



2026:DHC:8777



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

***Reserved on: 30.09.2026***

***Pronounced on: 06.10.2026***

***Uploaded on: 06.10.2026***

# **CNR No. DLHC010185992025**

+ **CRL.M.C. 2327/2025 & CRL.M.A. 10441/2025**

**DEEPAK MALHOTRA AND ANR**

**.....Petitioners**

Through: Mr. Vikram Aggarwal, Adv.  
versus

**STATE THROUGH SHO P.S. INDERPURI & ORS.**

**.....Respondents**

Through: Mr. Raghuvinder Verma, APP and Mr.  
Aditya Vikram Singh, Adv.  
SI Krishan Verma, P.S. Inderpuri,  
Delhi.

**CORAM:**

**HON'BLE MS. JUSTICE MADHU JAIN**

### **JUDGMENT**

#### **MADHU JAIN, J.**

1. The present The present petition has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as the 'BNSS'), corresponding to Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C.'), assailing the order dated 14.07.2023 passed by the learned Metropolitan Magistrate-04, Patiala House Courts, New Delhi (hereinafter referred to as the 'learned Trial Court') in FIR No. 86/2016 registered at P.S. Inderpuri under Sections 420/34 of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC'). By way of the impugned order, the learned Trial Court



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dismissed the protest petition filed by the petitioners, accepted the cancellation report and took cognizance of the offences under Sections 182/211 IPC against them.

**BRIEF FACTS**

2. The case of the petitioners originates from the purchase of two flats forming part of property bearing No. WZ-276, F/3, Upper Ground Floor, Khasra Nos. 2094-2075 and 2095/2075, Village Naraina, Inderpuri, Delhi. Respondent Nos. 2 and 3, namely Prem Singh and Bhupinder Kaur, are stated to have sold Flat No. 1A to petitioner No. 1, Deepak Malhotra, *vide* registered Sale Deed dated 06.06.2009 for a sale consideration of ₹8,50,000/-, while Flat No. 1C was sold to petitioner No. 2, Ruchi Malhotra, *vide* registered Sale Deed dated 10.06.2009 for the same consideration.

3. According to the petitioners, Respondent Nos. 2 and 3 represented that the properties were free from any encumbrance, lien, loan or mortgage. It was subsequently alleged that the Upper Ground Floor had already been mortgaged with Union Bank of India, Noida Branch, as security for a loan facility availed in the name of M/s Arsh Building Material and Suppliers, a concern of Respondent No. 2, for which Respondent No. 3 had stood as guarantor.

4. The petitioners claim to have acquired knowledge of the mortgage on 09.02.2013, when they found that possession of the property had been taken over by Union Bank of India on account of non-payment of the loan. The property was thereafter sold by the Bank through public auction. The petitioners further alleged that Respondent Nos. 2 and 3 subsequently



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received an amount of ₹17,54,135.84/- representing the excess amount remaining with the Bank after the auction.

5. On 30.05.2015, the petitioners lodged a complaint against Respondent Nos. 2 and 3 alleging that the properties had been sold to them by concealing the pre-existing mortgage. Upon no FIR being registered, the petitioners approached the learned Magistrate under Section 156(3) Cr.P.C. *Vide* order dated 16.02.2016, directions were issued for registration of an FIR, pursuant to which FIR No. 86/2016 under Sections 420/34 IPC was registered at P.S. Inderpuri.

6. During investigation, the registered sale deeds were verified. The Investigating Officer also obtained documents from Union Bank of India. The investigation revealed, *inter alia*, that petitioner No. 1 had introduced Respondent No. 2 for opening an account of M/s Arsh Building Material and Supplier with Union Bank of India, Noida; that a cash-credit facility of ₹25,00,000/- was sanctioned to the said concern on 03.11.2008; and that on the same date ₹1,60,000/- was transferred to an account of a concern of petitioner No. 2.

7. The investigation further brought on record a handwritten letter dated 18.11.2010 addressed by petitioner No. 1 to the Branch Manager, Union Bank of India, Noida, recording deposit of ₹1,00,000/- and seeking time to clear the outstanding amount. The then Branch Manager, Manoj Srivastava, is also stated to have informed the Investigating Officer that petitioner No. 1 had brought Respondent No. 2 to the Bank for the purpose of obtaining the cash-credit facility and remained present during the process.

