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

Date of decision: 02.02.2021

+ CRL.REV.P. 1025/2019 & Crl.M.A. 36929/2019

VISHAL TANDON Petitioner

Through Mr.K. Singhal, Adv.

versus

STATE Respondent

Through Mr. Panna Lal Sharma, APP for State

+ CRL.REV.P. 1026/2019 & Crl.M.A. 36952/2019

SIMMI TANDON Petitioner

Through Mr.K. Singhal, Adv.

versus

STATE Respondent

Through Mr.Panna Lal Sharma, APP for State.

+ CRL.REV.P. 1027/2019 & Crl.M.A. 36954/2019

ISH TANDON Petitioner

Through Mr.K. Singhal, Adv.

versus

STATE Respondent

Through Mr.Panna Lal Sharma, APP for State.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

1. Since the above-captioned 3 petitions pertain to common impugned order, therefore, these petitions have been heard together and are being disposed of by this common order.

2. Vide order dated 23.01.2020, this Court passed order as under:

“3. Vide present petitions, the petitioners seek direction to setting aside order on charge dated 07.08.2019 passed by Ld. ASJ, Tis Hazari Courts, Delhi in FIR No.146/2017 for the offences punishable under sections 323/354/354B/376/506/34 IPC registered at PS Roop Nagar.

4. The facts of the case are that Sh. Hari Pal Singh Tandon, father of Vishal Tandon i.e. petitioner in Crl.Rev.P. 1025/2019 (accused No.1), is co-owner of the property bearing 46-UB, Jawahar Nagar, Delhi (hereinafter shall be referred as 'Property') and was in exclusive possession of entire undivided property. He is still in exclusive possession of one garage & one bathroom at ground floor and entire portion on first and second floor of the property. One Smt. Maya w/o Sh. Ashok Kumar is also co-owner of the above detailed property, however, she was not in physical possession of any portion of above detailed property. She has illegally grabbed certain portion in the property and even created third party rights with respect to a shop located in suit property. The property is situated on the main road of Kamla Nagar Market. Hari Pal Singh Tandon, Har Jit Singh Tandon and Late Rajinder Singh Tandon are real brothers and admittedly the property was jointly owned by their late father Kartar Singh Tandon. After the sad demise of Late Shri Kartar Singh Tandon on 19.3.1977,

the property came to be in possession and occupation of his three sons on the basis of Will dated 10.06.1961 registered on 15.06.1963 whereby the entire property was bequeathed in favour of his three sons by Late Kartar Singh Tandon in equal shares. The property was indivisible and undivided Hindu property and meant for residence of the family of Late Kartar Singh Tandon. Hari Pal Singh Tandon was/is residing with his family in the entire suit property except the portions occupied by the tenants. Other two brothers of Hari Pal Singh Tandon were residing separately in their separate residences and had no material concern with the property except their shares in the suit property. Brothers of Hari Pal Singh Tandon namely Har Jit Singh Tandon and Late Rajinder Singh Tandon sold their respective shares in the suit property vide Registered Sale Deed dated 27.08.2003 and 15.09.2003 to Adarsh Kumar Oberoi and Om Prakash. Hari Pal Singh Tandon challenged the validity and legality of sale deeds dated 27.08.2003 and 15.09.2003 to Adarsh Kumar Oberoi and Om Prakash by way of filing a Civil Suit No. S-224/04 before the concerned Additional District Judge, Tis Hazari Courts, Delhi.

