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

+ **CRL.M.C. 6874/2025 & CRL.M.A. 28892/2025**

SITA RAM MISHRA

.....Petitioner

Through: Mr. Laksh Khanna, Advocate
(DHCLSC) and Ms. Diksha Suri,
Advocate along with Petitioner in
person.

versus

PRAVEEN KUMAR

.....Respondent

Through: *Appearance not given.*

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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24.09.2025

1. The present petition under Section 528 of the Bhartiya Nagarik Suraksha Sanhita, 2023¹ (erstwhile Section 482 of the Code of Criminal Procedure, 1973²) assails order dated 27th May, 2025. By the said order, the Sessions Court has aside the order dated 17th August, 2023 passed by the Metropolitan Magistrate, SED, Saket Court in Complaint case No. 442/2022 by which the Petitioner has been summoned for the offence under Section 323/341 of the Indian Penal Code, 1860³.
2. Briefly, the Petitioner's case arises from an alleged incident on 24th March 2020, when he claims to have been assaulted by the Respondent near

¹ "BNSS"

² "Cr.P.C."

³ "IPC"



the Sarai Kale Khan bus stand, New Delhi, while seeking temporary shelter due to the closure of a Rain Basera during the COVID-19 lockdown. The Petitioner alleges that the Respondent assaulted him with a wooden stick and inflicted punches and slaps, causing injuries, as reflected in his MLC dated 25th March 2020 prepared at AIIMS Trauma Centre. Despite repeated complaints to the concerned Police Station, the DCPs, and even the Lt. Governor, no action was taken. Consequently, the Petitioner filed an application under Section 156(3) Cr.P.C. before the Metropolitan Magistrate, SED, Saket Courts. By order dated 14th November 2022, the application was dismissed and directed to be treated as a private complaint. The Metropolitan Magistrate subsequently took cognizance after recording pre-summoning evidence and, on 17th August 2023, issued summons to the Respondent under Sections 323/341 of IPC. The Respondent challenged this order before the Sessions Court, which, by the impugned order dated 25th May 2025, set aside the Magistrate's order. Aggrieved, the Petitioner has filed the present petition.

3. Counsel for the Petitioner contends that the Sessions Court failed to appreciate that the summoning order was based on specific allegations of assault corroborated by the MLC. These allegations, *prima facie*, disclose the commission of an offence. He further submits that the Sessions Court erred in dismissing the complaint on the ground that the lockdown had already commenced, noting that despite the lockdown, many individuals, including migrant workers and homeless persons, were traveling by bus to seek shelter prior to that date. Counsel also argues that the Sessions Court wrongly relied on the absence of sanction under Section 197 of Cr.P.C. Assaulting a citizen is beyond the scope of official duty and does not attract



the protection of Section 197 of Cr.P.C. In the present case, the alleged assault bears no reasonable connection to the discharge of official duties; any question regarding sanction could have been addressed during trial.

4. This Court has considered the aforementioned contentions. The impugned order of the Sessions Court setting aside the order of the MM reads as follows: -

8. *Having heard the arguments and perused the entire records, I note firstly that as per the report and the common knowledge, on 21.03.2020, the lockdown had been declared in the entire country and at that time, no public/private transport was allowed to ply on the road. Secondly, the complainant has also not placed on record any bus ticket/pass to show that he visited Sarai Kale Khan via bus at the time of the incident. Thus, the complainant's statement that on 24.03.2020, he reached at Sarai Kale Khan via bus route no. 261 is not plausible.*

9. *Secondly, I find substance in the contention of Ld. Counsel for the revisionist on the point that the complainant in his complaint stated that on 25.03.2020, MLC was prepared and two stitches were given at his stomach, whereas perusal of the MLC shows that the complainant had received injuries on his left leg and not at stomach. Accordingly, the statement of the complainant is found to be contradictory and incorrect on this point.*

10. *Thirdly, I note that as per the complainant's allegations, it was accused Praveen Kumar who had beaten him up, however, at the time of his medical examination at AIIMS, Delhi before the doctor, he did not disclose the name of any accused including the revisionist and he specifically recorded that it was an assault committed by the three unknown police personnel near Sarai Kale Khan. Later, during his testimony, he specifically named the accused Praveen Kumar that he started beating him up with danda and punches. Thus, in the circumstances, I find that the statement of complainant, which contain contradictions and inconsistencies, cannot be believed upon.*

11. *Besides above, since the revisionist is a public servant and admitted he was acting as a police official at the time of commission of the alleged offence, while discharging his official duty and therefore, there is a mandatory requirement for obtaining prior sanction u/s 197 Cr.P.C. to proceed against the accused before taking cognizance of the offence.*

12. *On this, Ld. Counsel for the revisionist also placed reliance on the case of **Anil Kumar & Ors. vs. M.K. Aiyappa & Anr. Special Leave Petition (Criminal) Nos. 6652-6653 of 2013.***

