*   **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on: 19th October, 2015

+   **CRL.M.C. No. 5033/2014**

SURENDER KUMAR SHARMA ..... Petitioner
Represented by: Petitioner in person.

Versus

STATE AND ANR ..... Respondents
Represented by: Mr. Ravi Nayak, Additional Public Prosecutor for State with SI Avdhesh Kumar, P.S. Farsh Bazar.
Respondent No.2 in person.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. This petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter to be referred as 'Cr.P.C.') has been filed for quashing the order dated 07.08.2014 passed by the learned Metropolitan Magistrate, Karkardooma Court, Delhi, thereby the police was directed to make further investigation of the case. Further seeks directions thereby quashing the FIR No.55/2002 registered at Police Station Farsh Bazar, Delhi, for the offences punishable under Sections 380/457/448/506/120-B of the Indian Penal Code, 1860 (hereinafter to be referred as 'IPC') and emanating proceedings thereto.

2. Brief facts of the case are that on 22.10.1946, father of the petitioner Late Sh. Narender Nath Sharma had filed a suit for partition and separate possession in respect of the property bearing Municipal No.476-A, measuring 280 square yards, situated at Teliwara, Shahdara, Delhi, against late Sh. Jagdish Saran and Others, in the court of Senior Subordinate Judge, Tis Hazari, Delhi, which was registered as Suit No.76/596/1937 of 1946/1952. Accordingly, on 25.08.1952, the learned Sub-Judge, First Class, Delhi, decreed the suit of petitioner's father titled as "Narender Nath & Anr. Vs. Jagdish Saran & Others" and passed the judgment and a preliminary decree for partition and possession in respect of the suit property entitling petitioners therein to 140 square yards out of 280 square yards suit land in favour of the then petitioners and against the then defendants.

3. On 28.03.1960, the Division Bench of the Punjab High Court, Circuit Bench, Delhi, also dismissed the appeal bearing RFA No.61-D/1952 filed by the aforesaid defendants. On 04.09.1967, the Full Bench of the Supreme Court also dismissed the appeal bearing Civil Appeal No.9/1965 with costs thereby confirming the judgment and preliminary decree dated 25.08.1952 passed by the learned Trial Court, Tis Hazari, Delhi. On 29.07.1985, the petitioner alongwith his brothers and sisters filed an application under Section 20 Rule 18 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter to be referred as 'CPC') for making the final decree in the aforesaid suit and the same is pending disposal before the Court of the learned Senior Civil Judge, Karkardooma Courts, Delhi.

4. The petitioner, who is appearing in person, submitted that on 14.03.2002, the complainant/respondent No.2 filed a complaint under Section 200 Cr.P.C. and Section 156(3) Cr.P.C. in the court of learned ACMM, Karkardooma Courts, Delhi, against him and his family members.

5. After investigation, the police filed the closure report on 23.10.2002 on the ground that the case was found to be false and fabricated. The said report was not accepted by the learned Metropolitan Magistrate and accordingly vide order dated 03.04.2003, notice was issued to the complainant. On 07.06.2004, the learned Metropolitan Magistrate accepted the cancellation report and the case was fixed for respondent No.2/complainant's evidence and thereafter from 07.06.2004 to 25.08.2004, the evidence was not recorded rather the case kept pending without any legal justification.

6. Being aggrieved, petitioner filed Crl. M.C. No.1729/2014 before this Court. The same was disposed of vide order dated 15.04.2014 by directing the learned Trial Court to take notice of order dated 07.06.2004 and promptly proceed with the matter and make all endeavour to conclude the proceedings before the learned Trial Court within a period of six months from the date of hearing already fixed i.e., 15.05.2014.

7. The petitioner further submitted that on 07.08.2014, the learned Metropolitan Magistrate, instead of complying with the order dated 15.04.2014 passed by this Court, ordered for further investigation to be

conducted by the police which is against the provisions of law and in complete disregard to the aforesaid order. Hence, the petitioner approached this Court by way of the present petition.

8. He submitted that the impugned order of the learned Metropolitan Magistrate is bad in law and against the provisions of Section 156 (3) Cr.P.C. and Section 202 Cr.P.C. and same is liable to be quashed. The learned Metropolitan Magistrate has committed a patent and serious error of law in ordering further investigation of the case, while the case was fixed for respondent No.2/complainant evidence from 07.06.2004 to 25.08.2004 after accepting the cancellation report by the learned Predecessor of Court of Sh.Sunil Gupta, Metropolitan Magistrate, Delhi. As such after taking cognizance of the case, the case reached from pre-cognizance stage to the post-cognizance stage and the learned Metropolitan Magistrate has no power to switch back the case from post-cognizance stage to pre-cognizance stage. Thus, the learned Metropolitan Magistrate has committed the gross contempt of this Court while disobeying the order dated 15.04.2014 passed by this Court, whereby the evidence of respondent No.2/complainant was directed to be concluded within a period of six months from the date already fixed, i.e., 15.05.2014.

