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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of decision: 4th November, 2025***+ **CRL.M.C. 5917/2025**

G.P.S KOHLI

.....Petitioner

Through: Mr. Viran Vibhav Singh, Advocate.

versus

THE STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Utkarsh, APP for the State SI
Amit Kumar PS Moti Nagar & ASI
Uday Bhan,**CORAM:****HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)**

1. Petition under Section 528 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (*hereinafter* 'BNSS') read with Article 227 of the Constitution of India has been filed by the Petitioner for setting aside **Order dated 27.01.2025** of the learned ASJ-05, Delhi in Revision Petition No.535/2023 in respect of FIR No. 1066/2015 registered at P.S. Moti Nagar, Delhi and **for direction for implementation of Section 357A sub-clauses (4) and (5) CrPC** (now Section 396(4) and (5) BNSS).

2. **Briefly stated**, the Petitioner is a senior citizen, retired as Chief Manager (Law) with a Public Sector Bank. On 25.12.2015, the Petitioner had gone out of the house for a short time in the afternoon after putting a lock to his outer iron and inner wooden door of his house situated at C-53, Second Floor, Bali Nagar, New Delhi. Upon returning at 6:30PM, he found that somebody had intruded into his house by breaking open the locks. The

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almirahs were broken open and valuables i.e. gold and diamond jewellery and other articles worth Rs. 20 lacs were stolen. On his complaint, FIR No. 1066/2015 under Sections 454/380 IPC at P.S. Moti Nagar, was registered.

3. The Petitioner submitted that Head Constable Udai Bhan, (now ASI) IO, conducted the investigations absolutely shabbily for the sake of formality only, rather than diligently. The IO was in the local beat as well, whose duty was to prevent such crimes. He became the judge of his own cause and investigating his own conduct of dereliction to duty. The Petitioner met Mr. Ajay Kumar, SHO twice who gave false assurances to solve the crime.

4. There was a lack of will to bring the culprits to book and resultantly, an *Untrace Report* was filed in Court, after nine months on 22.09.2016, which consists of nothing except the *Crime Visit Report*, copies of the FIR, Site Plan, and statement of the Petitioner only. A bare perusal of the *Untrace Report* reflects the perfunctory manner in which the investigation was carried out by the IO.

5. The Petitioner was served with the copy of the Notice in regard to the *Untraced Report* to which he submitted a *Protest Petition* on 21.01.2017 wherein he asserted that the investigations had not been done properly by the Investigating Officer. The house where the Petitioner lived was fully occupied and families were residing and it was not possible for a theft to have taken place without it being noticed by anybody in the vicinity.

6. In response to the **first Protest petition, State filed a Reply** dated 12.10.2018. Apparently, the Ld. MM *vide* undated Order, directed further investigations but again, a final *Untraced Report* was submitted on 19.07.2019.

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7. Second *Protest Petition* was filed by the Petitioner, stating that he was relying of the Final Written Arguments and Compendium already on record.
8. The Petitioner has stated that in Compliance of Order dated 19.09.2019, Head Constable, Mr. Udai Bhan/IO, Mr. Hemant Kumar, SHO, who had filed the *Closure Report* and ACP, Mr. H.S.P. Singh, who had forwarded the Closure Report and Inspector Mr. Ajay Kumar, SHO, Police Station Moti Nagar, gave their explanations, which were flimsy and had no merit. The Petitioner again submitted his written arguments.
9. The successor learned Metropolitan Magistrate *vide* Order dated 29.05.2023, granted a clean chit to the Police without even looking at the material on record and the earlier Order dated 19.09.2019.
10. This subsequent Order of 29.05.2023 amounted to a virtual review of earlier Order dated 19.09.2019 for which it had no powers. The learned Metropolitan Magistrate did not even consider the explanations submitted by the four Police Officers, in terms of Order dated 19.09.2019, as well as the Written Submissions of the Complainant.
11. The Petitioner filed a ***Revision Petition No. 537/2023*** against the said Order dated 29.05.2023, before the learned ASJ.
12. The learned ASJ referred to the Order dated 19.09.2019 of the learned Metropolitan Magistrate in detail and also made a reference to the Order of the learned Metropolitan Magistrate dated 29.05.2023, and concluded that it was not a case of *no investigation*. Endorsing the observations of the learned Metropolitan Magistrate in regard to the manner of investigations, it was found that there was no illegality and infirmity in the Order of the learned Metropolitan Magistrate in accepting the Untrace Report. The Revision Petition was dismissed with the observations that it had no merit.



