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* IN THE HIGH COURT OF DELHI AT NEW DELHI

*Reserved on: 11th July, 2022**Decided on: 06th September, 2022*+ CRL.M.C. 6343/2019, CRL.M.As. 42280/2019 & 2069-70/2020**KIRAN TANEJA**

..... Petitioner

Through: Mr. Siddharth Luthra,
Senior Advocate with
Mr. Vinod Kumar,
Mr. Pankaj Singhal and
Mr. Hardik Rupal, Advocates.

V

STATE (GNCT OF DELHI)

..... Respondent

Through: Mr. Sanjeev Sabharwal, APP
for the State with SI Barjesh
Redhu, P.S. Inderpuri and
ASI Dinesh Kumar, P.S. AC
Branch.
Mr. Vikas Arora and
Mr. Mohit Dagar, Advocates
for R-2.
Mr. M. K. Ghosh, Advocate
for Impleader in Crl.M.A.
2069/2020.

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CORAM:**HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN****JUDGMENT**

1. This judgment shall decide present petition under section 482 code of criminal code of criminal procedure, 1973 (hereinafter referred



as **“the Code”**) for quashing of proceeding and setting aside the orders dated 27.1.2018, 19.10.2019 and 08.11.2019 passed by the court of Shri Sanjay Khangwal, ASJ, Special Judge, ACB Delhi in CC bearing no. 55/17 (332/2019) and application bearing no. 2069/2020 filed by the applicant Vijay Gautam for impleadment.

2. The factual background necessary to mention is that Satya Devi Gautam was the recorded owner of the property bearing no. D-79, Panchsheel Enclave, New Delhi (hereinafter referred to as **“the property”**). Satya Devi Gautam expired on 25.01.2011 and thereafter Ravi Dutt Gautam became the recorded owner of the property who expired on 28.04.2011 without leaving any legal heirs. Thereafter, Renu Joshi r/o D-15, Indra Enclave, Sainik Farm, New Delhi claimed that the property has been bequeathed to her by virtue of Will stated to be executed in her favour by Ravi Dutt Gautam wherein she was mentioned as sole beneficiary.

2.1 Parmil Mittal (hereinafter referred to as **“the complainant”**) made a complaint in larger public interest to the Additional Commissioner of Police, Anti-Corruption Department, Delhi Government, Delhi regarding illegal and collusive registration of Will stated to be



executed by Ravi Dutt Gautam in respect of the property. He stated in the complaint that after forging Will, it was illegally registered on 27.05.2011 i.e., after the death of Ravi Dutt Gautam by the Sub Registrar-IV, Delhi Government out of his jurisdiction and the registration of Will by Sub Registrar-IV, East Delhi was done knowingly and contrary to the established rules and procedure with a motive to grab the property illegally having high value. The property was required to be vested in the Government and to be utilised for public purpose. Sub Registrar-IV abused his official status in collusion with the alleged beneficiary.

2.2 The complaint was assigned to Inspector Pankaj Sharma for inquiry regarding the allegations made against Sub Registrar-IV, Seelampur. After inquiry and approval from Senior Officers, FIR bearing no.01/2013 was registered under section 13(1)(d) of Prevention of Corruption Act, 1988 read with sections 420/467/120-B of the IPC. Inspector Pankaj Sharma during investigation collected the necessary documents and also seized sale deed stated to be executed by Renu Joshi in favour of Gurinder Singh Sikka from office of Sub Registrar-V, Mehrauli and the sale deed stated to be executed by



Gurinder Singh Sikka in favour of Saurabh Joshi, who is son of Renu Joshi.

2.3 Inspector Pankaj Sharma also seized letter pertaining to mutation of property which was issued by Deputy Assessor and Collector along with other documents. Inspector Pankaj Sharma also recorded statement of various witnesses under section 161 of the Code. During investigation Inspector Pankaj Sharma came to know that the Renu Joshi had claimed execution of Will in respect of the property in her favour by Ravi Dutt Gautam i.e. her maternal uncle on 29.03.2011 in the presence of witnesses, namely, Aditya Kumar Bhandari and Yugal Kishore.

2.4 Renu Joshi and Saurabh Joshi instead of joining the investigation filed a Criminal Petition bearing no. 429/2013 under section 482 Cr.P.C. titled Renu Joshi & another V State and others for quashing of FIR bearing 01/2013 by alleging that the said FIR was registered at the instance of K. C. Dwivedi, Additional Commissioner of Police in collusion with G.C Dwivedi, Additional Commissioner of Police, Anti-Corruption Branch, New Delhi through proxy complainant Parmil Mittal.



