

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

% **Reserved on: 18th November, 2014**
Date of Decision: 3rd February, 2015

+ **CRL.M.C.Nos. 2877/2014, 2932/2014, 2938/2014, 2977/2014,**
2979/2014, 2995/2014, 3002/2014, 3006/2014, 3015/2014,
3023/2014, 3025/2014, 3031/2014, 3037/2014.

HARVINDER SINGH Petitioner
Through: Mr. D.S. Kohli with Mr. T.D. Sharma
and Mr. A.S. Anand, Advocates.

versus

STATE Respondent
Through: Mr. Navin Sharma, APP for the State
with Inspector/ IO Arun Kumar.
Mr. Mohit Mathur and Mr. Akhil
Mittal Advocates for the complainants
in Crl. M.C. Nos.2977/2014,
2995/2014, 3023/2014 & 3037/2014.

CORAM:
HON'BLE MR. JUSTICE VED PRAKASH VAISH

JUDGMENT

1. By way of these thirteen petitions filed under Section 482 of the Code of Criminal Procedure 1973 (hereinafter referred to as 'Cr.P.C.'), the petitioner seeks to set aside the order dated 03.06.2013, passed by learned Additional Chief Metropolitan Magistrate-II, Patiala House Court, New Delhi, as well as quashing of charge sheets for the offences punishable under sections 406/ 409/ 420/ 201 read with section 120-B

of the Indian Penal Code ('IPC' for short).

2. Since all these thirteen petitions have arisen out of different charge sheets in respect of different first information reports registered pursuant to the complaints of investors, who have invested in the Housing Projects launched by M/s. A.J.S. Builders Pvt. Ltd. (herein after referred to as 'accused company') and involves identical question of law, they are being disposed of by this common order.

3. Crl.M.C. 2877/2014 pertains to FIR No. 88/2010 registered at P.S. E.O.W, Crl.M.C. 2932/2014 pertains to FIR No. 25/2010 registered at P.S. E.O.W, Crl.M.C. 2938/2014 pertains to FIR No. 110/2009 registered at P.S. Mandir Marg, Crl.M.C. 2977/2014 pertains to FIR No. 87/2010 registered at P.S. E.O.W, Crl.M.C. 2979/2014 pertains to FIR No. 86/2010 registered at P.S. E.O.W, Crl.M.C. 2995/2014 pertains to FIR No. 24/2010 registered at P.S. E.O.W, Crl.M.C. 3002/2014 pertains to FIR No. 89/2010 registered at P.S. E.O.W, Crl.M.C. 3006/2014 pertains to FIR No. 75/2010 registered at P.S. E.O.W, Crl.M.C. 3015/2014 pertains to FIR No. 03/2010 registered at P.S. Mandir Marg, Crl.M.C. 3023/2014 pertains to FIR No. 50/2010 registered at P.S. E.O.W, Crl.M.C. 3025/2014 pertains to FIR No. 109/2009 registered at P.S. Mandir Marg, Crl.M.C. 3031/2014 pertains to FIR No. 169/2009 registered at P.S. Mandir Marg and Crl.M.C. 3037/2014 pertains to FIR No. 74/2010 registered at P.S. E.O.W.

4. The concise facts of the case as borne out from the charge-sheet are that a number of investors filed their complaints against accused

company which were clubbed under different First Information Reports. All the complainants came up with identical allegations of inducements, misrepresentations etc. by the Directors of the accused company. The accused company gave an advertisement on 18.03.2006 in the newspaper 'The Hindustan Times' to induce the general public for investment in their project at Gannaur, Sonapat. However, the accused company and its Directors were found to be engaged in cheating innocent customers by way of misrepresentation of facts through their various advertisements in print as well as electronic media.

5. As per the charge sheets Ms. Madhu Singh (Managing Director of accused company) along with others induced innocent investors for investment in aforementioned residential project of the accused company, in defiance of rules and regulations embedded in their agreement. Further, the company and its Directors neither obtained necessary permissions / land use change/ approved building plans, nor acquired the project land for the proposed project, but collected investments from a large number of investors, running into hundreds of crores. Investigating agency claimed that accused company and its Directors amassed funds running in several crores of rupees by cheating innocent customers with misrepresentation of facts while advertising the project of Gannaur, District Sonapat, Haryana as a township of 300 acres with 60% of the land dedicated to greenery, whereas, till the charge sheet was filed, the accused company had executed sale deeds in respect of 83 acres of land only and that too without making full payments to the land

owners. Further, the accused company started collecting funds from the innocent investors for its aforesaid township, even when the accused company had only 2 acres of land in their possession.

6. During investigation, it was observed that the accused company and its Directors misused the funds between the years 2005-2008, ranging to hundreds of crores of rupees which have been collected from a large number of investors for various residential projects of the company and utilization of which could not be proved, thus investigating agency concluded that the same have been used for the lavish living of the Directors of the accused company.

7. Investigation revealed that the accused company has a Board of Directors, comprising of three Directors namely Ms. Madhu Singh (CMD), Ms. Kailash Rani (mother of accused Madhu Singh) & Ms. Geeta Singh (Sister-in-Law of Madhu Singh). Initially Economic Offences Wing registered a case F.I.R. No. 56/09, under sections 406,420 read with section 120-B IPC, against the accused company and its Directors. Further, during the pendency of investigation various investors filed complaints against the accused company and its Directors.

8. It was further revealed during investigation that the Corporate office of the accused company situated at 8, Shaheed Bhagat Singh Marg, First Floor, Gole Market, New Delhi was purchased by the accused company through its Director Smt. Madhu Singh from one Smt. Suman Lata Singla W/o Sh. S.K. Singla vide Sale Deed dated 21.07.2006, for a total consideration of Rs.45,00,000/- (Rupees Forty

five lakhs only). Since the booking of projects started w.e.f. 2005 onwards, investigating agency suspected that the payments which were made to the vendor were done out of the cheated funds which were collected from investors. Investigation further revealed that the original title documents of the said property were mortgaged with Allahabad Bank, Parliament Street, New Delhi for seeking loan by the accused company, wherein overdraft limit of Rs.200 lakhs (Rupees Two hundred lakhs) and bank guarantee limit of Rs.3.91 crores (Rupees Three crores and ninety one lakhs) was sanctioned. The overdraft limit was sanctioned on 28.09.2007. As per the investigation, following properties were mortgaged against the loan A/c of the accused company:

- I. Office of the accused company i.e. Property no. 8, Shaheed Bhagat Singh Marg, New Delhi.
- II. Plot No.1, Sec.-17, Block-A, Noida, Gautam Budh Nagar, UP in the name of M/s Paradise Towers Ltd., which was auctioned on 07.06.2011 by the bank while invoking provisions of SARFAESI Act for Rs.4.15 crore (Rupees Four crores and fifteen lakhs) and a sale certificate was issued on 21.06.2011.
- III. Two Fixed Deposit Nos.124225 for Rs.18,60,375/- (Rupees Eighteen lakh sixty thousand three hundred and seventy five) dated 29.02.2008 and 124226 for Rs.79,07,250/- (Rupees Seventy nine lakh seven thousand two hundred and fifty) dated 29.02.2008 were also kept as security against Bank Guarantee.

