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

% Judgment delivered on: 22.04.2025

+ **CRL.M.C. 9375/2024 & CRL.M.A.Nos. 35967-68/2024**

**XXXXX**

..... Petitioner

versus

**THE STATE GOVT OF NCT  
OF DELHI AND ORS**

..... Respondents

**Advocates who appeared in this case:**

For the Petitioner : Mr. Pavitraveer Singh, Mr. Sudheer  
Goswami, Ms. Shino Gupta & Mr. Neel  
Kumar Sharma, Advs.

For the Respondents : Mr. Utkarsh, APP for the State  
W/SI Sangam Yadav, PS Mayur Vihar

**CORAM****HON'BLE MR JUSTICE AMIT MAHAJAN****JUDGMENT**

1. The present petition is filed under Section 528 of the Bharatiya Nyaya Suraksha Sanhita, 2023 ('**BNSS**'), *inter alia*, challenging the order dated 14.08.2024 (hereafter '**impugned order**'), passed by the learned Additional Sessions Judge ('**ASJ**'), East District,



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Karkardooma Courts, Delhi, in Cr. Rev. No. 314/23. The petitioner has also sought directions for re-investigation of the matter.

2. By the impugned order, the learned ASJ upheld the order dated 12.10.2023, passed in CR Cases 3482/2023 arising out of FIR No. 144/2023, registered at Police Station Mayur Vihar, whereby the learned Metropolitan Magistrate ('MM') had dismissed the protest petition filed on behalf of the petitioner.

3. The brief facts of the case are as follows:

3.1. On the basis of a complaint made by the petitioner, an FIR was registered against Respondent No.4/ accused for the offence under Section 376 of the Indian Penal Code, 1860 ('IPC'). To put it succinctly, it is alleged that the petitioner became acquainted with the accused on a matrimonial website, whereafter, around the month of August, 2020, he proposed marriage to the petitioner. It is the case of the petitioner that she remained in touch the accused over the next four months and met him in January, 2021 in Delhi. After talking to her family, the petitioner assented to the marriage and the petitioner went to Uttarakhand with the accused on his insistence on 25.01.2021. It is alleged that the parties had to stay an extra night at the hotel due to farmers protest in Delhi, and the accused made the petitioner drink something that made her intoxicated. It is alleged that the accused clicked private pictures and shot videos of the petitioner.



3.2. The parties also went to another hotel in Mayur Vihar. Subsequently, during a fight, the accused shared the photos with the petitioner. It is alleged that the accused made forcible relations with her many times in different hotels and properties on the basis of the photos and assured the petitioner that they will get married soon. It is alleged that the accused made videos every time and refused to delete the photographs and videos in the name of memories. It is alleged that the accused threatened to defame the petitioner and make her intimate photographs and videos viral.

3.3. Pursuant to the same, the charge sheet was filed against Respondent No.4 for the offences under Sections 376, 328 and 506 of the IPC. The prosecution listed 18 witnesses in the charge sheet, including, the mother of the petitioner as well as certain individuals who are employed at the named Hotels.

3.4. Aggrieved with the investigation that had been carried out by the police authorities, the petitioner preferred a protest petition.

3.5. The protest petition was dismissed by the learned MM by order dated 12.10.2023. The learned MM found that there was no merit in the protest petition and observed that if Respondent No.4 ever tried to share the intimate photographs of the petitioner, the same would give rise to a separate cause of action. The relevant portion of the order dated 12.10.2023 is reproduced hereunder:

*“Considering the submissions, this court deems it fit to dismiss the protest petition filed on behalf of the complainant as there is no*



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*merit in the protest petition and in the arguments addressed on behalf of the complainant. Further needless to say that **a separate cause of action will arise if the accused ever tries to share or disseminate the alleged photographs/videos of the complainant** and also it might be a ground for cancellation of bail of the accused. **Further IO has given a written a report with regards to the statement u/s. 161 Cr.PC that those statements are true and correct proceedings of this case taken during the investigation and there is no reason to concoct the facts and circumstances of the present case.***”

(emphasis supplied)

