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

Reserved on: 24th April, 2024

Pronounced on: 16th July, 2024

\+ CRL.M.C. 700/2014 & CRL.M.A. 2362/2014 (Stay)

S.K. AGGARWAL ..... Petitioner

Through: Mr. K.K. Sharma, Senior Advocate with Mr. Ram P. Rai and Mr. Shrey Shrivasatav, Advocates.

versus

STATE NATIONAL CAPITAL TERRITORY OF DELHI& ANR. ..... Respondents

Through: Mr. Sunil Kumar Gautam, APP for the State.
SI Yogendra Kr., PS EOW.
Mr. Sandeep Sharma and Mr. Fahad Khan, Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C') seeks the following prayer ;

"In the light of the above facts and circumstances, it is, therefore, most respectfully prayed that the Hon'ble Court may graciously be pleased to quash/set aside the proceedings arising out of Supplementary Final Report filed U/S 173 (8) of the Code of Criminal Procedure dated 26.11.2013, in the F.I.R. NO.5/2012, impleading the petitioner as accused No.9, U/S 109 r/w 420 of the Indian Penal Code, pending in the Court of Learned Shri V.K.Gulia, Chief Metropolitan Magistrate (South), Saket Court, New Delhi, only against the petitioner.

It is further prayed that the Hon'ble Court may graciously be pleased to quash the summoning Order dated 03.01.2014, passed by Court of Learned Shri V.K.Gulia, Chief Metropolitan Magistrate (South), Saket Court, New Delhi titled as State Vs. Narendra Kumar Rajgarhia & Ors, only against the petitioner.

Any other order / relief which this Hon'ble Court may deem fit and proper may also be passed in favour of the petitioner."

2. The present petition has been preferred challenging the order of summoning dated 03.01.2014, passed by the learned Chief Metropolitan Magistrate, whereby, based on the supplementary chargesheet dated 26.11.2013, filed on behalf of respondent no. 1, the present petitioner has been summoned to face trial.

3. The case of the prosecution as per status report dated 22.08.2014, authored by Sh. M.S. Shekhawat, Asstt. Commissioner of Police Sec-VI, Economic Offences Wing, New Delhi is as under:

"1. That the present case was registered on the complaint of Sh. Gaurav Sharma, Regional Business Leader (NCR), YES Bank, D-12, NDSE-II, New Delhi, dated 22.10.2011. In this case it has been alleged that accused N. K. Rajgarhia, Proprietor, M/S Texcomash Exports, D-52, Defence Colony, New Delhi, having submitted forged and fabricated property documents (Sale Deed in r/o 1. Second Floor of property bearing no. D-52, Defence Colony, New Delhi, and 2. A plot admeasuring 1825 sqmtrs in village Junpat, Tehsil Dadri, Distt. G.B. Nagar, U.P. bearing Khata no. 199, Khasra no. 62, as collateral security, fraudulently procured Financial facilities (term loan of Rs. 4 crore & CC facility to the tune of Rs. 3.5 crore in Sept 2007, which was further enhanced to Rs. 6 crore in year 2008). The total outstanding as on date is to the tune of more than Rs.13 Crores (approx.). The accused Narendra Kumar Rajgarhia claimed himself to be the individual owner of the property bearing no. D-52, Second Floor, Defence Colony, New Delhi.

2. That the fraud committed by Narender Kumar Rajgarhia, through forged property documents, came to the fore when he stopped repaying the dues to complainant bank and they had to invoke and initiate measures under SARFAESI Act 2002, for the payment of Rs. 9,91,94,751.64/- along with interest as applicable thereon as on that date. Vide order dated 14.05.2011, the Ld. ACMM (Spl. Act),Tis Hazari Courts handed over the possession of the above-mentioned property to the complainant bank."

3. That pursuant to the above-mentioned action under SARFAESI the bank took over the physical possession of the property D-52, second floor. Defence Colony, New Delhi-49 on 27.06.2011. The said action of bank was challenged by way of SA no. 58 of 2011 by accused N K Rajgarhia in the Ld DRT-I, New Delhi, wherein, he inter alia admitted his liability towards the complainant Bank and offered to give a sum of Rs. 2 Crores to the Bank subject to stay of the auction of the aforesaid property.

