

**Devendra Dutt and ors. Vs. State and ors.**

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**Court :** Delhi

**Decided On :** Nov-06-1989

**Reported in :** 1990CriLJ177; 1990(3)Crimes650; 41(1990)DLT570

**Judge :** R.L. Gupta, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 397

**Appeal No. :** Criminal Miscellaneous (Main) Appeal No. 603 of 1989

**Appellant :** Devendra Dutt and ors.

**Respondent :** State and ors.

**Advocate for Pet/Ap. :** J.S. Arora,; Satish Aggarwal,; Kant Tyagi,;

**Judgement :**

**R.L. Gupta, J.**

(1) This petition under Section 482 of the Code of Criminal Procedure has been filed for quashing an order dated 12.4.89 passed by Sh. D.R. Jain, Metropolitan Magistrate, New Delhi on Fir No. 43/88 under Section 309 of Indian Penal Code pertaining to Police Station Kalkaji. The circumstances in which this petition arose are as follows :

(2) A case under Section 309 Ipb was registered against one B.D. Tandon on the basis of report dated 12.2.88 allegedly made by Sh. M.R. Pruthi, Assistant Director of the Central Economic Intelligence Bureau (in short 'CEIB').

(3) In that report addressed to the in charge, Police Post, Nehru Place, New Delhi, Mr. Pruthi stated that today i.e. on 12.2.88 officers of the Narcotic Control Bureau ('NCB' for short) searched the business premises of M/s In Com Associates Pvt. Ltd. 203, Devika Tower, 6, Nehru Place and recovered and seized 3.186 Kg. of Heroine. Subsequently the officers of the Ceib were also associated in the investigation. thereforee, he along with Shri V.K. Bakshi and Sh. H.P.Kain, Addl. Director of Intelligence were recording statement of Sh. B.D. Tandon from Income tax angle. During the recording of that statement B.D. Tandon on pretext of probably answering a call of nature around 11.30 P.M. went towards the door towards balcony and jumped there from. Probably he wanted to hide some facts of the case and that is why he jumped from the railing. Intimation regarding his jumping was conveyed to Police control Room on phone No. 100.

(4) On that report the Investigating Officer Sh. Satish Rathi made an endorsement in the name of the duty officer. Police Station Kalkaji and sent it to the police station for registration of the case. The time of dispatch of this report at page 27 of the file of the trial court is given as 12.35 A.M. The investigation was carried on in respect of this report and finally a report under Section 173 of the Code of Criminal Procedure (hereinafter called the 'Code') was submitted to the Magistrate. It is stated in this report that after receipt of the rukka from Si Satish Rathi for legal action a case was registered under Section 309 IPC. It further states that the Sub Inspector reached the All India Institute of Medical Sciences ('AIIMS' in short) and obtained the the Mlc of the injured. He also submitted an application to the Doctor for recording the statement of the injured. But the Doctor at about 1.30 A.M. declared him unfit for giving any statement, so no statement could be recorded. At about 2.05 A.M. the injured expired. Inquest proceedings under Section 174 of the Code were completed on 13.2.1988. Post mortem was conducted at the Aiims Mortuary and the dead body was handed over to his relations. During the course of investigation statements of different witnesses were recorded. The witnesses told Satish Rathi that the deceased had jumped from his office at second floor,

Nehru Place. The nephew of the deceased Gopal Dass Tandon used to work with the deceased who had been arrested by Ncb officials. He addressed a report to the Dcp (South wherein he alleged that he and his uncle were assaulted and his uncle was killed. The investigation was then handed over to in charge Police Post, Nehru Place, New Delhi Sh. Dhir Singh. He made enquiries from Gopal Dass Tandon in jail and recorded his statement. The Si also recorded the statement of Pushpa Tandon, wife of the deceased and the eye witnesses Gur Prem Walia, Vinay Mathur and Neeraj Kumar etc. It is further stated in this report that during the course of investigation no evidence could be collected to prove that the deceased was beaten by Ncb officials or was murdered. G.D. Tandon had also moved a petition before Delhi High Court for bail which was heard by Malik Sharief-Ud-Din, J. During the course of arguments in that matter the counsel for Gopal Dass Tandon on 4.8.88 had told the Court that the deceased was beaten by officers of the Nbc and he had injuries and the police had not investigated the same. Malik Sharief-Ud-Din, J. vide his order dated 4.8.1988 directed the police to thoroughly investigate about the injuries on the body of the deceased. During the course of further investigation Cfsi Expert was called at the place of incident and the site was got inspected. As per the direction of the Expert a 'Kunda' of the door of the room where the deceased was being interrogated was taken into police possession after dislodging it. The opinion of Dr. R.K. Sharma about the injuries on the stomach of the deceased was obtained according to which both the injuries could be caused with the 'Kunda'. This 'kunda' was then sent to Cfsi Expert. The report of the Cfsi said that the injuries could be due to broken pieces of glass. The spot inspection by the earlier Investigating Officer Satish Rathi who had also prepared a site plan of the place where the deceased had fallen, showed that garbage and pieces of broken glass were lying at the place where B.D. Tandon had fallen. thereforee, the injuries could be either with the 'Kunda' of the door and also with the pieces of the glass and cut on the clothes could be possible with pieces of glass. thereforee, finally it was stated in the report that from the complete investigation in the case it was established that the deceased had himself jumped from his office and an offence under Section 309 Indian Penal Code was committed by him but since he had died so nothing further could be done in the matter.

