



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

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*Reserved on 01st September, 2025
Pronounced on: 15th December, 2025*

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CRL.M.C. 495/2021, CRL.M.A. 2536/2021

AYESHA ASHFAQ KHAN

D/O Ashfaq Subhan Khan,
R/O A Wing 303, Pearl Palace,
Aqsa Masjid Road, Bandivali Village,
Jogeshwari West, Mumbai

.....Petitioner

Through: Mr. Mohit Mathur, Sr. Advocate with
Mr. Abhir Datt, Mr. Debayan
Gangopadhyay, Mr. Vedant Singh,
Ms. Varnika Singh, Mr. Suryaketu
Tomar, Mr. Vaibhav Tomar and
Mr. Vignesh Ramanathan, Advocates

versus

1. STATE (NCT OF DELHI)

Through The Investigating Officer,
PS. North Avenue, New Delhi

2. NISHIKANT DUBEY

S/O. Radhey Shyam Dubey
18, Gurudwara Rakabganj, New Delhi

.....Respondents

Through: Mr. Utkarsh, APP for the State
Mr. Rishi Kumar Awasthi, Mr. Amit
V. Awasthi, Mr. Piyush Vatsa,
Ms. Ritu Arora and Mr. Abhigyat
Chaitanya, Advocates for R-2

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.



1. Petition under Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as 'Cr.P.C.'*) has been filed on behalf of the **Petitioner/Ayesha Ashfaq Khan** for quashing of **NCR No.0005/2020 dated 30.12.2020** under Section 500 of the Indian Penal Code, 1860 (*hereinafter referred to as 'IPC'*), registered by P.S. North Avenue, New Delhi and all consequential proceedings emanating therefrom including the Order dated 22.01.2021 passed by learned M.M., Delhi.

2. ***Briefly stated***, the Petitioner states that she is a Model by profession. In 2013, she was induced to file a false Complaint, but on realizing her mistake, she had withdrawn the same after few days of filing. However, after about seven years, in December 2020, persons claiming allegiance to Respondent No.2/Nishikant Dubey and other members of his political party, for their political gain and vested interest, coerced the Petitioner into lodging false Complaints/Petitions seeking reopening of that false Complaint, which she had withdrawn in 2013. Petitioner withdrew these false Complaint/Petitions, which she was coerced into filing in the first place, as soon as she was able to evade these persons. The Petitioner is receiving death threats ever since she has withdrawn these false Complaints/Petitions.

3. Fearing grave danger to her and her mother's life, the Petitioner had recorded a video clip and sent the video recording to the Mumbai Police in which she has named Respondent No.2 and three other persons to be held responsible, if anything untoward/unnatural happened to her. The Petitioner claims that she had sent this video-recording only to the Police Authorities



and had not disseminated the same in any manner to any third person whatsoever.

4. However, it transpires that Respondent No.2 has obtained this video recording and has tweeted the same on his twitter handle @nishikant_dubey on 24.12.2020. He has also posted this video recording on his Facebook page <https://www.facebook.com/nishikantdubeymp> on 23.12.2020. He has deliberately compromised the identity of the Petitioner and exposed her to grave risk. He has deliberately disseminated the video-recording through social media, to show his clout and intimidate the Petitioner. After disseminating the video himself, he has lodged a false, frivolous and *mala fide* Complaint with the police authorities in New Delhi, to further harass and coerce the Petitioner.

5. It is asserted that Respondent No.2, who is presently a Member of Parliament (Lok Sabha) from the Bhartiya Janta Party (BJP) from the Godda Parliamentary Constituency in Jharkhand, filed a Complaint on 24.12.2020 before the SHO, North Avenue Police Station, New Delhi, alleging that in the year 2013, a case bearing Registration No.700314/2013 was registered by the Petitioner against the Chief Minister of the State of Jharkhand, Shri Hemant Soren under Sections 376/366/365/ 354/323/506/120B/34 IPC, but the same was withdrawn on 30.10.2013, after which, the Petitioner purchased a house in Mumbai for an amount of Rs.55,00,000/-.