5. On the other hand, after the registration of sale deeds in favour of abovementioned persons, said persons sold the property in questions (share of the property as they purchased) to Smt. Maya vide executing registered sale deed dated 19.07.2007. However, possession was not handed over to her as no partition had taken place by that time. The aforesaid suit was disposed off vide judgment and decree dated 25.08.2010 passed learned ADJ, Tis Hazari Courts, Delhi whereby the suit was dismissed. Thereafter, Hari Pal Singh Tandon filed a Regular First Appeal No.668/2010 before this court. The said RFA was disposed of vide order dated 17.11.2014 after noticing the fact that no oral partition has taken place and passed the following order:

"Appellant filed a suit for declaration and perpetual

injunction against the respondents which has been dismissed by the impugned judgment and decree. During the trial it was pleaded by respondent nos.1 and 2 that an oral partition had taken place amongst the appellant and respondent nos. 1 and 2. Accordingly, issue no. 5 was framed by the trial court in this regard.

While deciding issue no.5 Trial court has held that oral partition took place. Appellant is aggrieved by this finding, hence, the present appeal.

Learned counsel for respondent no.5 submits that as per the Will appellant-plaintiff and respondent nos. 1 and 2 acquired equal shares in the suit property. This was a simple suit for declaration and perpetual injunction. No partition was claimed. During the pendency of suit sale transaction took place. He further submits that appellant has to seek partition in these facts and circumstances. The issue of division of property cannot be decided in this suit for declaration and perpetual injunction. In the suit for declaration and perpetual injunction trial court has returned a finding that oral partition took place which can be set aside by leaving this question open to be decided in the partition suit. Learned counsel for the appellant submits that appellant will now file a suit for partition. Learned counsel for the appellant on instructions, seeks leave to withdraw the present appeal with liberty to file partition suit. Leave and liberty granted.

Appeal is disposed of as withdrawn. With the consent of parties findings on Issue No. 5 are set aside and question is kept open to be decided in the partition suit, if so filed by the appellant"

6. During the pendency of suit filed by Hari Pal Singh Tandon, Maya also filed a suit seeking injunction and alleged that she is the owner and landlady in respect of

2/3rd share of suit property having purchased the same from the erstwhile owners. She further claimed that symbolic possession of the portion of suit property which were in possession of tenants and vacant possession of portion which were in actual physical possession of erstwhile owner were also delivered to her at the time of execution of sale deed.

7. Smt. Maya also filed an application seeking interim injunction under Order XXXIX Rule 1 & 2 of CPC before the Ld. Trial Court of Civil Judge. However, Ld. Civil Judge vide order dated 14.10.2013 dismissed the same holding that Maya has failed to show her possession over the suit property. Said Maya filed an appeal against the said order, however, at a later stage, she withdrew her appeal as well as the suit filed by her.

8. Thereafter, Maya filed a fresh suit bearing CS No. 540/2016 before the Court of Ld. ADJ-Central, Tis Hazari Courts, Delhi, wherein a decree of partition of the suit property has been claimed. Hari Pal Singh Tandon filed his written statement in the said suit. The above suit was reported to be instituted on 27.05.2016 and the summons in the said suit was issued by the Ld. Court on 30.05.2016. The said suit is pending for adjudication before the concerned Court.

9. After coming to know the contents of the written statement filed by Hari Pal Singh Tandon in the fresh suit for partition filed by Maya and further in an order to establish her possession in the suit property, Maya and her husband Ashok Kumar are/were acting illegally and in active collusion with the other two tenants of the suit property, got the possession of the portion of the suit property which was in possession of those tenants. Maya and her husband have already attempted to illegally get possession of third shop located in the suit property by way of instituting an eviction petition against the tenant M/s Handloom Mandap before the concerned ARC Court,

without informing and impleading the father of applicant in the said proceedings. In the said eviction proceedings, Ld. ARC was pleased to pass a decree of eviction against the tenant and in favour of Maya. The tenant M/s Handloom Mandap had availed the remedy of appeal by way of filing an appeal bearing RCT No. 01/2016 before Rent Control Tribunal and the same is pending for final consideration.

