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

% *Judgment delivered on: 25.02.2025*

\+ **CRL.REV.P. 1069/2024 & CRL.M.A. 25608/2024**

VIRENDER KUMAR AND ORS. .....Petitioners

Through: Mr. Aditya Kashyap, Advocate for petitioner no. 1
Mr. Sundaram Ojha, Mr. Abhishek Ranjan and Mr. Nikhil Kumar, Advocates for petitioner no. 2

versus

STATE NCT OF DELHI .....Respondent

Through: Mr. Naresh Kumar Chahar, APP for the State with SI K. L. Kuldeep no. D-6712, PS Kashmere Gate

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J

1. The present revision petition under Section 428 read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 [hereafter *'BNSS'*] has been preferred on behalf of the petitioners, seeking setting aside of the impugned judgment dated 21.08.2024 passed by the learned Additional Sessions Judge-05, Central District, Tis Hazari Courts, Delhi [hereafter '*Appellate Court*'] in Criminal

Appeal No. 49/2023, whereby the learned Appellate Court had upheld the judgment dated 17.11.2022 and the order on sentence dated 21.01.2023 passed by the learned Metropolitan Magistrate-07, Central, Tis Hazari Courts, Delhi [hereafter '*Trial Court*'] in CNR No. DLCT02-000329-2006, arising out of FIR No. 373/2004, dated 04.08.2004, registered at Police Station Kashmere Gate, Delhi, for offences punishable under Sections 186/353/332/506/34 of the Indian Penal Code, 1860 [hereafter '*IPC*'].

2. The prosecution's case is that on 04.08.2004, Constable Mahesh Kumar (the complainant/ victim), posted in the Civil Lines Circle of the Traffic Unit, was on official duty at Pul Dafrin along with Head Constable Gajender Kumar, from 8:00 AM to 8:00 PM. At around 6:00 PM, while they were proceeding towards Pul Dafrin, Khanna Market, to clear traffic jam, they had noticed two tempos, bearing registration numbers DL1LE5059 and DL1LE7119, wrongly parked on the road, obstructing the free flow of traffic. Constable Mahesh Kumar had inquired about the reason for the unlawful parking and had attempted to remove the vehicles from the spot. In the meantime, two persons had arrived at the spot and had claimed to be the owners of the said tempos. When they were directed to remove them, the said persons had refused to comply with the directions of Constable Mahesh Kumar. Consequently, a traffic crane had been called to tow the vehicles. As soon as the traffic helper Sanjay had attempted to hook one of the tempos, another individual, claiming to be the owner of one of the vehicles, had joined the two men already

present at the spot. The three men, later identified and arrested i.e. Virender Kumar Shukla (petitioner no. 1), Devender Kumar Shukla (petitioner no. 2) and Jitender Kumar (petitioner no. 3), had then caught Constable Mahesh Kumar by the collar, physically assaulted him, and tore his uniform. They had also threatened to abduct and abandon him at an unknown location. Furthermore, they had also attacked the crane helper Sanjay.

3. Upon completion of the investigation, the charge-sheet was filed before the learned Trial Court, along with a complaint under Section 195 of the Cr.P.C. Charges were framed against the accused persons. During the course of the trial, the prosecution had examined 10 witnesses. Subsequently, the statements of the accused persons were recorded under Section 313 of the Cr.P.C., wherein they denied the allegations and, in their defence, examined 04 defence witnesses.