8. Upon completion of the investigation, a cancellation report dated



24.08.2016 was filed. A Kalandra under Sections 182/211 IPC was also filed against the petitioners on the allegation that a false complaint had knowingly been made before the police and the Court. The petitioners thereafter filed a protest petition challenging the cancellation report.

9. *Vide* the impugned order dated 14.07.2023, the learned Trial Court dismissed the protest petition and accepted the cancellation report. The learned Trial Court further took cognizance of the offences under Sections 182/211 IPC on the basis of the Kalandra filed by the Investigating Officer and directed issuance of process against the petitioners.

### **SUBMISSIONS ON BEHALF OF THE PETITIONERS**

10. Learned counsel for the petitioners submits that the learned Trial Court erred in accepting the cancellation report despite the admitted fact that the properties sold to the petitioners were already mortgaged with Union Bank of India. It is submitted that the registered sale deeds were found to be genuine during investigation and, therefore, there was sufficient material to proceed against Respondent Nos. 2 and 3.

11. It is further submitted that Respondent Nos. 2 and 3 had represented that the properties were free from all encumbrances despite the subsisting mortgage and subsequently received the excess amount arising from the auction conducted by the Bank. According to learned counsel, these circumstances were sufficient to disclose a *prima facie* case of cheating and could not have been discarded merely on the basis of statements made by Respondent Nos. 2 and 3 during investigation.

12. Learned counsel further submits that the protest petition was dismissed without properly considering the objections raised by the



petitioners against the cancellation report. It is contended that the material relied upon by the Investigating Officer did not justify the conclusion that the original complaint was false.

13. Learned counsel also assails the taking of cognizance under Sections 182/211 IPC. It is submitted that Section 195 Cr.P.C. places an express restriction upon the Court taking cognizance of the offences specified therein except upon a complaint in writing by the competent public servant or Court, as the case may be. According to the petitioners, the *Kalandra* filed by the Investigating Officer could not, by itself, confer jurisdiction upon the learned Trial Court to take cognizance in the manner done by the impugned order.

14. In support of the aforesaid contention, learned counsel places reliance upon the judgment of the Supreme Court in ***Saloni Arora v. State (NCT of Delhi), (2017) 3 SCC 286***, to contend that compliance with Section 195 Cr.P.C. is mandatory before cognizance of an offence under Section 182 IPC can be taken.

15. Reliance is also placed upon ***Samundra Singh v. State of Rajasthan, 2019 SCC OnLine Raj 2374***, as well as ***Mukhtar Zaidi v. State of Uttar Pradesh, 2024 INSC 316***, in support of the contention that the procedure adopted by the learned Trial Court while dealing with the cancellation report, protest petition and consequential *Kalandra* is unsustainable.

### **SUBMISSIONS ON BEHALF OF THE RESPONDENTS**

16. *Per contra*, learned APP for the State opposes the petition and submits that the cancellation report was filed after a detailed investigation



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in which documentary material as well as statements of the relevant witnesses were collected. It is submitted that the material collected during investigation materially contradicted the version put forth by the petitioners.

17. It is submitted that petitioner No. 1 was aware of the loan transaction and the mortgage of the property. Particular reliance is placed upon the letter dated 18.11.2010 addressed by petitioner No. 1 to Union Bank of India, as also upon the statement of the then Branch Manager that petitioner No. 1 had introduced Respondent No. 2 to the Bank and remained present during the processing of the credit facility.

18. Learned APP further submits that the petitioners' assertion that they became aware of the mortgage only in the year 2013 was therefore contradicted by the material collected during investigation. The learned Trial Court considered the said material while accepting the cancellation report and the impugned order, to that extent, does not warrant interference in exercise of the inherent jurisdiction of this Court.

### **ANALYSIS AND FINDINGS**

19. This Court has heard learned counsel for the parties and perused the material placed on record.

20. The challenge to the impugned order dated 14.07.2023 essentially raises two issues, first, whether the learned Trial Court was justified in accepting the cancellation report and dismissing the protest petition and second, whether cognizance of the offences under Sections 182/211 IPC could have been taken against the petitioners on the Kalandra filed by the Investigating Officer.