2.5 It was also surfaced during investigation that Gaurav Joshi, son of Renu Joshi got married with Sudha, who was the daughter of K. C. Tyagi and they were having the matrimonial dispute. The complainant, Gurinder Singh Sikka, Aditya Kumar Bhandari, Yugal Kishore Sharma, Saurabh Joshi and Renu Joshi were investigated. Renu Joshi did not provide original Will to the Investigating Officer as alleged to have been stolen for which FIR bearing no. 187/2013 dated 06.03.2013 was got registered at P.S. Shakarpur under section 379 IPC.

2.6 The Investigating Officer on 06.01.2014 arrested public servants namely, K.K. Goswami, Sub Registrar-V Seelampur, J.L. Kathuria (Zonal Inspector SDMC) and Kiran Taneja i.e. the petitioner the then Deputy Assessor and Collector, SDMC. The Investigating Officer also sent photocopy of registered Will to FSL Rohini for comparison with admitted signature of deceased Ravi Dutt Gautam. However, no conclusive FSL report was submitted as the original Will was not available.

2.7 The Investigating Officer also sought sanction from the Competent Authority i.e. the Hon'ble Lieutenant Governor regarding K.K.



Goswami and from Commissioner, SDMC in respect of Kiran Taneja i.e. the petitioner and J.L Kathuria under section 19 of Prevention of Corruption Act, 1988. The Commissioner, SDMC declined to accord sanction qua Kiran Taneja, i.e. the petitioner and J. L. Kathuria and the application for review of this order was also declined. Inspector Pankaj Sharma filed the part charge-sheet before the concerned court. The Special Court, CBI vide order dated 28.09.2015 returned the charge-sheet for further investigation without taking any cognizance as the sanction for public prosecuting the public servant was not on record. The order dated 28.09.2015 is reproduced verbatim as under:-

**FIR No.-1/13
State V Renu Joshi & Ors.**

28.09.2015

Present:

**Sh.B.B.Bhasin, Ld. Addl. P.P. for the State with
IO/Inspector Sushil Kumar, PS-ACB, Delhi**

On instructions from the IO, Ld. Addl, PP submits that sanction qua public servants has still not been granted. Sanction for all the three public servants was previously declined and review has been sought qua two of them. IO submits that process may take more than a month.

It is noticed that the challan was filed in the court on 16.05.2015 and the court had declined to take cognizance, as the sanction for prosecuting the public servant is not on record. On a perusal of charge sheet, it is apparent that the charge sheet does not disclose



any offence punishable under the PC Act against the 5 persons, qua whom the challan has been filed. Recourse to sec.-120-B of IPC cannot be taken, unless the public servants are before the court.

Ahlmad is, therefore, directed to return the challan to the IO. IO shall of course be within his rights to file charge sheet, again if, and when sanction for prosecuting the public servants is granted by the competent authority.

Challan be separated and returned to the IO. Order sheets be separated & retained.

2.8 Inspector Sushil Kumar was assigned further investigation in pursuance of FIR bearing no.01/2013. The Hon'ble Lieutenant Governor has also declined the request for prosecution sanction against the public servant, namely, K. K. Goswami, the then Sub Registrar-IV of Seelampur. The further investigation was assigned to Inspector Dharmender Dang who came to know that the Final Report in pursuance of FIR bearing no.187/2013 under section 379 was submitted as untraced.

2.9 The complainant also gave a written request for withdrawal of his complaint. After Inspector Dharmender Dang, the investigation was undertaken by Inspector Raghuvir Singh who again requested FSL to give clear opinion about the genuineness of the Will but FSL again informed that a conclusive opinion qua the Will cannot be given for want of original document. Inspector Raghuvir Singh on the basis of



the investigation opined that no concrete evidence could be surfaced to corroborate/substantial allegations of forgery and cheating and regarding allegations of corruption, the prosecution sanction was declined and along review was also rejected. Accordingly, the Closure Report was submitted for acceptance and for discharge of public servants, namely, K.K. Goswami, Kiran Taneja, i.e. the petitioner and J.L. Kathuria.