9. During investigation, it was also revealed that the said Corporate office of the accused company at 8, Shaheed Bhagat Singh Marg, Gole Market, New Delhi was sold to the petitioner by accused company through its Director/Authorised Representative, Ms. Madhu Singh vide registered Sale Deed dated 15.12.2009 against a total sale consideration of Rs.2.25 crore (Rupees Two crore and twenty five lakhs). Investigation further revealed that on 12.09.2010, petitioner, individually as well as through his Company M/s. Habitat Buildtech Pvt. Ltd. purchased 50 % equity of the accused company by paying a sum of Rs.4,35,35,200/- (Rupees Four crores thirty five lakhs thirty five thousand and two hundred). Based upon its investigation, investigating agency concluded as under:-

“From the investigation conducted so far, evidence collected (*oral as well as documentary*), it is crystal clear and proved that accused Madhu Singh, Director of M/s AJS Builders Pvt. Ltd. in collusion and connivance with other associates i.e. Smt. Geeta Singh (sister in law) and Smt. Kailash Rani (mother), hatched a criminal conspiracy, with the common intention and sole object to cheat the innocent public right from the very beginning. Accused Harvinder Singh had also joined the accused Ms. Madhu Singh & others during the alleged period for the commission of the offences.”

10. Investigating agency arrived at a conclusion that the ‘Sale Deed’ dated 15.12.2009, in respect of the property of the accused company at 8, Shaheed Bhagat Singh Marg, New Delhi, is a sham transaction, purportedly executed by accused Ms. Madhu Singh to avoid its attachment. In order to sustain its conclusion, investigating agency has primarily relied upon following circumstances:-

- (a) The property has been purchased by the petitioner without due diligence and no *bona fide* purchaser would buy a property without originals of the previous chain, whereas stipulations 5 and 6 of the Sale Deed dated 15.12.2009, make it clear that original chain of the title documents was not furnished by the 'Vendor,' which makes the 'Sale' a sham transaction.
- (b) The property has been sold at a much cheaper price than its actual market price. To arrive at this conclusion, investigating agency is making reference of valuation of the said property at the time of seeking loan, when it was assessed as approximately Rs.7.57 Crore (Rupees Seven crore and fifty seven lakhs) in the year 2007 whereas, petitioner purchased the same in the year 2009 at a much less value of Rs.2.25 Crore (Rupees Two crore twenty five lakhs) only.
- (c) The payments which have been made to the Vendor by the Vendee have been reflected and corresponding debit / credit entries have been checked. After examination, Chartered Accountant (CA) stated that these transactions are sham transactions.
- (d) Statement of co-accused Ms. Madhu Singh, who subsequently claimed that the property in question was sold by her to the petitioner. The investigating agency is

of the opinion that the property in question has been transferred with the apprehension that the said property could be attached by the investigating agency in order to recover the cheated funds collected from the investors.

11. Further Investigating agency imputed the petitioner for witnessing the Agreement dated 05.02.2011, executed between M/s. Best Realtech (India) Pvt. Ltd. and accused company, in respect of development of the project of accused company at Gurgaon, Haryana, which as per the investigating agency was detrimental to the interest of the investors. In order to sustain its claim that the petitioner was incharge for day to day functioning of the accused company, investigating agency has relied upon statement of one Mr. Harjit Singh, Director of M/s. Best Realtech (India) Pvt. Ltd. in addition to the statements of witnesses recorded under section 161 of Cr.P.C.

12. In light of the aforesaid investigation, charge sheets were filed in all the thirteen cases, on which cognizance was taken by learned trial court and the petitioner was summoned as an accused, vide impugned order dated 03.06.2013.

13. During the course of proceedings before this Court, the complainants Mr. Keshav Sethi (in CrI.M.C.2977/2014), Ms. Kusum Jain (in CrI. M.C.2995/2014), Mr. Dev Raj (in CrI. M.C.3037/2014) and Mr. Vipul Kochar (in CrI. M.C.3023/2014) were impleaded as respondent No.2 on their respective applications. On 17.09.2014 learned counsel for the complainants Mr. Mohit Mathur, on instructions from Mr. Akhil Mittal, Advocate submitted before this

Court that he will move an appropriate application on behalf of the complainants for impleadement in all the respective petitions. However, on 23.09.2014 Mr. Akhil Mittal, Advocate submitted that all the remaining complainants were not interested in moving impleadement applications. Thereafter, respondent No.2/ complainant filed reply.

14. While impugning the conclusion of the investigating agency regarding culpability of the petitioner, Mr. Kohli, learned counsel for the petitioner submitted that under the influence of Ms. Madhu Singh and a few well connected investors, the petitioner has been falsely implicated in the present case by the investigating agency. It was argued by the counsel for the petitioner that in order to sustain conjectural hypothesis about culpability of the petitioner, investigating officer has deliberately concealed vital facts and infact, has arbitrarily given deaf ears to the representations/ complaints of the petitioner, wherein the petitioner has unfolded various illegal acts of Ms. Madhu Singh, Mr. Tejwant Singh, Mr. Harjit Singh, etc. and his victimization by accused Ms. Madhu Singh and others. It was argued that induced with the various projections of the accused company and its functionaries, petitioner and his family members also invested in Gurgaon Project of the accused company during the period 2007 to 2009, but despite specific complaints by the petitioner, none of his complaints have been considered by the investigating agency, whereas similarly circumstanced other investors have been arrayed as complainants / witnesses in the cases registered against the accused company.

