

**IN THE COURT OF SH. JITENDRA SINGH,
SPECIAL JUDGE (PC ACT) (CBI)-23
(MPs/MLAs Cases),
ROUSE AVENUE DISTRICT COURTS, NEW DELHI**

**Criminal Revision Petition No. 22/2024
CNR No. DLCT11-000641-2024**

In the matter of:-

**Sh. Kapil Mishra
S/o Sh. Rameshwar Prasad Mishra,
R/o B-2/212, Yamuna Vihar, Delhi,
Ex. MLA, New Delhi.**

..... Revisionist

Versus

**State of NCT of Delhi
Through APP (Sessions)
Rouse Avenue District Court,
New Delhi.**

..... Respondent

(i) Date of filing of Revision Petition	:	20.07.2024
(ii) Date on which order reserved	:	04.03.2025
(iii) Date on which order pronounced	:	07.03.2025

ORDER

1. This order shall decide Revision Petition preferred u/s 438 r/w Section 440 of Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter to be referred as 'BNSS') filed by Sh. Kapil Mishra (hereinafter to be referred as 'revisionist'), against summoning order dated 22.06.2024 (hereinafter to be referred as 'impugned order'), passed by Additional Chief Metropolitan Magistrate-04 (hereinafter to be referred as 'Trial Court'), Rouse Avenue District Court, Delhi and all consequential proceedings pending in Criminal Case No. 14/2023 titled as '*State vs. Kapil*

Mishra u/s 125 of the Representation of People Act, 1951 (hereinafter to be referred as 'RP Act').

BRIEF FACTS

2. The impugned FIR has been registered upon receipt of letter dated 24.01.2020 from the office of Returning Officer, Assembly Constituency-18, Model Town addressed to DCP, North West, Ashok Vihar, Delhi regarding violation of Model Code of Conduct and RP Act, by the revisionist.

3. The allegations against the revisionist are that he made objectionable statement in electronic media that "*Delhi mein chote chote Pakistan bane*", "*Shaheen Bagh mein Pak ki entry*". The revisionist has posted one tweet that "*India vs Pakistan 8th February Delhi 8 फरवरी को दिल्ली की सड़कों पर हिंदुस्तान और पाकिस्तान का मुकाबला होगा*" on 22.01.2020 and other tweet "*AAP और कांग्रेस ने शाहीन बाग जैसे मिनी पाकिस्तान खड़े किये हैं जवाब में 8 फरवरी को हिंदुस्तान खड़ा होगा जब जब देशद्रोही भारत में पाकिस्तान खड़ा करेंगे तब तब देशभक्तों का हिंदुस्तान खड़ा होगा*" on 23.01.2020 from his twitter handle with the object to promote enmity between classes in connection with Delhi Legislative Assembly Elections.

4. The above-mentioned statements led to issuance of the show cause notice dated 23.01.2020 to the revisionist. Reply of the revisionist was examined and found to be unsatisfactory, thereby attracting offence u/s 125 of RP Act. Thus, a complaint was made by the Returning Officer which resulted in the registration of the impugned FIR.

PROCEEDINGS BEFORE THE LD. TRIAL COURT

5. The chargesheet in the instant matter was filed on 01.11.2023. Further investigation in the present case was ordered on 04.03.2024. Thereafter, a supplementary chargesheet was filed and the Ld. Trial Court allowed the application for condonation of delay in filing the chargesheet and took cognizance and summoned the revisionist vide the impugned order.

GROUND OF THE REVISION PETITION

6. The impugned order has been assailed on three pronged grounds. Firstly, the impugned order is legally unsound and is against the settled principles of law as the Ld. Trial Court has taken cognizance despite the fact that the chargesheet was barred by limitation. Secondly, the offence u/s 125 of RP Act is a non-cognizable offence. Therefore, the police had no authority to investigate the matter without seeking permission from the Ld. Trial Court u/s 155 of Cr.P.C. Thirdly, the alleged objectionable statements cannot be said to be promoting enmity between classes in connection with Delhi Legislative Assembly Elections.