2.10 The Closure Report qua the accused K.K. Goswami, Kiran Taneja, i.e. the petitioner and J.L. Kathuria was placed before the Court of Shri Sanjay Khanagwal, ASJ, Special Judge, CBI for consideration who observed that the present Final Report does not appear to be complete and directed the Investigating Officer to file the complete Final Report containing details of all the accused. The order dated 27.01.2018 is reproduced verbatim as under:-

**FIR No. 01/17
CC No. 55/17
PS ACB
State vs KK. Goswartii & othets
27.1.18**

The present Closure Report has been filed qua the accused KK Goswami, JL Kathuria and Kiran Taneja who are the Public Servants. There are five other co-accused namely Renu Joshi, Saurabh Joshi, Gurinder Singh Sikka, Aditya Kumar Bhandari and Yugal



Kishore Sharma against whom the final report was filed before the Ld predecessor which was returned vide .order dt. 28.9.15 for want of sanction, against Public servant.

In the previous, final report, IO had sought the prosecution and trial of these five accused persons. The present final report has been filed on, 13.11.2017 only against the Public servants. There is no mentioning of the aforesaid co-accused and the final report does not appear to be completed. In these circumstances, IO is directed to file the complete final report bearing the details of all the accused persons. Let the same be separated and returned original to the 10 for compliance.

Order sheets be separated and retained.

2.11 It is stated that the first part charge-sheet was filed on 16.05.2015 under miscommunication. No evidence could be collected regarding the commission of forgery and cheating justifying the prosecution of any of the accused. The sanction for initiating prosecution against the public servants was also rejected by the Competent Authority and thereafter review was also rejected. The Closure Report was again filed wherein the names of all the accused was placed in Column no.12 with the request to discharge public servants, namely, K.K. Goswami Kiran Taneja, i.e. the petitioner and J.L. Kathuria.

2.12 The Court of Shri Sanjay Khanagwal, ASJ, Special Judge (PC ACT)-02/ACB, Rouse Avenue Courts vide order dated 19.10.2019 on the basis of the perusal of the record that observed that the brother and sister of the successor, appears to be aggrieved party in the present case and they are required to be heard for the just decision of this case. The order dated 19.10.2019 is reproduced verbatim as under:-



**State V. Closure Report
FIR No.1/03
PS ACB
CC No. 332/19**

19.10.2019

Present: Sh. Maqsood Ahmed Ld. Chief Prosecutor for the State.

IO Inspector Raghubir Singh in person.

As per report of the ahlmad, the documents are complete.

Arguments heard. Material on record is perused and on perusal of the same, the brother and sister of the successor, appears to be aggrieved party in the present case and they are required to be heard for the just decision of this case.

Therefore, Sh. Vijay Gautam R/o Geeta Bhawan, Nawa Sahar, Punjab and sh. Garsh gautam son of Sh. Vijay Gautam R/o Geeta Bhawan, Nawa Sahar, Punjab, be called on the next date of hearing.

Be put up for further proceedings on 8.11.2019.

2.13 The Court of Shri Sanjay Khanagwal, ASJ, Special Judge (PC ACT)-02/ACB, Rouse Avenue Courts, New Delhi vide order dated 08.11.2019 supplied the copies of the Closure Report to Harsh Gautam and Vijay Gautam and passed the order which is reproduced as under:-

**State V. closure Report
FIR No.1/13
PS ACB
CC No.332/19**

08.11.2019

Present: Sh. Maqsood Ahmed Ld. Chief Prosecutor for the State.

Sh. Harsh Gautam and sh. Vijay Gautam are present in person.

IO Inspector Raghuvir Singh in person.

Copy of Closure Report be supplied to the aggrieved



party.

Be put up for further proceedings on 12.12.2019.

Notice be issued to 10 for the date fixed. Copy of Closure Report supplied.

3. The petitioner being aggrieved by the orders dated 27.01.2018, 19.10.2019 and 08.11.2019 filed the present writ petition and challenged these orders on the grounds that the impugned orders are contrary to law and facts on records. The trial court should not decline to accept the First Closure Report without any justifiable or cogent legal reasons. The law only requires issuance of notice to the first informant on filing of the Closure Report and in the present case, the first informant i.e. Parmil Mittal had already recorded his no objection by way affidavit 16.12.2017. There was no occasion for the Special Judge, CBI to issue notice to any other person as aggrieved. There is no provision in the Code for impleading of any other person as per section 173 (2) (ii) of the Code. The Final Report was required to be communicated only to the first informant not to the alleged aggrieved person. The Trial Court has passed the impugned orders in mechanical manner and without application of mind and as such the impugned orders are manifestly erroneous and contrary to the law. The impleading of alleged aggrieved party in Closure Report is beyond the



powers of the Trial Court. Vijay Gautam is already litigating before the Civil Court since 2011 prior to the registration of the present case. It is prayed that the impugned orders dated 27.01.2018, 19.10.2019 and 08.11.2019 be quashed along with consequential proceedings.