9. To support his submissions, the petitioner has relied upon the judgment of ***Gangesh Kumar Nayak Vs. State, 2009 [1] JCC 521***, wherein this Court held as under:-

"2. The petitioner is one of the accused persons mentioned in the FIR. Admittedly, a closure report had been filed by the prosecution in the Court of the learned Metropolitan Magistrate ('MM'), Delhi on 28th February 2004. On that date an order was passed by the learned MM issuing notice to the complainant to show cause as to why the closure report be not accepted. It appears that in the meanwhile the Petitioner had appeared before the learned MM. However, on 9th July, 2004 he could not appear and the learned MM issued a non-bailable warrant. When the Petitioner appeared on 5th February 2005, he was remanded to the judicial custody and thereafter released on bail on 9th February, 2005.

3. The Petitioner approached this Court by filing a Criminal Misc. (C) Petition No. 1171 of 2005 challenging the order dated 5th February 2005. This Court disposed of the said petition with a direction to the learned MM "to consider the closure report, without issuing any notice to the complainant and pass appropriate orders thereon in the manner indicated above on the next date of hearing i.e. 26th September 2006.

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6. Considering the facts and circumstances of the case, this Court finds that no useful purpose will be served in keeping the FIR pending particularly when a closure report has been filed and the complainant is not interested in pursuing the case any further. Accordingly, the FIR No.52 of 2003 under Section 379 of the Indian Penal Code ('IPC') registered at Police Station Mukherjee Nagar, Delhi and all proceedings consequent thereto are hereby quashed."

10. Also relied upon the case of S***urrender Kumar Sharma Vs. The State (Govt. of N.C.T. of Delhi), 2008 [2] JCC 1362***, wherein this Court held as under:-

> *"2. Respondent No.2 approached the Magistrate by filing an application under Section 156(3) Cr.P.C. on 16.2.2005, the learned Magistrate after perusing the report filed by the police observed that no investigation is required to be done by the police authorities in the complaint. The complainant was permitted to lead evidence by summoning the requisite record and examining the witnesses as per the list of witnesses. The complainant accordingly examined two witnesses CW-1 and CW-2. On 29.8.2005 the learned M.M. passed an order observing that one the cognizance has been taken, and the complainant had been directed to lead prosecution evidence, then there cannot be any direction to the police to register a case and to investigate the same. Consequently, the request made in the application fr issuance of a direction to the SHO, PS. Farsh Bazar to investigate the matter under Section 156(3) Cr.P.C. was disallowed. However, the complainant was directed to complete the pre summoning complainants evidence. Further evidence was recorded by the learned M.M. on 17.11.2005 and the pre summoning complainant evidence was closed. On 28.4.2007 the impugned order came to be passed. As a consequence of the passing of the aforesaid impugned order FIR No.151/2007 dated 18.5.2007 has been registered under Sections 420/468/471 IPC at P.S. Farsh Bazar against the petitioner. Consequently the petitioner impugns the order dated 28.4.2007 and the resultant FIR registered by the police.*
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> *3. The submission of petitioner is that once cognizance is taken by the learned Magistrate it was not permissible to him to issue a direction under Section*

156(3) Cr.P.C. This legal position stand well settled. Reference made by me to the decision of the Supreme Court in ***Devearapalli Lakshminarayana Reddy & Ors. v. V. Narayana Reddy & Ors., 1976 SCC (Cri) 380*** *paragraph 17 of which reads as follows:-*

> *"17. Section 156(3) occurs in Chapter XII, under the caption: "Information to the Police and their powers to investigate"; while Section 202 is in Chapter XV which bears the heading "Of complaints to Magistrates". The power to order police investigation under Section 156(3) is different from the power to direct investigation conferred by Section 202(1). The two operate in distinct spheres at different stages. The first is exercisable at the pre-cognizance stage, the second at the post-cognizance stage when the Magistrate is in seisin of the case. That is to say in the case of a complaint regarding the commission of a cognizable offence, the power under Section 156(3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1)(a). But if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to switch back to the pre-cognizance stage and avail of Section 156(3). It may be noted further that an order made under Sub-section (3) of Section 156, is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation under Section 156(1). Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with a report or chargesheet under Section 173. On the other hand Section 202 comes in at a stage when*