15. It is case of the petitioner that like other investors, petitioner had visited the corporate office of the accused company for refund of his and his family member's investments in the beginning of the year 2009, where he was trapped by accused Ms. Madhu Singh, Tejawant Singh and others to purchase property bearing no. 8, Shaheed Bhagat Singh Marg, New Delhi, under the pretext that the accused company had invested its substantial liquidity towards purchase of major landholdings and thus is finding shortage of liquidity and the rumours about the bankruptcy of the accused company has caused damage to the extent that despite sound position, owing to the slump in realty sector, the Company was unable to fetch finances to meet out unprecedented demand of refund by investors. *Per contra* to the finding of the investigating agency that the petitioner did not conduct any due diligence before purchase of the property, it was contended by the counsel for the petitioner that before execution of the Sale Deed, petitioner had duly conducted due diligence of the property (both physical and title search) and had also obtained duly certified copies of the complete chain of title documents of the property which clearly reflected a clean title in favour of the accused company and since there was no encumbrance on the property, petitioner purchased the said property. To fortify his contentions, Mr. Daman Kohli has shown certified copies of the previous chain of title documents, copies of which have already placed on record. It was further contended on behalf of the petitioner that in terms of the Sale Deed, petitioner took possession of the First Floor of the property whereas built up structure on the 2nd floor of the property was retained by the sister concern of the

accused company, from where even the accused company started operation of its business activities. It was also submitted that the delay in furnishing original title documents by the seller is clearly stipulated in the Sale Deed and it is with full caution that the petitioner got the complete chain of previous title documents duly stamped and signed by the seller on each and every page. Mr. Kohli also submitted that the nephew of Ms. Madhu Singh who is also a shareholder of the seller/accused company is also a witness to the duly registered sale deed.

16. It was also submitted by Mr. Kohli that victimization of petitioner subsisted when petitioner was further lured to part with substantial sum of Rs.4,35,35,200/- (Rupees Four crore thirty five lakhs thirty five thousand and two hundred), towards 50% equity of the accused company in favour of the petitioner and his company M/s. Habitat Buildtech Pvt. Ltd.

17. It was further submitted that on 05.02.2011, being the 50% equity holder of the accused company, petitioner also became witness to the execution of the Agreement executed *inter se* accused company and M/s. Best Realtech (India) Pvt. Ltd.. Mr. Kohli has drawn my attention towards relevant clauses of the said Agreement, whereby M/s. Best Realtech (India) Pvt. Ltd. undertook to bear all costs and expenses for developing Housing Project of the accused company in Gurgaon, on the same terms on which the accused company has invited investments from different investors, besides undertaking to refund, if any of the investor in the said project of the accused company so desired. It is submitted by learned counsel for the petitioner that since

the agreement was in benefit of the investors as well as that of company and the accused company was also to fetch substantial funds in addition to development of the project with funds of M/s. Best Realtech (India) Pvt. Ltd., petitioner consented to become witness to the said document. However, when the perpetuating dishonest and fraudulent intent of accused Ms. Madhu Singh and her associates became apparent to the petitioner, he made various representations disclosing their illegal acts and also his victimization. Attention has been drawn to various complaints/representations, addressed at all levels ranging from S.H.O. Mandir Marg, New Delhi to Commissioner of Delhi Police, but despite complaints/ representations disclosing commission of cognizable offence, no action has been taken by the investigating agency.

18. It was further submitted by the counsel for the petitioner that endeavour of the investigating agency to array the petitioner as a conspirator with accused Ms. Madhu Singh, against whom the petitioner is fighting in different courts and forums, is liable to be deprecated. Attention of this Court has been drawn to the fact that apart from representations/ complaints against accused Ms. Madhu Singh, petitioner has also been instrumental in facilitating arrest of accused Ms. Madhu Singh at both the occasions i.e. when she was declared a proclaimed offender and secondly when she was arrested in the current FIR's. The counsel for petitioner showed record confirming this fact and the same is not disputed by the investigating officer as well. On mention by the counsel for the petitioner this fact is also not disputed that there are multiple complaints filed by the petitioner

against the threat to life extended to the petitioner by accused Ms. Madhu Singh and her men.

19. Mr. Kohli, learned counsel for the petitioner pointed out that the petitioner instituted suit for possession bearing CS (OS) No.3260/2011, in respect of second floor of property No.8, Shaheed Bhagat Singh Marg, New Delhi which was decreed by this Court vide judgment and decree dated 23.01.2013 and the same attained finality as appeal against the said judgment as well as the Special Leave Petition have also been dismissed. Further, the petitioner filed company petition bearing C.P. No.125 (ND)/11 before Company Law Board, New Delhi Bench for removal of accused Ms. Madhu Singh and her family members from the Board of Directors of the accused company. According to him, it shows that all fraudulent acts of accused Ms. Madhu Singh were presented before the Company Law Board, New Delhi Bench. However, perusal of the order dated 05.12.2011, makes it apparent that the petition was adjourned *sine die* owing to the provisional appointment of official liquidator by the Hon'ble Allahabad High Court in Company Petition No.2/2010. It is submitted by Mr. Kohli that had there been "Conspiracy" between petitioner and rest of the accused persons, he would not have been fighting against the accused persons at different forums.

20. It was also contended by Mr. Kohli that petitioner has been arrayed as an accused while fastening vicarious liability under the pretext that after obtaining 50% equity of the accused company, petitioner was actively participating in its day to day working. It is

argued that the act of fastening vicarious liability on the petitioner for the act of the company is in utter defiance of cardinal principles of criminal jurisprudence set up by the Hon'ble Apex Court through various pronouncements. To fortify his contention he has relied upon '**Maksud Saiyed v. State of Gujrat & Ors.**' (2008) 5 SCC 668, '**Thermax Ltd. & Ors. vs. K.M. Jony & Ors.**', 2011 X AD (SC) 189 and '**GHCL Employees Stock Option Trust vs. Kanti Sinha**', (2013) 4 SCC 506.

21. *Per contra*, learned APP for the State urged that in a criminal trial, a Magistrate can take cognizance on filing of Police Report under Section 173(2) Cr.P.C. He also submitted that even if a closure report is filed in a particular case the Magistrate can take cognizance. In this regard he has relied upon judgments in '**Sakiri Vasu v. State of U.P. and Ors.**' 2008 AIR (SC) 907, '**M/s India Carat Pvt. Ltd v. State of Karnataka and Another**' (1989) 2 SCC 132, '**Jagdish Ram v. State of Rajasthan**' AIR 2004, Supreme Court 1734, '**Musaraf Hossain Khan v. Bhagheeratha Engg. Ltd. & Ors.**' AIR 2006 Supreme Court 1288, '**State of W.B. And Another v. Mohd. Khalid and Others**' (1995) 1 SCC 684.

22. Mr. Mohit Mathur, learned counsel for the complainants reiterated the fact that the petitioner is a 50% equity shareholder in the accused company. The petitioner has been included in the charge sheet and as such there are direct allegations against him. The petitioner purchased the said property from the main accused Ms. Madhu Singh and that this transaction was a sham transaction.