(5) It may also be noted that Malik Sharief-Ud-Din, J. had also passed an order on 7th November, 1988 which reads as follow :-

'I am told now that the matter is being investigated thoroughly and a report will be submitted .to the court of the Magistrate after completion of investigation. The complainant, in case the investigating officer submits a report for closing the case, will represent his grievance before concerned Magistrate who shall before taking any action in the matter give a notice to the complainant.'

(6) In view of the above order, thereforee, Gopal Dass Tandon was also directed to appear before the learned Magistrate on that date after filing of the charge sheet. The learned Magistrate recorded the statement of Gopal Dass Tandon on oath wherein he implicated the petitioners as having used third degree methods upon the deceased, causing injuries by such third degree methods and when his condition worsened, he was allegedly thrown by these persons down from his office resulting in his death. Besides the statement of G.D. Tandon, the Magistrate was also influenced by the opinion of C.K. Jain, Senior Scientific Officer of Cfsi according to which cut marks on the shirt worn by the deceased could not have been caused from the sharp portion of the handle (Kunda) and also the absence of any opinion regarding the cut marks on Baniyan worn by the deceased. So the Magistrate came to the conclusion that the Police had concealed many material facts which could have been with a motive to save the officers of the NCB. thereforee, finding that there was a prima-facie clear case of murder of B.D. Tandon by the petitioners, he disagreed with the police report, took cognizance of the offence of murder against the petitioners under Section 190(l)(c) of the Code and directed issuance of non-bailable warrants. It was in these circumstances that this petition was filed under Section 482 of the Code for quashing the order of the learned Magistrate on a number of grounds detailed in the petition.

(7) I have heard Mr. J.S. Arora, learned counsel for the petitioners and Sh. Dinesh Mathur, learned counsel for Gopal Dass Tandon and Shri I.U. Khan, Advocate on behalf of the State at length and have given my careful consideration to the arguments and have also perused the records of the trial court. On behalf of Gopal Dass Tandon, it was strenuously argued that a petition under Section 482 of the

Code could not be filed because petitioner could have challenged the proprietary or legality of the impugned order under the provisions of Section 397 of the Code. The inherent power of the court could not be invoked in a matter which was specifically covered by the provisions of Section 397 of the Code. Many authorities in this respect have been cited at the bar. thereforee, before proceeding to discuss the merits of the rival contentions, it will be necessary to refer to these various authorities to find out whether in such circumstances this Court has power under Section 482 of the Code to quash the proceedings at all or not.

(8) Earliest authority cited in this respect is in the case of R.P. Kapur State of Punjab, : 1960 CriLJ1239 . The Supreme Court held,

'THE inherent power of High Court under Section 561 A of the Code (Now S. 482) cannot be exercised in regard to matters specifically covered by the other provisions of the Code. The inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Some of the categories of cases where the inherent jurisdiction to quash proceedings can and should be exercised are:- (i) Where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceeding in respect of the offence alleged Absence of the requisite sanction may, for instance, furnish cases under this category. (ii) Where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not. (iii) Where the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under S. 561-A the High Court would not

embark upon an enquiry as to whether the evidence in question is reliable or not. This is the function of the trial magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained.'

(9) In the case of *Rajendra Nath Mahato v. T. Gangooly*, : 1972 CriLJ268 , a complaint had been filed against some Police Officers under Section 395 IPC. The Magistrate held an enquiry under section 203 of the Code and holding that it was incompetent without obtaining sanction because the accused were government servants, dismissed the same. Learned Sessions Judge disagreeing with the view of the Magistrate referred the matter to the High Court. The reference was accepted. In the background of the above facts, it was laid down by Hon'ble the Supreme Court :

'THE High Court under Section 561-A of the Code of Criminal Procedure can go into the question as to whether there is any legal evidence. When the High Court said that the evidence in the present case came from tainted sources and was not reliable the High Court meant what can be described as no case to go to the jury'. The High Court correctly quashed the process against T. Ganguly.'

(10) The next cited case is *Smt. Nagawwa v. Veeranna Shivalingappa, Konjalgi and Others*, : 1976 CriLJ1533 . The Hon'ble Supreme Court enumerated following categories of the cases wherein the High Court could exercise its inherent powers to quash the proceedings :-

'(1) Where the allegations made in the complaint or the statement of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused. (2) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused. (3) Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible;

and (4) Where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.'