10. *Hari Pal Singh Tandon was completely unaware about the said proceedings and after coming to know about it, he also challenged the legality and validity of the eviction order in favour of Maya, by way of filing a separate appeal and the same is also pending for consideration before the RCT/District & Session Judge, Central, Delhi.*

11. *Since Maya and her husband are having their eyes on the shops under tenancy, they somehow managed tenant of another shop and got possession of said shop and thereafter, during the pendency of Civil Suit for partition filed by Maya, she executed a sale deed dated 25.07.2016 in favour of Third Party and purportedly sold one shop described as One shop on Ground Floor without roof right having its area size 10'.3 x 19'.0" approx. = 18.19 sq. mtrs. as shown in the annexed site plan of the sale deed, for a total consideration of Rs. 35 Lac.*

12. *Hari Pal Singh Tandon has also challenged validity and legality of the said sale transaction by way of filing a separate suit which is also pending in the Court of Ld. ADJ, Delhi. Apart from above cases, two more suits were filed by Hari Pal Singh Tandon against Maya and her husband seeking relief of injunction and recovery of possession, same are also pending before the concerned civil court.*

13. *In the above facts and circumstances of the case,*

the incident of 23.06.2017 took place in the following manner:

A. Accused No.1 alongwith his wife, namely, Simmi Tandon i.e. petitioner in Crl.Rev.P.1026/2019 (accused No.2), son Ish Tandon i.e petitioner in Crl.Rev.P.1027/2019 (accused No.3), daughter and parents (who are more than 85 years of age) were present on the first floor of the property. Accused No.1 was having his lunch and his wife was serving it. Their dog was also present and the stairs leading to the first floor were locked.

B. Their maid was also working.

C. Some labourers were also working in the house to carry on some maintenance and repair works in the house.

D. Ashok Kumar, Saurabh and their other 15-20 associates suddenly came on the staircases leading to the first floor of the property and started damaging the iron gate located on the staircases.

E. Ashok Kumar, Saurabh and their other 15-20 associates were carrying different weapons in their hands including rods, wooden rods, iron rods, hammer etc.

F. Ashok Kumar, Saurabh and their other 15-20 associates were tried to be stopped by Accused No.2 by showing the video clip which she was recording and telling them that this act would result into criminal prosecution against them.

G. Ashok Kumar, Saurabh and their other 15-20 associates also caused danda blows through the spaces available in the iron gate which resulted into injuries on the hand of accused No.1.

H. Ashok Kumar, Saurabh and their other 15-20

associates broke the iron gate and entered into the portion occupied by the accused No.1 and his family members.

I. Ashok Kumar, with bad intentions, tried to catch hold of accused No.2 and tore her t-shirt and also caught her by hair.

J. When accused No.1 tried to save his wife, he was given merciless beatings by the above named persons.

K. Accused No.1's family members were shouting for help and also called on 100 number immediately. Even the neighbors also heard their cries and called on 100 number.

L. After arrival of police, all the said persons left the spot.

M. Accused No.2 handed over her torn t-shirt to the police and necessary medical examination was conducted.

N. On the complaint of Accused No.2, the FIR No. 145/2017 at P.S. Roop Nagar was registered. She also handed over the video clips which she had recorded in her phone.

14. Learned counsel appearing on behalf of the petitioner submits that a CD showing the incident alongwith stills are annexed and Accused No.2 also sent emails to concerned higher authorities and one of the said complaint is also annexed. Thereafter, statement of accused No.2 was recorded u/s 164 of Cr.P.C., wherein she reiterated as stated in complaint, before the Ld. M.M. On the same day, Ashok Kumar threatened accused No.1 and his family members that he has good connection in the police as his near relatives are Magistrate and Public Prosecutor and now he will implicate them in false case. Ashok Kumar framed one lady namely 'B' who claims that she is residing in the Property (but did not say as to