3.6. The order dated 12.10.2023 was challenged by the petitioner in a revision petition before the learned ASJ, who dismissed the same by the impugned order. The learned ASJ noted that the only apprehension of the petitioner was that the accused may misuse the obscene photographs and videos of the petitioner in the future. The scope of revisional proceedings was discussed by the learned ASJ and it was found that there was no patent defect or error of jurisdiction or law in the order dated 12.10.2023 to warrant interfering with the same. The relevant portion of the impugned order is reproduced hereunder:

*“8. In the case in hand, the contention of ld. Counsel for revisionist/ prosecutrix is that non-revisionist/ accused was having 11 Gadgets in which he was having obscene photographs and videos the of revisionist prosecutrix. **This fact came from reply filed by the IO on 13.09.2023 wherein she stated that two mobile numbers belonging to non-revisionist/ accused were used in 11 IMEIs numbers for the Period from 01.09.2021 to 20.06.2023.** From perusal of that reply it appears that IO had given 09 IMEIs numbers wherein two mobile numbers of the non-revisionist/ accused were used. There are not 11 IMEIs numbers as the two IMEI numbers have been repeated. Out of those 09 IMEIs numbers, the mobile Phone seized by the police is having two IMUIs numbers. **Just because non-revisionist/ accused has used his mobile numbers in various phones/ gadgets, it does not mean***



*that all of such mobile phones/ gadgets would have obscene photographs or videos of the revisionist/ prosecutrix. Furthermore, if in future non-revisionist/ accused would misuse any obscene photographs or videos of the Prosecutrix, he will be liable for punishment under relevant provisions of law. However, at this stage, Court cannot assume that non-revisionist/ accused would do any such act. Further, in the bail order of the non-revisionist/ accused condition has already imposed on him that he shall not indulge into similar nature of offences or any other offence in the event of release on bail. Thus, if in future non-revisionist/ accused would misuse any obscene photographs or videos of the revisionist/ prosecutrix, she can also get his bail cancelled. Furthermore, the prosecutrix can seek injunction from a Civil Court qua any of her apprehension, however no such relief can be granted by a Criminal Court.”*

(emphasis supplied)

3.7. Aggrieved by the impugned order, the petitioner has preferred the present petition.

4. The learned counsel for the petitioner submitted that the impugned order is unsustainable and ought to be set aside.

5. He submitted that the petitioner has informed the Investigating Officer that the accused had saved her objectional videos and photographs in a number of devices, including, his two iphones, iPad, Macbook and hard drives. He further submitted that there are selfies and photographs of the accused which show him using an iphone 11 pro max of light blue color and iphone 12 of white color.

6. He submitted that the additional status report filed by the Investigating Officer in response to the protest petition shows that all the devices where the mobile number of the accused was used have not been seized.



7. He submitted that the seizure of the said devices is required as the petitioner and her family are apprehensive that the accused may attempt to misuse her photographs and videos to defame the petitioner or blackmail her.

8. He submitted that while the accused had stated in his disclosure statement that he had already deleted all the photographs and videos, but he had annexed certain photos in his revision petition.

9. He further submitted that the accused had also allegedly retained the intimate photographs and videos of a number of other girls in his devices as well.

### **ANALYSIS**

10. The first issue that falls for the consideration of this Court is whether the petitioner having already availed the remedy of revision should be allowed to take recourse to Section 528 of the BNSS [*analogous to Section 482 of the Code of Criminal Procedure, 1973* ('CrPC')] as a substitute for initiating a second revisional challenge which is clearly barred under Section 438(3) of the BNSS [*analogous to Section 397(3) of the CrPC*] which reads as follows:

*“(3) If an application under this section has been made by any person either to the High court or to the Sessions Judge, no further application by the same person shall be entertained by the either of them.”*



11. At the outset, it is relevant to note that while it is settled law that a second revision cannot be filed in terms of the bar under Section 397 of the CrPC, the inherent power of this Court under Section 482 of the CrPC has a wide ambit and can be exercised in the interest of justice. It is settled law that the power under Section 482 of the CrPC is to be exercised cautiously and sparingly, especially when Sessions Judge has already exercised revisional power under Section 397 of the CrPC. The Hon'ble Apex Court, in the case of **Krishnan v. Krishnaveni : (1997) 4 SCC 241**, had observed as under:

*“8. The object of Section 483 and the purpose behind conferring the revisional power under Section 397 read with Section 401, upon the High Court is to invest continuous supervisory jurisdiction so as to prevent miscarriage of justice or to correct irregularity of the procedure or to mete out justice. In addition, the inherent power of the High Court is preserved by Section 482. The power of the High Court, therefore, is very wide. However, the High Court must exercise such power sparingly and cautiously when the Sessions Judge has simultaneously exercised revisional power under Section 397(1). However, when the High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/incorrectness committed by inferior criminal court in its juridical process or illegality of sentence or order.”*

(emphasis supplied)

12. The present case is one where the protest petition filed by the petitioner complainant has been dismissed for being devoid of merits. Before delving into the facts of the present case, this Court considers it



apposite to succinctly take note of the law in relation to protest petitions.

13. While there is no specific provision in the BNSS which authorizes the complainant to file a protest petition, however, the right of a complainant to prefer a protest petition is borne out of practice. Usually, the protest petition is filed by a complainant after a final report is filed by the investigating agency to contest the finding of no case being made out or in case of infirmities in the investigation.

14. The Hon'ble Apex Court in the case of ***Gangadhar Janardan Mhatre v. State of Maharashtra : (2004) 7 SCC 768*** had discussed the right of an informant to contest the conclusions of the investigating agency after investigation has been carried. Briefly, the Hon'ble Apex Court also discussed the importance of notice to an informant and his right to be heard at the time of consideration of the final report. The relevant portion of the judgment is reproduced hereunder:

***“6. There is no provision in the Code to file a protest petition by the informant who lodged the first information report. But this has been the practice. Absence of a provision in the Code relating to filing of a protest petition has been considered. This Court in *Bhagwant Singh v. Commr. of Police [(1985) 2 SCC 537 : 1985 SCC (Cri) 267 : AIR 1985 SC 1285]* stressed on the desirability of intimation being given to the informant when a report made under Section 173(2) is under consideration...***

***7. Therefore, there is no shadow of doubt that the informant is entitled to a notice and an opportunity to be heard at the time of consideration of the report. This Court further held that the position is different so far as an injured person or a relative of the deceased, who is not an informant, is concerned. They are not entitled to any notice. This Court felt that the question relating to***



*issue of notice and grant of opportunity as aforescribed was of general importance and directed that copies of the judgment be sent to the High Courts in all the States so that the High Courts in their turn may circulate the same among the Magistrates within their respective jurisdictions.*

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**9.** *When a report forwarded by the police to the Magistrate under Section 173(2)(i) is placed before him several situations arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may either (1) accept the report and take cognizance of the offence and issue process, or (2) may disagree with the report and drop the proceeding, or (3) may direct further investigation under Section 156(3) and require the police to make a further report. The report may on the other hand state that according to the police, no offence appears to have been committed. When such a report is placed before the Magistrate he has again option of adopting one of the three courses open i.e. (1) he may accept the report and drop the proceeding; or (2) he may disagree with the report and take the view that there is sufficient ground for further proceeding, take cognizance of the offence and issue process; or (3) he may direct further investigation to be made by the police under Section 156(3)...*

**10.** *We may add here that the expressions “charge-sheet” or “final report” are not used in the Code, but it is understood in Police Manuals of several States containing the rules and regulations to be a report by the police filed under Section 170 of the Code, described as a “charge-sheet”. In case of reports sent under Section 169 i.e. where there is no sufficiency of evidence to justify forwarding of a case to a Magistrate, it is termed variously i.e. referred charge, final report or summary. Section 173 in terms does not refer to any notice to be given to raise any protest to the report submitted by the police. Though the notice issued under some of the Police Manuals states it to be a notice under Section 173 of the Code, there is nothing in Section 173 specifically providing for such a notice.*

**11.** *As decided by this Court in Bhagwant Singh case [(1985) 2 SCC 537 : 1985 SCC (Cri) 267 : AIR 1985 SC 1285] the Magistrate has to give notice to the informant and provide an opportunity to be heard at the time of consideration of the report. It was noted as follows : (SCC p. 542, para 4)*



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*“[T]he Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report.”*

