the version of the FIR, the justification of private defence is U/sec.99 and 100 IPC. These provisions have to be read in conjunction with Sec.105 of the Indian Evidence Act which enjoins that the burden of proving the existence of circumstances bringing the case within any of the general exceptions to the IPC is upon the claimant of self defence and the court shall presume the absence of such circumstances. The exercise of the right of the private defence cannot be determined during investigation and the final report submitted by the investigating officer. Even then to the Magistrate it is not conclusive. Only in Judicial proceedings it is legitimate to determine that the police conduct in a killing during exchange of firing event it constitutes a valid self defence justification. Therefore, the final report filed by the CBI reveals biased examination of the facts aimed at saving the guilty rather than eliciting the truth. All that is revealed in the investigation is a matte of facts which has to be established in a trial and plea of self defence available to anyone only at the time of trial and not before a pretrial stage and so it is not for the investigating



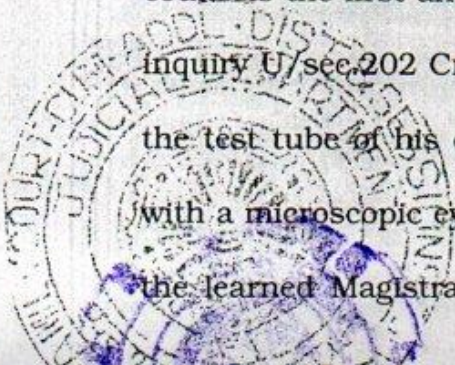
officer to decide the truthfulness all that conclusion is only investigating officer opinion which has to be decided in a full fledged trial and accused will have to prove their defense in an adjudication of a court of Law as per the criminal procedure code. The Law is same to a common citizen or to a Policemen in this regard as such it is a fit case for trial. Hence it is a fit case to take cognizance against all the accused. In support of their arguments they have relied on catena of decisions of Hon'ble Supreme Court which are delivered in different cases.

18. On the other side the learned counsel for respondent (CBI) has attacked the contentions of the learned counsel for revision petitioners in his arguments by raising contentions that as per the orders of the Hon'ble Supreme Court CBI has filed final report wherein CBI has examined 79 witnesses and collected 78 documents; whereas Dr.Neelakanteshwar Rao is the listed witness No.17 in CBI report filed before the Court u/sec.173 (3) CrPC. Accordingly the statement of Dr.Neelakanteshwar Rao is available in the final report of CBI. As per the statement of Dr.Neelakanteshwar Rao and according to his explanation in the meeting held on 08.06.2011 at AIIMS, New Delhi headed by Dr.T.D.Dogra, Professor and Head, Department of Forensic Medicine and Toxicology and Dr.Neelakanteshwar Rao was the part of the team which examined the PME reports of Sri Cherukuri Raj Kumar @ Azad and late Sri Hemchandra Pandey and expressed his opinion. So Dr.Neelakanteshwar Rao also explained in that meeting that the term darkening and burnt edged in the PME report of Azad is descriptive not denoting the phenomenon of blackening ie., deposit of smoke/soot particles. He also concurred with the opinion that black discoloration of margins could be due to abrasion collar or contusion collar intermixed with extra vacation of blood as the post mortem was conducted on



