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

+ **CRL.M.C. 467/2025**

MUSSARAT BANO

.....Petitioner

Through: Mr. Mohd. Faisal, Adv.

Versus

GOVT. OF NCT OF DELHI & ANR.

.....Respondents

Through: Mr. Utkarsh, APP with SI Dharamlal,
Pairvi Officer Traffic and Insp.
Jitender Singh, TI/Sarita Vihar.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

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06.05.2025

CRL.M.C. 467/2025

1. This was a petition under Section 528 of BNSS seeking setting aside of the impugned order dated 16.01.2025 passed by the learned Judicial Magistrate First Class-08, (S-E), Saket Courts, wherein the application filed by the petitioner, seeking release of impounded vehicle bearing No. HR 38 T 7479 (Diesel Dumper) was dismissed.
2. This Court in its order dated 24.01.2025 upheld the impugned order of the learned Judicial Magistrate, relying on Clause 8(ii) of the Guidelines framed by the Government of NCT of Delhi, Transport Department bearing F.NO. DC/SCRAPPING/TPT/2024/12278, dated 20.02.2024, wherein condition No. 8 reads as under:

**“8. IMPOUNDED VEHICLE WHICH CAN NOT BE
RELEASED (i) Any End of Life vehicle impounded for the
second time.**

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(ii) Transport vehicles running on diesel fuel and aged more than 10 years old.”

3. Along with the review application, the learned counsel for the petitioner has relied on the judgment of a Co-ordinate Bench in W.P.(C)3124/2024, case titled ‘*Sunil Rathore v. Govt. of NCT of Delhi*’ and more particularly paras No. 23, 24, 25 and 29, which read as under:

“23. The NGT in its orders (supra) was specifically dealing with air pollution caused in Delhi by diesel trucks aged more than 10 years. It was observed that trucks are a serious contributor to air pollution. At the same time, it was observed that these vehicles could be sent outside to areas where air dispersion is much higher and vehicular density is less. The dispensation created under Clause 6 and 7 of the 2024 Guidelines, to release the impounded diesel vehicles (for first time violation) on certain conditions will necessarily include the transport vehicles running on diesel fuel. To hold otherwise, will be violative of Article 14 and unreasonably deprive the petitioners' of their right to property.

24. As noticed above, orders passed by NGT were intended to address the issue of vehicular air pollution in Delhi. The said orders contemplate a classification of vehicles on the basis of type of fuel/emission caused by the vehicle. Diesel vehicles are stated to be more polluting than petrol vehicles. However, NGT noted that these vehicles can be plied outside Delhi subject to certain conditions. In fact,

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the NGT directed the authorities to issue NOC for such vehicles (diesel vehicles aged 10 years but below 15 years) to be registered outside Delhi. In Seema Chopra (supra), this court observed that where the vehicle is registered outside Delhi and can be legally plied there, GNCTD can have no objection to the release of such vehicles for removal to other states. In said conspectus, the classification created under Clause 8(ii), which purports to exclude transport vehicles running on diesel fuel from ambit of Clause 6 and 7, has no rational nexus with object of the 2024 Guidelines.

25. Consequently, Clause 8(ii) of the 2024 Guidelines is held to be violative of Article 14, and not in consonance with law.

29. In W.P.(C) 7781/2024, W-.P.(C) 7796/2024, WP.(C) 3124/2024, WP.(C) 4652/2024 and W.P.(C) 6049/2024, the respondents are directed to release the seized/impounded vehicles in question upon the petitioners furnishing in requisite affidavits/ undertakings as prescribed in para 18A of the judgement in Seema Chopra (supra).”

4. Learned counsel for the petitioner states that on the day of passing the order by this Court of 24.01.2025, Clause 8(ii) of the Guideline had already been declared unconstitutional by the Co-ordinate Bench and hence, the order of 24.01.2025 is erroneous.
5. He further states that on account of inadvertent error and *bona fide*

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mistake, the said judgment of 29.05.2024 could not be brought to the notice of the Court.