4. That instead of depositing the offered amount of Rs 2 Crores, accused NK Rajgarhia, in furtherance of his very shrewd ploy/trick, got a SA No. 73/2011, filed through his daughter Ms. Milli Raj, before the Ld DRT-I, claiming that the property in question belonged to N.K.Rajgarhia HUF, as such, neither had Mr. N.K.Rajgarhia any right to mortgage the property nor could bank have taken a mortgage of that HUF property. Ms. Milliraj also enclosed a photocopy of the Sale Deed of the property executed in favor of N K Rajgarhia HUF, dated 1.6.2001. This came as a surprise for Yes Bank Ltd. and in view of said disclosure, Ld. DRT-I, vide its order, dated 19.09.2011, directed the Bank to file reply after retrieval of certified copy of the Sale Deed from the record of concerned Sub Registrar of Assurances. Yes Bank Ltd. carried out search in the Office of the Sub Registrar of Assurances, New Delhi, as per the order of DRT and found out that the Sale Deed of the property in question was in the name of Narendra Kumar Rajgarhia HUF.

5. That in view of the facts revealed, the Yes Bank Ltd. filed a criminal complaint with EQW on 25.10.2011, on which the present case was registered on 28/01/2012, after carrying out a detailed enquiry.

6. That during the course of investigation, the record of Sub Registrar, New Delhi confirmed that the Title Deed of the property no. D-52, Second Floor, Defence Colony, New Delhi, exists in the name of Narendra Kumar Rajgarhia HUF, not in the name of accused applicant Narendra Kumar Rajgarhia individual. The Title Deed deposited by the accused N K Rajgarhia with the Complainant Bank was forged and fabricated.

7. That in view of evidence came on file the accused N K Rajgarhia was arrested in the present case and charge-sheeted on 13.02.2013. Investigation against other accomplices of accused N K Rajgarhia was pending, hence the name of the petitioner, being one of the suspects of this case, was also mentioned at serial no. 11 in column no. 12 of the aforementioned first Charge Sheet.

8. That during the course of further investigation it was revealed that before sanctioning/disbursing any loan/financial facility, the complainant bank, as per guidelines issued by RBI, time to time, carry out due diligence in respect of the collateral securities and the financial documents being submitted by prospective borrower in support of its credit worthiness. As the banks officials do not possess expertise of required level, they have to rely heavily on its outsourced vendors who are specialist in their respective field.

9. That investigation also revealed that the complainant bank had entrusted due diligence work to Advocate Sh S K Aggarwal, Prop. M/s. S. K. Aggarwal & Co., A-11, Niti Bagh, New Delhi, the Petitioner, to carry out very crucial legal verification in respect of genuineness of the Titles of the following properties in question:-

i) Property bearing number D-52, 2nd floor. Defence Colony, New Delhi, being claimed by the accused borrower Mr N K Rajgarhia in his individual name, and

(ii) A piece of land bearing Khata no. 199, Khasra no. 62, in village Junpat, Dadri, Distt. Gautam Budh Nagar, U.P. being claimed of total 1825 sqmtrs in area.

10. That based on the search at concerned Sub Registrar's, vide his Verification Report, dated 23.10.2007, in respect of property bearing number D-52, 2"" floor. Defence Colony, New Delhi (entire Second/Barsati Floor) the petitioner had, inter-alia, confirmed that:-

> "I have arranged for visit to the Registrar's office, and search of the records and ensured the correctness of the entries in the register. After carefully inspecting the said documents we confirm that all the documents are in order and bank's interest is protected through the same and Mr NARENDER KUMAR RAJGARHIA has a clear and marketable title over the subject property ".

11. That regarding second property i.e. piece of land bearing Khata no. 199, Khasra no. 62, viilage Junpat, Dadri, Distt. Gautam Budh Nagar, U.P, vide Verification Report, dated 15.04.2008, the petitioner had, inter-alia, confirmed that:-

> "I have arranged for visit to the Registrar's office, and search of records and ensured the correctness of the entries in the register and on the basis of documents as listed under the heading "Documents Perused by Us" are of the view that there Is no omission of any encumbrance in the EC."

