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

+ CRL.REV.P. 440/2014, CRL.M.A. 24850/2023

STATE

.....Petitioner

Through: Mr. Sunil Kumar Gautam, APP
with SI H.R. Choudhary, PS
Gandhi Nagar

versus

YASHPAL

.....Respondent

Through: Mr. Anupam S. Sharma, Ms.
Harpreet Kalsi, Mr. Abhishek
Batra, Mr. Ripudaman Sharma,
Mr. Vashisht Rao, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

04.03.2025

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1. This is a revision petition seeking to challenge the order dated 23.04.2014 passed by the learned ASJ-03, East, Karkardooma Courts, Delhi, thereby discharging the respondent in the revision petition bearing CRL.REV.P. 56/2014 filed by the respondent in case titled as “*Yashpal v. State*”, arising out of FIR No.279/2009 registered at PS Gandhi Nagar, Delhi, under Sections 186, 353 and 356 of IPC.
2. *Vide* the order dated 01.06.2012 passed by the learned MM, Karkardooma Courts, Delhi, charges were framed against the respondent under Sections 186, 353 and 356 of IPC.
3. Aggrieved by the said order, the respondent filed a revision petition.
4. *Vide* the order dated 23.04.2014 passed by the learned ASJ-03, East, Karkardooma Courts, Delhi, the respondent was discharged from the case.
5. The brief facts of the case are that on 11.11.2009, SI Surinder Singh



lodged a complaint with the police stating that on 07.11.2009, while he along with Constable Babu Lal was on duty checking the vehicles at Jheel Chowk, one Maruti van bearing registration No.DL-6CH-6249 was stopped. It was found that the driver of the said vehicle was without a seat belt and clothes meant for sale were also loaded in the said vehicle. It is also the case of the prosecution that the driver could not produce any document of the said vehicle.

6. Thus, the driver of the said vehicle was challaned as per law and the said vehicle was also impounded.
7. At the time of lifting the said vehicle, the driver made a call to the owner of the said vehicle on which the respondent came and started abusing the complainant. It is stated that the respondent is the brother-in-law of the owner of the said vehicle. It is alleged that the respondent who is also a constable with Delhi Police misbehaved with the complainant and also snatched his phone.
8. Thereafter, the respondent made a written apology to the complainant and hence, the complainant did not register any case.
9. Further, after 4 days, the complainant was aggrieved by the conduct of the respondent, wherein the respondent was harassing the complainant and hence, the complainant was constrained to register an F.I.R. against the respondent.
10. The learned MM, relying on the judgment of ***Kanti Bhadra Shah & Anr. v. State of West Bengal, AIR 2000 SC 522***, was of the opinion that there was sufficient material to frame the charge against the respondent in the present case.
11. Mr. Gautam, learned APP appearing on behalf of the respondent,



states that at the stage of charge, the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclosed the existence of all the ingredients constituting the ingredients of alleged offence. Reliance is placed on the judgement of ***Niranjan Singh Karam Singh Punjabi & Ors. v. Jitendra Bhimaraj Bijje & Ors., 1990 (4) SCC 76.***

12. On perusal of the impugned order, I am of the view that the learned ASJ has correctly disregarded the written apology to the complainant by the respondent as the same was written to a police officer and thus, is hit by Sections 24, 25 and 26 of the Indian Evidence Act.
13. The same was held in the case of ***Aghnoo Nagesia v. State of Bihar, 1966 SCR (1) 134***, which reads as under:

“9. Section 25 of the Evidence Act is one of the provisions of law dealing with confessions made by an accused. The law relating to confessions is to be found generally in ss. 24 to 30 of the Evidence Act and ss. 162 and 164 of the Code of Criminal Procedure, 1898. Sections 17 to 31 of the Evidence Act are to be found under the heading "Admissions". Confession is a species of admission, and is dealt with in ss. 24 to 30. A confession or an admission is evidence against the maker of it, unless its admissibility is excluded by some provision of law. Section 24 excludes confessions caused by certain inducements, threats and promises. Section 25 provides : "No confession made to a police officer, shall be proved as against a person accused of an offence." The terms of s. 25 are imperative. A confession made to a police officer under any circumstances is not admissible in evidence against the accused. It covers a confession made when he was free and not in police custody, as



