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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF JUNE, 2023

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

WRIT PETITION NO. 1354 OF 2016 (GM-RES)

BETWEEN:

SHRI B.S.YEDDYURAPPA
S/O LATE SIDDALINGAPPA
AGED 73 YEARS,
NO.381, 6TH CROSS
80 FEET ROAD, RMV II STAGE,
DOLLARS COLONY,
BENGALURU – 560 094.

...PETITIONER

(BY SRI SANDEEP S. PATIL., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
   BY THE INSPECTOR OF POLICE,
   BANGALORE CITY DIVISION,
   KARNATAKA LOKAYUKTA
   BENGALURU – 560 001.

2. THE COMPTROLLER AND
   AUDITOR GENERAL OF INDIA
   POCKET-9
   DEEN DAYAL UPADHYAY MARG
   NEW DELHI – 110 124.

3. THE STATE OF KARNATAKA
   REPRESENTED BY ITS
   CHIEF SECRETARY

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VIDHANA SOUDHA,
BENGALURU – 560 001.

...RESPONDENTS

(BY SRI B.S.PRASAD, ADVOCATE FOR R-1
SRI H.SHANTHI BHUSHAN, ASG FOR R-2;
SMT.K.P.YASHODHA, HCGP FOR R-3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CR.P.C., PRAYING TO DECLARE THAT THE REPORT OF THE COMPTROLLER AND AUDITOR GENERAL OF INDIA ON DENOTIFICATION OF LAND BY GOVERNMENT AND ALLOTMENT OF SITES BY BANGALORE DEVELOPMENT AUTHORITY BEARING REPORT NO.3 OF THE YEAR 2012 VIDE ANNEXURE-B CANNOT BE THE BASIS FOR REGISTRATION OF CRIMINAL CASES AGAINST THE PETITIONER HEREIN ANNEXURE-B AND ETC.,

THIS WRIT PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner is before this Court seeking quashment of registration of a crime in Crime No.76 of 2015 registered on the basis of the report of the Comptroller and Auditor General of India on de-notification of land by the Government and allotment of sites by the Bangalore Development Authority.

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2. Heard Sri Sandeep S.Patil, learned counsel appearing for petitioner, Sri B.S.Prasad, learned counsel appearing for respondent No.1, Sri H. Shanthi Bhushan, learned Deputy Solicitor General of India appearing for respondent No.2 and Smt K.P.Yashoda, learned High Court Government Pleader appearing for respondent No.3.

3. Learned counsel for the petitioner submits that the issue in the *lis* stands covered, on all its fours, to a judgment rendered by the co-ordinate Bench of this Court in ***W.P.No.41223 of 2015 and connected cases*** disposed on ***05.01.2016*** between the same parties reported in ***ILR 2016 KAR 1757*** wherein the co-ordinate Bench in extenso considers the very allegations as to whether the report of the Comptroller and Auditor General of India could become subject matter of registration of a crime under sub-section (1) of Section 154 of Cr.P.C. The Co-ordinate Bench holds as follows:

"…. …. ….

23. Re. Point No. 1:

The FIRs, fifteen in number reveal that they are registered in respect of the offences under the P.C. Act allied offences under IPC and the Karnataka Land (Restriction on Transfer) Act, 1991. The complainant's

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name is mentioned as Jayakumar Hiremath. Column 8(b) wherein the details of the personal knowledge of the offence by the complainant is required to be recorded, is left blank. Column No. 9 under the head 'Annexures to FIR', following documents are mentioned:

1) Copy of the complaint

2) CAG report

Summary of the case, is annexed to each FIR.