12. That during investigation the property bearing No. D-52, Second Floor, Defence Colony, New Delhi, mortgaged by the accused Narendra Kumar Rajgarhia, as per the record of Sub Registrar, South, Mehrauli, Delhi, was found registered in the name of HUF of Narendra Kumar Rajgarhia, vide Sale Deed dated 1st June 2001 and not in the name of accused Mr Narendra Kumar Rajgarhia individual.

13. That during investigation the total area of second property mortgaged as collateral security by the accused borrower, i.e. the piece of land bearing Khata no. 199, Khasra no. 62, in village Junpat, Dadri, Distt. Gautam Budh Nagar, U.P., was found only 449.82 sqrmtrs NOT 1825 sqmtrs as was claimed by accused N K Rajgarhia and confirmed by the Petitioner.

14. That the submission of the Petitioner that Agreement to Sell in respect of said property was scrutinized which was in favour of Mr N K Rajgarhia and on the basis of that documents the Reports were prepared, is incorrect. As per the copy provided by the accused borrower to the complainant bank, which was passed on to the Petitioner for due diligence, was in favour of N K Rajgarhia HUF not in the individual name of accused N K Rajgarhia.

15. That the submission of the Petitioner that they had searched only Peshi Registers, is also incorrect as the Petitioner intentionally did not not highlight the inconsistency in the Peshi Register itself. The document number 4685, the Sale Deed for D-52, Second Floor, Defence Colony, New Delhi and other details as mentioned in Peshi Register do not match with the copy of said Sale Deed too. Even in the relevant Index Register maintained with the office of Sub Registrar Dadri, GB Nagar, UP, the area of above mentioned piece of land in village Junpat, Dadri, Distt. Gautam Budh Nagar, is mentioned/recorded as 449.82 sqmtrs only not 1825 sqmtrs, as was confirmed by the Petitioner in his Report.

16.That the Petitioner further failed to justify as to why he had mentioned the word *RECORDS* his both reports and why he had not incorporated the facts that they had inspected only Peshi / Index Registers only.

17. That the submission of the Petitioner that he had not inspected the relevant record personally and did prepare the reports also appears to be an afterthought to meet the accusation/established allegations against him. The Petitioner is now trying to shift the onus on some fictitious persons, whereas it is an admitted case that he was empanelled with the complainant bank in his personal capacity.

18. That the Petitioner had overlooked multiple instances, which can't happen until and unless he had complicity with the main accused persons.

19. In view of the evidence and facts, as mentioned above, the complicity of the Petitioner Sh S K Aggarwal was found quite apparent, hence, he was charge-sheeted in the present case for abetting the offence of cheating."

4. The learned Senior Counsel appearing on behalf of the petitioner submits that the latter is a practicing advocate and he was neither named in the present FIR nor there was any allegation against him in the first chargesheet. It was argued that there was no specific reference to the role of the petitioner alongwith main conspirators either in the supplementary chargesheet or in the statement of witnesses recorded by the Investigating Officer. It is further submitted that the FIR, chargesheet and the supplementary chargesheet do not make any averments with regard to the present petitioner's meeting of mind with the other co-accused persons.

5. Learned Senior Counsel for the petitioner further submits that *vide* order dated 19.05.2015, a learned Single Bench of this Court in CRL.M.C. 687/2014, CRL.M.C. 4711/2014 and CRL.M.C. 1357/2015 have quashed the proceedings against the co-accused persons who were stated to be the main beneficiaries in the said FIR/chargesheet.