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21. The case of the petitioners rests principally on the assertion that respondent Nos. 2 and 3 sold Flats Nos. 1A and 1C to them despite the property already being mortgaged with Union Bank of India and without disclosing the said fact. It is not in dispute that the mortgage preceded the sale deeds. However, the existence of a prior mortgage, by itself, would not establish the offence of cheating. What assumes significance is whether the mortgage was concealed from the petitioners and whether they were induced to purchase the property without knowledge thereof.

22. The material on record does not support the latter assertion. Petitioner No. 1 was the introducer of respondent No. 2 for opening the account of M/s Arsh Building Material and Suppliers with Union Bank of India, Noida Branch. The cash credit facility of Rs.25,00,000/- was sanctioned on 03.11.2008 and, on the same day, Rs.1,60,000/- was transferred from the said account to the account of petitioner No. 2. The then Branch Manager also stated during investigation that petitioner No. 1 had brought respondent No. 2 to the Bank for obtaining the credit facility against mortgage of the property and had accompanied him during the process.

23. A perusal of the records shows a handwritten communication dated 18.11.2010 addressed by petitioner No. 1 to Union Bank of India referring to the proceedings before the Debt Recovery Tribunal and recording deposit of Rs.1,00,000/- towards the outstanding amount. This was inconsistent with the assertion in the complaint that the petitioners came to know of the mortgage only on 09.02.2013.

24. The fact that the sale deeds executed in favour of the petitioners were found to be genuine does not alter the position. The genuineness of



the registered instruments and the allegation that the mortgage was dishonestly concealed are distinct issues. The material collected during investigation was sufficient for the learned Trial Court to conclude that no ground was made out to reject the cancellation report merely because the property stood mortgaged prior to execution of the sale deeds.

25. In ***Mukhtar Zaidi (supra)***, the Supreme Court reiterated that a Magistrate, upon consideration of a final report, is not bound by the conclusion of the investigating agency and is required to independently consider the material before it. Equally, every protest petition need not be treated as a complaint. Tested on these principles, this Court finds no perversity or manifest illegality in the acceptance of the cancellation report and dismissal of the protest petition.

26. The position, however, is different insofar as the learned Trial Court proceeded to take cognizance under Sections 182/211 IPC against the petitioners.

27. The cancellation report records that, according to the Investigating Officer, the petitioners had knowingly and deliberately filed a false complaint before the police as well as before the Court and on that basis, a *Kalandra* under Sections 182/211 IPC was filed along with the cancellation report for further action against them.

28. Insofar as Section 182 IPC is concerned, Section 195(1)(a) Cr.P.C. prohibits a Court from taking cognizance except upon a complaint in writing of the public servant concerned or of a public servant to whom he is administratively subordinate. Section 195(1)(a) Cr.P.C is reproduced herein below:

***“Section 195 - Prosecution for contempt of lawful authority***



***of public servants, for offences against public justice and for offences relating to documents given in evidence---(1)***

***No Court shall take cognizance-***

***(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or”***

29. In ***Saloni Arora v. State (NCT of Delhi)***, (2017) 3 SCC 286, the Supreme Court reiterated the mandatory nature of this requirement and observed as under:

***“10. It is apposite to reproduce the law laid down by this Court in Daulat Ram [Daulat Ram v. State of Punjab, AIR 1962 SC 1206 : (1962) 2 Cri LJ 286] which reads as under : (AIR p. 1206)***

***“There is an absolute bar against the court taking seisin of the case under Section 182 IPC except in the manner provided by Section 195 CrPC.***

***Section 182 does not require that action must always be taken if the person who moves the public servant knows or believes that action would be taken. The offence under Section 182 is complete when a person moves the public servant for action. Where a person reports to a Tahsildar to take action on averment of certain facts, believing that the Tahsildar would take some action upon it, and the facts alleged in the report are found to be false, it is incumbent, if the prosecution is to be launched, that the complaint in writing should be made by the Tahsildar, as the public servant concerned under Section 182, and not leave it to the police to put a charge-sheet. The complaint must be in writing by the public servant concerned. The trial under Section 182 without the Tahsildar's complaint in writing is, therefore,***



*without jurisdiction ab initio.”*

*(emphasis supplied)*

30. The Supreme Court consequently held that prosecution under Section 182 IPC initiated without following the procedure prescribed under Section 195 Cr.P.C. is rendered *void ab initio*.

