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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of decision: 04.08.2025***

+ CRL.M.C. 3931/2025

GULVINDER KHATRIPetitioner

Through: Petitioner in person.

versus

POOJA ADHIKARI & ORS.Respondents

Through: None.

CORAM:**HON'BLE MR. JUSTICE ARUN MONGA****ARUN MONGA, J. (ORAL)**

1. Petitioner, a learned Advocate himself, is before this Court, *inter alia*, assailing an order dated 25.02.2025 passed by the learned Principal District & Sessions Judge, Saket Courts, New Delhi, *vide* which his Criminal Revision Petition No. 83/2024 has been dismissed. The said revision petition was directed against the order dated 18.11.2023 passed by learned MM-05, South, Saket Courts in CT Case No. 454/2021, Police Station Mehrauli *vide* which the learned MM declined to take cognizance of offences, as alleged, against the respondent no.2.

2. Succinct backdrop leading to the petition in hand is that petitioner filed a private complaint under Section 200 Cr.P.C. alleging commission of offences under Sections 379, 425, 120-B, 201, 217, 218 read with Section 34 IPC against the respondents. Respondent nos. 1 and 3 reside in the same premises on different floors. Petitioner



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and Respondent nos. 1 and 3 are neighbours. Essentially, the neighbours are being accused and made to stand trial for the offences of Sections 379 (theft) and 425 (mischief) of IPC.

2.1 While respondent no. 2 is Sub-Inspector Prem Singh, then posted at P.S. Mehrauli.

2.2 Allegation against respondent no. 2/Sub Inspector is that despite the petitioner reporting a cognizable offence of theft and mischief on 19.03.2020 and 07.04.2020 supported by CCTV footage, no FIR was registered. Instead, respondent no. 2 allegedly conducted an informal enquiry, recorded statements of accused persons, and thereafter prepared a report exonerating them.

3. According to the petitioner, the acts attributed to Sub-Inspector constitute independent offences under Sections 201, 217, 218, 120B, 34 of IPC, in conspiracy with the private accused. Hence the challenge to revisional order through this petition.

4. In the aforesaid light, I have heard the rival contentions and perused the case file.

5. Pertinently, before proceeding further, it may be noted that, the learned Trial Court, after considering the pre-summoning evidence adduced by the complainant/petitioner, took cognizance of offences under Sections 379/426/34 of IPC against respondents no. 1 and 3 *vide* order dated 18.11.2023.

6. However, as regards respondent no. 2 i.e. the Sub-Inspector, it was held by Trial Court that neither any direct or relevant evidence came forth to warrant his summoning. Moreover, no sanction under Section 197 Cr.P.C had been obtained or granted by the competent



authority, which is a mandatory legal requirement for prosecuting a public servant for acts allegedly committed in the discharge of official duty. In the absence of such sanction, the trial court rightly concluded that there was no basis to summon respondent no. 2.

7. At the threshold, I may like to opine that there is nothing wrong with the view taken by the learned Trial Court.

8. Be that as it may, aggrieved, the petitioner preferred a revision, wherein the learned Principal District & Sessions Judge, by order dated 25.02.2025, concurred with the learned Trial Court.

9. The Revisional Court specifically noticed that petitioner himself had placed reliance on a vigilance enquiry report, which had concluded that the allegations against respondent no. 2 were unsubstantiated. It also observed that respondent no. 2 was only performing his official duty and no *mala fides* could be imputed.

10. Once again, nothing wrong with the approach adopted by the learned Revisional Court. Moreover, it noted that the requirement of sanction under Section 197 Cr.P.C. remained unmet.

11. Before this Court, petitioner vehemently argues, *inter alia*, that both the Courts, *ibid*, in their respective orders dated 18.11.2023 and 25.02.2025, have committed grave error in law by ignoring that the registration of FIR is mandatory where cognizable offences are disclosed.

