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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 3530/2025 & CL.M.A. 15552/2025**
VIJENDER @ BIJENDER MALIKPetitioner

Through: Mr. Shaurya Mittal, Advocate with
Petitioner (in-Person).

versus

STATE (NCT OF DELHI) & ANR.Respondents

Through: Mr. Hemant Mehla, APP for State.
SI Sonia Gautam, P.S. Defence
Colony.
Mr. Manoj Kumar Jha, Mr. Ashish
Singh and Mr. Manish, Advocates for
complainant.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
06.08.2025

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1. The present petition filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ (corresponding to Section 482 of the Code of Criminal Procedure, 1973²) is directed against order dated 11th November, 2024, passed by ASJ-05, Saket Courts in Criminal Revision No. 679/2023. By the impugned order, the discharge of the Petitioner from offences punishable under Sections 354, 354A, 354B, 354C, 354D, and 506 of IPC as directed by the Metropolitan Magistrate, Mahila Court-02, South East District, Saket Courts, New Delhi, *vide* order dated 16th October, 2023, has been set aside.

¹ "BNSS"

² "CrPC"



2. Aggrieved by the impugned order, the Petitioner contends that the Trial Court had rightly noted that FIR No. 271/2020 was lodged after an unexplained delay of nearly four months, with no satisfactory reason for the Complainant's inaction on the date of the alleged incident. It is submitted that, notwithstanding these categorical findings, the Revisional Court erred in concluding that the Trial Court had not been apprised of earlier complaints. This, according to the Petitioner, is factually incorrect, as the Trial Court had directly questioned the complainant regarding the delay. The Complainant, however, failed to provide any cogent explanation and, despite being afforded an opportunity through the APP to furnish written clarifications, chose not to do so. This deliberate silence was duly recorded in the Trial Court's order and, in the Petitioner's submission, could not have been brushed aside in revision.

3. The Petitioner further argues that, rather than recognizing this unexplained silence, the Revisional Court sought to cure the deficiency *post facto* by relying on documents that were never part of the record before the Trial Court. This, it is argued, amounts to introducing fresh evidence at the revisional stage, an exercise impermissible in law. It is also submitted that the Revisional Court erred in setting aside the Trial Court's observation regarding the accused's presence in the hospital at the time of the incident. The Petitioner clarifies that the Trial Court had never treated the MLC timing as conclusive; rather, it was considered in conjunction with the video footage, the version of events in the FIR, and the complainant's failure to rebut these facts. By reducing the Trial Court's reasoning to a mere binary contradiction over timing, the Revisional Court, it is contended, ignored the broader evidentiary context which the Trial Court was bound to and did



consider.

4. The Petitioner further urges that the Revisional Court overstepped its jurisdiction. The discharge order dated 16th October, 2023, was passed after due application of judicial mind and personal examination of the complainant. There was neither perversity in the reasoning nor any error apparent on the face of the record. The Revisional Court transgressed well-settled jurisdictional limit by re-appreciating the evidence introduced for the time first time, as if it was sitting in appeal against the order of discharge.

5. The Court has considered the aforementioned submissions. It is pertinent to note that the Trial Court had discharged the Petitioner partly on the ground of unexplained delay in lodging the FIR. On this aspect, however, the Revisional Court, in the opinion of this Court, correctly recorded that the incident was, in fact, reported by the Complainant on 26th August, 2020. The relevant portion reads:

“3. The impugned order is perused. Delay in registration of FIR in present case was one of the reason why Ld. JMFC disbelieved the version of complainant Ms. ‘A’ and discharged the accused. The alleged incident occurred on 23/08/2020, at around 07:00PM, but the FIR was registered on basis of statement dated 11/12/2020 of the complainant.

In this regard, complainant alleged that she gave written complaint dated 26/08/2020 in PS Defence Colony against respondent Bijender @ Vijender Malik, that was registered as DD No.39A dated 26/08/2020 at 20:30 hours. Similarly, complainant filed complaint dated 28/08/2020 in office of DCP, South District, that was registered as DD No. 1731 dated 28/08/2020 in office of DCP, South District. The factum of filing of aforementioned complaints dated 26/08/2020 and 28/08/2020 have been confirmed through report received from office of DCP, South District. It’s a fact that police failed to take action, without explanation, on complaints dated 26/08/2020 and 28/08/2020 filed by the complainant in reference to incident that occurred on 23/08/2020 at 07:00PM.”



