

# Vijay Kumar Bansal Through Lr & Anr vs State & Ors on 13 March, 2024

**Author: Manoj Kumar Ohri**

**Bench: Manoj Kumar Ohri**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.M.C. 2039/2024 & CRL.M.As. 7882-85/2024

VIJAY KUMAR BANSAL

THROUGH LR & ANR

Through: Mr. Jitender Kumar Jh

Rath and Ms. Pallavi

petitioners in perso

versus

STATE & ORS.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

% 13.03.2024

1. By way of present petition filed under Section 482 Cr.P.C., the petitioners seek to assail the order dated 02.12.2023 passed by the learned ASJ (FTC)-03, South East District, Saket Courts, New Delhi whereby petitioners' revision petition being Cr. Rev. 271/2018 came to be dismissed. At the outset, it is noted that petitioner No.1 namely Vijay Kumar Bansal has expired and is represented in the present proceedings through his legal representative namely Pradeep Kumar Bansal i.e. petitioner No.2.

2. A perusal of the record would show that the accused persons (petitioners herein) are alleged to have physically assaulted one Kalpana Bhattacharya, who, as part of official duty, had visited their house for census related work. On account of the incident, a complaint under Section 195 Cr.P.C. came to be filed by one Kamlesh Suman, Asstt. Education Officer, Central Zone, Lajpat Nagar, New Delhi, which was placed before This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 12/04/2024 at 20:32:25 learned ACMM, South East, New Delhi on 02.10.2010. Although it was marked to be put before the concerned court, however, the same came to be filed alongwith the final report filed in FIR No. 73/2010 registered under Sections 186/353/332/509/34 IPC at P.S. Greater Kailash-I. Aggrieved by the same, the petitioners filed an application under Section 190 Cr.P.C. seeking cognizance of the

c o u r t f o r t h e a l l e g e d o f f e n c e s u n d e r S e c t i o n s 202/175/176/182/186/187/188/192/193/199/403/406/411/379 IPC. It was alleged that the retention of the original complaint under Section 195 Cr.P.C. amounted to illegal and unauthorized possession by respondent Nos. 2 to 5.

3. Vide order dated 02.01.2018, learned MM-04, South East, Saket Courts, New Delhi dismissed the said application. Notably, on that day, two other applications filed under Section 340 Cr.P.C. (by the petitioners) and for dropping of proceedings as provisions under Section 258 Cr.P.C. were also dismissed. In the impugned order, ld. MM noted as under:-

" Perusal of the record reveals that fresh chargesheet was thereon filed before the Court on 01.12.2010 and cognizance of the offence was taken by the Ld Predecessor while specifically mentioning that complaint u/s 195 CrPC has also been filed. However, neither it has been mentioned in the said order dt 01.12.2010 that the complaint u/s 195 CrPC by any police official as alleged in the application u/s 190 CrPC nor it has been mentioned therein that any police official was indeed present on the said day when the fresh challan was filed. The order of the given day not even mentions the presence of any police official and it has been specifically mentioned therein that even the accused were not present before the court on the said date when the fresh challan was filed and summons were issued by the Court for the appearance of the accused on.26.02.2011.

In the aforesaid facts and circumstances, the This is a digitally signed order.

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4. The said order came to be challenged by the petitioners before the learned ASJ vide revision petition being Criminal Revision No. 271/2018, wherein the impugned order came to be passed. While passing the said order, learned ASJ observed:-

"6. ...Vide order dated 01.12.2010 it was clearly recorded that "the complaint u/s 195 Cr.PC filed" but it does not speak about presence of any of the police officials so as to raise suspicion against them for withholding the complaint or fabricating the false evidence or misappropriation of the property or theft. In all eventuality the complaint reached the Court of the concerned Magistrate and since it was concerning the FIR no. 73/2010, same was placed alongwith the chargesheet. The Ld. Trial Court has rightly held that "... Perusal of record reveals that fresh chargesheet was thereon filed

before the Court on 01.12.201 and cognizance of the offence was taken by the Ld. Predecessor while specifically mentioning that complaint u/s 195 Cr.PC has also been filed. However, neither it has been mentioned in the said order dt. 01.12.2010 that the complaint u/s 195 Cr.PC by any police official as alleged in the application u/s 190 Cr.PC nor it has been mentioned therein that any police official was indeed present on the said day when the fresh challan was filed ....."

