

**IN THE COURT OF MS. ANJU BAJAJ CHANDNA
PRINCIPAL DISTRICT & SESSIONS JUDGE
SOUTH WEST DISTRICT : DWARKA COURTS : DELHI**

CA No. 362/2025

1. Kuldeep
S/o Sh.Mange Ram
R/o WZ-40, Palam Village
New Delhi-110045

2. Rakesh
S/o Dalel Singh
R/o WZ-3C, Village Palam
New Delhi-110045

...Appellants.

Versus

1. Govt. of NCT of Delhi
Through SHO PS Palam Village
New Delhi-110045.

2. Harkesh Jain
S/o Jai Kumar Jain
R/o 1/216/1, Raj Bhawan, Sadar Bazar
Delhi Cantt. New Delhi-110010

...Respondents

Date of filing : 23.07.2025
Arguments heard on : 01.08.2025
Date of pronouncement : **01.08.2025**

Appearance:

Ms. Kavya, Ms.Himani Verma and Sh.Aman Gahlot, Ld. Counsels for appellants

Sh.Ritender Singh, Ld. Addl. PP for State (substitute)
Sh.Sandeep Shokeen, Sh.Haneesh Balyan, Ld. Counsels for respondent no.2

Sh.Ajay Chaudhary, Ld. Counsel for
respondent no.2 (through VC)

ORDER:

1. The present appeal is directed against the order of Ld. Magistrate Sh.Saurabh Goyal dated 15.07.2025 whereby in the complaint case bearing no. 22490/2018 titled 'Harkesh Jain vs Anil & Ors.' Ld. Magistrate held the accused persons guilty for contempt of court and convicted for the offence punishable under Section 228 IPC. Accused persons were directed to stand in the court till the rising of the court with their hands straight in the air. Ld. Magistrate also observed that accused persons have committed contempt of the order and wasted precious time of the court.
2. The appellants Kuldeep S/o Sh.Mange Ram and Rakesh S/o Dalel Singh (accused before the trial court) have challenged the said order in the present appeal on the grounds that impugned order is nothing but gross misuse of process of law. The trial court failed to follow the procedural law and no opportunity was given to the appellants to show-cause before recording their conviction. Referring to the provision of Section 345 Cr.P.C, it is contended that reasonable opportunity was required to be given and only thereafter offender could be sentenced that too with fine not exceeding Rs.200/-. Accused persons further asserted that Ld. Magistrate failed to appreciate that non furnishing of bonds would not amount to contempt of court or interruption as per provision of Section 228 IPC.

3. Appellants have further contended that Magistrate has passed the order in an unlawful manner and he failed to appreciate that powers vested in the court should not be used to violate the dignity of the parties. Ld. Magistrate failed to take note that Indian Penal Code stands replaced with the provisions of Bharatiya Nyaya Sanhita 2023 with effect from 01.07.2024 and the offence (though not committed) should have been covered under the new law. The appellants have asserted that Ld. Magistrate failed to take into consideration the settled legal position as pronounced by following judgments:-

1. State of Madhya Pradesh vs Revashankar 1959 AIR 102.
2. Yoginath D. Bagde vs State of Maharashtra & Anr. 1999 (7) SCC 739.
3. Swatantra Kumar vs Lav Kush S. Shukla (1985) AWC 817.
4. Kiran N. Makasare vs State of Maharashtra & Anr. 1998 CrIJ 1939.
5. S. Rajanikanth vs Tmt.C.Thirumagal dated 27.06.2011 of Madra High Court.

4. I have heard both the sides and given due consideration to the record including the trial court record.

5. The question about maintainability of the present appeal is raised by Counsel for respondent no.2. On perusal of Section 376 (2) Cr.P.C and 417(b) of BNSS, 2023, since the sentence awarded to the accused persons is less than three months, appeal is not maintainable in petty offences. However, at the request of Ld. Counsel for appellant, present appeal is treated as revision as under the revisional powers, this court can evaluate the legality and propriety of the impugned order.

6. The complaint case titled, 'Harkesh Jain vs Anil & Ors.' was pending before Ld. Magistrate and cognizance against the accused persons was taken vide order dated 11.09.2024 for the offences punishable under Section 441/506/34 IPC. On 20.01.2025, accused persons namely Anand, Kuldeep and Rakesh (petitioners herein) were admitted to bail on furnishing personal bond and surety bond in the sum of Rs.20,000/- each. Time for furnishing bail bonds was granted for 18.02.2025 and matter was also fixed for pre-charge evidence. Thereafter the matter was adjourned on 18.02.2025 and 01.04.2025. Again on 06.05.2025, accused persons were directed to furnish bail bonds with the warning that default would attract cost of Rs.10,000/-.