6. The filing of a written complaint at P.S. Defence Colony, duly diarised as DD No. 39A on 26th August, 2020 at 20:30 hours, is borne out by official records and corroborated through the DCP's report. Once such a contemporaneous entry in official records exists, the complainant cannot be penalised for the investigating agency's omission to place it before the Trial Court.

7. In this context, it be observed that the procedural lapses attributable to State agencies cannot be visited upon an individual. In the present case, the fact that the complaint was lodged within three days of the incident is verifiable from official sources. This sufficiently explains the interval between the alleged incident and the registration of the FIR, thereby neutralising one of the principal grounds on which the discharge order is premised. The Revisional Court's reliance on this record does not amount to the impermissible introduction of fresh evidence in the exercise of revisional jurisdiction. The Courts can take judicial notice of official/ undisputed records to which there is presumption of correctness attached. Viewed thus, the Revisional Court's finding that the delay stood explained is supported by official record, and does not warrant interference under Section 528 BNSS (corresponding to Section 482 CrPC), which is to be invoked sparingly and only to prevent a gross miscarriage of justice.

8. As regards the second reason for discharge, the Revisional Court has, in the opinion of this Court, rightly corrected the finding, as can be seen from paragraph 4 of the impugned order:

"4. Another reason for discharge of the respondent as per impugned order was observation of Ld. JMFC that respondent / accused Bijender @ Vijender Malik was in hospital for conducting of his MLC at the time of alleged incident i.e. 23/08/2020 at 07:00PM. It implied that respondent/accused could not have been



present at the spot of incident at 07:00PM on 23/08/2020, for, he was in hospital at that time.

The foregoing observation of Ld. JMFC is factually wrong. In FIR No. 233/2020 (supra), complainant Bijender @ Vijender (respondent herein) stated that he was assaulted and injured by (REDACTED) (husband of Ms. 'A') and his children at around 07:00PM on 23/08/2020, near DMS booth.

In present case FIR, respondent Bijender @ Vijender committed the alleged offence of outraging the modesty of complainant Ms. 'A' on 23/08/2020 at around 07:00PM, near DMS booth, which is the same place as that disclosed in aforementioned FIR No. 233/2020 (supra) got registered by the respondent/accused. Thus, there was no reason for Ld. JMFC to assume or observe that respondent Bijender @ Vijender could not be present at the spot of incident on 23/08/2020 at 07:00PM."

9. The Trial Court appears to have assumed that the accused's presence in the hospital for the purpose of his MLC at the time of the alleged offence rendered it impossible for him to be at the scene. However, as the Revisional Court correctly noted, both the FIR lodged by the accused (FIR No. 233/2020) and the subject FIR place him at the same location, near the DMS booth, at approximately the same time, albeit in the context of two different incidents involving the same parties. In these circumstances, the inference drawn by the Trial Court, that hospitalisation coincided with or precluded his presence at the spot, was unsustainable and overlooked the contextual overlap between the two FIRs. The conclusion, therefore, was founded on a factual error apparent on the face of the record.

10. In light of the above, both principal planks of the discharge order, unexplained delay and the assumption regarding the accused's whereabouts, stand displaced. The Revisional Court's restoration of the case to the Trial Court was, therefore, consistent with law and with the limited scope of interference in revision as explained in ***New India Assurance Co. Ltd. v.***



Krishna Kumar Pandey³, which highlighted that the purpose of revisional power is to correct a patent defect or an error of jurisdiction of law. Such revisional powers can only be exercised in cases where there is perversity or unreasonableness, miscarriage of justice, or a complete misreading of records in the findings of the lower courts. Therefore, the Supreme Court cautions, that discharge can only be sustained where the allegations, taken at face value, do not disclose the commission of an offence. That threshold not having been met here, this Court finds no basis to interfere with the Revisional Court's order directing the matter to proceed to trial.

11. Accordingly, the present petition is dismissed along with any pending application(s).

SANJEEV NARULA, J

AUGUST 6, 2025

as

³ 2019 SCC OnLine SC 1786.