(11) The next case cited at the bar is of *Amar Nath and Others v. State of Haryana and Others*, : 1977 CriLJ1891 . The term 'interlocutory order' as defined in Section 397(2) of the Code was interpreted in this Authority. It held,

'THE term 'interlocutory order' has been used in a restricted sense and not in any broad or artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties. Any order which substantially affects the right of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order, because that would be against the very object which formed the basis for insertion of this particular provision in Section 397.'

The facts in this case were that the Fir mentioned a number of accused persons who had participated in the occurrence. The police after holding investigation submitted a charge sheet against them except the appellants opining that no case was made out against the appellants. therefore, the appellants before the Supreme Court were set at liberty by the Judicial Magistrate. The informant then filed a regular complaint before the Judicial Magistrate against all the accused persons including the appellants. It was also dismissed. In revision the Sessions Judge set aside the order of the Magistrate and ordered further enquiry. The Magistrate then summoned the appellants straightway. It led to the filing of petition under Sections 482/397 of the Code which was dismissed by the High Court on the ground that the orders summoning the appellants was an interlocutory one. In the background of the above facts, the Supreme Court held,

'THE order of the Magistrate summoning the appellants was one which was a matter of moment. If the appellants were not summoned then they could not have faced the trial at all. But the order compelling the appellants to face a trial without proper application of mind could not be held to be an interlocutory matter but one which decided a serious question as to the rights of the appellants to be put on trial. That being the position, a revision against the order was fully competent

under Section 397(1) or under S. 482, because the scope of both these sections in a matter of this kind is more or less the same.

(12) The Supreme Court had also occasion to comment upon the powers of the High Court under Section 482 in the case of *State of Karnataka v L. Muniswamy and others*, : 1977 CriLJ1125 as follows :-

'IN the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects it would be impossible to appreciate the width and contours of that salient jurisdiction'.

(13) In the case of *Raj Kapoor and others v. State (Delhi Administration) and others*, : 1980 CriLJ202 the Supreme Court had again occasion to comment upon the powers of the High Court under Section 482 in the following words:-

'THE inherent power of the High Court under Section 482 does not stand repelled when the revisional power under Section 397 overlaps. Nothing in the Code, not even Section 397 can after the amplitude of the inherent power preserved in so many terms by the language of Section 482. Even so, when a specific provision is made easy resort to inherent power is not right except under compelling circumstances. Not that there is absence of jurisdiction but that inherent power should not invade areas set apart for specific power under the same Code. There

is no total ban on the exercise of inherent power where abuse of the process of the court or other extraordinary situation excites the court's jurisdiction. The limitation is self restrain, nothing more. The policy of the law is clear that interlocutory orders, pure and simple, should not be taken up to the High Court resulting in unnecessary litigation and delay. As the other extreme final orders are clearly capable of being considered in exercise of inherent power, if glaring injustice stares the court in the face. In between is tertium quoid, as for example, where it is more than a purely interlocutory order and less than a final disposal. In such case the inherent power can be exercised'.

(14) The next case referred is Chandrapal Singh and others v. Maharaj Singh and another, : 1982 CriLJ1731 . A complaint was filed in this case under Section 201 by a frustrated landlord against his tenant just to involve the tenant in a frivolous criminal prosecution. The landlord who was an Advocate had lost the litigation in the hierarchy of civil courts against the tenant. Thereafter he filed the complaint under Section 201. There was not a single word as to what existing evidence was destroyed by the accused tenant individually or conjointly in respect of an offence which was already committed with the intention of screening the offender. thereforee, it was held by Hon'ble the Supreme Court that on the averments of the complainant himself in the complaint no court could have taken cognizance of an offence under Section 201 Indian Penal Code and, thereforee, the complaint in respect of the offence under Section 201 Indian Penal Code was liable to be quashed on the ground alone. Thus the inference from the aforesaid judgment of the Supreme Court in that presuming the allegations in the complaint to be correct when no inference of any offence can be made out against the accused under any section of the Indian Penal Code, the complaint should be quashed. In the case of J.P. Sharma v. Vinod Kumar Jain and others, : 1986 CriLJ917 the limit of the power to be exercised by the High Court under Section 482 of the Code was defined. It was held,

'AT the initial stage of the trial the High Court would be justified in quashing the proceedings only if taking the allegations in the complaint to be true, without adding or substituting anything, could it be said that no prima facie case for trial was made out. It such a conclusion could be arrived at by a perusal of the

allegations made in the complaint, then the High Court would be justified in exercising its power under Section 482 of the Code.'

(15) The limits of the jurisdiction of the High Court under Section 482 of the Code was then considered in the case of Madhavrao Jiwaji Rao Scindia and another etc. v. Sambhajirao Chandojirao Agree and others etc. : 1988 CriLJ853 . The Court held,

'UNDER Section 482 Cr.P.C. the legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of the case also quash the proceeding even though it may be at a preliminary stage'.

