



2025:DHC:11146



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

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*Judgment reserved on: 29.10.2025**Judgment pronounced on: 10.12.2025**Judgment uploaded on: 10.12.2025*+ **CRL.REV.P. 1161/2024, CRL.M.A. 28605/2024 & CRL.M.A. 28607/2024**

RAHUL

.....Petitioner

Through: Mr. Gaurav Kochar, Advocate

versus

THE STATE (GOVT OF NCT OF DELHI)Respondent

Through: Mr. Aashneet Singh, APP for
the State**CORAM:****HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J****CRL.M.A. 28607/2024 (condonation of delay of 398 days)**

1. The present application under Section 5 of the Limitation Act, 1963 has been filed seeking condonation of delay of 398 days in filing the captioned revision petition, wherein the petitioner has assailed the order dated 10.05.2023 [hereafter '*impugned order*'] passed by the learned Additional Sessions Judge, District Shahdara, Karkardooma Courts, Delhi in SC No. 31/2023 [hereafter '*Trial Court*'], arising out of FIR No. 162/2022 registered at Police Station Vivek Vihar, Delhi, for the offence punishable under Sections 392/397/34 of the Indian Penal Code, 1860 [hereafter, '*IPC*'].



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2. The petitioner submits that although the impugned order was passed on 10.05.2023, the formal order framing charges against the petitioner was in fact passed only on 30.05.2024, i.e. almost a year later. It is stated that the petitioner was under the *bona fide* impression that the reference to Section 397 of IPC in the order dated 10.05.2023 was a typographical error, especially as the learned Trial Court itself had observed in the said order that the ingredients of Section 397 of IPC were not attracted against the petitioner.

3. The learned counsel for the petitioner submits that the petitioner reasonably believed that the learned Trial Court, having recorded its finding that Section 397 of IPC was not made out against him, would not frame any formal charge invoking Section 397 of IPC. It is only when the order dated 30.05.2024 was passed, formally framing charges under Section 120-B IPC read with Sections 392/397 of IPC, that the petitioner came to know that the learned Trial Court had proceeded to frame a charge incorporating Section 397 of IPC despite its earlier finding to the contrary.

4. It is in these circumstances that the petitioner has preferred the present revision petition challenging the order dated 10.05.2023 as well as the consequential order on charge. The explanation furnished indicates that the delay had occasioned due to the peculiar facts of the case – particularly the substantial gap of more than 320 days between the passing of the operative order and the subsequent framing of formal charges by the learned Trial Court; and further, due to the apparent inconsistency between the findings contained in paragraph 7



of the impugned order and the charges ultimately framed.

5. This Court finds that the petitioner's explanation cannot be said to be malafide, negligent, or lacking in bona fides. In view of the aforesaid peculiar facts and circumstances, and in the interest of justice, this Court is satisfied that the petitioner has shown "sufficient cause" within the meaning of Section 5 of the Limitation Act. No prejudice shall be caused to the State if the delay is condoned, and even otherwise, the State has chosen not to file a reply to the present application, despite being directed to do so vide order dated 23.09.2024

6. Accordingly, the present application is allowed. The delay of 398 days in filing the present revision petition is hereby condoned.

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7. By way of the present petition, the petitioner seeks setting aside of the impugned order dated 10.05.2023 passed by the learned Trial Court.

8. Briefly stated, the facts of the case are that on 17.02.2022, at about 05:00 PM, the complainant, along with his driver, i.e., petitioner-accused Rahul, had left his residence at Preet Vihar for Dilshad Garden in his car bearing registration No. DL2C-AY-2526. As they had taken a left turn near Yamuna Sports Complex, Anand Vihar T-point, accused Rahul had stopped the vehicle. When questioned, he had informed the complainant that the tyre appeared punctured and had stepped out of the car. Immediately thereafter, two unknown persons had entered the vehicle from the rear door.