4. Upon conclusion of the trial, the learned Trial Court convicted the petitioners for commission of offences punishable under Sections 186, 353, 332, 506, and 34 of the IPC. The conclusion of the learned Trial Court is set out below:

> "47. In the light of the discussion herein above, I hold that it has been proved, beyond reasonable doubts, that accused Virender, Devender and Jitender, in furtherance of their common intention, had voluntarily obstructed the complainant, a public servant, in the discharge of his public functions when he was trying to tow away a vehicle which was parked in 'no parking zone'. It also stands proved beyond reasonable doubts that the accused persons, in furtherance of their common intention, had voluntarily caused hurt to the complainant being a public servant in the execution of his duty as such public servant and also threaten the complainant. Thus, the prosecution has proved the ingredients of offence

> punishable under Section 186/34, 332/34, 353/34 and 506/34 IPC against both the accused beyond reasonable doubts. Hence, accused Virender, Devender and Jitender are found guilty and they are accordingly convicted for the offences punishable under Section 186/34, 332/34, 353/34 and 506/34 IPC.

5. Vide order on sentence dated 31.01.2023, the petitioners were sentenced as follows:

(a) Three months' Simple Imprisonment for the offence punishable under Section 186 of the IPC.

(b) Two years' Simple Imprisonment for the offence under Section 332 of the IPC.

(c) Two years' Simple Imprisonment for the offence under Section 506 of the IPC.

6. No separate sentence was awarded under Section 353 of the IPC, as the punishment was already awarded under Section 332 of the IPC. Further, all sentences were directed to run concurrently. Additionally, the petitioners were directed to deposit a compensation of ₹2,000/- each with the Delhi Legal Services Authority and a further sum of ₹11,527/- towards prosecution expenses.

7. Aggrieved by the conviction and sentence, the petitioners had preferred an appeal before the learned Appellate Court. However, by way of the impugned judgment dated 21.08.2024, the learned Appellate Court dismissed the appeal, upholding the judgment and sentence imposed by the learned Trial Court.

8. Aggrieved by the impugned judgment dated 21.08.2024, the

present revision petition has been filed by the petitioners.

9. The learned counsel for the petitioners argues that the petitioners have been falsely implicated in the present case, and the entire prosecution story is fabricated, and is based on conjectures and surmises. It is argued that neither the petitioners nor the vehicles in question were present at the alleged site of the incident at the relevant time, and there exists no credible evidence to establish their involvement. It is further contended that the vehicles were neither seized nor towed, no challan was issued, and even the alleged victim police officer was not on duty at the time of the purported incident. The prosecution, it is submitted, has miserably failed to prove its case beyond reasonable doubt, and the conviction of the petitioners is based on a wholly erroneous appreciation of facts and law. The entire case rests solely on the testimonies of police officers, without any corroboration from independent witnesses, which raises serious doubts about the credibility of the prosecution's case.

10. It is vehemently argued that the prosecution has failed to examine any independent public witness, which is a material lapse that undermines the entire case. It is contended that the alleged incident took place at Kashmere Gate, a crowded public place, at 6 PM in August, when there was purportedly a traffic jam at the site. Yet, despite the presence of numerous potential witnesses, not a single independent person was examined. It is submitted that even the crane helper, Sanjay, who was allegedly assaulted and was a crucial eyewitness, was not examined by the prosecution. Further, the police

witnesses themselves admitted that members of the public had intervened during the incident, yet none of them was called to testify in the Court. The learned counsel for the petitioners argues that in a case, where the police personnels themselves are the alleged victims, complainants, investigators, and witnesses, their testimonies cannot be accepted as gospel truth in the absence of independent corroboration. It is contended that this failure on the part of the prosecution raises serious doubts about the veracity of the case and renders the conviction unsustainable in law.

11. The learned counsel further argues that a fundamental ingredient of the offences under Sections 332 and 353 of the IPC is that the police officer must have been on duty at the time of the incident. However, the prosecution has completely failed to establish this crucial fact. It is submitted that the Duty Roster/Register for the relevant date, which would have confirmed whether the police officers were on duty, was never produced before the learned Trial Court. Moreover, the concerned DD Entries regarding the arrival and departure of the officials were allegedly destroyed due to rain, which further casts doubt on the prosecution's case. It is argued that in the absence of any documentary evidence to prove that the police officers were on duty, the prosecution story collapses entirely, as the very foundation of the alleged offences is left unsubstantiated. It is submitted that the Trial Court and the Appellate Court failed to appreciate this determinative lacuna, which goes to the root of the matter.