When it is said 'copy of the complaint', what is furnished to the petitioner on his request for the copy is, not a written complaint by the complainant or his oral statement recorded by the SHO/IO, but copy of a complaint dated 7.8.2013 submitted by Jayakumar Hiremath to the then Lokayuktha whereby he had sought action in respect of 'various issues highlighted in CAG Report No. 6 of the year 2010-11 as well as CAG report No. 3 of the year 2012 relating to misuse of authority with corrupt motive and thereby causing heavy loss to the State exchequer'. None was arrayed as accused in the said complaint. In the body of the said complaint, the circumstances that led him to approach the Lokayuktha under Section 7 of the Lokayuktha Act (the Writ Petitions filed by him in W.P. No. 15502/2013 and W.P. No. 8437/2013, the disposal of the Writ Petitions with liberty to avail alternative and efficacious remedy in the form of Section 7 of Karnataka Lokayuktha Act, 1996 is narrated.

24. *As it emanates from the certified copies of the order sheet maintained by the Registry of Lokayuktha, considering the gravity of allegation in the complaint and also the CAG report, by the order of the Lokayuktha the matter was referred to DGP, CID under Section 15(3) of the Act for investigation and report. After the report of the DGP, CID was submitted, Lokayuktha granted permission to file a case under the P.C. Act. The ADGP of the Police Wing attached to Lokayuktha was ordered to ensure expeditious investigation through Officer in charge of investigation. That is how the present FIRs are registered by the respondent/Lokayuktha Police.*

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25. Whatever transpired in the office of the Lokayuktha is not within the purview of the present proceeding. But things stand clear that "compiaint annexed to the FIRs in question are not the oral or written information given by Jayakumar Hiremath to the SHO of the Police Station but a complaint given in Form No. 1 under Section 7 of the Act to the Lokayuktha". Now coming to Section 154(1) of the Code on the basis of which the Police system has evolved the format of the FIR reads thus:

"154. Information in cognizable cases. — (1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

(2) …….".

26. *If Jayakumar Hiremath had given any oral information regarding his allegation about commission of a cognizable offence, necessarily SHO would have reduced the same into writing. As such, it is the fundamentals of Criminal Justice that anybody can move the criminal law in motion. It does not call upon the defacto informant to be a victim or a witness to the alleged offence. The FIR not reflecting any such oral or written statement given by the defacto complainant that would have been translated into writing is definitely not in consonance with sub-Section (1) of Section 154 of the Code. The so-called complaint annexed to the FIR being the complaint in Form No. 1 under Section 7 of the Lokayuktha Act cannot be conceived as substantive information in the eye of law to register a criminal case. To assume that the SHO on his own satisfaction about commission of a cognizable offence registered the case and took up the matter for investigation, the FIR prepared by him will not substantiate such assumption. It is not a FIR registered by the Police suo moto on receipt of credible information. The Apex Court in the*

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matter of Lalita Kumari's (supra) clinched the issue thus:

***"97.** The Code contemplates two kinds of FIRs : the duly signed FIR under Section 154(1) is by the informant to the officer concerned at the police station. The second kind of FIR could be which is registered by the police itself on any information received or other than by way of an informant [Section 157(1)] and even this information has to be duly recorded and the copy should be sent to the Magistrate forthwith. The registration of FIR either on the basis of the information furnished by the informant under Section 154(1) of the Code or otherwise under Section 157(1) of the Code is obligatory. The obligation to register FIR has inherent advantages:*

***97.1.** (a) It is the first step to "access to justice" for a victim.*

***97.2.** (b) It upholds the "rule of law" inasmuch as the ordinary person brings forth the commission of a cognizable crime in the knowledge of the State.*

***97.3.** (c) It also facilitates swift investigation and sometimes even prevention of the crime. In both cases, it only effectuates the regime of law.*

***97.4.** (d) It leads to less manipulation in criminal cases and lessens incidents of "antedated" FIR or deliberately delayed FIR".*

That is why a duly registered FIR is the sacrosanct at the entry point to initiate a criminal case, which is missing here.