(16) Similarly in the case of State of Bihar v. Murad Ali Khan and others, : 1989 CriLJ1005 , the Supreme Court held,

'THOUGH it is neither possible nor advisable to lay down any inflexible rules to regulate that jurisdiction, one thing, however, appears clear and it is that when the High Court is called upon to exercise this jurisdiction to quash a proceeding at the stage of the Magistrate taking cognizance of an offence the High Court is guided by the allegations, whether those allegations, set out in the complaint or the charge sheet do not in law constitute or spell out any offence and that resort to criminal proceedings would, in the circumstances, amount to an abuse of the process of the court or not.'

(17) The above authorities therefore, enable us to conclude certain parameters within which the High Court can exercise its inherent power under Section 482 of the Code. Those parameters are :-

(A) Where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceeding in respect of the offence alleged. Absence of the requisite sanction may, for instance, furnish cases under this category. (b) Where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint, or the First Information Report to decide whether the offence alleged is disclosed or not. (c) Where the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under Section 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial magistrate and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained. (d) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused. (e) Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible. (f) Where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like. (g) Where the order of the Magistrate summoning the accused is one which is a matter of moment. If he is not summoned, he could not have faced a trial. (h) Where the order compelling the accused to face a trial without proper application of mind could not be held to be an interlocutory order, but one which decided a serious question as to the right of an accused to be put on trial. In such a case the scope of a revision under Section

397(1) or invoking of inherent power under Section 482 is more or less the same. (i) Where the High Court comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. (j) Where the High Court is of the opinion that the continuance of the prosecution ought not to be permitted to degenerate into a weapon of, harassment or persecution. (k) Where it appears that there is some veiled object behind the prosecution, which is apparent from the very nature of the material on which the structure of the prosecution rests. (1) Where it does not appear expedient and in the interest of justice to permit a prosecution to continue, because the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a prosecution to continue.

(18) The other principle that stands concluded from the aforesaid authorities is that the inherent power under Section 482 does not stand repelled by the overlapping of the revisional power under Section 397 and the same cannot affect the amplitude of the power preserved under Section 482. There is no total ban on the exercise of inherent power where abuse of the process of the Court or other extraordinary situation excites the Court's jurisdiction. In between the power under Section 397 and Section 482 there can be cases where it is more than an interlocutory order and less than a final disposal. In such a situation at resort can be had to inherent power under Section 482.

(19) In the light of the conclusions referred above, let us now examine the case in the hand and explore whether in the circumstances of the case the Magistrate was justified in taking cognizance of an offence under Section 302 read with Section 34 Indian Penal Code against the petitioners.

(20) At the outset, it may be noted that it appears to be really a case of its own type where the investigation was actually commenced, not on the report G.D. Tandon but upon the report made by Mr. M.R. Pruthi of the CEIB. On 12.2.1988 officers of Ncb had gone to the business premises of the deceased situate at 203, Devika Tower, 6, Nehru Place, New Delhi. They had recovered heroin weighing

3.186 Kgs. from G.D. Tandon. He is admittedly facing a trial for recovery of the said heroin in the court of Sessions. He was also arrested by the Officers of the Ncb on 12.2.1988. He was sent to judicial custody under orders of the learned Magistrate on 13.2.1988.

(21) It is significant to note that G.D. Tandon did not open his mouth before the learned Addl. Chief Metropolitan Magistrate on 13.2.1988 about the fact that his uncle had been mercilessly beaten and caused injuries by the petitioners or either of them and thereafter he was thrown down from the third floor of Devika Tower. For the first time he makes an application dated 16.2.1988 regarding the alleged throwing of his uncle i.e. the deceased B.D. Tandon by the officials of N.C.B. Copy of that application is attached with the file of the lower court. Misaddressed to the Deputy Superintendent of Police (South) Hauz Khas, New Delhi. In the subject at the top of the application, it is described that it was meant for lodging first information report against the erring officers of N.C.B., Ranjit Hotel, New Delhi who had committed murder of his uncle B.D. Tandon on 12.2.1988. Further on it reads as follows :-