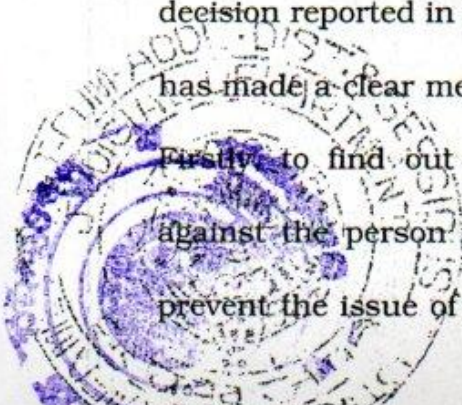
3rd day of the incident. Further, in pursuance of the directions of the Hon'ble Supreme Court, CBI has done investigation carried out at various places across India including Hyderabad, Adilabad, Nagpur, New Delhi and also expert opinion were obtained from different agencies like CFSL, APFSL, Hyderabad, AIIMS, New Delhi and after conducting extensive investigation the CBI filed final report with a conclusion that in view of the facts and circumstances has clearly analyzed in the report there is adequate evidence both oral and documentary to establish that there was an exchange of fire during the intervening night of 01.07.2010 and 02.07.2010 between the police party and suspected Maoists at Sarkepalli-Velgi forest area in Wankidi Mandal of Adilabad district, which resulted in death of two persons namely late Sri Cherukuri Raj Kumar @ Azad and late Sri Hemchandra Pandey. The oral, documentary and scientific evidence collected during the investigation indicates that the allegations made by the petitioners in the petitions and also during their examination are not substantiated. Hence in the absence of any material evidence to the contrary, the allegation of offences of conspiracy and murder are not proved against the police. Hence recommended to close the case. Therefore, as there is no merit in the contention raised by the learned counsels for revision petitioners, hence the petitions are liable to be dismissed.

19. In view of the contentions and allegations raised by both the side learned counsels the first and foremost understanding of this Court about the scope of inquiry U/Sec. 202 CrPC is that the learned Magistrate is not required to fill in the test tube of his discretion to find out the molecules of a prima facie case with a microscopic eye which should be left open for trial. In other words, what the learned Magistrate is supposed to do at the time of exercising its power



under Sec.203, of the code of Criminal Procedure is neither to scrutinize the evidence nor to weigh the probability and improbability with the purpose of providing the case but simply to find out whether the materials which have been placed before him by way of the petition of complainant and its accompaniments in the form of the initial Ejahars can light the lamp of the prosecution to a flicker so as to have sufficient fuel for the evening lamp and not to see as to whether there is sufficiency fuel to greet the next dawn. In the supporting shadow of the initial Ejahar, Court cannot persuade itself to come to the conclusion that there were absolutely no materials in the same which prompted the learned Chief Judicial Magistrate to come to his conclusion "As there is no sufficient ground for proceeding, the petition of complaint be dismissed under section 203 Cr.PC". The finding arrived at by the Magistrate is a reflection of mechanical appreciation of the issue and the reasons backed up for such conclusion are not sound and not apposite with the facts and circumstances of the case nor is it a sine qua non for dismissal under the provisions of section 203, of the code of Criminal Procedure. Hence inquiry U/sec.202 CrPC is a limited nature to find out whether there is prima-facie case against the persons. Hence at this age the evidence need not be meticulously appreciated as the limited purpose is to find out whether or not there is sufficient grounds for proceeding against the accused.

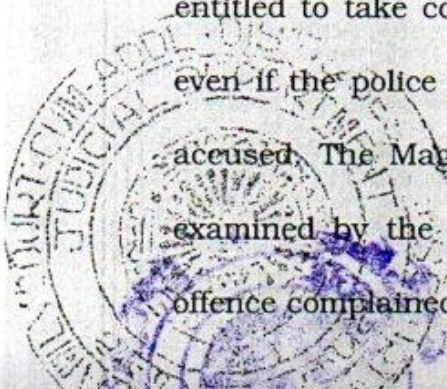
20. On this aspect the learned counsels for revision petitioners relied on a decision reported in 2000 (2) Supreme Court Cases 230 wherein their Lordships has made a clear mention that inquiry under section 202 is of a limited nature. Firstly to find out whether there is a prima-facie case for issuing process against the person accused of the offence in the complaint and secondly, to prevent the issue of process in the complaint which is either false or vexatious



or intended only to harass such a person. At that stage, the evidence is not to be meticulously appreciated, as the limited purpose is to find out "whether or not there is sufficient ground for proceeding against the accused". The standard to be adopted by the Magistrate in scrutinizing the evidence is also not the same as the one which is to be kept in view at the stage of framing charges. At the stage of inquiry under section 202 CrPC the accused has no right to intervene and it is the duty of the Magistrate while marking an inquiry to elicit all facts not merely with a view to protect the interests of an absent accused person, but also with a view to bring to book a person or persons against whom grave allegations are made. Therefore, as it is reiterated time and again by the decisions of our Hon'ble Apex Court the scope of 202 CrPC is very limited to find out whether there is prima-facie case made out for proceeding further or not and this discretion of evidence is not to be appreciated meticulously.