6. On 27.08.2020, the Respondent No.2 had written to the Home Minister of Maharashtra, for reopening of the case registered by the Petitioner against the Chief Minister of Jharkhand, as the offence being heinous, cannot be quashed and settled and has to be investigated in an



impartial and fair manner. The Petitioner had also written for reopening of the said case.

7. Respondent No.2 in his Complaint has further alleged that recently a video is being circulating on internet, wherein the Petitioner is claiming that she is being blackmailed and threatened and that bad things are being said about her on Twitter. *The Petitioner in the video is stating that if anything happens to her, then the Complainant/Respondent No.2 and three other persons, be held responsible for the same.*

8. It is alleged that the Petitioner has committed an offence under Sections 384/389 IPC and because of the said allegations levelled by the Petitioner; his reputation has been tarnished, which amounted to offence under Sections 499/500/503 IPC. Therefore, Respondent No.2 sought registration of FIR against the Petitioner and others, to unearth the alleged conspiracy.

9. The Police registered a *Non-Cognizable Offence Information Report (NCR) dated 30.12.2020* on the allegations made in the Complaint filed by Respondent No.2, by observing that no cognizable offence was disclosed, *except the offence under Section 500 IPC.*

10. Instead of referring the Complainant/Informant/Respondent No.2 to the Magistrate, as required under Section 155(1) Cr.P.C., it appears that acting under political pressure of Respondent No.2, Investigating Officer/SI Vijay Pal on 06.01.2021, filed an Application before the Court of learned M.M., *seeking permission/Order under Section 155(2) Cr.P.C. to investigate the offence as mentioned in the impugned NCR, which was granted vide Order dated 22.01.2021.*



11. The said permission for investigation in the NCR has been **challenged on the ground** that NCR is in gross abuse of the process of law and smacks of *mala fide* on the part of the Investigating Officer. The allegations made in the Complaint filed by Respondent No.2 are so inherently improbable and so absurd that no reasonable person would believe the existence of the offences alleged therein. The registration of the NCR, is misconceived and concocted and is an attempt on the part of Respondent No.2, to intimidate the Petitioner and put the criminal machinery in motion by using his political influence.

12. The allegations made in the impugned NCR are absurd, concocted, outlandish, misleading and false and is an attempt to browbeat and harass the Petitioner. The allegations are bereft of any logic and substance and the registration of the NCR, is in gross abuse of the process of law.

13. Furthermore, NCR is registered under Section 500 IPC and no other offence is mentioned, for which the procedure established under Section 155 Cr.P.C. has to be followed, which has not been followed and therefore, impugned proceedings and the Orders are liable to be quashed and set aside.

14. *Section 155(1) Cr.P.C.* provides that upon receiving of information of a non-cognizable offence, the substance of such information is to be entered by the officer In-Charge of the Police Station in a format prescribed by the State Government and thereafter, refer the Informant to the Magistrate. However, this procedure has not been followed and the Investigating Officer himself had sought permission from the learned M.M. for conducting the investigations. The Order is unreasoned and cryptic, as it assigns no reasons.



15. Reference is made to Adesh Kumar Gupta vs. CBI, 2015 SCC OnLine Del 11693, wherein a reference was made to Judgment passed by Hon'ble Supreme Court in the case of Kathiravan vs. Commissioner of Police, wherein it was held that as per the procedure prescribed under Section 155 Cr.P.C., the in-charge of a Police Station is mandated to refer the informant and not the information alone, to the Magistrate concerned.

16. This Court in the case of Adesh, (supra), after referring to various Judgments, concluded that the permission being granted by learned M.M. for investigation under Section 155(2) Cr.P.C., ought to be a well-reasoned Order. It is asserted that the impugned Order in the light of this Judgment is not in compliance with the directions given by the Hon'ble Apex Court in the aforesaid judgment.

17. Reliance is also placed on Harisha K. and Ors. vs. The State of Karnataka, Criminal Petition No. 462/2018 wherein High Court of Karnataka at Bengaluru, after examining Section 155(2) Cr.P.C., had observed that the simplicitor endorsement of the learned M.M., which does not indicate as to whether there is application of mind and what material was referred to before giving permission, is not sustainable in law.