'THIS is to bring to your kind notice that I have been falsely involved in the case of Ndps Act by the officials of Narcotics Control Bureau. I was arrested by the said officials on 12th February, 1988 and in my presence the said officials threatened my uncle Sh. Bhagwan Dass Tandon to make confession according to their wishes to which he refused. My uncle was physically tortured and was compelled to write down some confession to which he did not agree. Thereafter he said officials threatened my uncle that in case he refuses to write down confession according to their wishes, they will throw him from his office on the road. Even on this threat my uncle did not agree to succumb to their pressure and ultimately the said officials pushed my uncle on the road from his office situated at 203 (2nd floor) Devika Towers, Nehru Place, New Delhi and killed him. I can identify the said officers of Ncb if they are paraded before me. Thereafter the said officials of Ncb started compelling me to write down a confession involving me, my uncle, one Surinder Singh and Manjit Singh but I refused. They used third degree methods and told me that in case I refused to agree to write confession according to their wishes, they will kill me as they have killed my uncle by throwing him from his

office on the road and also involve entire family in false cases. The said officers told me that since I am an eye witness to the murder of my uncle Bhagwan Dass Tandon, they would not like me to be free as I may prove to be dangerous for them. They also assured me that nothing will happen to me in case I write down a confession according to their wishes and after three months they will get me free from jail. Due to the pressure, allurements and third degree methods used by the said officials and due to the fact that there was apprehension of my life being taken away by the said officials and my entire family being falsely involved. I agreed to write down a confession which is imaginary, incorrect, untrue and the same is neither voluntary nor correct. I virtually became insane due to the treatment meted out to me by the said officials of NCB. I was produced before the learned Magistrate on 13.2.1988 who was pleased to remand me to judicial custody. Before I was produced before the Magistrate, I was warned by the officials of NCB that I should not utter anything about the treatment meted out to me while I was in their custody and about the murder of my uncle having been committed by the officers of NCB, Ranjit Hotel New Delhi. In fact the so called confession obtained by the officials of NCB while I was in their custody is incorrect and untrue and I retract the same. The same is not voluntary and the same has been forcibly obtained by the said officials to falsely implicate me and to cover up the murder of my uncle which has been committed by them. In view of the above it is prayed that the said officials may be punished for the murder of my uncle and for the torture given to me by them and for creating false evidence against me. Some responsible officer may be deputed to record my statement about the murder of my uncle Shri Bhagwan Dass Tandon and identification parade of the officers of NCB Ranjit Hotel, New Delhi, specially those investigating this case may be held in order to enable me to identify those erring officers who had committed brutal murder of my uncle Bhagwan Dass Tandon in my presence. I can identify those officers, if they are brought before me. First information report regarding murder of my uncle Bhagwan Dass Tandon may kindly be ordered to be lodged, officers responsible for the murder be arrested and be tried in court according to the provision of law. Thanking you, Yours faithfully, sd/- (Gopal Dass Tandon) s/o Khushi Ram Tandon, r/o K-28, Jangpura Extension New Delhi (at present in Central Jail Tihar, New Delhi)'

(22) Now before discussing the merits of the aforesaid complaint dated 16.2.88, we should keep in mind that the police had already taken the deceased B.D. Tandon to Aiims where he was examined by the doctor on duty during midnight of 12th and 13th February, 1988. The police had arrived there because of a telephonic complaint at Number 100 to the police control room. Sub-Inspector S.K. Rathi of Police Post Nehru Place had commenced investigation upon the complaint of M.R. Pruthi of Ceib and he had sent the report at 12.35 A.M. on 13.2.88 to the duty officer of Police Station Kalkaji for registration of the case under Section 309 Indian Penal Code against the deceased B.D. Tandon who was alleged to have jumped from the balcony just about one hour and five minutes before, that is, at 11.30 P.M. This is also the case of G.D. Tandon that the occurrence took place at 11.30 P.M. A number of witnesses were examined by the police under Section 161 of the Code on 13.2.88 itself. They included the statements of Gur Prem Walia, Executive Director and Vinay Mathur, Senior Executive of Income Associates which was being run by the deceased. Since they were senior responsible employees of the deceased, therefore, their statements will be very material.

(23) Gur Prem Walia stated before the Police that he had come as usual to the office on 12.2.88 at about 9.30 A.M. At about 2.00 P.M. officers of Ncb came in their office and asked about B.D. Tandon (deceased). Walia told them that B.D. Tandon was sitting in the side room. 2-3 officers of Ncb went into the room of B.D. Tandon and rest of the officers remained in the Hall. Investigations were going on. At about 11.30 P.M. Walia went out for toilet because in the toilet inside the office there was no water. Mr. Walia further stated that at that time Vinay Mathur and Gopal Dass (meaning thereby G.D. Tandon) were sitting in the hall and some officers of Ncb were sitting there. 2-3 officers of Narcotic department were interrogating B.D. Tandon in his room. When Walia came out of the toilet he saw the officers of the Narcotic running down the stairs, saying that B.D. Tandon had jumped down the balcony. Similarly Vinay Mathur stated to the police that after lunch officers of Narcotic department came to their office and they thought that the Income Tax people had raided their office. At that time he and Gur Prem Walia were sitting in the room nearby. At about 11.30 P.M. when officers of Narcotic department were making enquiries in the second room, Gur Prem Walia had gone