SUBMISSIONS BY LD. SENIOR ADVOCATE FOR THE REVISIONIST

7. Sh. Pavan Narang, Ld. Senior Advocate for the revisionist has argued that the Ld. Trial Court has committed a grave error in treating the offence u/s 125 of RP Act as cognizable offence in nature, therefore, the summoning order suffers from illegality. It is further submitted that since Section 125 of RP Act

is non-cognizable offence, the entire trial court proceedings conducted are bad in law. The punishment provided as per the said Section is upto three years or with fine or with both. As per Schedule-I Part 2 of Cr.P.C., offences punishable for less than 3 years or with fine only are non-cognizable in nature, making Section 125 of RP Act a non-cognizable offence.

8. It is further submitted that no case is made out against the revisionist as the basic ingredients of Section 125 of RP Act are missing in the complaint of the Returning Officer. The words '*Shaheen Bagh*' and '*Pakistan*' and nor do their connotation target or refer to any specific community *per se*. It is clear that the revisionist had stated his position on the erstwhile protest at Shaheen Bagh, and not to any specific community or its member. The said statement was neither intended to promote feelings of enmity or hatred between different classes of citizens of India nor his statements had led to any of such situation being created during the ensuing period. The purpose of statement of the revisionist was not to create tension between any caste, society or religion. The purpose of his statement, made during election process being underway, was to draw attention to the efforts of some social elements to spoil the, otherwise, calm atmosphere of Delhi under the guise of anti-CAA movement. All statements and tweets were aimed at drawing attention to this serious concern. No caste, religion or society was ever targeted in any of the revisionist's statements. It is natural that during elections, certain political statements are made by the candidates and political parties to expose the role and stances of opponents. However, it

has to be seen that whether such statements make any impact which may lead to an instable law and order situation. In the present criminal case, no offence is made out from the afore-mentioned statement made by the revisionist.

9. It is prayed that the present revision petition be allowed and the impugned order be set aside. Reliance has been placed upon the judgments of *Navjot Singh Sidhu vs. State of Bihar*; 2023 SCC OnLine Pat 6186; *Srikrishna Upadyaya vs. The State of Karnataka*; WP No. 18261/2023 (GM-RES); decided by the Hon'ble High Court of Karnataka at Bengaluru on 27.09.2023, *Dr. Ayyub vs. State of U.P.*, Application u/s 482 No. 2848 of 2023, decided by the Hon'ble Allahabad High Court on 08.08.2023; *Sri Adaguru Vishwanath & Ors. vs. Narasimharaja & Anr.*, Crl. Petition No. 5066/2014; decided by the Hon'ble High Court of Karnataka at Bengaluru on 29.10.2018 and *Dr. Prabhakar Bhat vs. The State of Karnataka*, WP No. 27768/2019, decided by the Hon'ble High Court of Karnataka at Bengaluru on 31.07.2019.

SUBMISSIONS BY LD. ADDITIONAL PP FOR THE STATE/RESPONDENT

10. Ld. Additional PP for State/Respondent has submitted that they do not wish to file a formal reply to the present revision petition and shall straightaway move to arguing the matter. It is further submitted that the revisionist has indulged in electoral offence by promoting enmity between different classes on the grounds of religion. The revisionist has published

various statements through electronic media and social media. It is further submitted that the revisionist has made these statements during the election period, and has tried to take advantage from them in Elections by promoting hatred on the grounds of religion. The offence u/s 125 of RP Act is cognizable in nature and thus permission for investigation u/s 155 of Cr.P.C. is not required. Moreover, the delay in filing of the chargesheet was due to the outbreak of Covid-19 pandemic. It is on these grounds that the application for condonation was allowed by the Ld. Trial Court. It is prayed that since the revision petition lacks merit, it is liable to be rejected.