23. In addition to the above, averments made in the charge-sheet have been reiterated by learned APP for the State Mr. Navin Sharma and learned counsel for the impleader Mr. Mohit Mathur in order to sustain the summoning of the petitioner as an accused. It is the act of purchasing property of the accused company at 8, Shaheed Bhagat Singh Marg, New Delhi, which has attributed role of a conspirator to the petitioner with the Directors of the accused company. As per the prosecution this transaction is a sham transaction. In order to support its conclusion, the investigating agency has relied upon different circumstances. One of the circumstances which has been heavily stressed upon by the respondents is that the original title documents were not obtained by the petitioner before entering /concluding the sale proceedings in terms of Sale Deed dated 15.12.2009 and the property has been purchased without due diligence.

24. I have bestowed my thoughtful consideration to the submissions made by learned counsel for both the parties and have also perused the material on record.

25. The scope of exercising power under Section 482 of Cr.P.C. and the categories of cases where the High Court can exercise this power relating to cognizable offences to prevent abuse of process of any Court or otherwise to secure the ends of justice were laid down by the Hon'ble Supreme Court of India in '**State of Haryana vs. Bhajan Lal**', 1992 Supp. (1) SCC 335. A note of caution was, however, added that the power should be exercised sparingly and that too in rarest of

rare cases. The illustrative cases indicated by the Apex Court are as follows: -

“ 102.

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings

and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

- (7) Where a criminal proceeding is manifestly attended with malafide and/ or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

26. There are also catena of judgments of the Hon’ble Supreme Court. However, specific reference can be made to ‘**State of A.P. vs. Golconda Linga Swamy & Anr.**’, (2004) 6 SCC 522, wherein it was held that while exercising the powers under Section 482 of Cr.P.C., the Court does not function as a Court of appeal or revision and that such a power though very wide, has to be exercised sparingly, carefully and with caution and only when such exercise is justified by tests laid down in the section itself. Section 482 of Cr.P.C. envisages three circumstances under which inherent jurisdiction may be exercised namely; (i) to give effect to an order under Cr.P.C., (ii) to prevent abuse of process of the Court, and (iii) to otherwise secure ends of justice.

27. In **Golconda Linga Swamy’s** case (supra) it was also held that it is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction in the enactment dealing with the procedure and provide with all cases that possibly arise. When the complaint is sought to be quashed it is permissible to look into material to assess what the complainant has alleged and whether any offence is made out even if the allegations are

accepted *in toto*. Similarly, in the case of ‘**Devendra & Ors. Vs. State of Uttar Pradesh & Anr.**’, (2009) 7 SCC 495, Hon’ble Supreme Court observed that:

“24.When the allegations made in the first information report or the evidences collected during investigation do not satisfy the ingredients of an offence, the superior courts would not encourage harassment of a person in a criminal court for nothing”.

28. In view of the settled proposition of law as noted above, there does not remain any doubt that this Court has inherent power under Section 482 Cr.P.C. and also extraordinary power under Article 226 of the Constitution of India to entertain the present petition. Since power is to be exercised sparingly due care and caution will be required to examine the allegations as set out in the FIR and also brought up from the evidence gathered during investigation.

29. As noted above the power exercised by this Court under Section 482 of Cr.P.C. are very wide and the very plenitude of the power requires a great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principle. The inherent powers should not be exercised to stifle a legitimate prosecution. Of course, no hard and fast rule can be laid down in regard to cases in which this Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage.

30. The above position was highlighted in '**State of Karnataka vs. M. Devendrappa**', (2002) 3 SCC 89.

31. Again the Apex Court in '**R.P. Kapoor vs. State Punjab**', AIR 1960 SC 866, summarized some categories of cases where inherent power can and should be exercised to quash the proceedings; (i) where it distinctly appears that there is a legal bar against the institution or continuation of a proceeding for example for want of sanction; (ii) where the allegation in the first information report or complaint taken at its face value and accepted in its entirety do not constitute the offence alleged; (iii) where the allegation constitutes an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

32. In dealing with the case referred in clause (iii) of the said judgment, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusation made and a case where there is legal evidence, which on appreciation, may or may not support the accusation. The judicial process should not be an instrument of oppression, or needless harassment. The Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to needlessly harass any person.

33. In the instant case, the case of prosecution as emerging from the status report dated 08.08.2014 is that the accused company through its

Directors collected a sum of more than Rs.238 crores (Rupees Two hundred thirty eight crores) during the period 2005-2008.

34. Admittedly, it was in January, 2009 that the petitioner was introduced to the Directors of the company and in no way the petitioner was connected with the affairs of the accused company till 2008. On the contrary, the petitioner and his family members, like other investors/complainants had been tendering payments towards his investments in the housing projects of the accused company. A perusal of the respective first information reports stretches the period of conspiracy from the year 2005 to June 2010 whereas the petitioner has attained 50% equity in the accused company on 12.09.2010 i.e. much later than the period when the crime is stated to have been committed. Further, the status report dated 16.09.2014 makes it emphatically clear that the petitioner had neither been on the Board of Directors of the accused company nor has he been appointed as the authorised signatory with any of the banker and was never a functionary of the accused company, even before or after attaining 50% equity of the accused company. Reference may also be made to the provisions of the Companies Act, which make it apparent that the company is a juristic person that runs its operation through its board of directors. It does not sound to the prudence that a person would be managing affairs of a company without even being a functionary, authorised signatory, authorised representative or a participant in the Board of Directors of a Company. Had there been a semblance of truth in the conclusion of the investigating agency regarding the petitioner being incharge of the accused company, he would have at least procured authorization to

represent the accused company which is also completely missing in the present case. Furthermore, had the petitioner been vested with the powers of managing affairs of the accused company, he would not have needed to take shelter of the Company Law Board, vide CP No.125/2011, exposing the fraudulent acts of management of the accused company and seeking replacement of management. In this backdrop of the matter, when there is no evidence regarding the petitioner managing the affairs of the accused company, the acts attributed to the petitioner have to be examined to ascertain as to whether the conclusion of the investigating agency regarding “petitioner managing affairs of the company” was *prima facie* substantiated for launching prosecution of the petitioner or was merely a conjectural surmise having no legal sustainability.

35. I am not in agreement with this submission which is purely conjectural and hypothetical in nature having no legal sanctity. It is an admitted position that none of the statutory bodies including revenue authority were ever intimated by the Allahabad Bank, accused company or any other person about the creation of charge / lien on the property. Had the intent of petitioner been malignant, he would not have conducted due diligence and verified title of the accused company by obtaining certified copies of the previous chain of title documents in respect of the property before execution of the Sale Deed on 15.12.2009. Conducting due diligence and obtaining certified copies in respect of the property itself is self explanatory of the fact that the petitioner has taken due caution to verify any encumbrance from the relevant revenue authority. A bare perusal of the Sale Deed makes it

clear that the seller/accused company had concealed and misrepresented the original title documents of the property itself. Had the sale transaction been a sham there wouldn't have been a need to misrepresent or even mention about the original title documents, stamp and sign each and every document of the complete previous chain of title documents of the property by Ms. Madhu Singh and furnish it to the petitioner and also for Ms. Madhu Singh's close relation and shareholder Mr. Palak Seth to witness the Sale deed. Further, there was no need to make the relevant payments through banking channels and there was also no need to issue a separate acknowledgement receipt for each and every payment of sale proceeds and that too with proper stamp and seal of the company.

