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

CNR No. DLHC010283022022

+ **CRL.REV.P. 470/2022**

STATE

.....Petitioner

Through: Mr. Naresh Kumar Chahar, APP for
State.
SI Devendra Singh PS Nand Nagri.

versus

RAJESH @ RAJU

.....Respondent

Through: Mr. J.J. Rawat & Mr. Rajneesh, Advs.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

% **25.08.2026**

1. The present revision petition has been filed by the State under Section 397 and 401 with Section 482 of the Code of Criminal Procedure, 1973 (“CrPC”) against the order dated 01.10.2021 passed by learned ASJ(SFTC), East/Karkardooma Courts, Delhi (“**Impugned Order**”) in FIR No.420/2017 for the offences punishable under Sections 376(2)/451/509/34 of the Indian Penal Code, 1860 (‘IPC’) registered at PS Nand Nagri.
2. The respondent/accused had been discharged for the alleged offence punishable under Section 376 of the IPC *vide* the impugned order. However, he had been charged for offence punishable under Section 354 and 451 of the IPC.
3. Mr. Naresh Kumar Chahar, learned counsel for the petitioner submits



that the impugned order is illegal and has been passed improperly.

4. This Court, however, on perusal of the impugned order finds that the trial Court has made categorical findings and has come to the conclusion that no offence under Section 376(2)(i) of the IPC is made out. Paragraphs 6 & 7 of the impugned order are extracted as under:

“6. Now reverting back to the case, accused has been chargesheeted u/s 376(2)(i)/451/509/354 IPC. Alleged incident as per complainant/mother of victim is of 06.06.2017 when wrong act was allegedly done by accused with victim Axxx that wrong act has been done with her by the accused. In her entire complaint complainant who is mother of victim Axxx has not specified what wrong act has been done with victim. Further I also found substance that on 09.06.2017 the complainant daughter who is sister of victim made PCR call at 100 number but in the said complaint also there is no mentioning that victim Axxx was sexually assaulted or wrong act/ rape has been done with her by the accused as in the said complaint is only with respect to the quarrel. Further as stated above, even complainant/mother of victim in her statement 164 Cr.P.C had only alleged that accused had grappled the victim Axxx in her arm and thus has not alleged that accused had done any rape of victim Axxx or did wrong act/galat kaam which could be taken meaning as sexual intercourse. Other witness i.e. sister of victim Axxx namely Rxxxx only stated that accused did wrong act with her sister/victim Axxx on 06.06.2017 as told to her by her mother/complainant, hence her statement is hearsay and when mother of victim/complainant herself denied of accused's committing rape of victim in her statement u/s 164 Cr.P.C. hence statement of her sister Rxxxx cannot be relied upon. Further, from perusal of MLC of the prosecutrix as well as FSL report also, it is evident that no evidence has been found that accused did any sexual intercourse with victim Axx because in the MLC, no injury has been, found on the person of victim. Further in the FSL report, it is mentioned that no semen was detected and in DNA report there is nothing against the accused that his blood was found in cervical vaginal swab of victim or in blood of victim. In these circumstances, in my view no grave suspicion arises against the accused that he has committed rape of the prosecutrix, therefore, I discharge the accused from offence u/s 376(2)(i) IPC.

Further, in my view from the allegations of complainant/mother of victim Axxx as leveled by her in her complaint and statement u/s 164 Cr.P.C. statement prima facie offence of sexually assaulting victim Axxx and criminally trespassing in her house is made out against the accused. In my view, accused cannot be discharged from these offences because



there is no explanation as to why victim Axxx has told the incident to her mother on 07.06.2017 when incident happened in the night of 06.06.2017 and complaint made on 10.06.2017 i.e. after three days of incident. This certainly create some suspicious but same is not grave enough discharge the accused. Hence, I order to frame charge u/s 354/451 IPC against the accused.

7. Since the offences u/s 354/451 IPC are triable by Ld. MM, therefore, I order that file be sent to the Concerned Ld. Principal District & Sessions Judge to send the same to Concerned Ld. Chief Metropolitan Magistrate.”

5. The Supreme Court in ***Kuntegowda v. Thurubaiah***,¹ observed that the revisional jurisdiction of High Court is strictly confined to examining the legality, propriety or procedural regularity of any proceedings of subordinate trial Courts. The revisional Court does not function as an appellate Court. Therefore, the High Court in its revisional jurisdiction cannot conduct a re-examination of evidence. The relevant para nos. 7 & 7.1 are extracted as under: -

“7. Before parting, we would like to accentuate upon the revisional jurisdiction of the High Courts and the contours and inherent limits while exercising powers as a revisional authority. Section 397 of Code of Criminal Procedure, 1973 (now, Section 438 of Bharatiya Nagarik Suraksha Sannhita, 2023) encapsulates the power of High Courts and Session Courts to examine the correctness, legality or propriety of any order passed by an inferior criminal court. The said Section is extracted as hereunder:

“438. Calling for records to exercise powers of revision.—(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on his own bond or bail bond

¹ 2026 INSC 790.



pending the examination of the record.

Explanation.—All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this subsection and of section 439.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.”

Discretion in the exercise of revisional jurisdiction should be exercised within the four corners of this section whenever there has been miscarriage of justice. However, while exercising power under this section, the Court does not act as an appellate Court and therefore while considering the legality, propriety or the correctness of a finding or a conclusion, the revisional court does not and should not dwell upon the facts and the evidence of the case as an appellate Court. The court, in revision, considers the material only to satisfy itself about the correctness, legality and propriety of the findings, sentence and order recorded by the lower court, and should refrain from substituting its conclusion on an elaborate consideration of evidence and the findings of the lower courts should not be reversed merely on the ground that an alternative view is possible on the facts of the case. In this case, such a position did not also emanate from the evidence on record.

7.1 This Court, in the State of Maharashtra vs. Jagmohan Singh Kuldip Singh Anand, (2004) 7 SCC 659 observed that the High Court, *in exercise of its revisional jurisdiction, cannot embark upon an in-depth roving re-examination of the oral evidence and medical evidence and come to a conclusion contrary to the consistent one reached by two courts below. In the facts of the present case, in the impugned judgment, the High Court gravely erred in upsetting the concurrent findings of conviction of the trial court and the Appellate Court by substituting its own conclusions and reasoning on the merits of the case and thereby erred in setting aside the well-reasoned and correct judgement and orders of the trial and appellate courts.*

(Emphasis Supplied)



6. Applying the settled principles governing revisional jurisdiction as reiterated in ***Kuntegowda (Supra)***, this Court finds no jurisdictional error, perversity or procedural illegality in the impugned order discharging the accused under Section 376(2)(i) IPC and framing charges under Sections 354 and 451 IPC. The trial Court arrived at its finding after considering the material on record, thus the findings of the trial Court call for no interference.

7. In view of above, this revision petition stands dismissed.

PURUSHAINDRA KUMAR KAURAV, J

AUGUST 25, 2026

Ab/ksr