

**IN THE COURT OF PRINCIPAL DISTRICT & SESSIONS JUDGE :
WEST DISTRICT : TIS HAZARI COURTS : DELHI**

**Criminal Revision No. 289/2025
CNR No. DLWT01-008406-2025**

1. Ashok Singh
S/o. Sh. Padam Singh

2. Amit Singh
S/o. Sh. Ashok Singh

3. Sh. Ankit Singh
S/o. Sh. Ashok Singh

All R/o. H. No. E-1/346,
Shiv Ram Park, Nangloi, Delhi.

.....Revisionists

Versus

1. The State

2. Bateshwar Nath Tiwari
S/o. Late Ram Pyare Tiwari
R/o. E-1/338, Shiv Ram Park,
Nihal Vihar, Delhi – 110041.

.....Respondents

Date of Institution	:	22.08.2025
Date of hearing arguments	:	25.05.2025
Date of order	:	29.05.2025

ORDER

1. The present revision petition has been filed under Section 438/440 BNSS (Section 397/399 Cr.P.C) assailing the impugned order dated 04.12.2023 passed by learned MM - 03 (West), Tis

Hazari Courts, Delhi, in criminal case No. 12417/2023 titled as State v. Ashok Singh & Ors., under Section 323/341/506/34 IPC, whereby the cognizance of the offence was taken against the accused persons/revisionists and the accused persons / revisionists were summoned.

2. For the sake of convenience, I would be referring to parties as per their nomenclature before the Trial Court. Therefore, the revisionist would be referred as the “accused persons”, respondent no.2 as “State” and respondent no.1 as “complainant”.
3. The case put forth by the accused persons is that on 21.10.2019 on receipt of the DD No. 13A, ASI Padam Singh went to the SGM Hospital, where he recorded the statement of the complainant who stated that the accused no. 1 lives in his street with his family. There is a 100 yard vacant plot adjacent to his house. The accused no. 1 had put construction material in this vacant plot to build his house. He has completed the construction of his house but still the material is lying in the plot due to which there is dirt and mosquitoes breed. He asked accused no. 1 several times to clean the plot but accused no. 1 did not remove the material from the plot. On 21.10.2019, he was at his home and his son Shashi aged 23 years was standing outside the house and his son asked accused no.1 to clean this plot as requested earlier also but he did not get it cleaned and now get the plot cleaned.

Accused no.1 refused to get the plot cleaned. Thereafter, a fight started on this issue. Complainant also went out of the house and saw that accused no. 1 was beating his son. Then after some time, two of accused no.1's sons namely accused no. 2 and accused no. 3 came there and started abusing the complainant and his son. When they protested, all three of them started beating the complainant and his son. Ashok caught hold of the complainant and did not let him go. Then 2-3 more boys also came to the spot. The accused nos. 1, 2 and 3 had sticks in their hands and started beating him and caused injuries. Thereafter he made a call to the police. Complainant got medical treatment done at SGM Hospital, however his son Shashi did not get his medical treatment done. On the complaint of the complainant, FIR No. 0731/2019 under Section 323/341/506 IPC was registered. After completion of investigation, the chargesheet was filed in the Court on 04.12.2023. On 04.12.2023, Ld. Trial Court took cognizance of the offence against the accused persons and ordered issuance of the summons to the accused persons. The said order has been assailed by way of the present revision.

4. The accused persons have assailed the impugned order dated 04.12.2023 on the following grounds :-
 - i. Ld. trial court has erroneously taken the cognizance of the offence detailed in the chargesheet, which had to be filed on or

before 22.10.2022 and the chargesheet has been filed after expiry of limitation vide order dated 04.12.2023.

- ii. Ld. trial court ignored the fact that the limitation period as prescribed under Section 468 Cr.PC is 03 years and after that, the Court cannot take the cognizance unless the delay in filing the chargesheet belatedly is explained satisfactorily by giving plausible reasons and the said delay was condoned by the court as per the mandate of provision of 473 Cr.PC.
- iii. No plausible reason has been explained or shown as to why the chargesheet has been filed after a long delay of 11 months and 18 days and thus taking cognizance after expiry of limitation is without jurisdiction and consequently, the subsequent proceedings emanating thereto are liable to be set aside and the accused are liable to be discharged from the offences.
- iv. At the time of appearance of the accused before the ld. trial court, an objection was raised that the said Court cannot take the cognizance, as the charge sheet has been filed after lapse of period of limitation.
- v. As per the provisions of Indian Penal Code, offence U/s 323 is punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to

1,000/- rupees, or with both and Further, offence U/s 341 is punishable with simple imprisonment for a term which may extend to one month, or with fine which may extent to 500/- rupees or with both, and further offence U/s 506 is punishable with imprisonment of either description for a term which may extend to 02 years, or with fine or with both.

vi. As per provisions of taking cognizance, the period of limitation as per provisions of Section 514 BNSS (468 Cr. P.C.), the taking is as under :-

- (a) Six months, if the offence is punishable with fine only;
- (b) one year, if offence is punishable with imprisonment for a term not exceeding one year,
- (c) three years, if the offence is punishable with imprisonment for a term exceeding one year, but not exceeding three years.