in which portion she is residing and in what capacity and from when she is residing) (she is also not visible in the video) and on 23.03.2017, she was present in the property (the portion is not mentioned) and accused Nos.1 and 3 came and asked her son Saurabh and nephew Bharat Raj to go out of the property. She also alleged that accused Nos.1 and 3 molested her and caused injuries to her son and nephew. The said complaint was received by DD No.3B on 24.06.2017 at about 13.50 hours(0010 am) and the same was registered as FIR No. 146 of 2017 dated 24.06.2017 at P.S. Roop Nagar u/s 354B/354/506/34 of IPC. It is further submitted that since Ashok Kumar, is a practicing advocate and as per information available with the petitioner, he is having some relative in Delhi Judicial Service as well as in Directorate of Prosecution, he managed the local police by getting a charge sheet filed in the complaint lodged by 'B'.

15. *Learned counsel submits that a PCR call was made by one Shaily Mohan on 23.06.2017 at 14:29 hours and who reported as under;*

"WAKIL SAHAB HAI... PROPERTY DISPUTE BETWEEN

TWO PARTIES"

16. *Learned counsel submits that there is not even a whisper of word about the presence of alleged Ms. B. at the spot or about any act of molestation/rape against her. The so-called victim was medically examined on 23.06.2007 at 07.05 p.m. wherein she gave the alleged history of physical assault at Jawahar Nagar around 3 p.m. whereas MLC shows that the prosecutrix has given address as 5432, Chandrawal, Delhi whereas she claimed to reside in the property in question.*

17. *On the other hand, the FIR No. 145/2017 lodged by Accused No.2 was also investigated which resulted into filing of chargesheet, however, the Ld. MM has*

directed for further investigation and the chargesheet has already been filed.

18. *Learned counsel further submits that in the wake of above circumstances, detailed arguments were made before the Ld. ASJ on the point of charge, however, the Ld. ASJ passed the impugned order dated 07.08.2019 without assigning any reasons as to how the offences punishable u/s 323/354/354B/376/34 of IPC are made out against all the accused persons including Section 354/506/34 IPC.*

19. *The present petition is filed on the ground that Ld. Judge has failed to consider the dictum of Hon'ble Supreme Court in the matter of Union of India vs. Prafulla Kumar Samal: (1979) 3 SCC 4, wherein it has held that "at the stage of framing of charge the Trial Court has the power to sift and weigh evidence though for a limited purpose and finding out whether or not a prima facie case against the accused has been made out".*

20. *Further, in the case of State vs. Arun Kumar & Anr.: 2014 SCC Online SC 1018, it was held by Hon'ble Supreme Court that "even at the stage of charge, if two views are possible and one of the views gives rise to suspicion only as distinct, from grave suspicion, the Court would be empowered to discharge accused at that stage".*

21. *Recently, this court in the matter of Rukma Singh vs. State NCT of Delhi (Crl. Rev. No. 125/2017) decided on 04.07.2019, held as under:*

"The Trial Court has by the impugned order acted in a mechanical manner and has not correctly appreciated the facts of the case. The reasoning of the trial court appears to have been clouded by the allegations against the other co-accused."

22. *In addition to the above, this Court in*

Bhagwanti vs. State: 2001 SCC Online Del 1102 reiterated "the principle that at the stage of framing of charge broad probability of the case, total effect of the evidence and documents produced before it and any basic infirmity appearing in the case can be considered. Only where grave suspicion arises against the accused would it be proper to frame a charge. If there are vague and bald allegations without anything more, charge cannot be framed."

23. *In the case of Prashant Bharti vs. State of NCT of Delhi: 2013 (9) SCC 293, the Hon'ble Supreme Court observed as under: -*

"22. The proposition of law, pertaining to quashing of criminal proceedings, initiated against an accused by a High Court under Section 482 of the Code of Criminal Procedure (hereinafter referred to as "the Cr.P.C. ") has been dealt with by this Court in Rajiv Thapar & Ors. vs. Madan Lal Kapoor (Criminal Appeal No..... of 2013, arising out of SLP (Crl.) no.4883 of 2008, decided on 23.1.2013) wherein this Court inter alia held as under:

29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 of the Cr.P.C., if it chooses to quash the initiation of the prosecution against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 of the Cr.P.C, at the stages referred to hereinabove, would have far reaching consequences, inasmuch as, it would negate the prosecution's/complainant's case without allowing the prosecution/ complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section - 482 of the Cr.P.C., the High

Court has to be fully satisfied, that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such, as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such, as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 of the Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.