18. The Petitioner further asserted that she had not circulated any video on Twitter or on the Internet, but had merely forwarded the same to Mumbai Police. The allegations made in the NCR are contrary, false and misleading and do not make out any offence.

19. Hence, a prayer is made for setting aside the impugned NCR dated 30.12.2020 and Order of learned M.M. dated 22.01.2021.



20. **A Reply has been filed on behalf of Respondent No.2/Nishikant Dubey**, who has submitted that the objections taken in the present Petition are hyper-technical, fallacious, contrary to the established law and not tenable in the eyes of the law. Respondent No.2 is a three time sitting Member of Parliament (Lok Sabha) from Godda Lok Sabha Constituency, Jharkhand, from Bhartiya Janta Party (BJP). He was provided with a CD containing the video/audio of the Petitioner on 23.12.2020, in his Office by some unidentified person, which was also uploaded on 24.12.2020 on the twitter handle of the Jharkhand Mahila Morcha, which is the Women's Wing of the Jharkhand Mukti Morcha.

21. Upon hearing and watching the said video and audio, the Complainant/Respondent No.2 found it very defamatory as the Petitioner has falsely stated that she is being blackmailed and threatened and many bad things are being said about her on Twitter and if anything happens to her, Respondent No.2 along with three other persons shall be responsible.

22. It is submitted that Respondent No.2 is a popular political leader and has mass following in his Lok Sabha Constituency and entire State of Jharkhand and elsewhere and he enjoys great reputation. Since unsubstantial allegations have been levelled against him, he had lodged a Complaint with North Avenue Police Station requesting the Police Authorities to register an FIR under Sections 384/389/500/503/506 IPC.

23. Petitioner had recently approached the Police for reopening of her case/incident which took place in the year 2013 and the Complainant/Respondent No.2 had also written letters to the Police to re-open and investigate the case, so that the Petitioner gets justice and now the



Petitioner is alleging fear from him, which is only possible through coercion, undue pressure and criminal conspiracy. He has thus, sought the investigation in the matter by the Police.

24. Respondent No.2 has acted with complete *bonafide* to protect his legal rights against the aforesaid defamatory video and had no option but to approach the Police. Impugned NCR bearing No.0005/2020 was registered on 30.12.2020 only under Section 500 of IPC at Police Station North Avenue, New Delhi.

25. Subsequently, thereto permission has been sought under Section 155(2) Cr.P.C. for investigating the said non-cognizable offence. The procedure as laid down under Section 155 Cr.P.C. for registering and investigating the Non Cognizable Offence, has been duly complied with in pith and substance. Hyper-technical objections and grounds raised by the Petitioner seeking quashing of the impugned NCR and the Order dated 22.01.2021 passed by the learned M.M., are not tenable and present Petition is not maintainable, which is liable to be dismissed.

26. Reliance is placed on Adesh Kumar Gupta vs. CBI, 2015 SCC OnLine Del 11693, to contend that it is mandatory to refer the informant to the Magistrate in the non-cognizable offences. Reliance is also placed on Banshidhar vs. State, Criminal Revision No.37/1958, wherein reference is made to the Judgment of the Apex Court in H.N. Risbud vs. State of Delhi, AIR 1955 SC 196, in which Section 155(2) Cr.P.C. was examined and it was held that an investigation of a non cognizable offence without the Order of a Magistrate is illegal, but it will not vitiate the result unless there is miscarriage of justice. Investigation in the non-cognizable offence even



without following the procedure as laid down under Section 155(2) Cr.P.C. has been held to be valid.

27. Police investigation is insisted as in the video, Petitioner has specifically name Respondent No.2. The circumstances and the conspiracy behind the aforesaid defamatory video, keeping in view that the Respondent No.2 is a political figure, has tarnished his image. Furthermore, there is neither any apprehension nor any threat to the Petitioner, of being arrested by the Police.

