

**IN THE COURT OF MS. SHEETAL CHAUDHARY PRADHAN
ADDL. SESSIONS JUDGE-02 : SOUTH EAST DISTRICT
SAKET COURT : NEW DELHI**

*Criminal Revision No.46/2026
Awdhesh Kumar Roy Vs. Nageswer Sharma
PS Govindpuri*

In the matter of :-

Sh. Awadhesh Kumar Roy
S/o Sh. Rajeshwar Roy
R/o H.No.RZ-1/32, Second Floor
Front Side, Gali No.4,
Tuglakabad Extension, New Delhi 110044

.... Revisionist

Versus

Sh. Nageswer Singh
S/o Sude Lal
R/o House/Jhuggi No.A-202,
Indra Kalyan Vihar,
Okhla Industrial Area, New Delhi 110020

.....Respondent

Date of Institution : 24.01.2026

Date of Arguments : 08.04.2026

Date of Order : 12.05.2026

Decision : Revision Petition Allowed.

Order of Ld. Trial Court is set aside.

ORDER

1. Vide this order I shall dispose of revision petition bearing no.46/2026 arising out of the impugned order dated 14.08.2024 passed in Ct. Case No.1931/2022 titled “*Nageswer Sharma Vs. Awdhesh Ra*” by which the revisionist has been summoned for the offence punishable under Section 448 IPC.
2. Revisionist namely Awadhesh Kumar Roy have filed present revision petition thereby challenging impugned order dated 14.08.2024 passed by Ld. Trial Court, vide which, revisionist have been summoned for the offence under Section 448 IPC on the complaint filed by respondent Nageswer Sharma.

BRIEF FACTS

3. In a nutshell the case of the respondent before the Ld. Trial Court is that that the complainant is peace loving and law abiding Senior citizen of India and working with "WOODEN WORKS" living with his family peacefully at above mentioned address and law abiding citizen has never committed any criminal acts or even civil wrongs in her entire life and having a clean antecedent. The complainant has been residing at jhuggi bearing no.A-202, situated in Indra Kalyan Vihar Under The Jurisdiction Of Police Station Okhla Industrial Area, New Delhi with his family and has been living in this house since last 30 years. Further the complainant is in possession of the aforesaid house since the year 2016. However, some part of the the above said house had been

possessed forcefully by the accused Awdhesh Rai and he is warned the complainant if he will try to enter this room which is situated in the ground floor of the complainant will face dire consequences and the complainant lives with his family in same house at first floor and the remaining space laying vacant in Accused portion.

4. It has further been alleged by the respondent/complainant that the remaining portion of Jhuggi No.A-202, relating to the complainant name and after forcefully taken possession by accused/Awadesh Kumar Roy and his associates remaining part was not enough to live with family and therefore complainant lives with his family in the small part of that house with in very troubled position. That in this regard accused quarreled many time with the complainant and complainant inform the P.S. Okhla Industrial Area but police has not taken any legal action against accused Awadesh Kumar Roy, and his associates.
5. That on 20/09/2022 when complainant visit at House No.A-202, Indra Klyan Vihar after saw the complainant Awdhesh Rai and other starting abusing filthy language and threat to life and we must kill you if you visit again and also said *"SALE MULLE YAHAN SE BHAG JA NAHI TO JAAN SE MAR DUNGA"* and complainant returned back seeing the atmosphere. That complainant sent a written complaint on 21.09.2022 through speed posts and intimate to SHO Okhla Industrial Area local police and police commissioner of Delhi and same to DCP south east at Sarita Vihar against the accused person.

6. Subsequently, complainant filed his complaint u/s 156(3) Cr.P.C. r/w 200 Cr.P.C. before the Ld. Trial Court on 20.10.2022. Subsequently, the application u/s 156(3) Cr.P.C. was dismissed on 08.05.2023 and matter was listed for complainant evidence. Complainant during his pre summoning evidence examined himself as CW1.