30.1 Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

30.2 Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and

condemn the factual basis of the accusations as false.

30.3 Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

30.4 Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5 If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused."

24. As stated that the facts and circumstances of the present case are squarely covered under Steps observed by the Hon'ble Supreme Court of India in the above referred decision. Ld. Trial Judge has failed to consider that where the allegations were none other than the allegation of rape, this Court in the matter of Alok Kumar vs. State & Anr.: 2010 SCC Online Del 2645, while dealing with the petition under Section 482 Cr.P.C. for quashing of FIR in a case where the complainant getting FIR registered under Section 376 IPC against the petitioners out of malice in order to wreck vengeance on the petitioners because petitioners refused to live in relationship with the complainant, held as under:

"8. It is settled law that the Court should refrain from quashing FIR on the ground that allegations made in FIR were false. However, when FIR is lodged with mala fide

motives to wreck vengeance, the Courts have interfered as an exceptional matter and quashed the FIRs. In M/s Eicher Tractors Limited & Ors. vs. Harihar Singh & Anr.: 2009(1) JCC260, State of Karnataka vs. M. Devendrappa: 2002 (1) JCC 214, State of Haryana vs. Bhajan Lal: 1992 SCC(Crl.) 426 and Madhavrao J. Scindhia vs. Sambhajirao C. Angre: 198 SCC (Crl.) 234, Supreme Court held that where allegations made in an FIR or complaint were so absurd and inherently improbable on the basis of which no prudent person could ever reach a just conclusion, this was sufficient ground for quashing the FIR. The Apex Court also held that where criminal proceeding is manifestly attended with mala fide and where proceeding is maliciously instituted with an ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge, the FIR can be quashed."

25. As stated in the present petition that there is no evidence collected by police that the complainant was residing in the property bearing no. U-46B, Jawahar Nagar, Delhi. There is no evidence that the complainant was present at the property in question on the day and time of incident. No complaint was made by complainant or her son/nephew to the police immediately after the incident. MLC was done at 07.10 p.m. i.e. after about 6 hours from the date of alleged incident. PCR form records the presence of WAKIL SAHAB i.e. Ashok Kumar at the spot and further, the dispute of property is also reported. However, MLC of complainant did not record alleged history of any sexual assault/molestation. FIR in question was registered after the registration of FIR No.145/17 at the behest of accused No.2.

26. After hearing this matter, few questions came in mind as under:

a. Is it reasonable to believe that a woman aged about 50 years old could be molested/raped by inserting hand in

her private part, in the presence of her adult son and nephew aged about 34 years and that too when the adult son and nephew are having criminal antecedents?

b. Is it reasonable to believe that a mother and father would ask their son aged about 18 ½ to commit the alleged act of molestation/rape by putting hand on private part of a woman aged about 50 years?

c. Why the Investigating Officer did not make the CD/Video clip of the incident as a part of charge sheet?

d. Why the CD/Video Clip was not taken on record of Charge sheet when same was available with the same police station in file of FIR No. 145/17?