28. *Therefore, quashing of the investigation at this nascent stage, would lead to miscarriage of justice.*

29. **Status Report has been filed on behalf of State** giving the details of the video and registration of NCR. It is submitted that on 23.02.2021, the pen drive containing the alleged video has been deposited in FSL Rohini, New Delhi for authentication as well as for the examination. Notice under Section 91 Cr.P.C. was sent to Twitter for obtaining information of originator of the alleged video, as the said video was circulated by the [https://twitter.com/Jmm Mahila \(Jharkhand Mahila Morcha\)](https://twitter.com/Jmm Mahila (Jharkhand Mahila Morcha) on 24.12.2020) on 24.12.2020 at 11:10 AM and the URL of the said video is <https://twitter.com/Jmm Mahila/status/1341982008109502469>.

30. It is submitted that further investigation of NCR is required to be conducted in the allegations made by the Complainant against the Petitioner and the investigation is at the progressive stage.

31. **Petitioner in Rejoinder** has reaffirmed the assertions made in the Petition.



32. **Written submissions** have been filed on behalf of the Petitioner and the Respondent No.2, which are essentially the same, as made in the Reply.

Submission heard and record perused.

33. The instant dispute essentially arises from a video recorded by the Petitioner/Ayesha Ashfaq Khan in December, 2020, wherein she expressed *fear for her life and named Respondent No.2/Nishikant Dubey and others as responsible, in case any harm is caused to her.*

34. Although the Petitioner claims she shared the video only with Mumbai Police, but Respondent No.2/Nishikant Dubey, who is an elected Member of Parliament, on getting this video, publicly circulated it on his Facebook and Twitter accounts, on 23/24.12.2020. Subsequently, he filed a Complaint alleging that the video made by the Petitioner defamed him and sought registration of FIR for the offences under Sections 384/389/500/503 IPC, which led to the **NCR in question under Section 500 IPC.**

35. The Petitioner contends that the NCR is *mala fide*, politically motivated, and procedurally defective in view of the law under Section 155 Cr.P.C.

36. **The offence under Section 500 IPC is non-cognizable and Bailable offence.** To understand the procedure mandated to be followed for non-cognizable offences, **Section 155 Cr.P.C.** is produced as under:

“Section 155 - Information as to non-cognizable cases and investigation of such cases -

(1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such



form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable.”

37. According to Section 155 Cr.P.C., in the cases of non-cognizable offences, when an SHO receives information about a non-cognizable offence, his role is limited to recording the substance of that information in the appropriate register and directing the informant to the Magistrate. It is then up to the informant to approach the competent Magistrate and request an order for investigation. Furthermore, no police officer shall investigate a non-cognizable case without the order of a Magistrate. However, once such directions are given, the Police officer shall have same powers of investigation as for cognizable offence.

38. The Apex Court in the case of Tilak Nagar Industries Limited vs. State of Andhra Pradesh, (2011) 15 SCC 571, has held that the statutory safeguards given under Section 155(2) Cr.P.C. must be strictly followed, since they are conceived in public interest and as a guarantee against frivolous and vexatious investigation.



39. The proceedings in non-cognizable offence, cannot be initiated by the police by registering an FIR, without at the outset seeking the assent of the concerned Magistrate, as has been held in the case of Lokesh T.R. vs. State of Karnataka, 2022 SCC OnLine Kar 973. It reads as under:-

“9. Therefore, when the SHO of the Police Station receives a report regarding commission of non-cognizable offence, it is his duty to enter the substance of the information in the prescribed book and refer the informant to the Magistrate as required under Section 155(1) of Cr.P.C. Thereafter, the jurisdictional Magistrate is required to pass an order permitting the Police Officer to investigate the case as mandated by the provisions of Section 155(2) of Cr. P.C., stated supra. **Unless, the Police Officer is permitted by an order of the jurisdictional Magistrate to investigate the non-cognizable offence, the Police Officer does not get jurisdiction to investigate the matter and file a final report or the charge sheet.**