12. It is contended that neither the petitioners nor the vehicles in question were present at the alleged site at the relevant time. The learned counsel for the petitioners further submits that defence witnesses have categorically deposed that the tempos in question were being driven elsewhere at the time of the incident, and that the petitioners were called to the police station much later. It is further argued that even as per the deposition of PW-3, the police had no knowledge as to who were the owners of the vehicles, and that some persons other than the petitioners were seen loading goods onto the tempos. It is contended that if the entire dispute revolved around the alleged illegal parking of the tempos, it is unclear as to why the vehicles were neither seized nor challaned. The learned counsel submits that this glaring inconsistency further weakens the prosecution's case and lends credence to the defence version that the petitioners were falsely implicated in the present case.

13. The learned counsel also argue that there was an inordinate delay in the entire chain of investigation, from the lodging of the FIR to the conduct of the MLCs, which further casts doubt on the prosecution's version. It is pointed out that despite the police station and other law enforcement units being in close proximity to the alleged place of incident, the FIR was lodged after an unexplained delay of more than two hours. Similarly, the medical examinations of the alleged victims were conducted nearly four hours after the incident, which is highly unusual and remains unexplained. It is further submitted that there are material contradictions between the

Medico-legal reports and the deposition of the alleged victims. While PW-3 has claimed to have suffered bruises on his neck, his MLC records no such injury. Moreover, the MLC of Sanjay, the purported co-injured, clearly states that he had "no fresh external injury present," which contradicts the prosecution's assertion that he was assaulted. These inconsistencies, it is contended, create serious doubts about the credibility of the prosecution's case.

14. Lastly, the learned counsel argues that there is a complete lack of reasoning in the impugned judgments regarding the conviction under Section 506 of the IPC. It is submitted that there is no analysis whatsoever of whether the essential ingredients of criminal intimidation were satisfied in the present case. Without discussing the necessary elements of the offence or demonstrating how they were met, the petitioners were mechanically convicted and sentenced to two years' imprisonment under this provision. It is argued that this reflects a clear non-application of judicial mind and arbitrary exercise of power, rendering the conviction legally unsustainable. It is thus prayed that the impugned judgments be set aside and the petitioners be acquitted of all charges.

15. On the other hand, the learned APP for the State vehemently opposes the present petition. He argues that the scope of a revision petition is very limited, and the learned counsel for the accused has to demonstrate that the impugned judgment(s) suffer from perversity or illegality, which is not the case herein. It is contended that the learned Trial Court as well as the learned Appellate Court has rightly

appreciated the evidence brought on record and dealt with the contentions of the accused persons. It is therefore prayed that the present petition, being devoid of any merit, be dismissed.

16. This Court has **heard** arguments addressed by learned counsel appearing for either side. The Trial Court Record and the Appellate Court record has also been perused.

17. Insofar as the scope of present petition is concerned, it is well-settled that the High Court in criminal revision against conviction is not supposed to exercise the jurisdiction akin to the appellate court and the scope of interference is limited. Section 397 of the Cr.P.C. vests jurisdiction for the purpose of satisfying the Court as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court. It is also well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case [Ref: ***Malkeet Singh Gill v. State of Chhattisgarh:*** *(2022) 8 SCC 204;* ***State of Gujarat v. Dilipsinh Kishorsinh Rao:*** *2023 SCC OnLine SC 1294*].

18. The first and foremost consideration in this case pertains to the essential ingredients of the offences under Sections 186, 353, and 332 of IPC. For an offence under Section 186 of the IPC, the prosecution is required to establish the following three elements: (i) obstruction, (ii) of a public servant, (iii) while he is discharging his public functions. Similarly, for an offence under Section 353 of IPC, it must

be proved that there was (i) an assault or use of criminal force, (ii) upon a public servant, (iii) in the execution of his duty as such public servant. Likewise, for an offence under Section 332 of IPC, the prosecution must demonstrate (i) that hurt was caused, (ii) to a public servant, (iii) in the discharge of his duty as such public servant.