31. Also, merely because the document is described as a *Kalandra* would not render it incompetent if it otherwise satisfies the requirements of Section 195(1)(a) Cr.P.C. In the present case, however, the impugned order merely records that the *Kalandra* had been filed by the Investigating Officer and forwarded by the SHO. It does not record how the statutory requirement under Section 195(1)(a) stood satisfied before cognizance under Section 182 IPC was taken. In the absence of compliance with the mandatory requirement of Section 195 Cr.P.C., the cognizance so taken cannot be sustained.

32. As regards Section 211 IPC, Section 195(1)(b)(i) Cr.P.C. bars cognizance where the offence is alleged to have been committed in, or in relation to, a proceeding in any Court, except upon a complaint in writing of that Court or of the other authority specified therein. Section 195(1)(b)(i) Cr.P.C is reproduced hereinbelow:

***Section 195 - Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence---***  
***(1) No Court shall take cognizance-***

XXX XXX XXX  
***(b) (i) of any offence punishable under any of the following section of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when***



*such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or”*

33. In **Abdul Rehman v. K.M. Anees-Ul-Haq, (2011) 10 SCC 696**, the Supreme Court explained the scope of the expression “in relation to any proceeding in any Court” occurring in Section 195(1)(b)(i) Cr.P.C. and held that where the alleged offence under Section 211 IPC bears such relation to judicial proceedings, cognizance can be taken only upon a complaint of the Court contemplated by Section 195 Cr.P.C. The Supreme Court observed:

*“8. A plain reading of the above would show that there is a legal bar to any court taking cognizance of the offences punishable under Sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228 when such offence is alleged to have been committed in, or in relation to, any proceeding in any court except on a complaint in writing, of that court or by such officer of the court as may be authorised in that behalf, or by some other court to which that court is subordinate. That a complaint alleging commission of an offence punishable under Section 211 IPC, “in, or in relation to, any proceeding in any court”, is maintainable only at the instance of that court or by an officer of that court authorised in writing for that purpose or some other court to which that court is subordinate, is abundantly clear from the language employed in the provision.”*

34. The Supreme Court ultimately held that since the alleged offence under Section 211 IPC related to judicial proceedings, the bar contained in Section 195 Cr.P.C. stood attracted.



35. In the present case, the allegations made by the petitioners did not remain confined to the complaint lodged before the police. The petitioners approached the learned Magistrate under Section 156(3) Cr.P.C. and it was pursuant to the order dated 16.02.2016 that the FIR came to be registered. The investigation thereafter culminated in the cancellation report which was itself placed before the learned Magistrate for consideration. Significantly, the cancellation report proceeds on the premise that the allegedly false complaint had been made “before the police and before the Honourable Court”.

36. Thus, insofar as the alleged offence under Section 211 IPC is concerned, it cannot be regarded as wholly divorced from the judicial proceedings which had arisen from the complaint. The bar under Section 195(1)(b)(i) Cr.P.C. was therefore attracted and cognizance under Section 211 IPC could not have been taken merely on the *Kalandra* filed by the Investigating Officer, in the absence of a complaint by the Court contemplated under the said provision.

37. In view of the foregoing discussion, this Court finds no infirmity in the impugned order dated 14.07.2023 insofar as the learned Trial Court accepted the cancellation report in FIR No. 86/2016 and dismissed the protest petition filed by the petitioners. The said part of the impugned order is, accordingly, upheld.

### **CONCLUSION**

38. However, the impugned order, to the extent it takes cognizance of the offences punishable under Sections 182/211 IPC against the petitioners and directs issuance of process against them, cannot be



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sustained in view of the bar contained in Section 195 Cr.P.C.

39. Accordingly, the impugned order dated 14.07.2023 is set aside to this limited extent and all proceedings arising from the *Kalandra* under Sections 182/211 IPC pursuant thereto are also set aside.

40. It is clarified that setting aside the cognizance under Sections 182/211 IPC does not affect the acceptance of the cancellation report. The two issues are distinct: the former concerns compliance with the statutory bar governing cognizance, whereas the latter concerns the sufficiency of the material collected during investigation to proceed against respondent Nos. 2 and 3.

41. Subject to the aforesaid limited modification, the present petition is dismissed. Pending application(s), if any, also stand disposed of.

42. A copy of this judgment be sent to the learned Trial Court for information and necessary compliance.

**MADHU JAIN  
(JUDGE)**

**OCTOBER 6, 2026/P**