6. Learned Senior Counsel for the petitioner has placed reliance on the following judgments:

i. **Central Bureau of Investigation, Hyderabad v. K.Narayana Rao, (2012) 9 SCC 512**

ii. **Nita Deep Rastogi v. CBI in Criminal Revision Petition 77 of 2008 dated, 21.01.2009, passed by a learned Single Judge of this Court.**

iii. **A Kumar Sharma v. CBI in Criminal Miscellaneous Case 2704 of 2013, dated 09.02.2015, passed by a learned Single Judge of this Court.**

7. *Per contra*, learned APP for the State, assisted by learned counsel for respondent no. 2/complainant/bank, submits that the petitioner in connivance with the other co-accused persons induced the complainant/bank into extending financial/credit facilities, by giving a false verification report of the securities of the two properties against which the loan was granted. It is further submitted that the petitioner in his report dated 23.10.2007, had specifically stated that he himself visited the Registrar's office and, thereby, affirmed the correctness of the entries in the register showing that the Agreement to Sell of Property bearing no. D-52, 2nd Floor, Defence Colony, New Delhi was in favour of Mr. N.K. Rajgarhia. However, the original Agreement to Sell was later found to be in favour of N.K. Rajgarhia HUF. Similarly, it is submitted that the security land bearing Khata no. 199, Khasra no. 62, Village Junpath, Parghana and Tehshil, Dadri, Distt. Gautam Budh Nagar, Uttar Pradesh, which was stated to be 1825 sqr mtrs by the petitioner was later found to be only admeasuring 449.82 sqr mtrs.

8. It is submitted that the supplementary chargesheet records as under:

> "He also submitted that they have scrutinized the agreement to sell in respect of said property was in favour of Mr. N.K. Rajgarhia whereas the original agreement to sell was in favour of N.K. Rajgarhia HUF which actually obtained by Yes Bank from the borrower. But he failed to justify as to why he had mentioned the RECORDS in his both reports and why he had not incorporated the facts that they had only Peshi/Index registers only."

9. Reliance was placed on the judgment of this Court in **PS Shetty vs. Central Bureau of Investigation in W.P. (Crl) No. 1380 of 2013, dated 29.09.2015** passed by a learned Single Judge of this Court. It was also submitted that if an alternative efficacious remedy is available with the petitioner before the learned Metropolitan Magistrate, then the inherent jurisdiction under Section 482 of the Cr.P.C. may not be invoked. Reliance was placed on **Bhushan Kumar & Anr. v. State (NCT of Delhi) & Anr., AIR 2012 SC 1747.**

10. Heard learned counsel for the parties and perused the records.

11. The allegation with respect to the present petitioner in the supplementary chargesheet is as under:

> "64) Investigation revealed that complainant Bank had engaged three such vendors to carry out verification in respect of Title Deeds of two properties mortgaged as collateral security, to carry out valuation of these two properties and to carry out verification of financials of the firms M/s Texcomash Exports. During the course of investigation, it was found that M/s. S.K. Aggarwal & Co. A-11, Niti Bagh, New Delhi, the legal vendor of the complainant bank, carried out legal verification in respect of both the properties in question i.e. (i) D-52, 2nd floor, Defence Colony, New Delhi and (ii) Land bearing Khata no. 199, Khasra no. 62, admeasuring 1825 sqmtrs, village Junpat, Pragana & Tehsil, Dadri, Distt. Gautam Budh Nagar, U.P.
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> 65) Investigation revealed that:-
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> (i) Vide his Verification Report dated 23.10.2007, in respect of D-52, 2nd floor, Defene Colony, New Delhi he has submitted his report, the crux of the same is reproduced below:-
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> *"I have arranged for visit to the Registrar's office and search of the records and ensured the correctness of the entries in the register.*
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> (ii) And vide his Verification Report dated 15.04.2008, in respect of Land bearing Khata no. 199, Khasra no. 62, admeasuring 1825 sqrmtrs, village Junpat, Pragana & Tehsil, Dadri, Distt. Gautam Budh Nagar, U.P he has submitted his report, the crux of the same is reproduced below:-
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> *I have arranged for visit to the Registrar's office, and search of records and ensured the correctness of the entries in the register and on the basis of*

documents as listed under the heading "Documents Perused by Us" are of the view that there is no omission of any encumbrance in the EC.