27. *In addition to the above, prosecutrix is an employee of Ashok Kumar and just to solve the civil dispute, implicated the petitioner in the present case at the instance of Ashok Kumar. Said Ashok Kumar tried to pressurize the petitioner by creating these kinds of nuisance and implicate the petitioner in false cases and wants to grab the whole property occupied by the petitioner.*

28. *This court in the matter of Ramesh Thakur vs. State: 2013 SCC Online Del 2161, while considering the allegations of gang rape, held that:*

"218. It is settled law that conviction of an accused on the basis of the testimony of the prosecutrix is permissible, but that is in a case where the evidence of the prosecutrix inspires confidence and appears to be natural and truthful. The evidence of the prosecutrix in this case is not of such quality, and there is no other evidence on record which may even lend some assurance, sort of corroboration that she is making a truthful statement Proceedings initiated and continued for oblique motives or to take vengeance on the other party are liable to be quashed. Proceedings are also liable to be quashed if

even on the allegations being accepted in toto, prima facie no offence could be made out. The Courts have consistently put an end to criminal proceedings which are an abuse of process of court. At the initial stage, at the summoning stage and even if charges have been framed, this Court has the inherent powers U/s 482 Cr.P.C. to quash proceedings and to pass such orders as are necessary to prevent abuse of process of any court or otherwise to secure ends of justice".

29. *Learned APP appearing on behalf of the State submits that in the present case, the IO had asked accused No.2 for her mobile phone for sending same to FSL for establishing the authenticity of video recorded by the said phone. However, she refused and instead provided a CD despite the fact that the IO had asked her to provide the mobile phone so that said phone can be sent to FSL for examination. The said mobile phone has not been provided by accused No.2. However, this fact has been disputed by accused No.2 in FIR No.145/2017.*

30. *The accused No.2 is personally present in court and submits that even today she has video recording in the phone in question and is ready to give it to the IO for examination.*

31. *Accordingly, the accused No.2 is directed to hand over the phone to IO SI Sanjay Kaushik within two days and on receipt of the same, IO is directed to send the same for examination to the FSL.*

32. *On receipt of the requisition, Director, FSL concerned is directed to prepare report within one week.*

33. *The above named IO is further directed to collect the report and place the same on record at least three days before the next date of hearing."*

3. Accordingly, IO has submitted FSL report dated 13.02.2020 whereby

stated as under:

“3. RESULTS OF EXAMINATION/OPINION:

On examination of video files in CD marked “Exhibit-CD-A” it was observed that each video file contains one identified video shot. There is no indication of alteration in the identified video shot on the basis of frame-by-frame examination.

NOTE: - Case exhibits sent to this laboratory for examination have been sealed with the seal of ‘V.L.N.-FSL-DELHI’

Examined by

*(V. Lakshmi Narashihan
Assistant Director (Physics)
Forensic Science Laboratory
Govt. Of NCT of Delhi*

Note: This report is Per se admissible u/s 293 Cr.P.C. However, the scientific expert (witness) shall be available for cross examination, if required.”

4. Since the Trial Court was not having the benefit of FSL report, therefore, impugned order on charge dated 07.08.2019 passed by learned ASJ, Tis Hazari Courts, Delhi is set aside and Trial Court is directed to pass order on charge afresh after taking into consideration the submission of

petitioner made in the present petition , submissions of learned APP and the FSL report.

5. If the petitioner is still aggrieved, he may challenge the same before the appropriate forum.

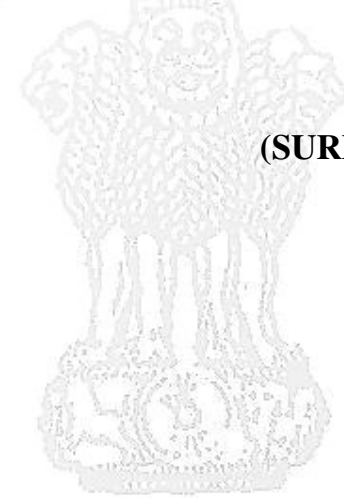
6. The petitions are, accordingly, allowed and disposed of.

7. Pending applications stand disposed of.

8. Order be uploaded on the website of this Court forthwith.

(SURESH KUMAR KAIT)
JUDGE

FEBRUARY 02, 2021/ab



नित्यमेव जयते