21. Further the learned counsels for revision/protest petitioners in their arguments submitted that the lower Court failed to see that even in the CBI investigation and report this post mortem report assumed most importance particularly with regard to the nature of fire arm injuries on the deceased. Further the learned counsels for revision petitioners relied in case of M/s India Carat Pvt. Ltd., Vs., State of Karnataka and another reported in AIR 1989 Supreme Court 885 wherein their Lordships has categorically opined 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 taken into account the statements of 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. The Magistrate is not bound in such a situation to follow the procedure laid down in section 200 and 202 of the Code for taking cognizance of a case under section 190 (1) (a) though it is open to him to act under section 200 or section 202 also".

22. Further the learned counsel for revision petitioners also relied in case of Sri Gangadhar Janardan Mhatre Vs., State of Maharashtra and others reported in (2004) 7 Supreme Court Cases 768 wherein these are the clear guidelines given by Hon'ble Apex Court that the functions of magistracy and the police are entirely different, and the Magistrate cannot impinge upon the jurisdiction of the police, by compelling them to change their opinion so as to accord with his view. However, he is not deprived of the power to proceed with the matter. There is no obligation on the Magistrate to accept the report if he does not agree with the opinion formed by the police. The power to take cognizance notwithstanding formation of opinion by the police which is the final stage in the investigation has been provided for in section 190(1) (c). The Magistrate may accept the report and drop the proceeding; or he may disagree with the report and take the view that there is sufficient ground for further proceeding, take cognizance of the offence and direct further investigation to be made by the police under section 156(3).



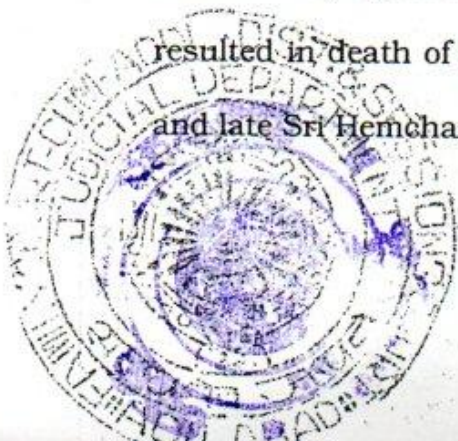
23. Whereas coming to the procedure laid down in CrPC in respect of investigation of the police and filing of their report on completion of investigation U/sec.173 CrPC. Proviso empowers the police to file their report after completion of investigation. Accordingly in pursuance of the orders of the Hon'ble Supreme Court CBI has filed its elaborate final report after completion of their extensive investigation. The Magistrate may accept the report filed by the investigating officer or he may disagree with the report. Accordingly the Magistrate is empowered to take cognizance of the offence U/sec.190(b) upon the police report in case of made out prima-facie case or disagree with the report. In the present case on hand the learned Magistrate after receiving final report further proceeded for inquiry U/sec.202 CrPC on receipt of protest petitions by the revision petitioners.

24. Therefore, now coming to the evidence of sworn statements of PW1 to PW4 who are examined on oath by the learned Magistrate U/sec.202 CrPC inquiry. Admittedly Smt.K.Padma is wife of late Sri Cherukuri Raj Kumar @ Azad and another protest petitioner Smt.Bineetha Pandey is wife of late Sri Hemchandra Pandey. As per their allegations made in their statement late Sri Cherukuri Raj Kumar @ Azad has left the house on 30.06.2010 at about 1.00 p.m to catch Gondwana express to go to Nagpur and he was found killed in an encounter on 02.07.2010. The contention of another petitioner Bineetha Pandey is also that her husband has left the house on 30.06.2010 to Nizamuddin railway station to go to Nagpur at about 4.00 p.m and he was found killed in an encounter. Further the contention of both the protest petitioners that late Sri Cherukuri Raj Kumar @ Azad and late Sri Hemchandra Pandey left to Nagpur on 30.06.2010 from Delhi were found killed in exchange of fire which taken place between the Police and Maoist during the intervening night of 01.07.2010