FINDINGS

(a) Limitation

11. In the instant matter, the chargesheet was admittedly filed on 01.11.2023 while the offence allegedly had been committed on 22.01.2020 and 23.01.2020. The FIR was registered on 24.01.2020. It is crystal clear that the chargesheet had been filed three years after the date of offence. The Hon'ble Supreme Court vide its Order dated 10.01.2022 passed in *Suo Moto Writ (Civil) Petition No. 3/2020* universally excluded the period from 15.03.2020 till 28.02.2022 for the purpose of computing the limitation period in filing the chargesheet. Thus, in the case at hand, the said period stands excluded. Accordingly, the chargesheet has been filed within the period of limitation. Even otherwise, the said ground has not been pressed by the Ld. Senior Advocate for the revisionist.

(b) Nature of Offence

12. It is vehemently argued by Ld. Senior Advocate for the revisionist that the offence u/s 125 of RP Act is a non-cognizable offence in view of the findings of the Hon'ble High Court of Karnataka in case titled as '*Srikrishna Upadyaya*' (*Supra*) and '*Dr. Prabhakar Bhat*' (*Supra*).

13. The offence u/s 125 of RP Act is punishable with imprisonment for a term which may extend to 3 years or with fine or with both. As the RP Act is silent as to whether the said offence is cognizable or non-cognizable in nature, Schedule - II of Cr.P.C. needs to be invoked. It provides that the offences punishable with 3 years or upward shall be cognizable and the offences which are punishable with imprisonment for less than 3 years as non-cognizable. Now the question arises in which category the offences which are punishable with 3 years are to be considered.

14. Similar question was arisen before the Hon'ble Supreme Court in relation to Section 63 of the Copyright Act, 1957. The punishment provided in the said Section is similar to Section 125 of RP Act, being an offence punishable with imprisonment of 3 years.

15. The Hon'ble Supreme Court in case titled as *M/s Knit Pro International vs. The State of NCT of Delhi & Anr.*, *CrI. Appeal No. 807 of 2022* held that the offence u/s 63 of Copyright Act, 1957 **shall be cognizable in nature**. The relevant extract is reproduced below for ready reference:-

“5.1 The short question which is posed for consideration before this Court is, whether, the offence under Section 63 of the Copyright Act is a cognizable offence as considered by the Trial Court or a noncognizable offence as observed and held by the High Court.

5.2 While answering the aforesaid question Section 63 of the Copyright Act and Part II of the First Schedule of the Cr.P.C. are required to be referred to and the same are as under:

“63. Offence of infringement of copyright or other rights conferred by this Act. Any person who knowingly infringes or abets the infringement of

(a) the copyright in a work, or

(b) any other right conferred by this Act, except the right conferred by section 53A except the right conferred by section 53A shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:

Provided that where the infringement has not been made for gain in the course of trade or business the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

Explanation Construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work shall not be an offence under this section.”

II – CLASSIFICATION OF OFFENCES AGAINST OTHER LAWS

<i>Offence</i>	<i>Cognizable or non-cognizable</i>	<i>Bailable or non-bailable</i>	<i>By what court triable</i>
<i>If punishable with death, imprisonment for life, or imprisonment for more than 7 years</i>	<i>Cognizable</i>	<i>Non-bailable</i>	<i>Court of Session</i>
<i>If punishable with imprisonment for 3 years and upward but not more than 7 years</i>	<i>Cognizable</i>	<i>Non-bailable</i>	<i>Magistrate of the first class</i>

<i>If punishable with imprisonment for less than 3 years or with fine only</i>	<i>Non-cognizable</i>	<i>Bailable</i>	<i>Any Magistrate</i>
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5.3 Thus, for the offence under Section 63 of the Copyright Act, the punishment provided is imprisonment for a term which shall not be less than six months but which may extend to three years and with fine. Therefore, the maximum punishment which can be imposed would be three years. Therefore, the learned Magistrate may sentence the accused for a period of three years also. In that view of the matter considering Part II of the First Schedule of the Cr.P.C., if the offence is punishable with imprisonment for three years and onwards but not more than seven years the offence is a cognizable offence. Only in a case where the offence is punishable for imprisonment for less than three years or with fine only the offence can be said to be noncognizable. In view of the above clear position of law, the decision in the case of Rakesh Kumar Paul (supra) relied upon by learned counsel appearing on behalf of respondent no.2 shall not be applicable to the facts of the case on hand. The language of the provision in Part II of First Schedule is very clear and there is no ambiguity whatsoever.