***27.** Sri. B.S. Prasad, Special Public Prosecutor for the Lokayuktha in W.P. Nos. 41238/2015, 41240/2015, 41241/2015 and 41231/2015 while adding to the submission of Sri. Venkatesh Dalwai, made effort to reason out the registration of the FIRs that it was inevitable for the Lokayuktha Police attached to the Lokayuktha wing to abide by the order of the Lokayuktha thereby to register the cases. The petitioner having consciously given up the challenge to the order*

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of the Lokayuktha, now he cannot challenge the consequential registration of the FIRs. Learned Spl. P.P. refers to the judgment of the Apex Court in the matter of Yunus Zia v. State of Karnataka [2015 AIR SCW 2478] , in which case the Lokayuktha Police had registered a complaint suo moto on the basis of a newspaper publication and the said registration was endorsed by the Apex Court.

28. *But the situation herein is entirely different. '……for a message or communication to be qualified to be a first information report there must be something in the nature of a complaint or accusation or at least some information of the crime given with the object of setting the police or criminal law in motion (as per Patai Alias Krishna Kumar (supra)). As such, the Lokayuktha is not invested withjurisdiction to probe into the offences under the Penal laws and a complaint lodged before the Lokayuktha cannot take over the colour of information of offence under Section 154(1) of the Code. It is a mistaken notion to say that Lokayuktha Police is obliged to abide by the order of the Lokayuktha to register and investigate the offences under the various laws quoted in the FIR.*

29. *The Police Officers in the State of Karnataka are on deputation in the Police Station attached to Lokayuktha. Even after such deputation, the relationship of the master and servant between the Police personnel working in the Police Station of Lokayuktha and the State Government would not cease, but would continue as noticed by the Apex Court in Yunus Zia's case (supra), while referring to the judgment in the matter of State of Punjab v. Inder Singh [(1997) 8 SCC 372 : AIR 1978 SC 7] . The independent nature of investigation conducted by the Police Wing of Lokayuktha fell for consideration of the Division Bench of this Court in State of Karnataka, By Chief Secretary v. Basavaraj Guddapa Maliger [2003 Crl. LJ 4252] . Referring to the judgments of C. Rangaswamaiah v. Karnataka Lokayuktha [(1998) 6 SCC 66] and State of Karnataka v. Kempaiah [(1998) 6 SCC 103] , the Division Bench held that the 'the pronouncement of Supreme Court in Rangaswamatah's case (supra) would lead to the inevitable conclusion that the Lokayuktha or Upalokayuktha may request the Police Wing of a Police Officer of the competent*

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jurisdiction to consider registering the case under the provisions of the P.C. Act, then the Police Wing of the Lokayuktha if notified as a Police Station under Section 2 of the Code of Criminal Procedure may make a preliminary investigation and the prima facie case if made out may register the FIR and conduct investigation in accordance with the provisions of the P.C. Act and in accordance with the Code.' That explains the space between Lokayuktha and Lokayuktha Police attached to Lokayuktha Wing. As noticed above, Police Officers in our State working on deputation in Lokayuktha Police Station, their identity is with the State Police not with the Lokayuktha. There is no statutory provision in any of the Penal laws in respect of which the FIRs are registered, reconciling the procedure contemplated in Section 154(1) of the Code. That being so, the Lokayuktha Police ought not to have yielded to register the FIRs by blowing away the mandatory procedure. The irregularity/illegality committed in registration of the FIRs, without there being any material in the nature of information goes to the very root of the matter which cannot be cured by whatever means.