PRE SUMMONING EVIDENCE

7. In the pre summoning evidence, complainant examined himself and deposed that *“I am the complainant in the present case, I used to reside at my native village, my son had opened a committee in which 10-15 persons were members. My son could not return the committee money, my son had left 05 years ago and went to Bangalore. Due to this dispute, the accused Avdesh Rai has wrongfully captured my jhuggi which bears the above-mentioned address, I at present is residing at the first floor of the said jhuggi in a one room. The electricity bill is paid by me only. 02 rooms have been captured by Avdesh Rai. I had not taken any money from Avdesh Rai. The aforementioned facts were informed to me by the neighbors and my son as well. Avdesh Rai has not entered into any scuffle with me, however, he only collects the rent of those 02 rooms. I have also offered Avdesh Rai to take the principle amount back, however, he insists on payment of the interest”*.
8. Ld. Trial Court vide impugned order dated 14.08.2024 passed the summoning order and has summoned the accused/revisionist Awadesh Kumar Roy for the offence punishable u/s 448 IPC.

GROUND OF CHALLENGE

9. Ld. Counsel for revisionist has taken following grounds challenging the impugned order.

A. That the Impugned Orders passed by the Ld. Trial Court is contrary to Law and Facts established and proved on the record of the case.

B. That the Ld. Trial Court has passed the impugned orders without any justifiable or reasonable cause.

C. That the Ld. Trial Court has committed a grave error in opining that "let summons be issued to the alleged Awdesh Rai for facing trial qua the offence u/s 448 IPC".

D. That the Impugned Order of summoning for facing the trial U/s 448 of IPC suffers from irregularities and perversity as the Section 441, 442 of Indian Penal Code, 1860 by its bare reading clearly states that this section can only be applied to a person who entered or unlawfully remains in any building, tent OR vessel. Hence, the same cannot be attributed against the Revisionist as in the present case he never ever entered or remains in the above-mentioned property of the Respondent.

E. That the Ld. Trial Court did not consider that prima facie no offence under Section 448 of Indian Penal Code, 1860 can be made out against the Revisionist, as the said section can only be invoked against the individual who entered or unlawfully remains in any building, tent OR vessel OR to intimidated, insult, OR annoy any person in possession of such property.

F. That Ld. Trial Court did not consider that in this case, the Revisionist has been falsely implicated and victimized by the Respondent, who, along with his son, is in the habitual practice of embezzling innocent people's hard-earned money.

G. That the Ld. Trial Court did not consider that the respondent in his complaint has not mentioned even a single date, time and any kind of the documentary evidence in support of his allegation.

H. That the Ld. Trial Court did not consider that the respondent in his complaint had alleged that the Revisionist had many time threatened as well as abuse him whereas in the order dated 14.08.2024 he clearly stated before the Ld. Trial court that the Revisionist had never beaten him or ever entered into any scuffle with the Respondent.

I. That the Ld. Trial Court did not consider that the material contradiction in the Respondent's own statements, wherein in his complaint he alleged that the Revisionist had forcefully taken possession of a portion of his jhuggi in the year 2016, whereas in his subsequent police complaint dated 21.09.2022, the Respondent himself categorically stated that the Revisionist had started residing in his jhuggi as a tenant merely 1 or 2 years ago.

J. That the Ld. Trial Court did not consider that the Respondent has not furnished even a single documentary evidence in support of the allegations levelled against the Revisionist. Furthermore, the Respondent's criminal complaint filed under Section 200 Cr.P.C, his police complaint dated 21.09.2022, and the statements made before the Ld. Trial Court are materially contradictory to each other, thereby rendering his version of events unreliable and devoid of credibility.

K. That the Ld. Trial Court did not consider that the Respondent had deliberately mentioned an incorrect address of the Revisionist before the Ld. Trial Court, resulting in non-service of court summons/Notices and denial of a fair opportunity to the Revisionist to present his case at the initial stage.

L. That the impugned orders are passed on mere assumptions and presumptions which do not flow from the record and on mere surmises and

conjectures which cannot be sustained in law. That the Revisionist has a strong *prima facie* case and the balance of convenience lies towards him, and irreparable loss would be caused to the Revisionist if the Impugned Orders dated 14.08.2024 is not set aside/quashed.