> *some evidence has been collected by the Magistrate in proceedings under Chapter XV, but the same is deemed insufficient to take a decision as to the next step in the prescribed procedure. In such a situation, the Magistrate is empowered under Section 202 to direct within the limits circumscribed by that section, an investigation "for the purpose of deciding whether or not here is sufficient ground for proceeding". Thus the object of an investigation under Section 202 is not to initiate a fresh case on police report but to assist the Magistrate in completing proceedings already instituted upon a complaint before him."*

11. On the other hand, respondent No. 2, who is appearing in person, submitted that neither any legal error nor any contempt of the order passed by this Court has been committed by the learned Metropolitan Magistrate. Under the circumstances, by merely accepting the untraced report of the police officers, no cognizance has been taken against any of the accused persons including the petitioner. If the learned Trial Court has not issued notice/summons to the accused persons during entire court proceedings of the case bearing FIR No.55/2002, then question of switching back the case from post cognizance stage to pre-cognizance stage does not arise. However, the learned Magistrate has exercised his powers under the law and passed the order dated 07.08.2014, thereby directed the DCP (NE) to hand over the further investigation of this matter to a competent officer from DIU (NE) finding that the local police has not investigated the matter in accordance with law.

12. To strengthen his arguments, the respondent No.2 relied upon the case bearing Criminal Appeal No. 1412/2014, titled as "***Rakesh & Anr. Vs State of U.P. & Anr.",*** arising out of SLP (Crl.) No.3308/2013, wherein the Supreme Court held that there cannot be any doubt or dispute that only because the learned Magistrate has accepted a final report, the same by itself would not stand in his way to take cognizance of the offence on a protest/complaint petition, but the question which is required to be posed and answered would be as to under what circumstances the said power can be exercised. The relevant portion of the same read as under:-

> "2. Whether a Magistrate after accepting a negative final report *submitted by the Police can take action on the basis of the protest petition filed by the complainant/first informant? The above question having been answered in the affirmative by the Allahabad High Court, this appeal has been filed by the accused.*
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> *xxxx xxxx xxxx*
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> *10. In the present case, the contention advanced on behalf of the accused pertained to the question of jurisdiction alone; it was urged that having accepted the final report the learned Magistrate had become "functus officio" and was denuded of all power to proceed in the matter. The above stand taken and the answer provided by the High Court would not require us to consider the circumstances in which the exercise of power was made."*

13. The respondent No. 2 further submitted that the petitioner had completed his arguments, in regard to his protest petition against the untraced report filed by the Investigating Officer, alongwith written

synopsis twice on 24.12.2010 and on 13.09.2011. Thereafter, attended the court and waited for the orders of the learned Trial Court. Hence, under these circumstances, the learned Metropolitan Magistrate has committed no contempt of this Court in respect to the order dated 15.04.2014. The petitioner has come before this Court with unclean hands after committing the offence under Sections 380/448/457/ 506/120-B IPC alongwith his associates.

14. I have heard the learned counsel for the parties.

15. The question which arises for consideration of this Court is whether the Magistrate, after accepting the closure report filed by the police, can order further investigation in the case.

16. Before dealing with the same, it would be appropriate to examine the relevant provisions and scheme of the Code in relation to Section 156(3) Cr.P.C., which empower the Magistrate, who is competent to take cognizance in terms of Section 190 Cr.P.C., to order investigation as prescribed under Section 156(1) of the Code.

17. Section 190 Cr.P.C. provides that subject to the provisions of Chapter XIV of the Code, any Magistrate of the first class and any magistrate of the second class specifically empowered in this behalf may take cognizance of any offence upon receipt of a complaint, facts of which constitute such offence, upon a police report of such facts or upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

18. For the sake of convenience, Section 156 Cr.P.C. is reproduced below:-

> *"156. Police officer's power to investigate cognizable cases.*
>
> *(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.*
>
> *(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one, which such officer was not empowered under this section to investigate.*
>
> *(3) Any Magistrate empowered under section 190 may order such an investigation as above mentioned."*

19. Section 190 Cr.P.C. prescribes as under:-

> *"190. Cognizance of offences by Magistrates.*
>
> *(1) Subject to the provisions of this Chapter, any Magistrate of the first class, specially empowered in this behalf under sub- section (2), may take cognizance of any offence-*
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> *(a) Upon receiving a complaint of facts which constitute such offence;*
>
> *(b) Upon it police report of such facts;*
>
> *(c) Upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.*
>
> *(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance*

under sub-section (1) of such offences as are within his competence to inquire into or try.