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13. The acceptance of the impugned Report by the Ld. MM, has been challenged on the **grounds** that the learned Metropolitan Magistrate had observed in the Order dated 19.09.2019 that the Investigating Officer had not conducted any enquiry from the neighbours or the people from in the immediate vicinity and had not collected any CCTV footage or considered the explanations given by the four Officers and the Written Arguments submitted by the Complainant.

14. Further, the learned Metropolitan Magistrate had acted in violation of the observations made by the learned Apex Court in the Case of Adalat Prasad vs. Roop Lal Jindal that no Metropolitan Magistrate has the authority to review its own Order. The learned Sessions Judge has failed to look into the earlier Order of the learned Metropolitan Magistrate dated 19.09.2019 and has also not considered that no clean chit ever had been given by the learned Metropolitan Magistrate. Further, no Show Cause Notice was given to the Police Officials, pursuant to the Order dated 19.09.2019 to the erring Police Officials despite which no action has been taken against them, which also amounts to sitting in Appeal over the said Order of learned Metropolitan Magistrate dated 19.09.2019.

15. The Police is trained to conduct the investigations rather than the ordinary citizen and the observations of the learned ASJ that there was no indication given about the spot from where the CCTV could be collected, is patently against the investigated jurisprudence. The Police Officials cannot go scot-free, without any accountability for their negligence, connivance, disregard and dereliction of duty. Such lax attitude of the Police has a direct impact of further propagating the commission of crime in the society.

16. The unsolved crimes not only demoralize the law-abiding citizens, but



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also encourage and train the criminals to commit bigger and heinous crimes in the society.

17. The Petitioner has further contended that Section 357A sub clause (4) and (5), which is now 396 BNSS, have remained dead letters and have not been implemented till date.

18. There is no scheme for award of compensation framed either by State or DLSA for which, the directions may be issued. The Petitioner was entitled to compensate and the compensation payable by the erring Police Officials or the State as vicarious liability, should have been determined.

Submissions heard and the record perused.

19. The Petitioner, who is a senior citizen of 70 years, had the unfortunate incident of broad daylight theft in his house on 25.12.2015 from 02:00 pm to 06:30 pm, when he had gone out only for a little while. According to his Complaint, jewellery and valuables worth Rs. 20 Lakhs, were robbed from his house.

20. The first *Untrace Report* had been filed on 22.09.2016, and Protest Petition was filed by the Petitioner on 21.01.2017. Thereafter, the State filed a Reply dated 12.10.2018 and also, a second final *Untrace Report* was submitted on 19.07.2019, highlighting the further investigations that were undertaken. Though the neighbours had not been examined earlier, but subsequent to the directions of the learned Metropolitan Magistrate, further investigations were undertaken by the Police and the neighbours were questioned, but nothing material could be unearthed.

21. The learned MM in his Order dated 19.09.2019 noticed the entire series of events, conduct of the Police Officials in carrying out the botched - up investigation, but observed that owing to the fact that the matter was



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already five years old, *the Untrace Report* was accepted by the learned MM *vide* Order dated 19.09.2019. However, serious dereliction of duties by the Police were observed thus:-

“In the given case the police authorities have completely failed to discharge their duties. The Investigating Office instead of timely collecting CCTV footage, had done a mere formality of investigation by unnecessarily interrogating the habitual offenders of the area. In the considered opinion of this Court, by not discharging their duties, the police authorities have, to some extent contributed to the loss caused to the complainant.”