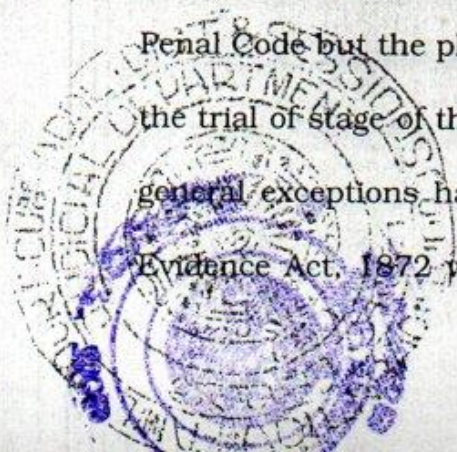
and 02.07.2010 at Sarkepalli-Velgi forest area in Wankidi Mandal of Adilabad district of Andhra Pradesh. Thereby both the petitioners have made allegation that their husbands were carried and killed in fake encounter by Andhra Pradesh Police on the intervening night of 01.07.2010 and 02.07.2010 at Sarkepalli-Velgi forest area in Wankidi Mandal of Adilabad district. The evidence of PW4/Dr.Neelakanteshwar Rao coupled with Ex.C1/post mortem examination report of deceased Cherukuri Rajkumar @ Azad shows the fact of found firearm injuries on the dead body during post mortem examination. Though his statement did not reveal any cause of the death of the deceased Sri Cherukuri Raj Kumar but however he made clear that his opinion varies from opinion given by the experts in Ex.C2/minutes of meeting of Forensic Department, New Delhi, dt.08.06.2011. Further though it is stated by PW3/Dr.Swamy Agnivesh that the encounter taken place and the deceased/ Sri Cherukuri Raj Kumar @ Azad was killed while he was mediating peace talks inbetween Maoist party-CPI and Central Government but in supporting of his allegation except the self serving statement there is no any documentary evidence

25. On the other side contents of complaint lodged by Circle Inspector of Police, Asifabad in Cr.No.40/2010 made clear that there was exchange of fire on the intervening night of 01.07.2010 and 02.07.2010 at Sarkepalli-Velgi forest area in Wankidi Mandal of Adilabad between Police party and suspected Maoists they opened fire at Maoists in exercising of right of self defense which resulted in death of two persons namely late Sri Cherukuri Raj Kumar @ Azad and late Sri Hemchandra Pandey.



26. Therefore the allegations of PW1 and PW2/protest petitioners that their husbands/deceased ie., Sri Cherukuri Raj Kumar @ Azad and Sri Hemchandra Pandey were killed in encounter taken place in the intervening night of ½-07-2010 gets support from the evidence of PW4/Dr.Neelakanteshwar Rao who described the fire arm injuries found on the dead body of deceased Sri Ch.Raj Kumar @ Azad under Ex.C1 during post mortem report. Further their allegation gets support from the contents of FIR got registered by Circle Inspector of Police, Asifabad which made clear that during the exchange of fire inbetween Maoist and AP local police party, the police party have opened fire at Maoists in exercise of right of self defense towards Maoists in a result of which both the deceased ie., Sri Cherukuri Raj Kumar @ Azad and Sri Hemchandra Pandey were killed. Therefore as per the evidence adduced by the revision/protest petitioners coupled with contents of complaint lodged by Circle Inspector of Police, Asifabad in Cr.No.40/2010, this has been ~~have~~^{is} prima-facie established that an exchange of fire was taken place in between Maoist and Police party of Adilabad in the intervening night of ½-07-2010 and the police have opened fire at Maoist in exercise of right of self defense in result of which two deceased by name late Sri Cherukuri Raj Kumar @ Azad and late Sri Hemchandra Pandey were killed.