M. That the Revisionist herein/Original Accused has come to know about the impugned summoning order after engaging the present counsel on 05.01.2026, who, after perusing and inspecting all the relevant orders, complaint copy and informed the Revisionist on 13.01.2026 that the Ld. Trial Court had erred in misinterpreting the settled fundamental principles of law and had wrongly issued the summoning order against the Revisionist to face trial under Section 448 of the Indian Penal Code, 1860.

ARGUMENTS ON BEHALF OF REVISIONIST

10. In addition to the aforesaid grounds it has been argued on behalf of Ld. Counsel for revisionist that the Revisionist is a very sober and gentle persons and belong to an ideal society as well respectable family. The accused is law abiding citizen of India who always believe in rule of law and pay respect to Hon'ble Courts and their verdict. The present Revision Petition is directed against the impugned summoning order dated 14.08.2024 passed by the Ld. Trial Court in Complaint Case No. 1931 of 2022, whereby the Revisionist/Original Accused has been summoned for facing trial qua the offence under Section 448 IPC. That the impugned order suffers from gross material irregularity, and non-application of Judicial mind, thereby warranting interference under revisional jurisdiction. That there are clear contradictions in the complaint filed by the complainant and in the statement of the

complainant and further in the application addressed to the concerned police station, thereby rendering the complainant's version unreliable. That is a settled principle of law that summoning of an accused in a criminal case is a serious matter and cannot be done in a mechanical manner. That offence under Section 448 IPC (house-trespass) is predicated upon the existence of "criminal trespass" as defined under Section 441 IPC, which requires: a) unlawful entry into property; and b) such entry being with intent to commit an offence or to intimidate, insult or annoy. It is argued that the Revisionist has been working as a General Manager in a reputed company for a considerable period, and there is no necessity for him to reside in a rented jhuggi, as he is financially well-positioned to afford suitable and respectable accommodation and there is no material whatsoever to show that the Revisionist ever entered the alleged premises; there is no allegation of criminal intent; and there is neither direct nor indirect proof that the Revisionist is in the possession of the Respondent's Jhuggi; the respondent is miserably failed to establish any Landlord, tenant relationship whatsoever, and therefore, no offence is made out against the accused/revisionist and the present revision be allowed.

REVISIONIST HAS RELIED UPON THE FOLLOWING JUDGMENTS

11. That the Hon'ble Supreme Court, in numerous judgments, has held that *"criminal proceedings ought not to be used as a tool for harassment or for pursuing private vendetta"*.

12. Further that where the materials on record do not disclose the basic ingredients of the alleged offences, the accused is entitled to discharge at the threshold (*State of Bihar vs. Ramesh Singh, (1977) 4 SCC 39*).

13. That In "*Sanjay D. Jain v. State of Maharashtra*" (2025 INSC 1168), the Hon'ble Supreme Court held that criminal proceedings based on vague and general allegations, unsupported by concrete evidence, do not disclose a prima facie offence so as to warrant continuation of prosecution against the accused. Furthermore, in *Neelu Chopra v. Bharti, (2009) 10 SCC 184*, the Apex Court ruled that criminal proceedings based on vague and general allegations, unsupported by concrete evidence or specific details of the occurrences, do not disclose a prima facie offence and warrant an immediate discharge of the accused.

ARGUMENTS ON BEHALF OF RESPONDENT

14. On the other hand it has been argued on behalf of Ld. Counsel for the respondent/complainant that the order passed by the Ld. Trial court is correct and does not require any interference and that the accused / revisionist has been rightly summoned for the offence u/s 448 IPC.

15. It has been further argued that the scope of section 397 Cr.P.C (analogous to section 438 BNSS) in judgment titled as *Amit Kapoor Vs. Ramesh Chander (2012) 9 SCC 460, Hon'ble Supreme Court of India* observed as under: -

"12..... Section 397 of the Code vests the court with the power to call for and examine the records of an inferior

court for the purpose of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinize the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law.....