22. The learned Metropolitan Magistrate held the Police Authorities were responsible for lack of investigations and made the following Order:-

“Let the first IO, concerned ACP who had forwarded the report of HC Udai Bhan, and the then SHO be called upon to file their explanation as to why they should not be directed to pay compensation to the complainant.”

23. Thereafter, *vide* Order dated 29.05.2023, the explanations of the concerned officials were considered and the learned Metropolitan Magistrate observed that it was not the case that no efforts had been made. The explanation tendered by the Police officials, were found to be satisfactory and no ground was found to interfere with the *Untrace Report* that was already accepted.

24. The Petitioner filed a **Revision Petition No. 537/2023** against the said Order dated 29.05.2023, before the learned ASJ.

25. Learned ASJ in his Order dated 27.01.2025, referred to the Order



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dated 19.09.2019 of the learned Metropolitan Magistrate in detail and also considered that the doors of the house of the Complainant, were broken and the almirahs were ransacked and that the Investigating Officer had even called the Crime Team and prepared the Site Plan. Chance prints were also lifted to trace the Accused, though they were partial and smudged and were not sufficient for relative comparison. Further investigations had also been carried out by the Police pursuant to the directions of learned MM, but to no avail, leading to again filing of *Untrace Report* dated 18.07.2019, which was filed in the Court on 19.07.2019. Also, learned ASJ made a reference to the Order of the learned Metropolitan Magistrate and concluded that it was not a case of no investigation, and no ground was found to interfere with the untrace Report which had already been accepted by the learned MM.

26. The grievance of the Petitioner is that there was *slip shod and lackadaisical investigation carried out by the Police*, in making no sincere efforts to collect the CCTV footage from the vicinity. Also, no comprehensive enquiry was made from the people residing in the vicinity as there was every likelihood that some person may have been able to give some information, which could have led the Police to the culprits.

27. There is nothing pointed out by the Petitioner, to show if there was any CCTV at the spot, which could have been collected by the Police. General allegations that CCTV footage of the incident should have been procured is not of much avail to the Complainant, for alleging deliberate and intentional non-procurement of the Investigating Officer. While it is correct that it is not for the Complainant to guide the Police about the manner in which the investigations must be conducted, but then merely asserting that investigations were slip shod, would also not be sufficient.



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28. There is no indication that there was any CCTV camera installed near the scene of crime. While the Police is expected to work diligently and make absolute whole-hearted endeavour to solve the crime and arrest the accused, but in certain cases, unaided by expert forensic training, certain aspects may not be given due weightage, but that in itself cannot be a ground to question the entire investigations. The Complainant is the most important resource to give significant cues, to assist in investigations. In the absence of even any assertion that there was a CCTV camera installed, mere conjectural assertions, do not help in the investigations or in concluding any intentional overlooking of material evidence by the Police.

29. The CCTV footage may have been of some consequence, but there is no evidence whatsoever on record to show that there indeed was any CCTV camera installed near the scene of incident. The Complainant though is right in asserting that it is not his job to direct the Police, about the manner in which, the investigation is to be conducted, but there is nothing cogent on record to show that there indeed was a CCTV camera near the scene of crime.

30. The ***second grievance*** was that it being a day light robbery, it is not possible that no neighbours would have witnessed some person, but no neighbour was examined. Ld. MM in his initial Order dated 19.09.2019 did highlight that the neighbours should have been examined. Further investigations were undertaken and available neighbours were examined, though nothing significant could be unravelled. Ld. MM as well as Ld. ASJ in their respective Orders, considered the case diaries where it was recorded observed that though initially neighbours were not interrogated but subsequent interrogation of the neighbours, did not reveal anything. There



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being nothing coming forth, any further directions for investigations, is futile.