4. Vijay Gautam filed an application under section 482 of the Code bearing no.2069/2020 for impleading as respondent in the present petition. The applicant/Vijay Gautam is claimed to be the real brother of Ravi Dutt Gautam and filed a complaint dated 17.10.2013 before the Additional Commissioner of Police, Anti-Corruption Branch, Delhi, requesting investigation in the matter of forgery of Will and misappropriation of the property which belonged to Late Satya Devi Gautam. FIR bearing no. 01/2013 dated 24.01.2013 has already been registered under sections 420/467/468/120B IPC on the complaint of Parmil Mittal and as such no separate FIR was registered on the basis of complaint dated 17.10.2013. The applicant has a *locus* to appear at the time of consideration of the Closure Report. It was prayed that the applicant be impleaded as necessary party.

5. The learned Senior Counsel for the petitioner besides stating factual position argued that the impleader does not have right of



hearing as the Closure Report has already been submitted by the Investigating Officer. The parties are before the Civil Court where the issue regarding the property and execution of the Will shall be decided. The impleader has filed application for impleadment for extraneous consideration. It was argued that the impugned orders are liable to set aside and the Crl. M. A. bearing no.2069/2022 for impleadment is liable to be set aside. The counsel for the respondent no 2 argued that the respondent no 2 being complainant has already requested for withdrawal of complaint. The learned Senior Counsel cited **Gangadhar Janardan Mhatre V State of Maharashtra and others**, (2004) 7 SCC 768 2004 and **Vishnu Kumar Tiwari V State of UP**, (2019) 8 SCC 27.

6. The counsel for impleader/ Vijay Gautam in Crl. M. A. bearing no.2069/2022 besides mentioned the factual background of the case argued that the entire disputes revolves around misappropriation of high value property of late Satya Devi Gautam who was the wife of Ravi Dutt Gautam who have died issueless and never executed any Will in favour of Renu Joshi and Will was forged. Renu Joshi has never produced the original Will during the investigation. It is argued



that the impleader being real brother of Ravi Dutt Gautam is an affected party and the Closure Report cannot be accepted without hearing otherwise grave injustice shall cause to the impleader. The counsel for the impleader cited **Bhagwant Singh V Commisioner of Police**, (1985) 2 SCC 537 and other decisions.

7. The Code of Criminal Procedure, 1973 was enacted to consolidate and amend the law relating to criminal procedure. Chapter XII of the Code deals with information to police and their power to investigate. A fair and impartial investigation is necessary part of Articles 14 and 21 of the Constitution which obliged the court to ensure adherence by the police. Investigation is considered to be exclusive privilege and prerogative of the police which does not command any interference but the investigating agency is under statutory and constitutional obligation to conduct investigation as per legal provisions contained in the Code. The court has a bounden constitutional obligation to ensure proper conduction of investigation in accordance with law and any direction given by the court for said purpose within law cannot amount to interference with investigation. There should not be unnecessary delay in investigation.



7.1 A fair investigation mandates the police to find out whether a *prima facie* case is made out against the accused after thorough examination of material collected during investigation. It is duty of the investigating agency to assist the court in a trial if a case is made out after conclusion of investigation. If there is no *prima facie* case is made out against the accused after conclusion of investigation then a closure report has to be filed in concerned court as per section 169 of the Code. It is also the duty of the Magistrate or the concerned court to ascertain whether there is any material in closure report to proceed against the accused and cognizance cannot be taken if there is no such material against the accused. A closure report is considered to be an important aspect of a fair investigation which is given under section 169 of the Code and protects the accused from unwanted and vexatious prosecution. Section 169 of the Code reads as under:-

169. Release of accused when evidence deficient. If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police report, and to try the accused or commit him for trial.