16. That the Hon'ble Supreme Court of India in **Sanjaysinh Ramarao Chavan Vs. Dattatray Gulabrao Phalke (2015) 3 SCC 123** held:

"14.....Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with decision in exercise of their revisional jurisdiction". (Emphasis supplied).

17. It has been argued that it is a settled principle of law that at the nascent stage of the issuance of summons, the strict standard of proof nor probable defence which the accused may take is not to be examined. All

that is required by the court is to satisfy itself as to whether there are sufficient grounds for proceeding. (*State of Gujarat v. Afroz Mohammed Hasanfatta*, 2019 SCC OnLine SC 132)

"51. While hearing revision under Section 397 Cr.P.C., the High Court does not sit as an appellate court and will not reappreciate the evidence unless the judgment of the lower court suffers from perversity....."

18. That the Hon'ble Apex Court in **New India Assurance Co. Ltd. Vs. Krishna Kumar Pandey**, Crl. Appeal No.1852 of 2019 decided on 06.12.2019 has held that:-

"8. The scope of the revisional jurisdiction of the High Court (or Sessions Court) under Section 397 Cr.P.C, is limited to the extent of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order passed by an inferior Court. The revisional Court is entitled to look into the regularity of any proceeding before an inferior Court. As reiterated by this Court in a number of cases, the purpose of this revisional power is to set right a patent defect or an error of jurisdiction or law."

19. It has further argued that the presence of both civil as well as criminal liability for the same act in itself explains that remedy can be availed

for both and such proceedings don't interfere with each other. That the Apex Court in case of **K. Jagadish v. Udaya Kumar G.S. and Anr. (2020) 14 SCC 552**, the court has reviewed its precedents and the relevant paragraph from the above judgement is extracted below:

"9. It is thus a well settled that in certain cases the very same set of facts may give rise to remedies in civil as well as criminal proceedings and even if a civil remedy is availed by a party, he is not precluded from setting in motion the proceedings in criminal law,"

20.It has been argued that the **Hon'ble Supreme Court of India in Crl. Appeal No. 1059 of 2001 Kamaladevi Aggarwal v. State of West Bengal and Ors. (2002) 1 SCC 555** observed that:

"17..... Criminal cases have to be proceeded with in accordance with the procedure as prescribed under the Code of Criminal Procedure and the pendency of a civil action in a different court even though higher in status and authority, cannot be made a basis for quashing of the proceedings."

21.Further, that the **Hon'ble Supreme Court of India in Rajesh Bajaj vs State NCT of Delhi (1999) 3 SCC 259**, made the following observations:

"10. It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transactions."

22. Further, that the **Hon'ble Supreme Court of India in Crl. Appeal No. 255 of 2019 Sau. Kamal Shivaji Pokarnekar v. The State of Maharashtra & Ors.**, observed that:

"9..... At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offense alleged against are prima facie made out in the complaint, the criminal proceedings shall not be interdicted."

FINDINGS

23. I have heard Ld. Counsel for both the parties and carefully considered the record and gone through the submissions. Present revision has been filed on behalf of accused/revisionist Awadesh Kumar Roy against the impugned order dated 14.08.2024. Upon being summoned by Ld. Trial

Court, accused appeared before Ld. Trial Court on 17.12.2024, and the copy of the complaint was supplied to him only on 04.04.2025 and the charge was framed against the accused/revisionist on 09.07.2025. Further, it has been stated by the revisionist/accused that due to aforesaid proceeding he was unable to file the revision petition on time. On the aforesaid submissions delay in filing of revision petition stands condoned.

24. During the course of arguments, it has been argued on behalf of the revisionists that the order on summoning passed by the Ld. Trial Court is incorrect and has been passed without taking into consideration the legal provisions and there is infirmity in the impugned order.

25. The question which needs adjudication in present revision petition, is whether impugned order is perverse, illegal or arbitrary in nature ?