Reg. Point No. 2:

30. *Each of the FIR apart from the copy of the complaint (submitted to the Lokayuktha) is appended with the copy of the CAG report. The summary of the prosecution case annexed to the FIR refers to irregularity committed by the petitioner and co-accused in reference to the particular case. Of course, the Apex court had directed investigation on the basis of the CAG report (in the matter of CPIL (supra) popularly identified as 2G Spectrum case) and endorsed investigation ordered by the High Court based on a letter of the CAG in Sushil Kumar Modi's case (supra). But now it is to be recalled that Jayakumar Hiremath filed W.P. No. 15502/2013 seeking investigation into various issues highlighted in the CAG report No. 6/2010-11 without naming anybody as accused and without making specific allegation under any statutory provision and the said writ petition was dismissed on the ground of availability of alternative remedy. His writ petition in W.P. No. 8347/2013 arraying the present petitioner and another former Chief Minister of Karnataka Sri. H.D.*

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Kumaraswamy on the allegation of illegal land de-notification was disposed as not pressed. The High Court in its writ jurisdiction ordering probe in respect of an allegation on the basis of CAG report is one thing and the Lokayuktha Police taking CAG report on his file as a document to launch a criminal case is another thing. There is no semblance between two circumstances.

31. *The author of the CAG report is the Comptroller and Auditor General of India appointed under Article 148 in Chapter V of the Constitution of India, which reads thus:*

> ***"148. Comptroller and Auditor-General of India —*** *(1) There shall be a Comptroller and Auditor-General of India who shall be appointed by the President by warrant under his hand and seal and shall only be removed from office in like manner and on the like grounds as a Judge of the Supreme Court.*
>
> *(2) Every person appointed to be the Comptroller and Auditor-General of India shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.*
>
> *(3) The salary and other conditions of service of the Comptroller and Auditor-General shall be such as may be determined by Parliament by law and, until they are so determined, shall be as specified in the Second Schedule;*
>
> *Provided that neither the salary of a Comptroller and Auditor-General nor his rights in respect of leave of absence, pension or age of retirement shall be varied to his disadvantage after his appointment.*
>
> *(4) The Comptroller and Auditor-General shall not be eligible for further office either under the Government of India or under the Government of any State after he has ceased to hold his office.*

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(5) Subject to the provisions of this Constitution and of any law made by Parliament, the conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the Comptroller and Auditor-General shall be such as may be prescribed by rules made by the President after consultation with the Comptroller and Auditor-General.

(6) The administrative expenses of the office of the Comptroller and Auditor-General, including all salaries, allowances and pensions payable to or in respect of persons serving in that office, shall be charged upon the Consolidated Fund of India".

32. *He is a distinct and independent authority and derives his power and duties from Articles 149 to 151 of the Constitution and his duties, powers and conditions of service are envisaged by the Comptroller and Auditor General (Duties, Powers and Conditions of Service) Act, 1971. He is the premier institution for carrying out audit and account in respect of Government Department and Government Instrumentalities. Under Section 10 of the Act of 1971 (supra) he compiles the accounts of the Union and States, prepares the annual account and submits to the President of India or Governor of the State or Administrator of the Union Territory. The report thereafter will be placed before the Parliament or the Legislature of the State. He discharges his function through Accountant General of the respective State. The audit extends to all the expenditures to ascertain whether the monies shown in the accounts as having been disbursed were legally available for such disbursement and whether the expenditure confirms to the authority which governs it. He also examines the decisions, which have financial implications including the propriety of the decision making.*

33. *After the audit reports are received in the Parliament/State Legislature, they are scrutinized by the PAC. In the State of Karnataka, having regard to the rules of procedure and conduct of business in Karnataka Legislative Assembly (Article 208(1) of the Constitution), the Committee is formed consisting of not more than 20 members, who are elected from the*

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members of the Assembly and the Council according to the principle of proportionate representation by means of single transferable voting system. The Committee scrutinizes the appropriation of the accounts of the State Government vis-a-vis the report of the CAG. The duration of the Committee being limited to one year, a system is evolved by selecting the paragraphs from the audit report for detailed examination. During the course, the Ministers and the Executives of the Departments will be called upon to take corrective action and to furnish a proposed action to be taken in respect of the audit report. Thereafter the report of the Committee will be placed before the House. In the matter of Arun Kumar Agrawal (supra), it was observed that the CAG report is always subject to scrutiny by the Parliament and the Government can always offer its view point on the report of the CAG In Paras-67 and 68 it was held thus:

> *"67. The question that is germane for consideration in this case is whether this Court can grant reliefs by merely placing reliance on the CAG's Report. The CAG's Report is always subject to parliamentary debates and it is possible that PAC can accept the ministry's objection to the CAG Report or reject the report of the CAG. The CAG, indisputably is an independent constitutional functionary, however, it is for Parliament to decide whether after receiving the report i.e. PAC to make its comments on the CAG's Report.*
>
> *68. We may, however, point out that since the report is from a constitutional functionary, it commands respect and cannot be brushed aside as such, but it is equally important to examine the comments what respective Ministries have to offer on the CAG's Report. The Ministry can always point out, if there is any mistake in the CAG's reportorthe CAG has inappropriately appreciated the various issues. For instance, we cannot as such accept the CAG report in the instance case".*

34. *The Division Bench of the High Court of Sikkim in Subba Associates v. Union of India (supra) was dealing with a situation wherein the search and seizure operation under Section 132 of the Income Tax Act were carried out on the basis of the preliminary draft and*

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unsigned report of CAG with regard to the business of lottery of the State of Nagaland — The final CAG report was subsequently laid before the Legislative Assembly and was referred to PAC — The Legislative Assembly found the CAG report to be unsustainable — The contention was the CAG report did not acquire legal authenticity and could not be construed as information within the meaning of Section 132(1) of the Income Tax Act. The High Court observed that, CAG report is a legislative paper and is a property of the House and its members …… It is the exclusive prerogative of the House and its members to deliberate on the same as the report falls within the special jurisdiction of the House or its Committee…. The executive or the judiciary cannot be in legal and/or constitutional possession of the said report. The Division Bench of the Gauhati High Court in M.S. Associates v. Union of India (supra) addressing similar issue regarding 'information' within the meaning of Section 132 of the Income Tax Act, though was of the opinion that the CAG report is initially meant for the Parliament/Legislature, and undoubtedly a property of the House, further held that for the purpose of starting an investigation into evasion of tax, the source of information is not material; when the Legislature itself has not restricted the authorities concerned under Section 132 supra from acting upon the information which may be derived from the report of the CAG which has not been laid/discussed by the State Legislature, it would be realistic to hold that the legislative intendment is that even if the authority concerned received the information about evasion of tax from the report of the CAG, there is no legal impediment on the part of the authorities concerned to act upon such information.

35. *In my considered opinion the view taken by the Gauhathi High Court is more realistic. In this era of advanced Information Technology with the enablement conferred on the citizen of the country to have easy access to information by way of Right to Information Act, 2005, it is unrealistic to presume CAG report as a confidential document, till it meets finality in the Parliament or the Legislature. The Code no where contemplates a Police Officer acting under Section 157 of the Code to publish the source of information which drives him to register a suo moto complaint in respect*

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of a cognizable offence. Likewise it is always open to a concerned/aggrieved informant to approach the jurisdictional Police even on suspicion about commission of a cognizable offence, to be dealt in accordance with Section 154(1) of the Code. But the concern is, availing the CAG report as the basis for registration of the criminal case subjecting the same to the test of trial in a Criminal Court which has no jurisdiction to adjudicate the question raised in the CAG report. The CAG report wherefore since not available for judicial scrutiny, in my considered opinion, cannot be used as a foundation to build up a criminal case and cannot be made a part of investigation. As such, if an informant has a reasonable suspicion about the commission of cognizable offence he has every right to move the criminal law into motion by way of a formal information oral/writing to the concerned Court and the concerned Police if warranted can ascertain truthfulness or otherwise of the information so received by holding preliminary enquiry within the period stipulated by the Apex Court as at Lalitha Kumari's case (supra) and then register the criminal case if the enquiry probabalises commission of a cognizable offence.