36. Another plea taken by the investigating agency to question the sanctity of the Sale Deed is that the property has been sold out at much cheaper rates than the prevailing market price. Admittedly, there is no evidence on record regarding sale of the property at a better price than the property in question has fetched. In fact bare perusal of charge sheet reveals that the same property was purchased by the accused company on 21.07.2006 from the erstwhile owner for a total sale consideration of Rs.45,00,000/- (Rupees Forty five lakhs) and within a span of three years, the property has fetched an appreciation of five times its purchase price i.e. Rs.225 lakhs (Rupees Two hundred twenty five lakhs) when it was ultimately sold to the petitioner. It is worth to take note of the fact that the purchase of the property has been given effect to by using banking channels in addition to acknowledgement

receipts which have been duly verified by the investigating agencies from the corresponding records of the petitioner. Admittedly, all the payments are reflected even in the corresponding Income-Tax return of the petitioner. Mr. Kohli has further contended that the conclusion of the investigating agency that the property in question was sold at less than the prevailing market price itself is belied from the prevailing circle rates of the area.

37. I find substance in submissions of Mr. Kohli that reliance on the valuation report to assert that the property in question was sold at a cheaper price is completely ill founded. If the alleged valuation report projecting the value of the property as Rs. 7.57 Crores (Rupees Seven crores and fifty seven lakhs) in the year 2007 is to be taken as a yardstick then I find no justification as to why the bank has insisted for additional security in the form of another property i.e. a plot measuring 500 sq. yds. at Noida, U.P., which has fetched a sale consideration of Rs. 4.15 Crores (Rupees Four crores fifteen lakhs) in an auction made after invoking provisions of SARFESI Act. Had the valuation been so sacrosanct, the bank would not have insisted for additional security in the form of fixed deposits to the tune of approx. Rs. 1 Crores (Rupees One crores), which the accused company deposited on 29.02.2008. The very act of the bank calling for additional security in addition to two properties including the property in question, itself is self explanatory that the securities tendered by the accused company for procuring loan were inadequate. Furthermore, it is hard to digest that the property which had a total value of Rs.45,00,000/- (Rupees Forty five lakhs) on

21.07.2006 would fetch Rs.7.57 Crores (Rupees Seven crores and fifty seven lakhs) within one year.

38. Learned counsel for the petitioner rightly contended that the investigating agency could question sale of the property only if the same has been purchased through the 'cheated funds.' It is contended that the investigating agency has miserably failed in passing the litmus test to bring on record sufficient evidence to *prima facie* sustain this view. Reliance has been placed upon the following conclusion of the charge sheet:-

“.....the booking of the projects were started w.e.f. 2005 onwards. The said office was purchased by the accused company against total sales consideration of Rs. 45 lacs and there is every suspicion/likelihood that the payments which were made to the vendor were done out of the cheated funds which was collected from investors.”

39. It is astonishing to take note of the fact that despite thorough investigation into the matter for three years and by three different investigating officers of Inspector rank as well as deployment of the Chartered Accountant instead of coming up with formidable evidences in this regard, investigating agency has taken shelter of mere suspicion to conclude that property has been purchased from the cheated funds. In the absence of any enabling provision for presumption against accused, the Law does not authorise the trial court to issue summoning of a person as an accused on mere suspicion of the investigating agency. Even otherwise, if cheated funds of Rs.45,00,000/- (Rupees Forty five lakhs) have been utilised by the accused company towards

purchase of the property in question, with sale consideration of Rs.225 lakhs (Rupees Two hundred and twenty five lakhs) the Company has already received five times of the investment within three years.

40. In this view of the matter, precisely in absence of any legally admissible evidence to sustain the claim of the investigating agency regarding sale of the property at a cheaper price, I am in agreement with submissions of the counsel for the petitioner that the conclusion is merely hypothetical having no substance therein. The Sale Deed in favour of the petitioner does not appear to be a sham transaction.

41. This brings this Court to the next plea of the prosecution that the report of the Chartered Accountant has also claimed transaction to be sham. On specific query of this Court as to whether the debit entries from the petitioner's account and credit entries from the accused company's account have been verified by the investigating agency, it has been affirmed that all the debit and credit entries are duly reflected in the bank accounts and income tax returns of the petitioner and no irregularities have been found in that regard. Furthermore, it is also pointed out that the accused company has not filed any balance-sheet after 2008 with the statutory authorities as such, balance-sheets for the period 2009-2010 was not available before the Chartered Accountant. It is surprising that the Chartered Accountant has adversely commented upon the genuineness of the Sale-Deed, despite existence of a valid registered Sale-Deed and in the absence of any irregularity in banking/ payment channel. In my considered view, the petitioner cannot be subjected to trial because of the lapses on the part of accused

company in performing its obligations. If this hypothetical conclusion of the investigating agency is accepted, it will give another tool to the accused persons of committing frauds by initially obtaining sale consideration against a property and subsequently questioning a valid sale transaction by deliberately refraining from filing returns. In this backdrop of the matter, no sanctity could be attributed to the Chartered Accountant's report, which is primarily a conclusion based upon assumptions and thus, cannot be considered as a piece of evidence to question the registered Sale Deed with legitimate and verified mode of payment.

42. In order to justify arraying of the petitioner as an accused in the case, investigating agency has taken shelter of written representation of co-accused Ms. Madhu Singh and has subsequently claimed that the property in question was sold by the accused Ms. Madhu Singh to the petitioner with the apprehension that the property in question could be attached by the investigating agency in order to recover the cheated funds collected from the investors. The version of the co-accused is to be analysed in backdrop of the fact that an investigation is primarily instrumental in misappropriating cheated amount and the representation is not a confessional statement. Apparently, belated claim of accused Ms. Madhu Singh to question genuineness of the Sale transaction does not hold ground, precisely for the reason that there was no justification for protecting a property from its attachment, which was already lying mortgaged with the bank and the accused

company was not in a position to repay the loan. When being confronted with this situation, Mr. Kohli questioned the admissibility of this statement at the stage of summoning itself. Reliance has been placed in this regard on the judgment of this court reported as ‘**Kamal Kishore v. State through Delhi Administration**’ 1997 Cri.L.J.2106, wherein this Court has observed:

“In the present case, the learned Magistrate has framed the charge against the present petitioner only on the basis of the disclosure statement which has not led to discovery of any fact which was not known to the prosecution before recording the statement of the petitioner. No recovery at the instance of the petitioner has been made. No independent witness has deposed that the petitioner has shared the booty or was involved in the incident in question except as alleged by the co-accused. There is no corroborating evidence on record corroborating the above allegation against the present petitioner.”