to the toilet adjoining the lift. He i.e. Vinay Mathur was sitting at that time with some officers in front of the room of B.D. Tandon. The time was about 11.30 P.M. At that time officers of the Narcotic department came out of the room of B.D. Tandon and started running down stairs. Then Mathur came to know that B.D. Tandon had jumped from the Balcony of his office. From the statements under Section 161 of the Code of these two witnesses, who were quite responsible officers of the company of the deceased himself, it is clear that immediately after the occurrence they came to know that the deceased had jumped down from the balcony of his office on the road. They heard it from the very mouth of the officers of the NCB. Not only they heard from their mouths about the jumping of B.D. Tandon from the balcony, they also saw the officers of the department running down stairs, immediately at that time. From these statements it is apparent that if in fact the officers had thrown down the deceased from the balcony, as alleged by G.D. Tandon in his complaint after 3 days of the alleged occurrence, it was rather impossible for those officers to have run down stairs to the site where B.D. Tandon had fallen after jumping from the balcony of his office. There was no reason for the officers to run down stairs to that side if actually they were instrumental in causing injuries to B.D. Tandon as alleged by Gopal Dass Tandon. None of them would have even informed the police at that time that B.D. Tandon had jumped from the balcony. According to the common course of human conduct if they were really guilty of having murdered B.D. Tandon, they would have made their escape from the spot and absconded. But no such thing happened. In fact, G.D. Tandon himself mentioned in his complaint about the conduct of the officers of Ncb after that occurrence. He states that after throwing down B.D. Tandon the officers started compelling him to write down a confession incriminating himself, his uncle i.e. the deceased and some others. But he refused. Can it be imagined that if actually these officers had thrown the deceased B.D. Tandon from the balcony they would have been so composed in their behavior as if nothing had happened and so start interrogating G.D. Tandon. This very allegation in the complaint of G.D. Tandon would un-mistakably point out that the officers of Ncb actually did not push B.D. Tandon down from the balcony. It was actually the act of the jumping of B.D. Tandon himself from the balcony which created panic amongst them and i.e. why in a shocked state of mind they started running down stairs to

that spot as alleged by Gur Prem Walia and Vinay Mathur.

(24) Asi Khetra Pal of the Police control room van had accompanied the deceased in the van when he was taken to the AIIMS. He was also interrogated under Section 161 of the Code by the police. He stated that on the way he enquired from B.D. Tandon many times as to why he had jumped from there. But in spite of repeated enquiries B.D. Tandon did not reply. B.D. Tandon correctly mentioned his name and address to the doctor in the presence of two witnesses in AIIMS. Even the doctor enquired from B.D. Tandon as to why he had jumped but he did not reply and kept silent. Dr. K.S. Reddy had examined B.D. Tandon in the Institute. MLC prepared by him is on the record of the lower court. It is stated in it that B.D. Tandon had been brought by Asi Khetra Pal with the alleged history of fall from height at Nehru Place. He further mentioned in it that no other details were available. This alleged history of fall could either be given by Asi Khetra Pal or by B.D. Tandon deceased himself. B.D. Tandon at that time was in a position to give the history because it is clearly recorded in this medical certificate that he was conscious, telling his name and was responding to commands. Therefore, if this alleged history of fall from height at Nehru Place was given by B.D. Tandon himself, that seems to be the end of the matter. If this history of the fall from the height was given by Asi Khetra Pal to the doctor, the deceased would have at least made some protest to the doctor and would have indicated either by word of mouth or by making some gesture that whatever was being said by Asi Khetra Pal was false. But the MLC does not record any such fact giving rise to the clear presumption that either the history of fall was given by the deceased himself or given by Asi Khetra Pal in his presence without any protest from him. In both these situations the court is entitled to infer that it could not have been a case of pushing down of the deceased from the balcony and thereby causing his death after some time.

(25) Another interesting feature of this case is that the officers of Ceib have clearly deposed that actually it were they who were interrogating the deceased at the relevant time from the Income tax angle. This will mean that at that particular time the officers of Ncb were not actually interrogating the deceased. It is highly improbable that the officers of Ceib would try to take upon themselves the

responsibility of the murder of the deceased by substituting their own names in place of the officers of NCB. The evidence to point out that actually the officers of Ceib were interrogating the deceased is voluminous on record of the lower court file. First of all the report by M.R. Pruthi of Ceib clearly indicates that at the relevant time he along with V.K. Bakshi and H.P. Kain were recording his statement, from Income Tax angle when on the pretext of probably answering a cell of nature around 11.30 P.M., B.D.Tandon went towards the door near title balcony and jumped there from. V.K. Bakshi and H.P. Kain both in their statements under Section 161 of the Code have corroborated the above fact.