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Accused Rahul had also re-entered the vehicle and had begun driving. One of the unknown persons had snatched the complainant's iPhone and, when the complainant had resisted, had pressed a pistol-like object to his waist, threatening him to remain quiet. The complainant was frightened and compelled to comply with their demands. The present accused had continued to drive around with the complainant, and upon reaching near ESI Hospital, Jhilmil, the complainant had noticed a police vehicle and had raised an alarm. Accused Rahul had thereafter stopped the car, allowing the two unknown assailants to flee. When the complainant had gotten down to apprehend them, accused Rahul had fled away with the complainant's car. On the basis of the complainant's written complaint, the present FIR had been registered.

9. During investigation, the car in question was recovered in abandoned condition near Anand Vihar Flyover and seized. After dismissal of his anticipatory bail application, petitioner-accused Rahul surrendered before the learned Trial Court on 26.02.2022. His disclosure statement led to the names of co-accused Mukesh and Vinod. During police custody, a pistol allegedly used in the commission of the offence was recovered from the house of accused Rahul. Upon completion of investigation, a chargesheet was filed against him for offences under Sections 392/397/34 of IPC read with Section 25 of the Arms Act, 1959.

10. The learned Trial Court, *vide* impugned order dated 10.05.2023, held as under:



“7. However, it is a settled proposition of law that an offence u/s 397 IPC can be attracted only against the ‘offender’ who used any deadly weapon at the time of committing robbery. In the present case, accused Rahul was in the driving seat and did not allegedly use the pistol/pistol like article while his phone was snatched by the two unknown persons sitting in the back seat. As such, offence u/s 397 IPC is not attracted against accused Rahul.

8. Further, although a countrymade pistol has been allegedly recovered at the instance of accused Rahul, the required sanction u/s 39 Arms Act has yet not been received. Therefore, this Court cannot go ahead with framing charge u/s 25 Arms Act against accused Rahul as cognizance of the said offence has yet not been taken.

9. xxxxxxxx

10. In the light of discussion the preceding paragraphs, there are sufficient grounds to presume the existence of criminal conspiracy between accused Rahul and the two unknown persons to commit the alleged offence of robbery of car of complainant and robbery, by use of deadly weapon, of mobile phone of the complainant. Further, there are grounds for presuming commission of offence of robbery of car of complainant against accused Rahul.

On the basis of such grounds and grave suspicion, a case to frame charge for offence u/s 120-B IPC read with ‘Sec. 392/397 IPC and separately for offence u/s 392 IPC is made out. Accused Rahul be separately charged for the same.”

11. Eventually, *vide* order dated 30.05.2024, it was directed as under:

“In terms of order on charge dt. 10.05.2023, Charge under Section 120-B of the IPC r/w Section 392/397 IPC and Section 392/120B/34 IPC framed against and explained to accused in vernacular, to which he pleaded not guilty and claimed trial.”

12. The learned counsel appearing for the petitioner contends that it is the prosecution’s own case that the petitioner did not use any deadly weapon at the time of the incident, and therefore the essential ingredient of Section 397 of IPC is not made out against him. It is



argued that despite this admitted position, the learned Trial Court erroneously proceeded to frame charge for offence under Section 120 read with Section 397 of IPC. The learned counsel further submits that although a pistol is stated to have been recovered from the petitioner's house, there is no other material connecting him with the alleged act of robbery. Attention is also invited to certain observations in paragraphs 7, 8, and 10 of the impugned order, which, according to the petitioner, contain inconsistencies regarding the nature of the offence and the petitioner's alleged involvement.

13. On the other hand, the learned APP for the State argues that the material collected during investigation, including the complainant's statement and the recovery effected at the instance of the petitioner, clearly gives rise to grave suspicion against him. It is contended that the manner in which the incident had unfolded demonstrates the petitioner's active participation with the other two assailants, and therefore sufficient grounds existed for the learned Trial Court to frame charges for the alleged offence.