43. I find force in the contentions of Mr. Kohli that no part of this statement can be used to impute petitioner as an accused as it is neither a confession of co-accused admissible under Section 30 of the Indian Evidence Act, nor does it lead to discovery of any fact qualifying parameters of Section 27 of the Indian Evidence Act to permit its usage against the petitioner. It can’t be lost sight of the fact that Madhu Singh is the same person, who had earlier disclosed to the investigating agency in her disclosure statement dated 08.06.2011 that she has sold out the property and equity to the petitioner as the accused company was facing acute financial crunch and further even in bail application dated 12.09.2011, when the accused Madhu Singh was in Judicial

Custody, she has voluntarily taken specific stand that sale proceeds of the property and equity were used in repayment to different investors of the company who were seeking refund. In this backdrop of the matter, it is astounding that investigating agency is buying this fresh statement of accused Ms. Madhu Singh to justify implication of the petitioner, precisely when none of the averments of this statement have been corroborated by any independent evidence. Attempt of the investigating agency in this regard is contemptible and liable to be castigated. It appears that falling short of legally convertible evidence to sustain implication of the petitioner, investigating agency seems to be bent on implicating the petitioner and has gone to the extent of making feeble attempt to rely upon the changed version of the prime/co-accused of the case.

44. I have gone through the judgments relied upon by learned APP for the State. The law emerging from the said judgments that the Magistrate can take cognizance on filing of police report even if a closure report is filed is not disputed.

45. In **Maksud Saiyed's case (supra)** the Apex Court observed as under:

“13. Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. **The Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company.** The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition,

even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities.....” (emphasis supplied)

46. In ‘**Thermax Ltd. & ors. v. K.M. Jony & ors.**’ 2011 X AD (S.C.) 189, Hon’ble Supreme Court reiterated the principles laid down in the aforesaid judgment of **Maksud Saiyed**.

47. Learned APP for the State Mr. Navin Sharma and learned counsel for the impleaders Mr. Mohit Mathur have also stressed upon the fact that petitioner is liable to face trial as he has stood witness to the Collaboration Agreement dated 05.02.2011, which was detrimental to the interest of the investors. The date of execution of agreement is beyond the alleged period of conspiracy and it is settled law that any act performed subsequent to completion of an act conspired for can’t be used by the prosecution as a circumstance to sustain charge of conspiracy. Even otherwise, respondents have failed to show even a single clause which is detrimental to the interest of investors. In fact, scrutiny of the agreement makes it apparent that the said agreement was not only in the interest of the investors but was also beneficial for the accused company. Had the stipulations of the said agreement been genuinely executed and complied with, the project would have been developed without any expenditure from the accused company and the company would have additionally built up/ developed an area of

1,75,000 square feet in addition to sum of approximately 57 Crores (Rupees Fifty seven crores) and all the investors desiring refund would have received their money back. As such, reliance on the circumstance of the petitioner witnessing agreement dated 05.02.2011 to implicate the petitioner as an accused is ill founded.

48. Prosecution has also made effort while referring to the statement of one Mr. Harjit Singh, Director of M/s. Best Realtech Pvt. Ltd., that petitioner was sitting at 8, Shaheed Bhagat Singh Marg, New Delhi, when Collaboration Agreement was signed, which preceded few meetings wherein petitioner participated. Sight of the fact can also not be lost that the version of Mr. Harjit Singh has come as a counter blast to the complaint of the petitioner, who has exposed fraudulent acts of Mr. Harjit Singh in concealing 'Agreement' while stepping in as a 'Strategic Buyer' for the same project under a different name and style with an intention to mislead the court of Ld. ACMM, Patiala House, to portray financial impotency of accused Ms. Madhu Singh so as to enable her in procuring bail. Furthermore, presence of the accused at 8, Shaheed Bhagat Singh Marg, New Delhi in 2011 can't be a circumstance for implicating the petitioner as he had purchased the same vide Sale Deed dated 15.12.2009 and there can't be anything unusual / illegal about the presence of the owner in his own property. Had the 'Sale Deed' been a paper transaction, the 'Agreement' would not have carried address of the accused company as 2nd Floor, 8, Shaheed Bhagat Singh Marg, New Delhi. Even perusal of statements of the informants under section 161 Cr.P.C. does not make out any specific

act attributable to the petitioner, which could justify implication of the petitioner as an accused.

49. Learned APP for the State, Mr. Navin Sharma has pleaded that the petitioner is facing charge of conspiracy and since the conspiracy is hatched in secrecy there can't be direct evidence of meeting of minds. The circumstantial evidence procured by the investigating agency is sufficient enough, at least at this stage of the proceeding when the trial court was exercising power under section 204 of Cr. P.C. There is no dispute that the conspiracies are hatched in secrecy and prosecution can rely upon the circumstances to establish existence of conspiracy. However, there is no presumption in favour of existence of conspiracy. The prosecution cannot be absolved of the responsibility of bringing sufficient circumstances pointing towards existence of an agreement amongst the conspirator to do an 'illegal act' or 'a legal act through illegal means'. Apart from commission of 'Acts,' prosecution is also casted with a responsibility to bring evidence on record suggesting that the same has been committed in pursuance of 'an agreement' made between the accused persons who were parties to the alleged conspiracy. It is a well settled proposition of law that an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inferences which are not supported by cogent and acceptable evidence. Reliance can be made to the matter of **'Central Bureau of Investigation, Hyderabad v. K. Narayana Rao'** (2012) 9 SCC 512, where while dealing with the subject matter Hon'ble Apex Court has observed:-

“The ingredients of the offence of criminal conspiracy are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing, by illegal means, an act which by itself may not be illegal. In other words, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and in a matter of common experience that direct evidence to prove conspiracy is rarely available. Accordingly, the circumstances proved before and after the occurrence have to be considered to decide about the complicity of the accused. Even if some acts are proved to have been committed, it must be clear that they were so committed in pursuance of an agreement made between the accused persons who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. In other words, **an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inferences which are not supported by cogent and acceptable evidence.**” (emphasis supplied)

50. Reference may also be made to the celebrated judgments of the Hon’ble Apex Court in the matter of **‘P.K. Narayanan v. State of Kerala’** (1995)1 SCC 142 & **‘Sherimon v. State of Kerala’** AIR 2012 SC 493 where same view point has been expressed. With regard to quality of evidence requisite for establishing charge of conspiracy, it has been observed by the Hon’ble Apex Court in **‘State of Kerala Vs. P. Sugathan & Anr’** (2000) 8 SCC 203:-

“12. A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for

connecting the accused with the commission of the crime of criminal conspiracy. It has to be shown that all means adopted and illegal acts done were in furtherance of the object of conspiracy hatched. The circumstances relied for the purposes of drawing an inference should be prior in time than the actual commission of the offence in furtherance of the alleged conspiracy.”