20. As per aforesaid provisions, the Chief Judicial Magistrate is competent to empower any Magistrate of the second class to take cognizance in terms of Section 190 Cr.P.C.. The competence to take cognizance, in a way, discloses the sources upon which the empowered Magistrate can take cognizance. After the investigation has been completed by the Investigating Officer and he has prepared a report without unnecessary delay in terms of Section 173 Cr.P.C., he shall forward his report to a Magistrate who is empowered to take cognizance on a police report. The report so completed should satisfy the requirements stated under clauses (a) to (h) of sub-section (2) of Section 173 Cr.P.C. Upon receipt of the report, the empowered Magistrate shall proceed further in accordance with law. The Investigating Officer has been vested with some definite powers in relation to the manner in which the report should be completed. It is required that all the documents on which the prosecution proposes to rely and the statements of witnesses recorded under Section 161 Cr.P.C. accompany the report submitted before the Magistrate, unless some part thereof is excluded by the Investigating Officer in exercise of the powers vested in him under Section 173(6) of the Code. A very wide power is vested in the investigating agency to conduct further investigation after it has filed the report in terms of Section 173(2) Cr.P.C.

21. The legislature has specifically used the expression 'nothing in this Section shall be deemed to preclude further investigation in respect of an offence after a report under Section 173(2) Cr.P.C. has been forwarded to the Magistrate', which unambiguously indicates the legislative intent that even after filing of a report before the court of competent jurisdiction, the Investigating Officer can still conduct further investigation and where, upon such investigation, the officer in charge of a Police Station gets further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the prescribed form. In other words, the investigating agency is competent to file a supplementary report to its primary report in terms of Section 173(8) Cr.P.C.

22. The supplementary report has to be treated by the Court in continuation of the primary report and the same provisions of law, i.e., sub-section (2) to sub-section (6) of Section 173 Cr.P.C. shall apply when the Court deals with such report.

23. In ***Abhinandan Jha and Anr. Vs. Dinesh Mishra, 1968 CriLJ 97***, this Court while considering the provisions of Sections 156(3), 169, 178 and 190 of the Code held that the functions of the 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 the opinion by the police which is the final stage in the investigation has been provided for in Section 190(1)(c) Cr.P.C.

24. The position is, therefore, now well-settled that upon receipt of a police report under Section 173(2) Cr.P.C. 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 take into account the statements of the 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) Cr.P.C. 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, exercise of his powers under Section 190(1)(b) Cr.P.C. 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 Sections 200 and 202 of the Code for taking cognizance of a case under Section 190(1)(a) Cr.P.C. though it is open to him to act under Section 200 or Section 202 Cr.P.C. also. In this regard, reference is

made to ***India Carat Pvt. Ltd. Vs. State of Karnataka and Anr. [1989]1 SCR 718***.

25. It is true that the informant is not prejudicially affected when the Magistrate decides to take cognizance and to proceed with the case. But where the Magistrate decides that sufficient ground does not subsist for proceeding further and drops the proceeding or takes the view that there is material for proceeding against some and there are insufficient grounds in respect of others, the informant would certainly be prejudiced as the First Information Report lodged becomes wholly or partially ineffective. Therefore, the Supreme Court in the case of ***Bhagwant Singh Vs. Commissioner of Police & Anr. [(1985) 2 SCC 537]*** held that where the Magistrate decides not to take cognizance and to drop the proceeding or takes a view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, notice to the informant and grant of opportunity of being heard in the matter becomes mandatory. Therefore, there is no shadow of doubt that the informant is entitled to a notice and an opportunity to be heard at the time of consideration of the report.

26. When the information is laid with the Police, but no action in that behalf is taken, the complainant is given power under Section 190 read with Section 200 of the Code to lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint

as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and would issue process to the accused. These aspects have been highlighted by the Supreme Court in ***All India Institute of Medical Sciences Employees' Union (Reg.) through its President Vs. Union of India and Ors. 1997 SCC (Crl.) 303***.