(26) Besides the above evidence collected by the prosecution during investigation the further fact which is very relevant is that in the report dated 16.2.88 G.D. Tandon did not give the details of the alleged occurrence in the manner in which he has narrated the same before the learned Metropolitan Magistrate. In the complaint he did not mention that in the first instance he was given any beating by the officers of NCB. He concentrated on saying in the complaint that the officers had physically tortured B.D. Tandon and compelled him to write down some confession. In case he refused they will throw him from his office on the road. Thus, there is no allegations in the complaint that he himself was simultaneously subjected to any beating or torture by the officers along the deceased B.D. Tandon. In his statement before the learned Metropolitan Magistrate he stated that the officers were making enquiries from both of them. Then those officers gave severe beating to him (G.D. Tandon). thereforee, even the initial story given before learned the Magistrate by G.D. Tandon is not the same as disclosed by him in the complaint dated 16.2.88. Then before the learned Magistrate he stated that Davinder Dutt, petitioner, was having a steel ruler (scale) in his hand while petitioner N.P. Kaushik was having paper cutter in his hand. But in the complaint he did not: assign any such role to either of the petitioners. Assuming for the sake of arguments that he did not know the names of these two persons at that time, at least it was expected of him to make allegation in the complaint that one of those officers was having a steel ruler in his hand while another officer was having a paper cutter in his hand. But any such allegation is completely missing from the complaint. Even there is no allegation in this complaint that any of such persons caused any injuries with any such weapon while they were armed with any such

weapon. Then before the learned Metropolitan Magistrate G.D. Tandon further stated that when all these officers were torturing B.D. Tandon continuously for one hour in his cabin, B.D. Tandon was crying and shouting for help and was requesting them not to be cruel to him but they did not listen. There is no such allegation in the complaint that at that time B.D. Tandon was crying and shouting for help and requesting them not to be cruel. Then he further stated before the learned Magistrate that they were giving fist and kick blows to B.D. Tandon on his person including his stomach. Mr. Dutt was giving him below with steel ruler. There is no such allegation in the complaint. He alleged in his complaint that the officials of Ncb pushed his uncle and killed him and thereafter they started compelling him to make a confession. The fact is that B.D. Tandon did not die at the spot. Rather he was not only alive at that time but was in senses. therefore, if this complaint dated 16.2.88 is considered with reference to the statement made by G.D. Tandon before the learned Metropolitan Magistrate, it will be found that all the details given by G.D. Tandon before the learned Magistrate were almost wanting in the original complaint. Thus taking into consideration the lack of all particulars in the complaint dated 16.2.88 which was also made after more than 72 hours of the occurrence, the only conclusion which one could arrive at is that the story given by G.D. Tandon before the learned Metropolitan Magistrate was simply a figment of his imagination, which he poured forth for the first time after more than 13 months of the occurrence. We have to keep in mind the fact that G.D. Tandon has been prosecuted for being found in possession of 3.186 Kg. of heroin by the officers of Ncb including the petitioners and, therefore, he has a clear motive to falsely implicate the petitioners because he knows that by making such allegations against the petitioners a sort of suspicion can be created upon the case against him for the recovery of such heave quantity of heroin'.

(27) I may also refer to another complaint dated 22.8.88 by G.D. Tandon to Sho Kalkaji which is at page 31 of the lower court file. In that complaint giving other details, he stated that 5-6 persons actually were severely beating his uncle. At that time Walia (Gur Prem Walia) had gone to the bath-room near the lift and when he came back, the Ncb officials said that B.D. Tandon had jumped down from the balcony. Neither Walia nor Mathur saw the occurrence. He further states that the officials of the Ncb killed his uncle and then threw him down the balcony. This

statement in this complaint will, therefore, indicate that B.D. Tandon had actually been killed by the officials of the Ncb even before he was allegedly thrown down the balcony by the officials of Ncb of and that they were 5-6 in number. This allegation in the second complaint is again contradictory to the statement made by him before the learned Metropolitan Magistrate. It was neither the case of the State nor even of G.D. Tandon in his statement before the court that B.D. Tandon had died at the spot. therefore, the second complaint further belies the case of G.D. Tandon that B.D. Tandon was killed by the officials of NCB. G.D. Tandon further admits in the second complaint that there is no other eye witness of the occurrence except he himself and as already stated above, his statement before the learned Metropolitan Magistrate is very much contradictory in material particulars to his complaint made to the police. Thus when according to him there is no other witness to the occurrence and his own statement is unbelievable the only conclusion which one can arrive at is that G.D. Tandon has absolutely no evidence to offer to prove his charge against the officials of the Ncb that they killed B.D. Tandon by pushing him down from the balcony.

(28) Another important fact which may be kept in mind is that G.D. Tandon filed Crl. Misc. (M) 698/88 dated 9.6.88 from jail in the High Court under Section 439 of the Code for bail through Sh. R.N. Mittal, Advocate. A certified copy of that application has been placed on record on behalf of the petitioner. In para 1 of this application he stated that the officials of Ncb were alleged to have recovered 3.186 Kgs. of Heroin from the cabin of one Bhagwan Dass (B.D. Tandon) situate at Devika Tower. He further states that he was not present there at that time. therefore, his intention by making this allegation in this application seems to be to throw doubt on the alleged recovery of 3.186 Kgs. of heroin from him by saying that he was not present there at all. therefore, coupled with his allegations in the previous two complaints and this application for bail, his intention seems to be simply to extricate himself somehow or other from the case under Ndps Act which has been filed against him by the officials of NCB. That is why in the previous application as well as in this bail application he states that the alleged confessional statement extracted from him by the officer of Ncb was under pressure and allurement.