51. Applying the aforesaid legal principles, it is observed that there is no evidence collected by the prosecution even to *prima facie* infer that the petitioner was part of any agreement with other accused persons either to do any illegal act or legal act through illegal means, to sustain his summoning as co-accused. Surprisingly, with such intricate factual matrix, the learned trial Court has passed a single line summoning order, which even does not convince this Court that the learned trial Court has applied its mind to the facts to convince itself about existence of *prima facie* evidence about complicity of the petitioner. It is apparent that while summoning the petitioner as an accused, trial Court has completely ignored the parameters set out by the Hon’ble Apex Court for summoning of an accused as enunciated in the judgment of ‘**Pepsi Foods Ltd. and Anr. v. Special Judicial Magistrate and Ors.**’ (1998) 5 SCC 749, wherein the law regarding summoning of an accused was considered and it was held:

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case

and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is *prima facie* committed by all or any of the accused.”

52. The aforementioned principles were followed by the Supreme Court in ‘**GHCL Employees Stock Option Trust v. India Infoline Ltd**’ (2013) 4 *Supreme Court Cases* 505. Relevant observations of the Hon’ble Apex Court in the matter of **GHCL Employees Stock Option Trust (Supra)** are extracted herein below:-

“14. Be that as it may, as held by this Court, summoning of accused in a criminal case is a serious matter. Hence, criminal law cannot be set into motion as a matter of course. **The order of Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. The Magistrate has to record his satisfaction with regard to the existence of a prima facie case on the basis of specific allegations made in the complaint supported by satisfactory evidence and other material on record.**

19.

‘38.

39. Apart from the fact that the complaint lacks necessary ingredients of Sections 405, 406, 420 read with Section 34 Indian Penal Code, it is to be noted that the concept of 'vicarious liability' is unknown to criminal law. As observed earlier, there is no specific allegation made against any person but the members of the Board and senior executives are joined as the persons looking after the management and business of the Appellant-Company.' ” (emphasis supplied)

53. The Apex Court, in **‘Umesh Kumar v. State of Andhra Pradesh and Another’** (2014) 1 SCC (Cri) 338 was of the view that the High Court in exercise of its powers under Section 482 Cr.P.C, cannot appreciate evidence it can only evaluate material documents on record to the extent of its *prima facie* satisfaction about the existence of sufficient ground for proceedings against the accused. Materials which still have to be accepted as evidence are a matter for trial. No document that has been filed with the petition as evidence can be examined, if the same has not been tested and proved. There lies no prohibition in the law in a petition under Section 482 Cr.P.C to quash a charge-sheet before framing of charge, before filing or during pendency of discharge application on the ground that accused can argue legal and factual issues at the time of framing of charge. However, Court while exercising its inherent powers should be cautious of the fact that while doing so, it doesn't suppress legitimate prosecution. This power should be exercised to save an accused from undergoing agony of a criminal trial. The apex court was of a similar view in **‘Zandu Pharmaceutical Works Ltd. & Ors. v. Mohd. Sharaful Haque & Anr.’** (2005) 1 SCC 122.

54. In view of the above, the inference that can be drawn is that the summoning order in this case does not meet out aforesaid requirements and when this Court independently examined material on record, neither were there any allegations to make the petitioner amenable for his prosecution nor were there any material to *prima facie* substantiate culpability of the petitioner.

55. In the light of aforesaid discussion, it is apparent that there is no evidence which goes to show that petitioner was responsible in inducing any of the investors to invest in the projects of Company, which is prerequisite for invoking Section 420 of IPC. In fact, the case of the prosecution is that all investments have poured in / collected by the accused company between years 2005 to 2008, pursuant to the inducements/misrepresentations made by the Directors of the accused company. It has come on record that the petitioner was never Incharge/ Director / Functionary of the Company, on the contrary, like other investors petitioner has also invested in the projects of the company. Surprisingly, it has also been admitted that all the records pertaining to the petitioner having invested crores of rupees have been verified and that the petitioner has not received even a penny in any manner, there is no question of petitioner being made accountable for cheating.

56. With regard to criminal breach of trust, it is surprising that when it has come on record that petitioner had no role to play in the management of the company and was not entrusted with dominion over any asset of the property, the petitioner cannot be subjected to face prosecution merely for the fact that he has purchased 50% equity

of the accused company by 12.09.2010. As far as allegations in respect of offence defined under Section 201 IPC are concerned, no overt act is attributable to the petitioner for fastening this liability. As such, prosecution has miserably failed in bringing appropriate evidence to substantiate its conclusion regarding culpability of the petitioner.

57. A bleak effort has also been put in by the respondents to assert that inherent powers of this court should be exercised sparingly and the petitioner has remedy of raising all these pleas at the stage of consideration on framing of charge. This proposition of law is undisputed. However, this Court can't refuse to invoke its inherent powers if the material on record is not sufficient enough to put the criminal law into motion. Reliance to the principles carved out by the Hon'ble Apex Court in the matter of '**Satish Mehra v. State of N.C.T. of Delhi and Anr.**' (2012) 13 Supreme Court Cases 614 can be safely placed for invoking inherent powers of this Court for quashing proceedings qua the petitioner. Relevant para of the judgment is reproduced herein below:-

“19. The view expressed by this Court in *Century Spg. case* and in *L. Muniswamy's case* to the effect that the framing of a charge against an accused substantially affects the person's liberty would require a reiteration at this stage. **The apparent and close proximity between the framing of a charge in a criminal proceeding and the paramount rights of a person arrayed as an accused under Article 21 of the Constitution can be ignored only with peril. Any examination of the validity of a criminal charge framed against an accused cannot overlook the fundamental requirement laid down in the decisions rendered in *Century Spg.***

and Muniswamy. It is from the aforesaid perspective that we must proceed in the matter bearing in mind the cardinal principles of law that have developed over the years as fundamental to any examination of the issue as to whether the charges framed are justified or not.