7.2 Section 169 of the Code reflects that the closure report submitted by the police or the investigating agencies to the Magistrate or the concerned court stating that after investigation no evidence or reasonable grounds for suspicion could be found to connect the accused to the alleged crime but the Magistrate can direct the police to conduct further investigation. A closure report in morphology is different from a final report filed under section 173 of the Code. After filing of closure report a Magistrate can accept the report and close the case or direct the investigation agency to conduct further investigation or issue notice to the first informant as he is the only person who can challenge the closure report or may reject the closure report and take cognizance of the case under Section 190 of Code and can issue a process of proceedings under Section 204 of the Code. Mere submission of a closure report does not mean that no proceeding can take place against the accused in the future. A Coordinate Bench of this court in **N. K. Rai V Central Board of Investigation**, CrI.M.C. No.6023/2018 decided on 29th November, 2018 observed that the closure report is not binding on the trial court and the court is expected to apply its independent mind to the material on the record and merely



CBI had made certain observations which partially support the petitioner, cannot be a ground to tinker with the directions for further investigation given by the trial court. The Supreme Court in **Amar Nath Chaubey V Union of India**, Special Leave Petition (Crl.) No.6951 of 2018 decided on 14th December, 2020 did not accept plea of the police that further investigation was not possible as the informant had not supplied adequate materials to investigate.

7.3 The Supreme Court in various judgments has considered the desirability of intimation being given to informant when a report is made under section 173(2) of the Code. The Supreme Court in **Bhagwat Singh V Commissioner of Police & another**, AIR 1985 SCC 1285 and also relied on by the counsel for the impleader observed as under:-

when the report forwarded by the officer-in charge of a police station to the Magistrate under sub-section (2)(i) of Section 173 comes up for consideration by the Magistrate, one of two different situations may arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may do one of three things: (1) he may accept the report and take cognizance of the offence and issue process or (2) he may disagree with the report and drop the proceeding or (3) he may direct further investigation under sub-section (3) of Section 156 and require the police to make a further report. The report may on the other hand state



that, in the opinion of the police, no offence appears to have been committed and where such a report has been made, the Magistrate again has an option to adopt one of three courses: (1) he may accept the report and drop the proceeding or (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process or (3) he may direct further investigation to be made by the police under sub-section (3) of Section 156. Where, in either of these two situations, the Magistrate decides to take cognizance of the offence and to issue process, the informant is not prejudicially affected nor is the injured or in case of death, any relative of the deceased aggrieved, because cognizance of the offence is taken by the Magistrate and it is decided by the Magistrate that the case shall proceed. But if the Magistrate decides that there is no sufficient ground for proceeding further and drops the proceeding or takes the view that though there is sufficient ground for proceeding against some, there is no sufficient ground for proceeding against others mentioned in the First Information Report, the informant would certainly be prejudiced because the First Information Report lodged by him would have failed of its purpose, wholly or in part. Moreover, when the interest of the informant in prompt and effective action being taken on the First Information Report lodged by him is clearly recognised by the provisions contained in sub-section (2) of Section 154, sub-section (2) of Section 157 and sub-section (2)(ii) of Section 173, it must be presumed that the informant would equally be interested in seeing that the Magistrate takes cognizance of the offence and issues process, because that would be culmination of the First Information Report lodged by him. There can, therefore, be no doubt that when, on a consideration of the report made by the officer in charge of a police station under sub-section (2)(i) of Section 173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of



the offence and issue process. We are accordingly of the view that in a case where the magistrate to whom a report is forwarded under sub-section (2)(i) of Section 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report.

7.4 The Supreme Court in **Gangadhar Janardan Mhatre V State of Maharashtra and others**, (2004) 7SCC768 2004 observed that there is no provision in the Code to file a protest petition by the informant who lodged the first information report but this has been the practice. Absence of a provision in the Code relating to filing of a protest petition has been considered. The Supreme Court referred **Bhagwant Singh** wherein stressed was laid on the desirability of intimation being given to the information when a report under Section 173(2) is under consideration. It was held as under:-

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. This Court further hold that the position is different so far as an injured person or a relative of the deceased, who is not an informant, is concerned. They are not entitled to any notice. This Court felt that the question relating to issue of notice and grant of opportunity as aforesaid was of general importance.....

The Supreme Court regarding person entitled to receive notice



observed that this right is conferred only to informant and none else. It was held as under:-

Therefore, the stress is on the" issue of notice by the Magistrate at the time of consideration of the report. If the informant is not aware as to when the matter is to be considered, obviously, he cannot be faulted, even if protest petition in reply to the notice issued by the police has been filed belatedly. But as indicated in Bhagwant Singh's case (supra) the right is conferred on the informant and none else.