19. The learned Trial Court, in its judgment, rightly referred to these legal provisions and the essential ingredients required to be proved for sustaining a conviction under these sections. As noted above, for all these offences, one of the essential ingredients is – that the public servant must have been discharging his public duties, at the time when the offence is committed. However, the learned Trial Court, while taking note of and examining the allegations of obstruction, use of force, and hurt, and the fact that the complainant was a public servant, proceeded on a presumption that the complainant was also 'discharging his public duties' at the relevant time. It is evident from a bare perusal of the judgment that the conviction of the petitioners is premised on such a presumption rather than on actual proof of this crucial ingredient of the offences in question, since the learned Trial Court has made no discussion on this aspect in the judgment.

20. As rightly pointed out by the learned counsel for the petitioners, no documentary evidence, such as a duty roster or register, was produced by the prosecution to establish that the complainant was, in fact, on duty at the time of the alleged incident. The prosecution witnesses themselves admitted that the relevant

records, including the duty hours, arrival, and departure timings of the complainant/victim (PW-3), had been destroyed due to rain, as deposed by PW-7, ASI Virendra Prakash. The absence of such documentary evidence is a critical omission, as it leaves the learned Trial Court with no proof that the complainant was performing his official duties when he had allegedly asked the accused persons to remove the tempos. Despite this fundamental lacuna, the learned Trial Court did not record any specific finding to establish that the complainant was indeed acting in the discharge of his public duty at the relevant time.

21. The learned counsel for the petitioners further drew the Court's attention to the written arguments submitted before the learned Appellate Court, wherein this specific ground was urged to assail the judgment of conviction. However, the learned Appellate Court also failed to deal with this argument, even though the said issue goes to the root of the matter. In this Court's view, the failure of both the learned Trial Court and the Appellate Court to address this issue renders the conclusion that the offences under Sections 186, 353, and 332 of the IPC were proved beyond reasonable doubt both erroneous and perverse.

22. Another important aspect of this case is that the entire dispute, in a nutshell, revolves around the parking of two tempos, which were allegedly causing a traffic jam, and the claim that the incident occurred because the accused persons had refused to comply with the complainant's directions to remove the vehicles. However, it is a

conceded position that neither of these tempos was seized by the police, nor was any challan issued in respect of them, despite the assertion that they were wrongly parked to such an extent that even a crane had to be called to tow the tempos. The tempos were also never towed by the police, and no documents concerning their ownership were seized by the I.O. during the course of investigation. This omission also raises serious doubts about the very premise of the prosecution's case.

23. In this regard, it is also significant to note the deposition of the defence witnesses, particularly DW-1 and DW-2, who had categorically deposed that at the relevant time, they were driving the said tempos elsewhere and had reached the alleged site only around 9 PM – several hours after the alleged incident. DW-1 testified that the tempo bearing No. DL-1ALE-5059 was owned and driven by him, and that he was operating it at another location at the relevant time, only to later learn that the petitioners had been taken by the police. Similarly, DW-2 deposed that he was the driver of tempo No. DL-1E-7119 and had driven the vehicle to Sahibabad, and had returned to Delhi only at 9 PM, when he was called to the police station and directed to bring the tempo and hand over the keys. The learned Trial Court, however, completely ignored and failed to discuss the testimonies of these defence witnesses in its judgment, despite their direct relevance to the case.