13. *Further, it would also be apt to peruse the relevant extract of **State of Uttar Pradesh v. Paras Nath Singh (2009) 6 SCC 372**, wherein the Hon'ble Apex Court observed as under:*

"6.....And the jurisdiction of a Magistrate to take cognizance of any offence is provided by Section 190 of the Code, either on receipt of a complainant, or upon a police report or upon information received from any person other than a police officer, or upon his knowledge that such offence



has been committed. So far as public servants are concerned, the cognizance of any offence, by any Court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in Jaw if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, 'no court shall take cognizance of such offence except with the previous sanction'. Use of the words 'no' and 'shall' make it abundantly clear that the bar on the exercise of power of the court to take cognizance of any offence is absolute and complete. The very cognizance is barred. Thus, the complaint cannot be taken notice of. According to Black's Law Dictionary the word 'cognizance' means jurisdiction or the exercise of jurisdiction or power to try and determine causes'. In common parlance, it means taking notice of. A court therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during discharge of his official duty."

14. *In the light of the above discussion, I find the impugned order warrants interference of this Court, therefore, I deem it fit to set aside the impugned order dated 17.08.2023 passed by Ld. Trial Court qua the revisionist. Hence, the criminal revision petition is hereby allowed.*
15. *TCR, if any, alongwith copy of this order be sent to Ld. Trial Court for necessary information/compliance.*
16. *revision file be consigned to record room after due compliance.*
17. *Copy of this order be given dasti.*

5. Having considered the rival submissions and examined the record, this Court finds no infirmity in the impugned order. The Sessions Court has highlighted three features that go to the root of the matter: (i) the Complainant's own inconsistencies regarding the date, manner, and place of the alleged assault; (ii) the contradiction between his version and the MLC on the site and nature of injuries; and (iii) the omission to name the accused when examined medically, despite later attributing specific acts of violence to him. These are not minor discrepancies that can be brushed aside at the



threshold; they strike at the credibility of the complaint and justify a cautious approach by the revisional court.

6. The Petitioner's principal submission that summoning could not be interfered with since the allegations, if taken at face value, made out an offence of assault, does not persuade this Court. While ordinarily, the threshold at the summoning stage is indeed low, it is equally settled that where the very foundation of the complaint is riddled with contradictions and improbabilities, the Magistrate's order may not stand scrutiny. A summoning order is not immune from revisional oversight merely because some allegations exist; it must reflect an application of mind to whether the material discloses a *prima facie* case worth putting an accused to trial.

7. The legal position on Section 197 of Cr.P.C. is well settled. Sanction is a condition precedent to the court's competence to take cognizance of an offence "alleged to have been committed by a public servant while acting or purporting to act in the discharge of his official duty." The test is not of culpability but of nexus: if the act is reasonably connected with official functions, sanction is required; only where the act is wholly unrelated to duty does the bar not apply.⁴ In the present case, the complaint itself indicates that the incident arose during law-and-order enforcement at a public transport hub amid a lockdown. Even assuming some excess of authority, that does not efface the nexus for the purposes of Section 197. The object of the provision is precisely to ensure that prosecutions for acts done in the course or colour of duty proceed only after Government scrutiny at the pre-cognizance stage.

⁴ *Devinder Singh v. State of Punjab* (2016) 12 SCC 87; *Gauri Shankar Prasad v. State of Bihar & Anr.* 2000 (5) SCC 15.



8. The contention that the question of sanction could have been deferred to trial is untenable. In cases where the nexus is evident on the face of the complaint. The Supreme Court has repeatedly held that when the allegations themselves project the act as integrally connected with official functions, the court cannot take cognizance absent prior sanction.⁵ The Sessions Court's view that sanction was a precondition is therefore in line with binding precedents.

9. To be clear, no court condones the use of excessive force. Acts motivated by personal animus or bearing no relation to official duty do not enjoy its protection. However, the present case, by the Petitioner's own account, stems from action taken during deployment pursuant to lawful lockdown orders. Whether the force used was proportionate is a merits question; whether the prosecution may proceed without sanction is a jurisdictional one. The Sessions Court addressed the latter and answered it correctly.

10. The additional reasons noticed by the Sessions Court, i.e., implausibility of bus travel during the relevant lockdown phase and the absence of contemporaneous particulars, were not the sole foundation of its decision, but context for assessing plausibility at the summoning stage. Even leaving those aside, the sanction bar suffices to sustain the result.

11. Two clarifications are apposite. First, this order expresses no opinion on the truth of the allegations. Secondly, nothing prevents the Petitioner from approaching the competent Government for sanction; if sanction is granted, it will be open to pursue the complaint in accordance with law. Likewise, if the competent authority declines sanction, that order would be

⁵ *Amrik Singh v. State of Pepsu* AIR 1955 SC 309.



amenable to challenge on its own merits.

12. In light of the above, no ground is made out to interfere with the Sessions Court's order.

13. Accordingly, the present petition is dismissed along with pending application.

SANJEEV NARULA, J

SEPTEMBER 24, 2025/MK