11.1 He also contends that sanction under Section 197 Cr.P.C. must be deemed to have been granted, since no decision was taken within the stipulated time frame by the competent authority.



12. I am unable to persuade myself with the arguments canvassed by the petitioner.

13. Having perused both the aforesaid orders, neither is there any discernible regularity in law nor, even otherwise, on appreciation of facts by any of the Courts is made out, so as to warrant interference by this Court.

14. The revisional court has rightly adhered to the settled principle of law which limits its jurisdiction to correcting jurisdictional errors or patent illegality. It is not a first appellate court so as to carry out fresh review or re-appreciation of evidence. For doing it otherwise would turn the Revision as a disguised appeal. In the present matter, no such error of jurisdiction, perversity, or illegality is borne out. The trial court's order is well reasoned and therefore interference in revision was rightly declined.

15. Moreover, the Magistrate, at the stage of taking cognizance, is required to apply judicial mind to the facts before him and cannot act mechanically or issue process as a matter of course. An order taking cognizance must reflect the awareness of material facts and a minimum level of judicial reasoning. After all, summoning an accused is not a trivial step; it sets into motion the criminal process by making him an accused, which directly impinges on the fundamental right to personal liberty and fair trial, as guaranteed under Article 21 of the Constitution.

16. Therefore, a Magistrate cannot act in a perfunctory or knee-jerk manner. In the present case, the trial court has shown the very degree of judicial caution the law expects, carefully analyzing the pre-



summoning evidence and concluding that no *prima facie* case existed. The criminal process cannot be used for satisfaction of ego or settling personal scores or causing harassment.

17. Furthermore, regarding the application of Section 197 Cr.P.C., both the learned courts took the correct view that the provision mandates prior sanction for prosecuting a public servant for acts done in the discharge of official duties. For ease of reference relevant of Section 197 *ibid* is as below:-

“197. Prosecution of Judges and public servants.

(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013]

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Aforesaid statutory safeguard is meant to shield officers from frivolous and vexatious prosecutions while they discharge their official duties fearlessly and scrupulously.

18. The settled law is that real test whether acts complained are private or official is whether there exists a reasonable nexus between the act complained of and the official duty of the officer concerned. If the act has such a nexus, sanction is a condition precedent for cognizance. In the present case, the alleged act, i.e. investigating and preparing a report, was undoubtedly part of the respondent/Sub-Inspector’s official functions. Therefore, the absence of sanction



rendered the sought after cognizance as impermissible in law. The trial court, therefore, correctly refrained from doing so.

19. Also, to be noted on merits that, the petitioner himself relied on the vigilance report, which conclusively found the allegations unsubstantiated after an exhaustive inquiry, including analysis of CCTV footage and statements of independent witnesses. This negates any suggestion of mala fides or collusion on the part of the respondent no.2. On the contrary, it establishes he discharged his duty lawfully and without ulterior motive. To allow a prosecution in the face of such findings would not only be legally untenable but would also demoralize officers performing their duties in good faith and in accordance with law.

20. Taking cognizance is not a mechanical ritual; it is a judicial act that must be exercised with circumspection and a sense of responsibility. Criminal law is a potent weapon, and if wielded without care, it can become an instrument of oppression rather than justice.

21. In light of the above observations, I am of the opinion that the learned revisional court has thus correctly held that there is no illegality, impropriety, or infirmity in the order dated 18.11.2023 of the learned trial court.

22. In the parting, I may hasten to add that, apart from there being no irregularity, it is not the case that the petitioner was left with no other remedy. He was at liberty to file an appropriate representation or complaint before the superior police authorities under Section 154 (3) of the Cr.P.C. (corresponding to Section 173 of the BNSS). If he



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chose to pursue that remedy, he was also free to take it to its logical conclusion. If not, he did so of his own choice. Be that as it may, it is not for this Court to express any opinion on that course of action.

23. Accordingly, the present petition is dismissed.

ARUN MONGA, J

AUGUST 04, 2025/rs