66) Investigation revealed that both the above-mentioned reports of Sh. S.K. Aggarwal, Advocate were false. Neither the property in question i.e. D-52, 2nd Floor, Defence Colony, New Delhi was in the name of accused Narendra Kumar Rajgarhia nor the area of Land bearing Khata no. 199, Khasra no. 62, admeasuring 1825 sqmtrs, village Junpat, Pragana & Tehsil, Dadri, Distt. Gautam Budh Nagar, U.P. was the same. As per the record received from concerned Sub. Registrars the 1st property was in the name of Narendra Kumar Rajgarhia HUF and the area of land in village Junpat was only 449.82 Sqrmtrs.

67) Further he also failed to clarify that the Agreement to Sell in respect of 1st property situated at D-52, Defence Colony, New Delhi was in favour of N K Rajgarhia HUF not in favour of accused Narendra Kumar Rajgarhia.

68) During the course of Investigation Adv. Sh S K Aggarwal, the Propreitor, M/s S K Aggarwal & Associates, averred that actually he himself never visited the different offices of Sub Registrars to inspect the relevant record. His assistant boy actually went for the said job. He further added that they inspect only Index/Peshi Register maintained in the concered SR offices and on the basis of document Opinion is prepared by his legal assistant. He also submitted that they have scrutinized the Agreement to Sell in respect of said property was in favour of Mr N K Rajgarhia whereas the original Agreement to Sell was in favour of N K Rajgarhia HUF which was actually obtained by Yes Bank from the borrower. **But he failed to justify as to why he had mentioned the word *RECORDS* in his both reports and why he did not incorporated the facts that they had inspected only Peshi/Index Registers only**.

69) Further the relevant Index Registers maintained with the office of Sub Registrar Dadri, GB Nagar, UP, revealed the area of Land bearing Khata no. 199, Khasra no. 62, village Junpat, Pragna & Tehsil, Dadri, Distt. Gautam Budh Nagar, Registered vide Book No. 1, Part 919, Page no. 133-156 Serial No. 14120 transferred in the name of accused Kaushal Kumar admeasures 449.82 sqmtrs only, not 1825 sqmtrs, as confirmed by Mr S K Aggarwal."

(emphasis supplied)

A perusal of the aforesaid reflects, that there is no allegation against the present petitioner with regard to any monetary benefit being accrued to him in any manner by way of alleged commission of the offence attributed to him. As per the Investigating Officer, the petitioner has been prosecuted for the reason that since he had not inspected the records, but only *peshi/*index registers, then why did he mention the word 'Records' in both his reports, and did not clearly state that he had inspected *peshi*/index registers only. There is no material on record to demonstrate that the aforesaid alleged omission was in furtherance of a conspiracy or connivance with other accused persons or with intention to deliberately aid and abet the alleged offence. The Hon'ble Supreme Court of India, in **Central Bureau of Investigation, Hyderabad v. K. Narayan Rao (2012) 9 SCC 512**, while dealing with similar situation with regard to the role of a panel advocate observed as under:

> "**24.** 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 inference which are not supported by cogent and acceptable evidence.
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> **31.** However, it is beyond doubt that a lawyer owes an "unremitting loyalty" to the interests of the client and it is the lawyer's responsibility to act in a manner that would best advance the interest of the client. Merely because his opinion may not be acceptable, he cannot be mulcted with the criminal prosecution, particularly, in the absence of tangible evidence that he associated with other conspirators. At the most, he may be liable for gross negligence or professional misconduct if it is established by acceptable evidence and cannot be charged for the offence under Sections 420 and 109 IPC along with other conspirators without proper and acceptable link between them. It is further made clear that if there is a link or evidence to connect him with the other conspirators for causing loss to the institution, undoubtedly, the prosecuting authorities are entitled to proceed under criminal prosecution. Such tangible materials are lacking in the case of the respondent herein."

The present case is squarely covered by the aforesaid judgment, inasmuch as in the present case also, as already discussed, nothing has come on record linking the present petitioner with any conspiracy and apart from the aforesaid legal opinion, no overt act has been attributed to the present petitioner indicating his involvement in any manner with respect to the alleged conspiracy.