***12. Therefore, the stress is on the issue of notice by the Magistrate at the time of consideration of the report. If the informant is not aware as to when the matter is to be considered, obviously, he cannot be faulted, even if protest petition in reply to the notice issued by the police has been filed belatedly. But as indicated in Bhagwant Singh case [(1985) 2 SCC 537 : 1985 SCC (Cri) 267: AIR 1985 SC 1285] the right is conferred on the informant and none else.”***

(emphasis supplied)

15. The present case is one where the police has deemed it fit to file a final report alleging charges against the accused rather than a closure report. Despite the same, the petitioner preferred a protest petition. It was argued on behalf of the petitioner before the learned MM that the Investigating Officer had not seized all the devices in which the photographs and videos of the petitioner were stored by the accused. It was also argued that the Investigating Officer had wrongly recorded the statement of the petitioner to the effect that no sexual assault had happened with her in the parking lot of Medanta Hospital, Gurugram, Haryana. It was also argued that the Investigating Officer had falsely recorded a statement of the petitioner’s mother even though her mother had not met any police officer nor signed any documents.

16. Insofar as the incident in the car and the statement of the petitioner’s mother is concerned, the learned Trial Court noted that the Investigating Officer had mentioned in her report that the recorded



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statements were true and correct and there was no reason to concoct the facts.

17. Even otherwise, it is relevant to note that before this Court, the only issue agitated is the apprehension of the petitioner that the accused will misuse her intimate photographs and videos. It is relevant to note that before the learned ASJ as well, it was stated on behalf of the petitioner that her only apprehension was that the accused will misuse her intimate photographs and videos.

18. The petitioner has listed a number of devices that were allegedly used by the accused and in which he had allegedly stored her intimate photographs and videos, including, his Macbook and hard disks. Reliance is also placed upon the additional reply to the protest petition which mentions that as per the CDR of the mobile numbers attributed to the accused, his numbers were used in a total of eleven IMEI numbers. As noted by the learned ASJ, two IMEI numbers are repeated in the list, and there were thus only nine IMEI numbers to account for. Out of these nine, two IMEI numbers were found to be associated with the gadget that ultimately was seized from the accused.

19. It was noted by the learned ASJ that merely because the accused has used his mobile number in a number of gadgets, that alone is no cause to conclude that her obscene photographs or videos were stored in all such gadgets.



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20. The protest petition appears to have been filed essentially out of apprehension of misuse of the intimate photographs and videos of the petitioner. While the allegations as alleged in the FIR are grave in nature and this Court is sensitive to the plight of the victim petitioner, at this stage, the only cause for seeking re-investigation seems to be borne out of her pure bald apprehensions. Vague assertions for seizure of a number of devices have been made on the basis of selfies of the accused with some devices as well. The same cannot be a reason for vitiating the entire investigation and directing *de novo* investigation as sought for. It would not be prudent to direct seizure of all the devices that were used by the accused merely on account of apprehensions of the petitioner that the accused will threaten or blackmail her. Moreover, there is nothing to suggest that the accused would have not already disseminated and made copies of the photographs and videos that the petitioner seeks to protect. There can be no end to paranoia in such circumstances.

21. As noted by the lower courts, sufficient deterrent in the form of strict bail conditions have been imposed on the accused already. If the accused still does anything untoward, he will be subjected to the consequences of his actions in accordance with law. No other pre-emptive relief can be granted to the petitioner in this regard in the remit of the present proceedings.

22. As discussed above, no other ground has been pressed before this Court or even the learned ASJ, apart from the apprehension of the



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petitioner that the accused would disseminate the photographs and videos. It is due to this that the learned ASJ did not comment on any other aspect.

23. In the instant case, this court is of the opinion that no exceptional circumstances have been presented to warrant the exercise of its extraordinary jurisdiction under Section 528 of the BNSS. There is no indication of any legal irregularity in the proceedings undertaken by the two lower courts, and the petitioner has not pointed out any such deficiencies.

24. In view of the aforesaid discussion, this Court finds no infirmity in the impugned order so as to warrant interference in the same.

25. The present petition is dismissed in the aforesaid terms.

26. Pending applications also stand disposed of.

**AMIT MAHAJAN, J**

**APRIL 22, 2025**