6. Under the circumstances the High Court has committed a grave error in holding that the offence under Section 63 of the Copyright Act is a noncognizable offence. Thereby the High Court has committed a grave error in quashing and setting aside the criminal proceedings and the FIR. Therefore, the impugned judgment and order passed by the High Court quashing and setting aside the criminal proceedings/FIR under Section 63 of the Copyright Act deserves to be quashed and set aside.

7. In view of the above discussion and for the reason stated above, it is observed and held that offence under Section 63 of the Copyright Act is a cognizable and nonbailable offence. Consequently, the impugned judgment and order passed by the High Court taking a contrary view is hereby quashed and set aside and the criminal proceedings against respondent no. 2 for the offence under Sections 63 & 64 of the Copyright Act now shall be proceeded further in accordance with law and on its own merits treating the same as a cognizable and nonbailable offence.”

16. Based on the analogy of the aforesaid judgment, since the punishment prescribed for the offence u/s 125 of RP Act extends upto 3 years, the said offence falls in the category of being a cognizable offence. Therefore, the argument of Ld. Senior Advocate that the police did not have the authority to investigate the matter without the permission of the Judicial Magistrate is not tenable. Honoring the doctrine of *stare decisis* and following the principles set in this precedent, this court has no hesitation to hold that the judgment of the Hon'ble Supreme Court in *M/s Knit Pro International (Supra)* shall prevail over the judgment of the Hon'ble High Court of Karnataka.

(c) Nature of allegations

17. The superintendence, direction and control of the elections are vested with the Election Commission under Article 324 of the Indian Constitution. Free and fair elections are the very foundations of any vibrant democracy. India is a festival of diversity in religions, castes, cultures, languages and ethnicities. Though religious diversities are embraced but there also exist fragile atmosphere where the religious passion can be easily ignited. There has been a trend in this country to resort to communally charged speeches to garner votes during elections. This is the outcome of politics of divisiveness and politics of exclusion which is a threat to democratic and plural fabric of the country. Divide and rule policy of the colonialist are sadly still in practice in India. The Hon'ble Supreme Court has categorically held in

case titled as *Dhartipakar Madan Lal Agarwal vs. Shri Rajiv Gandhi*, AIR 197 SC 1577 that any action which generates powerful emotions, depriving people of their powers of rational thinking should not be permitted, for preservation of the democratic freedoms. Elections are regulated under the RP Act. The RP Act classifies objectionable and condemnable act into two categories: (i) Corrupt practices and (ii) Electoral offences. The principle distinction between these two categories is that corrupt practices leads civil liabilities and the electoral offences upon conviction, attracts criminal liability. Any appeal in the name of religion, caste, community or language is a corrupt practice and attracts Section 123(3)¹ of RP Act. Further, promotion or attempt to promote enmity and hatred amongst different group of people is both a corrupt practice and an electoral offence u/s 123(3A)² and 125³ of RP Act.

1. Sec. 123 (3) of RP Act - Corrupt practices

(3) The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

2. Sec. 123 (3A) of RP Act – Corrupt practices

The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community, or language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

3. Sec. 125 of RP Act – Promoting enmity between classes in connection with election

Any person who in connection with an election under this Act promotes or attempts to promote on grounds of religion, race, caste, community or language, feelings of enmity or hatred, between different classes of the citizens of India shall be punishable, with imprisonment for a term which may extend to three years, or with fine, or with both.

18. All the above said provisions are similar in its language and import. It will be pertinent to mention the observation of the Hon'ble Supreme Court while interpreting Section 123(3) of RP Act. The Seven Judges Bench of the Hon'ble Supreme Court in case titled as *Abhiram Singh and Ors. vs. C.D. Commachen (Dead) by L.Rs and Ors.*, MANU/SC/0010/2017 held that RP Act is a statute which explicitly prohibits making of an appeal to vote on the ground of religion. The relevant extract is reproduced below:-

“39. The Representation of the People Act, 1951 is a statute that enables us to cherish and strengthen our democratic ideals. To interpret it in a manner that assists candidates to an election rather than the elector or the electorate in a vast democracy like ours would really be going against public interest. As it was famously said by Churchill: "At the bottom of all the tributes paid to democracy is the little man, walking into the little booth, with a little pencil, making a little cross on a little bit of paper..." if the electoral law needs to be understood, interpreted and implemented in a manner that benefits the "little man" then it must be so. For the Representation of the People Act, 1951 this would be the essence of purposive interpretation.”