7. In view of the aforesaid discussion and overall facts and circumstance of the case, I came to the conclusion that I find no infirmity or irregularity in, the impugned order and revision filed by the revisionist is hereby dismissed. The order dated 02.01.2018 stands confirmed."

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5. Learned counsel for the petitioners states that the impugned order is perverse and illegal. It has been argued that the learned ASJ passed the said order in haste and without appreciating the fact that complaint under section 195 Cr.P.C. is an independent proceeding and only by an order under Section 210 Cr.P.C., the said complaint could have been clubbed with the FIR. Certain other grounds have also been raised to contend that the impugned order was passed without due consideration of the facts of the present case.

6. Learned APP for the State, on the other hand, has raised an objection as to the maintainability of the said petition inasmuch as it is contended that the said petition is basically a second revision in the garb of Section 482 Cr.P.C. In this regard, reference has been made to the Supreme Court decision in Dharampal & Ors. v. Ramshri (Smt.) & Ors. reported as (1993) 1 SCC 435 wherein it was observed that Section 397(3) bars a second revision application by the same party. It is now well settled that the inherent powers under Section 482 of the Code cannot be utilised for exercising powers which are expressly barred by the Code. On merits, it is submitted that there is no infirmity in the impugned order inasmuch as the same has come to be passed after due consideration of the facts of the case. It is submitted that when the petitioners having already availed the remedy of revision, should be allowed to take recourse to Section 482 Cr.P.C. as a garb for what can essentially be termed as a second revision. While it is true that the Court has been granted unbridled powers under Section 482 Cr.P.C., however, it has been clarified time and again that the said power cannot be used to subvert or bypass the express provisions of law.

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7. Later in Rajinder Prasad v. Bashir reported as (2001) 8 SCC 522, the Supreme Court, while referring to its earlier decision in Krishnan v. Krishnaveni reported as (1997) 4 SCC 241, held that:-

"...though the power of High Court under Section 482 of the Code is very wide, yet the same must be exercised sparingly and cautiously particularly in a case where the petitioner is shown to have already invoked the revisional jurisdiction under Section 397 of the Code. Only in cases where the High Court find that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order was not correct, the High Court may, in its discretion, prevent the abuse of the process or miscarriage of justice by exercise of jurisdiction under Section 482 of the Code..."

Similar observations have also been made by the Supreme Court in *Kailash Verma v. Punjab State Civil Supplies Corporation & Anr.* reported as (2005) 2 SCC 571.

8. What can be culled out from the legal provisions and conspectus of cases discussed above is that although a second revision cannot be allowed to maintain in the garb of invocation of inherent/extraordinary powers of the Court under Section 482 Cr.P.C., however, in cases where the Court comes to a conclusion that the impugned order would bring about a miscarriage of justice or that the same is an abuse of judicial mechanism or procedure, this Court is well within its powers to intervene and set aside the order even if the revisional jurisdiction has already been exercised.

9. In the present case, it can be seen that the application under Section 190 Cr.P.C. has been filed solely on the ground that respondent Nos. 2 to 5 illegally possessed the complaint filed by one Kamlesh Suman, even though the same had been directed to be placed before the concerned court and that the same came to be filed as one of the documents in FIR No. 73/2010. A This is a digitally signed order.

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10. It is not the petitioner's case that compliance of Section 195(1) Cr.P.C. was not done. On a careful consideration of facts, this Court finds no ground to interfere with the impugned orders.

11. Consequently, the petition alongwith pending application is dismissed.

MANOJ KUMAR OHRI, J MARCH 13, 2024/rd This is a digitally signed order.

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