36. *The Apex Court in Vineet Narain v. Union of India [(1998) 1 SCC 226] (Verma C.J.) held thus:*

> *"55 ..... It is trite that the holders of public offices are entrusted with certain powers to be exercised in public interest alone and, therefore, the office is held by them in trust for the people. Any deviation from the path of rectitude by any of them amounts to a breach of trust and must be severely dealt with instead of being pushed under the carpet. If the conduct amounts to an offence, it must be promptly investigated and the offender against whom a prima facie case is made out should be prosecuted expeditiously so that the majesty of law is upheld and the rule of law vindicated. It is the duty of the judiciary to enforce the rule of law and, therefore, to guard against erosion of the rule of law".*
>
> *Further, in Subramanian Swamy v. Manmohan Singh [(2012) 3 SCC 64] (Ganguly J.), it is observed thus:*

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> *"68. Today, corruption in our country not only poses a grave danger to the concept of constitutional governance, it also threatens the very foundation of the Indian democracy and the Rule of Law. The magnitude of corruption in our public life is incompatible with the concept of a socialist secular democratic republic. It cannot be disputed that where corruption begins all rights end. Corruption devalues human rights, chokes development and undermines justice, liberty, equality, fraternity which are the core values in our Preambular vision. Therefore, the duty of the court is that any anti-corruption law has to be interpreted and worked out in such a fashion as to strengthen the fight against corruption. That is to say in a situation where two constructions are eminently reasonable, the court has to accept the one that seeks to eradicate corruption to the one which seeks to perpetuate it".*

37. *An alert citizen upholding the mission of 'combat against corruption' is certainly laudable. But it shall not be a free style battle. The Penal laws under which the alleged offence fall will take over, if offence is proved in a court of law. The procedure contemplated by the Code to invoke criminal law into motion being the first step for registration of a criminal case, inroading of the procedure laid down by rule of law is not at all permissible. An attempt is made to justify the action of Lokayuktha Police that the case is not registered solely on the report of C.A.G. but also on the independent enquiry conducted by the C.I.D. Police on the direction of the Lokayuktha. But this justification does not stand to reason, neither the Lokayuktha nor the C.I.D. Police are the de facto complainants here. The matter having gone out of the premises of Lokayuktha Act, the Lokayuktha Police Station being the Police Station as defined under Section 2(s) of the Code, registration of the case shall be either under Section 154(1) of the Code, if it is on an information by an informant or under Section 157(1) of the Code, if it is the instance of Police Officer registering the case on his suo moto report. The F.I.Rs. in question neither in consonance with Section 154(1) nor 157(1) of Cr. P.C. cannot be sustained even after noticing the fundamental defects in their formulation. Allowing the investigation to continue on*

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> *these defective F.I.Rs. is by itself abuse of process of law. These F.I.Rs. since not registered on information about a cognizable offence, in my considered opinion, it is not required to go further to the merit of the allegations made against the petitioner or the defence offered by him to the said allegation. It is also not required to call upon the petitioner to array Jayakumar Hiremath or the co-accused as respondents in these petitions. Law on the question of ultimate jurisdiction of this Court in exercise of power vested under Article 226 of the Constitution of India and Section 482 of the Code is well settled from long lineage of judicial pronouncements commencing from State of Haryana v. Ch. Bhajan Lal [1992 Supp (1) SCC 335 : AIR 1992 SC 604] . The F.I.Rs. not disclosing commission of cognizable offence in the form of first information are liable to be quashed keeping open the larger questions raised in these criminal petitions."*

In the light of the issue standing covered on all its fours by the judgment rendered by the co-ordinate bench *(supra)*, as also that being not disputed by the respondents, I deem it appropriate to obliterate the proceedings against the petitioner.

4. For the aforesaid reasons, the following:

ORDER

(i) Writ Petition is allowed.

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(ii) Impugned proceedings in Crime No.76 of 2015 dated 19-12-2015 stands quashed *qua* the petitioner.

Sd/-
JUDGE

BKP
List No.: 1 Sl No.: 64

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