31. It is not a case of no effort being made to conduct the investigations. As has been noticed by the learned ASJ, the Crime Team had visited the scene of crime and aside from preparing the Site Plan, the finger prints were also lifted which, however, were smudged and not of the quality, which could have assisted the Police in identification of the culprits. The investigations were conducted though it did not yield any result.

32. The incident of theft is of 2005 and much efforts have already been made. Investigation has been carried out by the Police initially and also subsequently, pursuant to the directions of the learned Metropolitan Magistrate. The *Untrace Report* was rightly accepted by the learned Metropolitan Magistrate after due consideration of the various factors and the same has been rightly upheld by the learned ASJ.

33. The Petitioner has contended that the Ld. MM practically reviewed the earlier Order of MM dated 19.09.2019 for which it had no jurisdiction. However, this contention is fallacious, in so much as the Ld. MM in Order dated 19.09.2019 while accepting the *Untrace Report*, had sought explanations from the concerned Police Officials for their explanation as to why they should not be directed to pay compensation to the Complainant. In the Order dated 29.05.2023, the explanations of the concerned Police Officials were considered, and it was found that it was not a case in which no efforts had been made. Hence, there is no Review of earlier Order 19.09.2019, but only the explanation given by the Police official about the investigations done, was accepted. Therefore, there was no question of granting compensation to the Petitioner. As the record would show, there is



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no Review of the earlier Order dated 19.09.2019 in the subsequent Order dated 29.05.2023.

34. It may be a case where the Complainant has lost much of his valuables and feels betrayed and cheated by those who have committed the crime, but the Police could have only done whatever they could, to trace the culprits. Unfortunately, no culprit could be traced and consequently *Untrace Report* was submitted.

35. There is some angst that no action has been directed against the erring Police Officials. However, Ld. ASJ has succinctly noted that before passing any adverse Orders against the Supervisory/Investigative Officer, the Court has to satisfy itself that the facts and circumstances reveal that the reasonable efforts have not been made by them, which was not so in the present case. No disciplinary action is merited, in the present case.

36. The learned Metropolitan Magistrate, as well as the learned ASJ, were right in the circumstances when no incriminating evidence was coming forth, to accept the *Untrace Report*.

37. The next grievance of the Complainant is that despite there being Section 357A (4) and (5) dealing **with giving compensation to the victims**, they have remained a dead letter and there is no scheme formulated till date, for awarding compensation in such right cases.

38. The scheme of victim compensation is provided under Section 357A CrPC, the relevant paragraphs of which are as follows:

“357-A. Victim compensation scheme — (1) Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a



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result of the crime and who require rehabilitation.

(2) Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).

(3) If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under Section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

(4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.

(5) On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Service Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.

(6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.]”

39. The Delhi Victim Compensation Scheme has already been brought

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into effect pursuant to Section 357A(1) CrPC. The first DVC Scheme was brought into effect in 2011, and thereafter, replaced by the DVC Scheme, 2015 which came into effect from 23.12.2016. The said Scheme has since been modified and promulgated as Delhi Victim Compensation Scheme, 2018 (***“DVC Scheme”***), brought into effect from 02.10.2018. The DVC Scheme includes provisions pertaining to the eligibility for compensation, the procedure for grant of compensation and the factors to be considered while awarding compensation.

40. Besides, directions have been issued on multiple occasions by this Court as well as the Hon’ble Apex Court with respect to the implementation of Section 357A CrPC and the DVC Scheme. Therefore, the contention that no Scheme is formulated or S.357A Cr.P.C., is a dead letter, is erroneous.

41. In view of the aforesaid, the Petitioner is at liberty to approach the appropriate forum for seeking compensation for the injury/ loss suffered in accordance with law.

42. Accordingly, the present Petition is dismissed as having no merit. The pending Applications, if any, are disposed of accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 4, 2025/va

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