24. While the learned Trial Court observed, citing judicial precedents, that the statement of an accused under Section 313 of

Cr.P.C. is not evidence as it is not recorded on oath, it at the same time failed to engage in any discussion whatsoever regarding the testimonies of the defence witnesses, who were examined on oath. The testimonies of DW-1 and DW-2 were significant because if it was to be held that the tempos were not even present at the location at the time of the alleged incident, the entire basis of the prosecution's case would collapse. Despite this, the learned Trial Court did not make any effort to evaluate their credibility or record any reasons for disregarding their testimony.

25. The learned Appellate Court, while dealing with this issue, summarily rejected the testimony of the defence witnesses by stating that since none of them had witnessed the incident, their evidence was of no relevance. This reasoning is also flawed because the importance of DW-1 and DW-2's testimony was not as to whether they were eyewitnesses to the incident or not, but that they had deposed that they were driving the said tempos elsewhere at the relevant time. Their testimony directly contradicts the prosecution's version that the incident occurred because of the wrongful parking of the tempos, and their deposition should have been given due consideration.

26. Further, a perusal of the record reveals that both the learned Trial Court and the Appellate Court placed reliance on the MLC of the victim/complainant, which noted the presence of two aberrations over the chest. However, it is equally significant to note that the MLC clearly recorded that there were "no fresh external injuries".

This observation assumes relevance in assessing the nature and extent of injuries allegedly sustained by the victim and their correlation with the prosecution's case. The courts below, while considering the MLC, ought to have examined the overall medical findings in their entirety rather than selectively relying on specific notings in the MLC.

27. Next, the learned Appellate Court observed that the accused Jitender had admitted in his examination under Section 313 of the Cr.P.C., that the accused persons were present at the spot but they had not indulged in the acts as alleged by the prosecution and that they were falsely implicated. This finding also appears to be contrary to the record inasmuch as the accused Jitender had only stated in his examination under Section 313 of the Cr.P.C. that "*I was passing by at the spot of alleged incident and saw that police officials were taking my cousins to PS Kashmere Gate so 1 enquired to the police officials regarding the same. The police officials took me also to the PS and lodged FIR against me without any reason*".

28. This Court is also of the view that, while it is well settled that the examination of independent public witnesses is not mandatory and the failure to do so is not necessarily fatal to the prosecution's case, in the peculiar facts and circumstances of this case, it assumes significance. The incident allegedly had taken place in broad daylight, at 6 PM, on a busy public road with heavy traffic, and in the presence of a large number of people. Despite this, the police did not examine even a single independent public witness. Moreover, Sh.

Sanjay, the crane operator/helper, who was allegedly injured in the altercation and was a purported victim of assault, was also not examined as a witness. On the other hand, it is also relevant to note that despite there being allegations that he was beaten by the accused persons, the medical examination of Sh. Sanjay had not revealed any injury on his person. It was mentioned in the MLC of Sanjay that "no fresh external injury present". Thus, these aspects also raise further doubts about the reliability of the prosecution's version of events.

29. In view of the aforesaid reasons, this Court is firmly of the opinion that the prosecution has failed to prove its case beyond reasonable doubt. The judgments of both the learned Trial Court and the learned Appellate Court suffer from patent errors and infirmities. The lack of proof regarding the complainant acting in discharge of his official duties at the time of incident, the failure to seize or issue a challan for the tempos, the non-examination of any independent witnesses or co-injured person, and the versions of the defence witnesses and their unexplained disregard by the learned Trial Court – all create doubts about the veracity of the prosecution's case. The petitioners, therefore, deserve the benefit of doubt, as the prosecution could not prove its case beyond reasonable doubt.

30. Accordingly, the impugned judgments and orders of the learned Trial Court and the learned Appellate Court are set aside.

31. The petitioners are hereby acquitted of all the offences alleged against them.

32. The petitioners be released from jail, in case their custody is not warranted in any other case.

33. The petition is allowed in above terms. Pending application is also disposed of.

34. The copy of this Judgment be given *dasti* under the signature of Court Master.

35. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

FEBRUARY 25, 2025/zp