“41. The purpose of enacting Sub-section (3) of Section 123 of the Act and amending it more than once during the course of the first 10 years of its enactment indicates the seriousness with which Parliament grappled with the necessity of curbing communalism, separatist and fissiparous tendencies during an election campaign (and even otherwise in view of the amendment of Section 153A of the Indian Penal Code). It is during electioneering that a candidate goes virtually all out to seek votes from the electorate and Parliament felt it necessary to put some fetters on the language that might be used so that the democratic process is not derailed but strengthened. Taking all this into consideration, Parliament felt the need to place a strong check on corrupt practices based on an appeal on grounds of religion during election campaigns (and even otherwise).

*42. The concerns which formed the ground for amending Section 123(3) of the Act have increased with the tremendous reach already available to a candidate through the print and electronic media, and now with access to millions through the internet and social media as well as mobile phone technology, none of which were seriously contemplated till about fifteen years ago. **Therefore now, more than ever it is necessary to ensure that the provisions of Sub-section (3) of Section 123 of the Act are not exploited by a candidate or anyone on his or her behalf by making an appeal on the ground of religion with a possibility of disturbing the even tempo of life.***

(emphasis supplied)

19. One of the submissions of the revisionist is that his alleged statement nowhere refers to any caste, community, religion, race and language but has referred to a country which is not prohibited u/s 125 of RP Act. This submission is simply preposterous and outrightly untenable, the implicit reference underlying the particular ‘country’ in the alleged statement is an unmistakable innuendo to persons of a particular ‘religious community’, apparent to generate enmity amongst religious communities. This can be effortlessly understood even by a layman, let alone by a reasonable man.

20. In fact, at this stage, the alleged statements of the revisionist appear to be a brazen attempt to promote enmity on the grounds of religion by way of indirectly referring to a ‘country’ which unfortunately in common parlance is often used to denote the members of a particular religion. The word ‘Pakistan’ is very skillfully weaved by the revisionist in his alleged statements to spew hatred, careless to communal polarisation that may ensue in the election campaign, only to garner votes. Thus, accepting the

submission that since revisionist has not referred to any grounds mentioned in Section 125 of RP Act (religion, race, caste, community and language) explicitly and hence Section 125 of RP Act is not attracted would be blatant negation of, and brutal violence with, the spirit underlying the provision of Section 125 of RP Act. One cannot be allowed to do something, that has been prohibited by Section 125 of RP Act, indirectly, if he cannot do it directly.

21. The Election Commission is under a constitutional obligation to prevent the candidates from indulging in vitriolic vituperation with impunity, vitiating and contaminating the atmosphere for free and fair election. Therefore, this court is in complete agreement with the Ld. Trial Court that the complaint filed by the Returning Officer, notification of the Election Commission and other documents were sufficient to take cognizance of the offence punishable u/s 125 of the RP Act. Accordingly, **the instant revision petition is dismissed.**

22. It is clarified that nothing mentioned herein shall tantamount to expression of any opinion on the merits of the case. Any observations made in this order touching directly or indirectly upon the merits of the case shall not construed as expression of finding by this Court and is restricted only to the purpose of cognizance and summoning of the revisionist.

23. With these observations, the present revision petition stands disposed off. A copy of this order, along with the Trial Court Record, be sent to the Ld. Trial Court.

24. **Revision file be consigned to the Record Room.**

**Announced in the open Court
on 07.03.2025.**

**(Jitendra Singh)
Special Judge (PC Act) CBI-23
(MPs/MLAs Cases)
Rouse Avenue Court Complex,
New Delhi; 07.03.2025**