THE LAW PERTAINING TO SUMMONING OF THE ACCUSED

26. What are the considerations, which a Criminal Court has to bear in mind, while summoning accused in criminal matters, are properly explained by Hon'ble Apex Court. In the case law titled as *Pepsi Foods Ltd. & Anr. Vs. Special Judicial Magistrate & Ors., (1998) 5 SCC 749*, wherein following observations were made :-

“Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to

bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

27. After considering aforesaid dictum, it is clear that the exercise of summoning the accused should not be mechanically done rather should be based on careful scrutiny of the record placed before him. The Court is required to appreciate and decide role of each accused, at the stage of summoning.

28. Further, summoning order in complaint case need not be reasoned as

Section 204 does not mandate the Magistrate to explicitly state the reasons for issuance of summons. It clearly states that if in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, then the summons may be issued. This section mandates the Magistrate to form an opinion as to whether there exists a sufficient ground for summons to be issued.

29. Further, it is the duty of Magistrate while issuing summons to accused u/s 204 CrPC, Magistrate has only to see whether allegations made in the complaint or prima facie sufficient to proceed against the accused. Magistrate need not enquire into merits or demerits of case as held in ***Fiona Shrikhande Vs. State of Maharashtra, AIR 2014 SC 957***. Further, a summoning order passed by Magistrate in complaint case must reflect application of mind.

30. For summoning the accused in a complaint case, it is the duty of a Magistrate while passing summoning order has to see that the allegations of the complainant are substantiated by some cogent evidence and the criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring witnesses to support his allegations in the complaint to have the criminal law set into motion but also to bring on record sufficient evidence and lead cogent evidence which is sufficient to prosecute the accused for the offences alleged. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable

thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and that would be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused. The same has also been held in *Pepsi Foods Ltd. (supra)*.

31. In this case, it has been argued by Ld. Counsel for accused/revisionist that no offence is made out as the complainant had not placed on record any document in support of his allegations regarding threat or trespass. Further that the complaint is bereft of details. On the other hand it has been argued on behalf of respondent/complainant that the order of Ld. Trial Court has been correctly passed and does not require any interference.

32. In the present matter, complainant apart from his complaint dated 20.09.2022 to the SHO concerned had relied upon the documents pertaining to himself that is the LPG card, ration card, aadhar card, PAN card and electricity bill in his name of the aforesaid property. The respondent / complainant Nageshwar Sharma has not placed on record

any document to support his contentions that the accused/revisionist Awadesh Kumar Roy had been occupying the house of complainant initially like a tenant. No document pertaining to tenant landlord relationship has been placed on record. There are no specific allegation on behalf of respondent/complainant, before the Ld. Trial Court as to when the revisionist/accused criminally trespassed into his house and the complainant / respondent has not even specified a date of any such incident when the accused criminally trespassed into his premises or extended threats to him. Further, believing that the relationship of the complainant and the accused is of tenant and landlord, and considering that the revisionist/accused is not vacating the jhuggi/house of the complainant/respondent, the same is of civil in nature. The aforesaid nature of relationship of tenant and landlord, cannot be termed to be criminally trespass and therefore no offence u/s 448 IPC is made out against the revisionist/accused Nageshwar Sharma.

33. Therefore, once the foundational facts constituting the offence u/sec. 448 IPC are not established through the complaint and supporting documents and the impugned order passed by Ld. Trial Court is not justified in issuing the process against the revisionist/ accused. I find that the order of summoning against accused/revisionist by Ld. Trial Court is liable to be set aside.

34. In view of the aforesaid discussion, the grounds of revision as such, are maintainable. **The impugned order dated 14.08.2024 passed by Ld. Trial Court stands set aside.**

35. TCR be sent back alongwith copy of this order to the Ld. Trial Court for information.

File be consigned to Record Room after due compliance.

**ANNOUNCED IN THE
OPEN COURT TODAY**

**[Sheetal Chaudhary Pradhan]
ASJ-02, South-East/Saket/Delhi
12.05.2026 (vk)**