7.5 The Supreme Court in Vishnu Kumar Tiwari V State of UP, (2019) 8 SCC 27 also reaffirmed above legal position and referred Bhagwant Singh and Gangadhar Janadan Mhatre. It was observed as under:-

27. It is undoubtedly true that before a Magistrate proceeds to accept a final report under Section 173 and exonerate the accused, it is incumbent upon the Magistrate to apply his mind to the contents of the protest petition and arrive at a conclusion thereafter. While the Investigating Officer may rest content by producing the final report, which, according to him, is the culmination of his efforts, the duty of the Magistrate is not one limited to readily accepting the final report. It is incumbent upon him to go through the materials, and after hearing the complainant and considering the contents of the protest petition, finally decide the future course of action to be, whether to continue with the matter or to bring the curtains down.

43. It is true that law mandates notice to the informant/complainant where the Magistrate contemplates accepting the final report. On receipt of notice, the



informant may address the court ventilating his objections to the final report. This he usually does in the form of the protest petition.

8. The legal position which is emerging from above discussion is that if it appears to police that no offence appears to have been committed and if the Magistrate observed that there is no sufficient ground for proceeding further and decide to drop the proceeding either against accused(s) or some of the accused, in that eventuality the informant would certainly be prejudiced and he must be given an opportunity of being heard by giving notice so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. However this right is conferred on the informant and none else.

9. It is appearing from critical and analytical perusal of facts that Renu Joshi claimed to be owner of the property stated to be owned by Late Satya Devi Gautam and after her death by Ravi Dutt Gautam, on basis of a registered Will which as per complainant was got registered after death of Ravi Dutt Gautam illegally by K. K. Goswami, then Sub Registrar-V, Seelampur and subsequent mutation by J. L. Kathuria, then Zonal Inspector, SDMC and the petitioner, then Assessor &



Collector, SDMC. FIR bearing no 01/2013 was got registered on basis of the complaint made by the complainant. No incriminating material could be collected against private accused and sanction was not accorded for prosecution by competent authority against public servant. According Closure Report was filed before concerned court and same is not accepted so far. The concerned court also observed that Vijay Gautam and Harsh Gautam are also aggrieved persons and they be heard on Closure Report. The impleader/applicant also made a complaint dated 17.10.2013 for investigation regarding forgery of Will and misappropriation of the property.

10. The legal issue which needs judicial consideration is that whether impleader/applicant Vijay Gautam who is neither complainant nor maker of FIR bearing no 01/2013 is having a *locus* or right to be heard at the time of consideration of Closure Report and whether trial court was justified in giving an opportunity of being heard to Vijay Gautam i.e. impleader/applicant and Harsh Gautam who happened to be relatives of Late Ravi Dutt Gautam and claimed themselves to be aggrieved party.

11. There is no provision in the Code which allows a party to be



impleaded during trial or otherwise. No such right is recognized in scheme of the Code as recognized under civil law where a party can be impleaded as necessary party whose presence is required for just disposal of case. The impleader was not a complainant in registration of FIR bearing no 01/2013. The investigating agency has conducted through investigation arising out of FIR bearing no 01/2013 and thereafter concluded that no incrimination evidence could be collected against private accused. The competent authorities did not grant sanction for prosecution against the public servants. FSL was not conclusive in absence of original Will. The impleader/applicant/Vijay Gautam or any other person does not enjoy any right to be heard at the time of consideration of Closure Report being neither informant not complainant. It hardly gives any advantage to the impleader/applicant/Vijay Gautam that he made a complaint dated 17.10.2013 for investigation regarding forgery of Will and misappropriation of the property particularly when civil dispute is pending between the concerned parties. As discussed hereinabove and as laid down in **Bhagwant Singh, Gangadhar Janardan Mhatre and Vishnu Kumar Tiwari** that right to issue notice at the time of



consideration of Closure Report is given to informant and none else. There is force in arguments advanced by learned Senior Counsel that the trial court erred in law while giving an opportunity to be heard to Vijay Gautam and Harsh Gautam at the time of consideration of Closure Report. Accordingly orders dated 19.10.2019 and 08.11.2019 are set aside as legally not sustainable and have passed without considering and appreciating correct legal proposition as discussed hereinabove and application bearing no 2069/2020 is dismissed. The arguments advanced by the counsel for impleader/applicant/Vijay Gautam are without any legal force and do not appeal to reasons.

12. The trial court is directed to consider Closure Report filed after conclusion of investigation arising out of FIR bearing no 01/2013 on its own merits. The petitioner shall be at liberty to initiate appropriate legal proceedings in case the petitioner is aggrieved by any order arising out of consideration of Closure Report.

13. A copy of this order be sent to concerned trial court for information and compliance.

**SUDHIR KUMAR JAIN
(JUDGE)**

SEPTEMBER 06, 2022
N/MYS