6. Mr. Utkarsh, learned APP states that the Court in its inherent jurisdiction cannot review an order which has attained finality. He relies on the Judgment of '*Simrikhia V. Dolley Mukherjee (1990) 2 SCC 437*' and more particularly para 5, which reads as under:

“5. Section 362 of the Code expressly provides that no court when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error save as otherwise provided by the Code. Section 482 enables the High Court to make such order as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice. The inherent powers, however, as much are controlled by principle and precedent as are its express powers by statute. If a matter is covered by an express letter of law, the court cannot give a go-by to the statutory provisions and instead evolve a new provision in the garb of inherent jurisdiction.”

7. I have heard the learned counsel for the parties.
8. Admittedly, on 29.05.2024, this Court has held Clause 8(ii) of the 2024 Guidelines to be violative of Article 14 of the Constitution.
9. The Co-ordinate Bench also directed release of vehicles which were impounded pursuant to the Clause 8(ii) of the guidelines.
10. The judgment of '*Simrikhia V. Dolley Mukherjee*' (supra) in paras 3 to 4

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categorically states that the High Court in exercise of its inherent powers can pass orders to secure ends of justice or to prevent the abuse of the process of law. They read as under:

“3. The learned counsel for the appellant contended before us that the second application under Section 482 CrPC was not entertainable, the exercise of power under Section 482, on a second application by the same party on the same ground virtually amounts to the review of the earlier order and is contrary to the spirit of Section 362 of the CrPC and the High Court was, therefore, clearly in error in having quashed the proceedings by adopting that course. We find considerable force in the contention of the learned counsel. The inherent power under Section 482 is intended to prevent the abuse of the process of the court and to secure ends of justice. Such power cannot be exercised to do something which is expressly barred under the Code. If any consideration of the facts by way of review is not permissible under the Code and is expressly barred, it is not for the court to exercise its inherent power to reconsider the matter and record a conflicting decision. If there had been change in the circumstances of the case, it would be in order for the High Court to exercise its inherent powers in the prevailing circumstances and pass appropriate orders to secure the ends of justice or to prevent the abuse of the process of the court. Where there is no such changed circumstances and the decision has to be arrived at on the facts that existed as on

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the date of the earlier order, the exercise of the power to reconsider the same materials to arrive at different conclusion is in effect a review, which is expressly barred under Section 362.

4. In the present case, there had been a definite finding that the complaint was taken cognizance of by the Magistrate before he transferred the proceedings under Section 192(2) for enquiry under Section 202 CrPC. This finding has been arrived at after perusal of the record of the proceedings before the Magistrate and on a consideration of the report of the concerned Magistrate. A reappraisal of the facts on record to determine whether such cognizance had been taken of in a subsequent proceeding is not, therefore, warranted. The only ground on which relief was claimed is the alleged irregularity in the transfer of the proceedings. It was not open to the parties to reagitate the question by a fresh application nor was the court empowered under Section 482 to reconsider the matter.”

11. Once the Clause 8(ii) of the guideline has been declared to be violative of Article 14 of the Constitution, any order passed relying on the guideline, would be an abuse of the process of law and be contrary to law. Clause 8(ii) had formed the basis of the order dated 24.01.2025 which is sought to be reviewed.
12. For the said reasons, the order dated 24.01.2025 is recalled.
13. Consequently, this petition, being CRL.M.C. 467/2025 is allowed.
14. The impugned order dated 16.01.2025 passed by the learned Judicial

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Magistrate First Class-08, (S-E), Saket Courts is hereby set aside and Dumper (Truck) bearing no. HR-38-T-7479 is directed to be released to the petitioner immediately, subject to furnishing an undertaking that immediately on release, the same shall be taken outside the limits of NCT of Delhi.

15. Review petition is allowed, disposed of.
16. Since the vehicle was lying parked due to the orders of the Court, no parking fee will be charged by the scrapper.
17. The scrapper is at liberty to avail appropriate proceedings to recover parking charges from the petitioner/MCD/ any other authority, as the case may be, in accordance with law.

JASMEET SINGH, J

MAY 6, 2025/*pk* [Click here to check corrigendum, if any](#)

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