27. So far as 'further investigation' is concerned, in the case of ***Vinay Tyagi Vs. Irshad Ali @ Deepak & Ors. (2013) 5 SCC 762***, the Apex Court held that:-

> *"15. 'Further investigation' is where the Investigating Officer obtains further oral or documentary evidence after the final report has been filed before the Court in terms of Section 173. This power is vested with the Executive. It is the continuation of a previous investigation and, therefore, is understood and described as a 'further investigation'. Scope of such investigation is restricted to the discovery of further oral and documentary evidence. Its purpose is to bring the true facts before the Court even if they are discovered at a subsequent stage to the primary investigation. It is commonly described as 'supplementary report'.*

'Supplementary report' would be the correct expression as the subsequent investigation is meant and intended to supplement the primary investigation conducted by the empowered police officer. Another significant feature of further investigation is that it does not have the effect of wiping out directly or impliedly the initial investigation conducted by the investigating agency. This is a kind of continuation of the previous investigation. The basis is discovery of fresh evidence and in continuation of the same offence and chain of events relating to the same occurrence incidental thereto. In other words, it has to be understood in complete contradistinction to a 'reinvestigation', 'fresh' or 'de novo' investigation.

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35. The power to order/direct 'reinvestigation' or 'de novo' investigation falls in the domain of higher courts, that too in exceptional cases. If one examines the provisions of the Code, there is no specific provision for cancellation of the reports, except that the investigating agency can file a closure report (where according to the investigating agency, no offence is made out). Even such a report is subject to acceptance by the learned Magistrate who, in his wisdom, may or may not accept such a report. For valid reasons, the Court may, by declining to accept such a report, direct 'further investigation', or even on the basis of the record of the case and the documents annexed thereto, summon the accused."

28. In the case of ***Hasanbhai Valibhai Qureshi Vs. State of Gujarat and Ors., AIR 2004 SC 2078***, the Apex Court held that:-

"13. In Om Prakash Narang and another v. State (Delhi Admn.) (AIR 1979 SC 1791) it was observed by this Court that further investigation is not altogether ruled

out merely because cognizance has been taken by the Court. When defective investigation comes to light during course of trial, it may be cured by further investigation if circumstances so permitted. It would ordinarily be desirable and all the more so in this case that police should inform the Court and seek formal permission to make further investigation when fresh facts come to light instead of being silent over the matter keeping in view only the need for an early trial since an effective trial for real or actual offences found during course f proper investigation is as much relevant, desirable and necessary as an expeditious disposal of the matter by the Courts. In view of the aforesaid position in law if there is necessity for further investigation the same can certainly be done as prescribed by law. The mere fact that there may be further delay in concluding the trial should not stand on the way of further investigation if that would help the Court in arriving at the truth and do real and substantial as well as effective justice. We make it clear that we have not expressed any final opinion on the merits of the case."

29. A Full Bench of this Court in a judgment reported as ***Rajneesh Kumar Singhal Vs. State (National Capital Territory of Delhi), 2001 (2) Crimes 346 (FB),*** held that the Magistrate is empowered to direct further investigation under Section 173(8) Cr.P.C. even in a case where police after investigation filed the challan and the Magistrate takes cognizance of the offence. The rationale for the same is explained in the judgment that restricting the powers of a Magistrate would adversely affect administration of justice.

30. It is imperative to note that the Code has compartmentalized the powers to be exercised at different stages of a case, namely, at the time

of taking cognizance, after cognizance is taken, after appearance of the accused, and after commencement of trial on charge being framed. It is settled law that the power of 'further investigation' undoubtedly exists in the first stage, may exist at the second and Section 311 Cr.P.C. permits to examine any witness during the course of trial. But at the third (intermediate) stage, this power has not been conferred on a court. All that has to be done at that stage is to look into the materials already on record and either frame charge, if a prima facie case is made out, or discharge the accused bearing in mind relevant provisions relating to the same incorporated in Chapter XVII of the Code, titled 'The Charge'. Of course, the discharge would not prevent further investigation by police and submission of charge-sheet also thereafter, if a case for the same is made out.

31. Admittedly, the case in hand falls in the second stage as in the present case though cognizance has been taken but the accused has not been asked to put appearance, therefore, the argument that the learned Trial Court has committed serious error of law in ordering further investigation of the case as the learned Metropolitan Magistrate has no power to switch back the case from post-cognizance stage to pre-cognizance stage has no substance.

32. Moreover, the investigation should not *prima facie* be indicative of a biased mind and every effort should be made to bring the guilty to law as nobody stands above law de hors his position and influence in the society. The maxim *Contra veritatem lex nunquam aliquid*

permittit, which means the law never suffers anything contrary to truth, but sometimes it allows a conclusive presumption in opposition to truth, applies to exercise of powers by the courts while granting approval or declining to accept the report.

33. Since the impugned order records the reason for the Court to form such an opinion, therefore, I am of the considered view that the present petition is not only without any merits but also amounts to an abuse of the process of the Court.

34. In view of the above legal discussion, the present petition is dismissed, but without any costs.

SURESH KAIT
(JUDGE)

OCTOBER 19, 2015
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