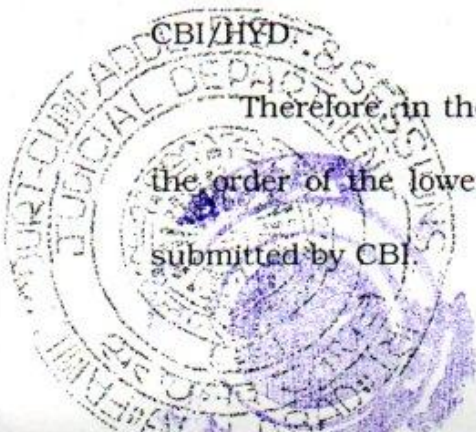
27. As rightly pointed out by the counsels for revision petitioners that even according to the contention of the police they have killed both the deceased in exercise of right of self defense which comes under general exceptions of Indian Penal Code but the plea of the right of private defense available for them only at the trial of stage of the case and not before a pre-trial stage. The proviso under general exceptions have to be read in conjunction with section 105 of Indian Evidence Act, 1872 which enjoins that the burden of proving the existence of



circumstances bringing the case within any of the general exception to the Indian Penal Code is upon the claimant of self defense and the Court shall presume the absence of such circumstances. As the police/accused taken plea of right of self defense as per Section 105 of Indian Evidence Act the burden of proof lies on the police/accused who took the plea under general exceptions. Therefore, the exercise of right of private defense cannot be determined during investigation. Therefore, plea of self defense available to every one at the time of judicial trial and not before a pre-trial stage and so it is not for the investigating officer to decide the truthfulness all that conclusion is only investigating officer opinion which has to be decided in a full fledged judicial trial and accused will have to prove their defence in an adjudication of a court of law as per criminal procedure code. The Law is same to a common citizen or to a Policemen in this regard as such it is a fit case for trial as such the liability of the police/accused mentioned under RC 14 (S)/2011-CBI/HYD shall not be exempted on the plea of right of self defense at the stage of investigation as well as pre-trial stage. The learned lower Court has committed error in considering the facts and evidence on record and taking cognizance of offence against the accused. Further the sixteen fatal questions raised by learned counsels for protest/revision petitioners shall not liable to be taken up at this stage in view of the limited scope of inquiry U/sec.202 CrPC. Further no prima-facie evidence made out regarding the other offences alleged by the revision/protest petitioners except the offences charged against the accused in RC 14 (S)/2011-

CBI/HYD.

Therefore, in the light of above glaring evidence as well as my discussion the order of the lower Court is liable to be set-aside by rejecting final report submitted by CBI.



28. IN THE RESULT, Criminal revision petitions No.19/2015 and 24/2015 are hereby allowed by setting aside the order, dt.24.03.2015 passed by the learned Judicial Magistrate of First Class, Adilabad in C.F.R.Nos.1816/2013 and 1817/2013 by rejecting final report. Further the learned Judicial Magistrate of First Class, Adilabad is hereby directed to take cognizance of the offence against the police persons/accused mentioned in RC14(S)/2011-CBI/HYD and to issue of process under section 204 of Criminal Procedure Code and to proceed against them as per the procedure contemplated under Criminal Procedure Code.

Dictated to the Stenographer, transcribed by him and after correction pronounced by me in open court this the 15th day of February, 2018.



[Signature]
Judge, Family Court -cum- IV Addl.
District and Sessions Judge, Adilabad

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DISTRICT & SESSIONS COURT
ADILABAD.

C.A. No. 444/18. Sri. D. Sureshkumar (Adv)

1. The Appl. was made on 16-02-2018
2. The Appl. was returned on —
3. The Appl. was represented on —
4. The Stamps were called for on 16-02-2018
5. The Stamps were deposited on 16-02-2018
6. The Addl. Stamps were called for on —
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