also a confession made before any investigation has begun. The expression "accused of any offence" covers a person accused of an offence at the trial whether or not he was accused of the offence when he made the confession. Section 26 prohibits proof against any person of a confession made by him in the custody of a police officer, unless it is made in the immediate presence of a Magistrate. The partial ban imposed by S. 26 relates to a confession made to a person other than a police officer. Section 26 does not qualify the absolute ban imposed by s. 25 on a confession made to a police officer. Section 27 is in the form of a proviso, and partially lifts the ban imposed by ss. 24, 25 and 26. It provides that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. Section 162 of the Code of Criminal Procedure forbids the use of any statement made by any person to a police officer in the course of an investigation for any purpose at any enquiry or trial in respect of the offence Order investigation, save as mentioned in the proviso and in cases falling under sub-s (2), and it specifically provides that nothing in it shall be deemed to affect the provisions of S. 27 of the Evidence Act. The words of s. 162 are wide enough to include a confession made to a police officer in the course of an investigation. A statement or confession made in the course of an investigation may be recorded by a Magistrate under s. 164 of the Code of Criminal Procedure subject to the safeguards imposed by the section. Thus, except as provided by s. 27 of the Evidence Act, a confession by an accused to a police office- is absolutely protected under s. 25 of the Evidence Act, and if it is made in the course of an investigation, it is also protected by s. 162 of the Code of Criminal Procedure, and a confession to any



other person made by him while in the custody of a police officer is protected by S. 26, unless it is made in the immediate presence of a Magistrate. These provisions seem to proceed upon the view that confessions made by an accused to a police officer or made by him while he is in the custody of a police officer are not to be trusted, and should not be used in evidence against him. They are based upon grounds of public policy, and the fullest effect should be given to them.

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18. If the first information report is given by the accused to a police officer and amounts to a confessional statement, proof of the confession is prohibited by s. 25. The confession includes not only the admission of the offence but all other admissions of incriminating facts related to the offence contained in the confessional statement. No part of the confessional statement is receivable in evidence except to the extent that the ban of s. 25 is lifted by S. 27.”

14. It is also stated that the alleged incident is of 07.11.2009 and as per the complainant, he had closed the issue at his end. However, since he felt humiliated by the conduct of the respondent and thus, the F.I.R was registered on 11.11.2009.
15. With regard to the conduct of the complainant in delay of the registration of the FIR, the learned ASJ has well appreciated in Para 11 of the impugned order that the complainant did not report the incident earlier and that the delay in lodging the complaint raises doubts about his motives. Thus, the conduct of the complainant appears to be driven by personal feelings rather than a rational response.



16. The relevant para of the impugned order reads as under:
- “11. The conduct of the complainant is very strange and which is reflected from the FIR itself. He did not lodge any complaint earlier. He decided to lodge the complaint only when he felt humiliated by the conduct of the petitioner/accused. The complainant being the officer of the rank of a Sub Inspector was expected to show a rational behaviour rather than the manner in which he has reacted. The delay on his part goes against him. He has not given any explanation for the delay, in fact he could not have given any such explanation because he decided to lodge the case belatedly consciously. He felt humiliated later and therefore he lodged the FIR. It appears that if the humiliation had been meted out to him after about a week or a month, he would lodge the FIR then.”*
17. Additionally, the statement of TI S.K. Patil recorded on 24.11.2009 does not state about any incident of snatching of the mobile phone of the complainant or obstructing the complainant in discharge of his official duties by the respondent, as alleged by the complainant. He has also stated that the respondent had passed sarcastic remarks against the complainant, however, also explained that he was told about the same by the IO. Thus, the learned ASJ has correctly termed the said statement as hearsay evidence and discarded the same.
18. Thus, the learned ASJ concluded that after considering all aspects of the case, there is only suspicion against the respondent, which is insufficient to frame charges and do not warrant proceeding to trial. Thus, taking the matter to trial would be a waste of time and resources



of the court.

19. The Hon'ble Supreme Court in the case of ***P. Vijayan v. State of Kerala & Anr., 2010 2 SCC 398***, held that where two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion as to the guilt of the accused, the Trial Judge will be empowered to discharge the accused.
20. The relevant para of the said judgement reads as under:

“10. Before considering the merits of the claim of both the parties, it is useful to refer to Section 227 of the Code of Criminal Procedure, 1973, which reads as under:

“227. Discharge.—If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.”

If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage he is not to see whether the trial will end in conviction or acquittal. Further, the words “not sufficient ground for proceeding against the accused” clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is



really the function of the court, after the trial starts.

11. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him.

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25. [Ed.: Para 25 corrected vide Official Corrigendum No. F.3/Ed.B.J./30/2010 dated 23-2-2010.] As discussed earlier, Section 227 in the new Code confers special power on the Judge to discharge an accused at the threshold if upon consideration of the records and documents, he finds that “there is not sufficient ground” for proceeding against the accused. In other words, his consideration of the record and documents at that stage is for the limited purpose of ascertaining whether or not there is sufficient ground for proceeding against the accused. If the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228, if not, he will discharge the accused. This provision was introduced in the Code to avoid wastage of public time when a prima facie case was not disclosed and to save the accused from avoidable harassment and expenditure.”

21. For the said reasons, the impugned order dated 23.04.2014 passed by the learned ASJ-03, East, Karkardooma Courts, Delhi, is well reasoned and does not require any interference and the same is accordingly upheld.



22. The revision petition is dismissed and is disposed of accordingly.

JASMEET SINGH, J

MARCH 4, 2025/sp

Click here to check corrigendum, if any