Therefore, as per the said provisions, the period of limitation for taking cognizance with respect to the offence U/s 323/341/506/34 IPC is maximum three years from the date of offence. Thus the limitation for taking cognizance with respect to the above offence commenced on 21.10.2019 and the cognizance is to be taken within period of 03 years i.e. till 20.10.2022. Therefore, the entire proceedings being conducted by the Ld. trial court stood vitiated and the FIR as well as the subsequent proceedings emanating thereto are not tenable, illegal and the

accused are liable to be discharged from the offence. In this regard, reliance has been placed upon the case titled as *Balbir Singh & Ors. Vs. State*, 2023:DHC:8587.

vii. The accused persons have filed Crl. M.C. No. 1938/2025 titled as *Ashok Singh & Ors. Vs. The State*, however, the said petition was permitted to be withdrawn with liberty to file the revision petition before this Court.

5. No reply has been filed by the respondent / State.

6. I have heard Sh. R. K. Singh, Ld. Counsel for the revisionist and Sh. Atul Kumar Shrivastava, Ld. Addl. PP for the State/respondent no.1 and have perused the record carefully.

7. The impugned order dated 04.12.2023 is reproduced as under :-

“04.12.2023

Through hybrid mode.

Fresh charge sheet filed, it be checked and register.

Present: Ld. Substitute APP for the State.

ASI Jag Mohan Singh in person.

After perusal of charge-sheet, the allegations made therein and documents placed on record, the court takes cognizance of offence against the accused.

Issue fresh summons to the accused to be served through IO/SHO concerned for appearance and to remain present on NDOH.

Put up for appearance of accused and supply of copy of charge sheet on 09.12.2023.”

8. The four main contentions of the accused persons are that the Ld. Trial Court wrongly took cognizance vide order dated 04.12.2023 despite the charge sheet having been filed beyond the prescribed period of limitation; under Section 468 Cr.P.C. (Section 514 BNSS), the limitation period for the offences alleged is three years, beyond which cognizance could not be taken without sufficient explanation for delay; the charge sheet ought to have been filed on or before 22.10.2022; however, the same was filed belatedly after a delay of about 11 months and 18 days without any plausible explanation; the revisionists had raised an objection before the Ld. Trial Court regarding cognizance being barred by limitation; and the offences under Sections 323/341/506/34 IPC carry a maximum punishment attracting a limitation period of three years, which expired on 20.10.2022, rendering the cognizance and consequential proceedings legally unsustainable.

9. Per contra, Ld. Addl. PP for the State has argued that if there are grave allegations against the accused persons, the order of the trial court taking cognizance cannot be set aside over a technical delay. In this regard, he has placed reliance upon the case of the Supreme Court of India titled as *Vanka Radha Manohari v. Vanka*

Venkata Reddy, 1993 (3) SCC 4. Further, it has been argued that the limitations are designed to prevent laziness of police and not to let offender escape on technical reasons. In this regard, he has placed reliance upon the case of the Supreme Court of India titled as *Bhagirath Kanoria v. State of M.P.* 1984 AIR 1688. It has been further argued that the prosecution is not required to file condonation of delay at the time of the chargesheet and it can be filed at any time of trial. Reliance has been placed upon the case of the Supreme Court of India titled as *Sukhdev Raj v. State of Punjab*.

10. I have considered the submission from both the sides along with record and judgments cited.

11. Section 468 Cr.PC which is being invoked by Ld. Counsel for the accused persons for challenging the impugned order is produced as under :-

“468. Bar to taking cognizance after lapse of the period of limitation.-

(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be—

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.”

12. For the purpose of this section, the period of limitation in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.

13. Considering the aforesaid provision, it can be safely said that the period of limitation for taking cognizance for commission of offence punishable under Section 323/341/506/34 IPC was 03 years. As aforementioned earlier, chargesheet was filed after the lapse of a period on 04.12.2023 i.e. about 11 months and 18 days since registration of FIR and cognizance was taken on 04.12.2023 after 11 months and 18 days. Regarding the date relevant for the purpose of computing the period of limitation under Section 468 Cr.PC, this Court guided by the judgment of the Hon'ble Apex Court in Sarah Mathew v. Institute of Cardio Vascular Diseases & Ors, AIR 2014 SC 448, wherein it was held that *the date of institution of prosecution and not the date on which the cognizance is taken by the magistrate is relevant*. It means that the

relevant date in this case for the purpose of computing the limitation period which is without doubt much beyond the period of limitation. Though, Section 473 Cr.PC provides that the Court may take cognizance of an offence after expiry of period of limitation on being satisfied that delay has been properly explained or that it was necessary so to do in the interest of justice, impugned order is not containing anything to show that ld. trial court had condoned the delay under this provision.