(29) The learned Metropolitan Magistrate was also influenced by the presence of some injuries upon the person of the deceased. These injuries are indicated in the Mlc as well as in the post mortem report. Earlier the grievance of G.D. Tandon was that the investigation was not being properly carried out by the police. In this respect Malik Sharief-Ud-Din, J. mentioned in his order dated 4.8.1988 that the complaint of G.D. Tandon was not being properly investigated because the post mortem report showed the presence of two sharp incised wounds on the person of the deceased Vide order dated 7.11.88 Malik Sharief-Ud-Din, J. recorded that the matter was being thoroughly investigated at that time and the report was likely to be submitted to the Court of Magistrate after the completion of the investigation. In between these two dates, therefore, because of the presence of injuries on the person of the deceased as observed by the High Court the investigating officer requested for opinion of an expert from AIIMS. The application in this respect is dated 27.10.1988 at pages 65 and 67 of the lower court file. This application also states that as per the direction of Sh. C.K. Jain, Senior Scientific Officer, Cfsi, a steel lock affixed on the rear door in the room of the deceased was dislodged and taken into police possession. Opinion was, therefore, sought whether the injuries on the person of the deceased could be caused by that lock divided into two parts, one being inside the room and the other being out side the room. Dr. R.K. Sharma opined that both the injuries could be produced by the handle of the lock. Regarding the corresponding cuts on the shirt and the baniyan, he advised that opinion may be taken from Forensic Expert in the CFSL. therefore, these clothes i.e. shirt and the Baniyan were sent to Cfsi which were examined by the Dr. C.K. Jain. He was of the opinion that the cut mark could not have been caused from a pointed weapon during the process of falling but could be possible with sharp edged broken glass pieces or any other sharp edged weapon. He did not offer any opinion regarding the cut mark on the Baniyan due to the stretchable characteristics of the fabric yarn. In view of the fact that there was no legal evidence to support the theory of G.D. Tandon that the deceased had been pushed down from the balcony by the petitioners, it may otherwise be not necessary to go into the details of the above referred evidence of the experts. But even this evidence indicates that the injuries could either be possible with the handle of the lock or with the broken pieces of glass lying scattered on the road

where the deceased had fallen from the balcony. This evidence, therefore, also does not lend any support to the theory that the deceased had been pushed down by the petitioners from the balcony.

(30) Taking into consideration all the circumstances, I am of the view that G.D. Tandon has actually no evidence to prove that the officers of Ncb caused the death of B.D. Tandon by throwing him down from the balcony. On the other hand even the Senior Officers employed by the deceased have clearly stated that immediately after the alleged occurrence they heard the officers of Ncb saying that B.D. Tandon had jumped down from the balcony and they saw the officers running down stairs to the spot where the deceased had fallen. In these circumstances, if there is no legal evidence to support the allegations made by B.D. Tandon before the learned Metropolitan Magistrate in his statement dated 13.3.1989 and on the other hand all the evidence collected by the State during the investigation of the report made by M.R. Pruthi of Ceib indicates that B.D. Tandon had actually committed suicide by jumping down from the balcony of his office, it will serve no useful purpose to permit the continuance of prosecution of the petitioner as ordered by the learned Metropolitan Magistrate. In fact, there seems to be a veiled object of avoiding his own prosecution by G.D. Tandon at the hands of the officers of Ncb by continuing this lame prosecution which tantamounts to harassment and persecution of those whose legal duty is to unearth such crimes in order to bring to book such offenders. The allegations made in the complaint dated 16.2.88 by G.D. Tandon seem to be patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that on the basis of such allegations there is sufficient ground for proceeding against the petitioners. The discretion, therefore, exercised by the learned Metropolitan Magistrate in issuance of process against the petitioners under Section 302 Indian Penal Code read with Section 34 Indian Penal Code is arbitrary being not based on any legal evidence. The statement of G.D. Tandon did not provide a sufficient material when viewed in the background of his complaint dated 16.2.1988. therefore, it will not at all be in the interest of justice to continue the prosecution of the petitioners and rather such a prosecution is an abuse of the process of the Court.

(31) thereforee, taking into consideration the totality of the circumstances, I am of the view that the order of the learned Metropolitan Magistrate dated 12.4.1989 issuing non-bailable warrants against the petitioners is not based on any legal evidence and requires to be quashed. The proceedings against the petitioners, thereforee, are quashed.

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