18. The provision of Section 155(1) and (2) of Cr.P.C., referred above make it very much clear that the SHO of the Police Station on receiving the information regarding the commission of non-cognizable offence, **his first duty is to enter or cause to be entered the substance of such commission in a book maintained by such Officer and then refer the informant to the Magistrate.**Section 155(2) of Cr.P.C., specifically provides that **no Police Officer shall investigate the non-cognizable case without the order of the Magistrate having power to try such case or commit such case for trial. Therefore, passing an “order” by the Magistrate permitting the Police Officer to investigate the non-cognizable offence is an important factor.** The word **without the order of the Magistrate** appearing in sub-Section (2) of Section 155 of Cr.P.C., makes it clear that the Magistrate has to pass an ‘order’ which means **supported by reasons**. On the other hand, in number of cases, the Jurisdictional Magistrates are writing a word ‘permitted’ on the requisition submitted by the Police itself which does not satisfy the requirement of Section 155(2) of Cr. P.C., Such an endorsement cannot be equated with the word ‘Order’.”

40. Therefore, on receipt of information of non-cognizable offence, the substance of information is required to be registered and the information as well as the informer has to be referred to the concerned magistrate. It is only



when a direction by a speaking Order is given that the Police can assume jurisdiction to investigate.

41. In this regard, reference be made to **Section 460 Cr.P.C. which deals with irregularities which do not vitiate proceedings.** Clause (b) of Section 460 Cr.P.C. reads as under:-

“Section 460 – Irregularities which do not vitiate proceedings.

If any Magistrate not empowered by law to do any of the following things, namely;

- a)
- b) to order, under section 155, the police to investigate an offence;**
- c)
- d)
- e) to take cognizance of an offence under clause (a) or clause (b) of Sub-Section (1) of section 190;
- f)
- g)
- h)
- i)

erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered.”

42. Section 460 Cr.P.C. therefore, provides that where *erroneously but in good faith*, directions are given by the Magistrate under Section 155 Cr.P.C. to investigate into an offence, it shall not be set aside merely on the ground of being not so empowered.

43. In the present case as well, though the I.O. was required to refer the party to the MM, but merely because the I.O. himself approached the Ld.



MM, who allowed the investigations in the NCR, is only as irregularity done in good faith, which does not vitiate the investigations so undertaken by the IO.

44. However, this aspect of directing investigations is a case under Section 500 IPC, assumes significance in the light of the procedure for initiating any offence of defamation, as has been specifically provided under Section 199 Cr.P.C, which reads as under:

“Section 199(1) - No Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code (45 of 1860), except upon a complaint made by some person aggrieved by the offence: Provided that where such person is under the age of eighteen years, or is an idiot or a lunatic or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf.”

45. From a bare perusal of the said provision, it is evident that defamation being a *non-cognizable offence*, **only a Complaint can be filed by the aggrieved person before the learned Trial Court** and it is only on the said Complaint, that the cognizance can be taken.

46. This aspect was considered in the case of Subramaniam Swami vs. UOI, (2016) 7 SCC 221, wherein the Apex Court specifically referred to *Section 199 Cr.P.C* to observe that *there can be no other way of initiating any case under Section 499/500 IPC, except by the Complaint and that too by an aggrieved person*. It was further observed that the offence under Section 500 IPC has its own gravity and it is the responsibility of the Ld.



M.M to consider the contents of Complaint before directing issuance of process, which is a matter of judicial determination.

47. In the light of Section 199 Cr.P.C., neither any FIR can be registered nor can any directions be issued under Section 156(3) or Section 155 Cr.P.C. for registration of any FIR, for an offence under Section 500 IPC.

48. **It is therefore, established that** no directions could have been given to the Police for investigations as for the offence of defamation, as the cognizance can only be taken *on a Complaint by the Aggrieved person before the concerned MM*; neither registration of FIR nor police investigations can be undertaken under the scheme of Cr.P.C., which is expressly barred under Section 199 Cr.P.C. read with Section 155 Cr.P.C. In such circumstances, the police to resort to Section 155(2) was legally untenable.

Conclusion:

49. In light of the above observations, the present Petition is **allowed**. The Order dated 22.01.2021 of Ld. MM directing investigations by the Police, is bad in law and is hereby, quashed. Needless to say, the Respondent No.2 has a right to pursue his remedy, in accordance with law.

50. The present Petition is disposed of, along with pending Application(s), if any.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 15, 2025/R