14. In the case titled as *Bhagirath Kanoria v. State of M.P.* 1984 AIR 1688, in which it has been held as under :-

“Before we close, we consider it necessary to draw attention to the provision of section 473 of the Code which we have extracted above. That section is in the nature of an overriding provision according to which, notwithstanding anything contained in the provisions of Chapter XXXVI of the Code, any Court may take cognizance of an offence after the expiry of the period of limitation if, inter alia, it is satisfied that it is necessary to do so in the interest of justice. The hair-splitting argument as to whether the offence alleged against the appellants is of a continuing or non continuing nature, could have averted by holding that, considering the object and purpose of the Act, the learned Magistrate ought to take cognizance of the offence after the expiry of the period of limitation, if any such period is applicable, because the interest of justice so requires. We believe that in case of this nature, Courts which are confronted with provisions which lay down a rule of limitation governing prosecutions, will give due weight and consideration to the provisions contained in section 473 of the Code. We confirm the view of the High Court that in passing the impugned order, the learned Magistrate has not in any manner reviewed his earlier order dated September 20, 1976.

In the result, these appeals are dismissed. The prosecutions will proceed and be disposed of expeditiously in accordance with law. The learned Magistrate will dispose of these cases by considering all the points together, that is to say, without treating any particular point as a preliminary point.”

15. It may be noted that whenever a court exercised its discretion under Section 473 Cr.PC, the same must be by a speaking order indicating satisfaction of the Court to the effect that delay was satisfactorily explained and consideration of the same was in the interest of justice. In this regard, reliance is placed upon the case titled as *State of Himachal Pradesh v. Tara Dutt & Anr.*, AIR 2000 SC 297.

16. In *Balbir Singh & Ors. Vs. State*, it has been observed that the delay in taking cognizance can be condoned, when the same has been done only at the pre-cognizance stage. It has been held in para no. 17 in the aforesaid judgment as under :-

17. Clearly, the delay in taking cognizance can be condoned under Section 473 CrPC but the same has to be done at the pre-cognizance stage. It has been so observed by this Court in Vinod Kumar Jain (supra), the relevant part of which reads thus:-

"...8. It is thus manifest that if a complaint is prima facie barred by time when it is filed, it becomes necessary for the prosecuting agency to explain the delay and seek condonation of the same. Unless the delay is condoned the court cannot take cognizance of the complaint. In other words, the Magistrate has to apply his mind to the question of limitation at the pre-cognizance stage and satisfy himself

that delay has been properly explained or that it is necessary to condone the delay in the interests of justice. The Magistrate cannot hasten to issue the process without first recording his satisfaction that the delay was satisfactorily explained to him or that he was of the view that the condonation of delay was in the interests of justice. It is highly doubtful that the court can condone the delay and thus extend limitation subsequent to the taking of cognizance of the offence. Of course, the condonation of delay may be implied from the act of the Magistrate in taking cognizance after the expiry of the period of limitation and proceeding with the case but the order must be clear and categorical in this respect. He has no power or authority to condone the delay provisionally or ex facie as has been seemingly done in the instant case.

XXXX XXXX XXXX XXXX

15. It is thus manifest that the weight of authority supports the view that the Magistrate must apply his judicial mind to the question of condoning the delay before taking cognizance of the offence and he cannot, after taking cognizance, rectify the illegality by passing an order under Section 473 so as to operate retrospectively.

XXXX XXXX XXXX XXXX

17. Certainly the accused has a right to challenge his prosecution when cognizance of the offence has been taken by a Magistrate without prior notice to him and without deciding the question of condonation of delay under Section 473 of the Code on the ground that it is barred by time. However, that does not relieve the Magistrate or the court taking cognizance of the offence from applying its judicial

mind to this aspect of the matter when the complaint is apparently barred by limitation at the time of its institution. Surely he cannot drag the accused to face the music by passing a mindless order at the time of taking cognizance. It will certainly amount to avoidable harassment, expense and hardship to the accused. In the instant case, the respondent has challenged the order of the learned Magistrate taking cognizance at the threshold. Hence, there is no reason why the same be not quashed if it is found to be bad in law."

17. In view of the aforesaid provision, Ld. Trial Court could not have taken the cognizance of the offences under Section 323/341/506/34 IPC after three years as the maximum punishment for the offence under Section 323 IPC is imprisonment upto one year with fine Rs. 1000/-, the maximum punishment for the offence under Section 341 IPC is simple imprisonment for a term of up to one month, a fine of up to Rs. 500 or both and the maximum punishment for the offence under Section 506 IPC is imprisonment of up to 2 years, or a fine, or both in case of general threat / simple criminal intimidation and in case of grave threat / threat of death, grievous hurt, etc. is imprisonment of up to 7 years, or a fine, or both. Further, the perusal of the impugned order shows that the Trial Court did not condone the delay in terms of the Section 473 Cr.PC before taking the cognizance, therefore the impugned order is liable to be set aside.

18. Consequently, in view of the above detailed discussion, **the revision petition is allowed. The impugned order dated 04.12.2023 is set aside.** TCR be sent back along with the copy of this Order.

19. File be consigned to the record room.

**Announced in the open Court
on 29th day of May, 2026.**

**(Dr. Vijay Kumar Dahiya)
Principal District & Sessions Judge (West)
Tis Hazari Courts: Delhi**