12. It is the case of the petitioner that the aforesaid exercise was undertaken by his associate, who was working at his office. The said fact even as per the supplementary chargesheet was duly informed to the Investigating Officer, however, as per records, no investigation has been done with respect to the same. The alleged legal opinions placed on record are on the petitioner's letter head but the same cannot make the present petitioner liable without the essential ingredients of *mens rea.* It is pertinent to note that the said legal opinions dated 23.10.2007 and 26.07.2008 have been forwarded by one Praveen Lok for 'SK Aggarwal & Company' and are unsigned documents.

13. As pointed out hereinabove, there is no evidence on record with respect to meeting of mind between the present petitioner and the main accused, namely, Narender Kumar Rajgarhia. Nothing has been placed on record by the prosecution to demonstrate that the petitioner was in touch with the said Narender Kumar Rajgarhia at any point of time or anyone on his behalf. The liability sought to be fastened up on the present petitioner is on the basis of circumstances and drawing conclusion therefrom.

14. So far as the submission of learned counsel appearing on behalf of respondent No.2/complainant with respect to the argument that inherent jurisdiction under Section 482 of the Cr.P.C. may not be invoked in view of the alternative efficacious remedy available to the petitioner before the learned Metropolitan Magistrate at the stage of consideration of charge is concerned it is apposite to refer to a judgment of High Court of Bombay at Goa in **Nicholas John Fernandes and Another vs. State as Represented by Officer in Charge and Another, 2021 SCC Online Bom 2980.** The Learned Division Bench quashed a chargesheet with respect to petitioners therein under the NDPS Act. In the aforesaid judgement it was observed and held as under

"7. The power of the High Court to quash a first information report/charge-sheet to prevent abuse of the process of the Court, in exercise of its inherent powers preserved by Section 482 of the Cr. P.C., is well-recognised. The three circumstances on the existence of which exercise of inherent powers is envisaged are when (i) an order under the Cr. P.C. has to be given effect; (ii) abuse of the court is required to be prevented; or (iii) otherwise, the interest of justice has to be secured. While exercising its inherent power, the Court has to remember that such power must be sparingly exercised and in exceptional cases, since it is not akin to exercise of appellate or revisional powers. Exercise of the power must be for advancement of justice and prevention of injustice, upon recording of a satisfaction that the injustice might result from an abuse of the process of the Court. In a case of the present nature, the Court's endeavour ought to be to find out whether continuance of the proceedings against the petitioner would amount to an abuse of the process and quashing thereof would sub-serve ends of justice.

8. Law in this regard is well-settled that the complaint in its entirety has to be examined, on the basis of the allegation levelled, and it has to be considered whether any offence is made out even if the allegations are accepted on face value.

9. Although it is not possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent powers preserved by Section 482 of the Cr. P.C., categorization of cases where such power can and should be exercised to quash proceedings are found in the decisions of the Supreme Court in R.P. Kapur v. State of Punjab, (AIR 1960 SC 866) and State of Haryana v. Bhajan Lal, (1992 Supp (1) SCC 335 : AIR 1992 SC 604). Such decisions, at the same time, caution that the Court's interference cannot be based on arbitrary assumption of jurisdiction according to its whims and caprice.

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15. The Supreme Court in Anand Kumar Mohatta v. State (NCT of Delhi) [(2019) 11 SCC 706] has held that abuse of process caused by an FIR stands aggravated if the FIR has taken the form of charge-sheet after

investigation and also that inherent powers preserved by Section 482 of the Cr. P.C. can be exercised by the Court even after charge-sheet has been filed."

15. In view of the aforesaid legal position and the facts and circumstances of the present case, the impugned order dated 03.01.2014 is set aside and quashed *qua* the present petitioner.

16. The petition is allowed and disposed of.

17. Pending application(s), if any, also stands disposed of accordingly.

18. Copy of the Judgment be communicated to the learned Trial Court for necessary information and compliance.

19. Judgment be uploaded on the website of this Court *forthwith*.

AMIT SHARMA
JUDGE

JULY 16, 2024/bsr