7. On 15.07.2025, the following impugned order was passed:-

"Present: Complainant in person with Ld. Proxy Counsel Sh. Sandeep Shokeen.

All the accused in person except accused Anil and Ram Kumar.

Accused Anil and Ram Kumar is stated to have been expired.

Sh. Tapish Sehrawat Ld. Proxy Counsel for accused Upasana and Anand.

Sh. Hemant Kapoor Ld. Counsel for accused persons namely Kuldeep and Rakesh.

Despite waiting and calling the matter twice from 10:00 AM till 11:40 AM, the bail bonds were not furnished by the accused persons. For wasting the time of the court, which is in contempt of the order duly promulgated on last date of hearing, the accused persons are hereby held guilty for contempt of court proceedings and are convicted for offence U/s 228 IPC. They are directed to stand in the court till the rising of this court with their hands straight in the Air.

Despite waiting since morning, the Bail bonds not furnished by accused Kuldeep. He is thus, taken into custody of this court. He is remanded to 14 days J/C and be produced on date fixed. Rehnumai be done on 29.07.2025 through VC.

Matter is today fixed for pre charge evidence. Ld. Counsel for the accused persons has sought an adjournment for today and the same is not opposed by

Ld. Counsel for complainant.

Copy of this order be given dasti, as prayed for to Ld.

Counsel for accused persons.

Accordingly, matter is adjourned for pre charge evidence on 11.08.2025.”

8. The above impugned order cannot qualify the test of legality and propriety. The order passed by Ld. Magistrate is not only illegal but even the legal procedure has not been adopted. Non-furnishing of bail bonds by the accused persons cannot be termed as contemptuous act by any stretch of interpretation. Firstly, the Ld. Magistrate failed to take note of the fact that new criminal laws have came into effect w.e.f. 01.07.2024 and the proceedings conducted by Ld. Magistrate under Indian Penal Code is incorrect application of law.

9. Even if proceedings are viewed in context of provisions of IPC and Cr.P.C, the order passed by Ld. Magistrate is absolutely against the substantive and procedural law.

10. Accused persons have been convicted under Section 228 IPC which reads as follows:-

Section 228. Intentional insult or interruption to public servant sitting in judicial proceeding.

Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public

servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

11. The procedure is provided under Section 345 Cr.P.C which reads as follows:-

Section 345. Procedure in certain cases of contempt

(1) When any such offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code (45 of 1860) is committed in the view or presence of any civil, Criminal or Revenue Court, the Court may cause the offender to be detained in custody and may at any time before the rising of the Court on the same day, take cognizance of the offence and, after giving the offender a reasonable opportunity of showing cause why he should not be punished under this section, sentence the offender to fine not exceeding two hundred rupees, and, in default of payment of fine, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.

(2) In every such case the Court shall record the facts constituting the offence, with the statement (if any) made by the offender as well as the finding and sentence.

(3) If the offence is under section 228 of the Indian Penal Code (45 of 1860), the record shall show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and the nature of the

interruption or insult.

12. The act of accused persons of not furnishing bail bonds does not fall within the scope and ambit of Section 228 IPC and can in no manner be taken as intentional insult or interruption to public servant in judicial proceedings. It is also clear that Ld. Magistrate did not afford any opportunity to the accused persons to show cause as to why they should not be proceeded against under the provision of Section 228 IPC. Without hearing, petitioners (accused) were asked to stand in the court till the rising of the court with their hands straight in the air. This kind of sentence is not contemplated in law.

13. Article 21 of the Constitution of India, confers fundamental rights of personal liberty, which can be curtailed only by a procedure established by law. The object of law is to ensure that basic human rights are not violated. The judges are duty bound to safeguard basic and natural rights meant for a dignified existence of individuals. Every person appearing before the court (even if involved in crime) has the inalienable right to live with dignity and is entitled to equal respect. It is the duty of the court to ensure that no person can be detained without proper legal justification or without following due process of law.

14. In the present case, Ld. Magistrate completely failed in his duty and responsibility to conduct judicial proceedings legally and properly. The order passed by Ld. Magistrate thereby

convicting the accused persons under Section 228 IPC and sentencing them to stand with their hands in air till the rising of the court is not sustainable. Ld. Magistrate is advised to properly read and understand the legal provisions before using his discretionary powers.

15. In view of above-said observations, order dated 15.07.2025 is set aside.

16. Copy of this order along with TCR be sent back to the trial court.

17. Parties to appear before the trial court on the date fixed before the trial court i.e. 11.08.2025.

18. File be consigned to the record room.

(Anju Bajaj Chandna)
Principal District & Sessions Judge
South-West, Dwarka Courts
New Delhi/01.08.2025