14. This Court has **heard** arguments addressed by learned counsel appearing for the petitioner as well as the learned APP for the State, and has perused the material placed on record.

15. Section 397 of the IPC reads as under:

“**397.** Robbery or dacoity, with attempt to cause death or grievous hurt.—

If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or so attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall



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not be less than seven years.”

16. The learned Trial Court has observed in paragraph 6 of the impugned order that, according to the prosecution, the offence in question was committed by the present petitioner in furtherance of a criminal conspiracy with his two associates, who have neither been identified nor arrested till date. The learned Trial Court opined that even though the other two alleged co-accused could not be identified or arrested, the absence of direct evidence of criminal conspiracy would not preclude the framing of a charge for conspiracy against the petitioner for the purpose of the alleged commission of the offence.

17. The learned Trial Court further observed that the manner in which the offence was committed, coupled with the surrounding circumstances, *prima facie* indicated a meeting of minds between accused Rahul and the two unidentified persons for the commission of the robbery. In paragraph 7 of the same order, however, the learned Trial Court proceeded to hold that an offence under Section 397 of IPC can be attracted only against the “offender” who actually used a deadly weapon at the time of committing the robbery. Since the present petitioner was driving the car at the relevant time and the pistol or pistol-like article was allegedly used by the two unknown persons seated in the back seat, the learned Trial Court categorically held that an offence under Section 397 of IPC was not attracted against accused Rahul. Further, in paragraph 8, the learned Trial Court observed that although a country-made pistol had allegedly been recovered at the instance of accused Rahul, the requisite



sanction under Section 39 of the Arms Act had not yet been received. In the absence of such sanction, the learned Trial Court held that a charge under Section 25 of the Arms Act could not be framed, as even cognizance of the offence under the Arms Act had not been taken.

18. However, despite these clear observations, particularly those contained in paragraphs 7 and 8, the learned Trial Court, in the concluding part of the impugned order, proceeded to hold that there were sufficient grounds to presume the existence of a criminal conspiracy between accused Rahul and the two unidentified persons for committing robbery of the complainant's car and for committing robbery of the complainant's mobile phone by use of a deadly weapon. Consequently, the learned Trial Court framed charges under Section 120-B IPC read with Sections 392/397 of IPC, as well as a separate charge under Section 392 of IPC against the petitioner.

19. The impugned order, therefore, reflects a clear contradiction. While in paragraph 7 the learned Trial Court unequivocally held that Section 397 of IPC was not attracted against the petitioner, it nonetheless proceeded to frame a charge under Section 120-B read with Section 397 IPC. Similarly, although the learned Trial Court itself recorded that sanction under Section 39 of the Arms Act had not been received and hence charge under Section 25 of the Arms Act could not be framed, it still relied upon the alleged recovery of the country-made pistol at the instance of the petitioner to draw conclusions regarding the alleged use of a deadly weapon. These



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contradictory findings show that the impugned order appears to have been rendered in haste, without awaiting the FSL report or the sanction under Section 39 of the Arms Act in respect of the alleged recovery.

20. This Court is therefore of the considered opinion that the present matter deserves to be remanded back to the learned Trial Court for passing a fresh order on charge. The learned Trial Court shall proceed to consider the matter afresh after the prosecution files the supplementary charge-sheet along with the FSL report and the sanction under Section 39 of the Arms Act, if any, received. Thereafter, the learned APP for the State as well as the learned counsel appearing for the petitioner shall address arguments on charge afresh. Accordingly, the impugned order dated 10.05.2023 is set aside. The parties shall appear before the learned Trial Court on the date already fixed, whereupon arguments on charge shall be addressed by both sides without seeking unnecessary adjournment, and a fresh order on charge shall be passed in accordance with law.

21. With the above directions, the petition stands disposed of. Pending application, if any, also stands disposed of.

22. It is, however, clarified that nothing expressed hereinafter shall tantamount to an expression on the merits of the case.

23. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J
DECEMBER 10, 2025/A