.....

20. In such a situation to hold either of the appellant-accused to be, even prima facie, liable for any of the alleged wrongful acts would be a matter of conjecture as no such conclusion can be reasonably and justifiably drawn from the materials available on record.

21. A criminal trial cannot be allowed to assume the character of fishing and roving enquiry. It would not be permissible in law to permit a prosecution to linger, limp and continue on the basis of a mere hope and expectation that in the trial some material may be found to implicate the accused. Such a course of action is not contemplated in the system of criminal jurisprudence that has been evolved by the courts over the years. A criminal trial, on the contrary, is contemplated only on definite allegations, prima facie, establishing the commission of an offence by the accused which fact has to be proved by leading unimpeachable and acceptable evidence in the course of the trial against the accused.” (emphasis supplied)

58. During the course of hearing, lot of details have surfaced showing deliberate attempt on the part of investigating officer to implicate the present petitioner. Under normal circumstances this court would have expressed its displeasure on the conduct with a warning to the erring official/s but when the abuse is of a wider magnitude, I deem it appropriate to take serious note of the same. When the power is given to the investigating agency, it carries inbuilt responsibility on the officials of the Police force to use the power

diligently for detection of crime and not for victimisation of a person for extraneous considerations. It is apparent from record that since the deployment of Inspector Ajay Kumar as an investigating officer, the petitioner has been deliberately targeted. Despite knowing about the frivolity in the claim of Mr. Harjit Singh regarding his being strategic buyer, investigating officer kept on shielding him and eventually facilitated accused Ms. Madhu Singh and others to misappropriate proceeds due to the accused company in terms of the Agreement dated 05.02.2011. Had the intent of the investigating officer been fair, he would have acted on the complaints of the petitioner as well and would have placed all relevant material on the record for perusal of the learned Magistrate for imparting fair opportunity to the court to examine the entire matter independently. Whereas, in the present matter there exist sufficient evidence, records and documents pointing towards innocence of the petitioner, which have been deliberately concealed to implicate and procure summoning of the petitioner. As per status report dated 10.11.2014 filed by the state, in identical matter i.e. case FIR No. 56/09 registered at P.S. E.O.W, when the charge sheet was sent for examination by the prosecution branch, the concerned prosecutor had observed that there is no criminal evidence for trial against the petitioner. Learned counsel for the petitioner pointed out that the prosecutor had also opined that even if the charge sheet is filed, the petitioner would be easily discharged. Despite such observations from the prosecution branch, charge sheets have been filed arraying the petitioner as an accused.

59. Mr. Navin Sharma, learned APP for the State urged that the opinion of the prosecution branch is not binding upon the investigating agency and these are only administrative observations and thus cannot be used to quash the proceedings. It is true that the opinion of the prosecutor is not binding on the investigating agency. However, I am unable to preclude myself from commenting upon the conduct of the investigating officer. It is surprising to see the haste shown by the Investigating Officer in by-passing objections of prosecution branch and targeting the petitioner. Despite retaining investigation for substantial period, misappropriated funds have not been trailed and in fact, accused Ms. Madhu Singh has been facilitated to siphon off further funds due under the agreement dated 05.02.2011. Not only this, Investigating Officer has even tried to justify his deliberate act of non recovery of money with what appears to be a self created reason that the accused persons have spent the balance money of Rs. 238 crores (Rupees Two hundred thirty eight crores) in lavish living. Admittedly after the order of the Hon'ble Chandigarh High Court dated 13.02.2013, the I.O. has made no efforts to implement the pending attachment of compensation amount of the acquired land of the company at Sonapat, nor has he tried to implement the pending attachment of surplus amount left with Allahabad Bank, Parliament Street after settlement of Loan A/c's. On the contrary he has himself gone to the extent of creating an excuse for the accused persons that the money of the accused was spent on lavish living of the Directors of the accused company. In the charge sheets there is also no justification whatsoever as to why any of the functionaries of the accused company

was not booked, since Ms. Madhu Singh alone could not have single handedly induced hundreds of investors without help from her associates and specially when there is specific role attributed to the functionaries in the FIRs.

60. I am at pain to see the misconduct of the Investigating Officer. It appears that instead of putting genuine efforts for taking action against the real culprits and trailing the cheated funds for making the same available with the trial Court to enable it to pass appropriate orders for compensating the *bona fide* purchasers who had invested their life savings to accomplish their dream home, investigating officer has completely defied his obligations. Unbridled powers provided to the police also carry inbuilt bounden responsibility of using the same for detection of crime and this Court cannot permit misuse/abuse of the power by any officer of the police force for benefiting accused persons or to the detriment of the poor investors/complainants. Despite specific queries, learned APP for State could not offer any justification for the conduct of the investigating officer, which compels me to direct the Commissioner of Police to probe the role of the I.O. and the erring officials / persons responsible and involved with him. It is anticipated that the Commissioner of Police would expeditiously conclude the inquiry addressing concern of this court uninfluenced by the observations of this court.

61. In view of the aforesaid discussion, I feel it is a fit case to observe that there is no evidence available on record to justify summoning of the petitioner as an accused in the present case.

62. In light of the aforesaid discussion, all the petitions are allowed. The summoning order dated 03.06.2014 passed by the learned ACMM-II, Patiala House Courts, New Delhi is set aside and all the charge sheets are hereby quashed qua the petitioner only. It is made clear that any observation made in this order shall not have any bearing on the prosecution case qua the co-accused persons.

63. Trial court record be sent back forthwith.

Crl. M.A. No. 9874/2014 in Crl. M.C. 2877/2014
Crl. M.A. No.10105/2014 in Crl. M.C. 2932/2014
Crl. M.A. No.10126/2014 in Crl. M.C. 2938/2014
Crl. M.A. No.10311/2014 in Crl. M.C. 2977/2014
Crl. M.A. No.10314/2014 in Crl. M.C. 2979/2014
Crl. M.A. No.10405/2014 in Crl. M.C. 2995/2014
Crl. M.A. No.10425/2014 in Crl. M.C. 3002/2014
Crl. M.A. No.10457/2014 in Crl. M.C. 3006/2014
Crl. M.A. No.10471/2014 in Crl. M.C. 3015/2014
Crl. M.A. No.10494/2014 in Crl. M.C. 3023/2014
Crl. M.A. No.10499/2014 in Crl. M.C. 3025/2014
Crl. M.A. No.10507/2014 in Crl. M.C. 3031/2014
Crl. M.A. No.10529/2014 in Crl. M.C. 3037/2014

The above applications are dismissed as infructuous.

(VED PRAKASH VAISH)
JUDGE

FEBRUARY 3rd, 2015
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