

IN THE COURT OF SH. JITENDRA SINGH,
SPECIAL JUDGE (PC ACT) (CBI)-23,
(MPs/ MLAs CASES),
ROUSE AVENUE COURT COMPLEX: NEW DELHI.

Criminal Revision Petition No. 09/2024
CNR No. DLCT12-000187-2025

In the matter of :-

Satyender Kumar Jain
MLA, Shakur Basti Assembly Constituency, Delhi
S/o Late Sh. Ram Sharan Jain
R/o; E-1032, Saraswati Vihar,
New Delhi-110032.

..... Complainant

Versus

Bansuri Swaraj
Member of Parliament, Lok Sabha,
R/o; H-4, Dhawandep Building,
6 Jantar Mantar Road,
New Delhi-110001.

..... Respondent

(i) Date of filing of Revision Petition	:	07.03.2025
(ii) Date on which order was reserved	:	31.07.2025
(iii) Date of pronouncement of order	:	31.07.2025

ORDER

1. The present revision petition under Sections 438 and 440 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (**hereinafter to be referred as “BNSS”**) has been preferred by Sh. Satyender Kumar Jain (**hereinafter to be referred as “Complainant”**), assailing the order dated 20.02.2025 (**hereinafter to be referred as “impugned order”**), passed by the Additional Chief Metropolitan Magistrate-03 (**hereinafter to be referred**

as “Trial Court”), in Complaint Case bearing no. 23/2024, titled ‘*Satyender Kumar Jain Vs. Bansuri Swaraj & Anr.*’ whereby the Trial Court declined to take cognizance for the offence under Section 235 of the Bharatiya Nayay Sanhita, 2023 (**hereinafter referred to as “BNS”**) against the respondents, namely, Ms. Bansuri Swaraj (**hereinafter referred to as “proposed accused”**), Member of Parliament, and Aaj Tak News Channel.

2. It is pertinent to note that the revision petition qua respondent no. 2 (Aaj Tak news Channel), has been withdrawn by the Ld. Counsel for the Complainant through his statement dated 22.03.2025.

Brief Facts of the Case:

3. The Complainant alleges that proposed accused made defamatory statements against him during an interview aired on 05.10.2023 on Aaj Tak news Channel, with the intention to tarnish his reputation and gain undue political advantage. It is averred that the Complainant, a three time elected Member of the Legislative Assembly (MLA) from Shakur Basti, Delhi, who has also served in various ministerial roles under the Government of the National Capital Territory of Delhi (GNCTD), including Health and Family Welfare, Industries, Home, Water, Urban Development, and Irrigation and Flood Control. It is further averred that the proposed accused, a practicing advocate and sitting Member of Parliament representing the New Delhi Lok Sabha constituency, made defamatory statements against him during a televised interview on 05.10.2023 on Aaj Tak news channel.

4. The said interview was broadcasted both nationally and internationally, reaching wide audience and resulting in severe harm to the public image of the complainant. It is contended that the statements were made with malicious intent to defame him and to secure undue political advantage. The specific defamatory statements made by proposed accused in the context of an Enforcement Directorate (hereinafter referred to as “ED”) raid at the Complainant’s house are as follows:-

- (i) That Rs. 3 Crore in cash was recovered from the Complainant’s house;
- (ii) That 1.8 kg of gold and 133 gold coins were seized from the same location.

5. The complete interview in question is stated to be available at the following link:

<http://x.com/aajtak/status/1709847850631217230?ByUNZ0FdsMG4oKgz0hTxQ&s=19>

The Complainant asserts that his reputation has been severely damaged as a direct consequence of the defamatory statements made by proposed accused during the said interview. It is averred that on 20.10.2024, two of the Complainant’s long time associates and well-wishers, namely Mr. Deepak Kumar Jain and Mr. Pradeep Kumar visited his residence. During this visit, they allegedly confronted the Complainant in an aggressive and disrespectful manner. They expressed their disillusionment, citing that they had previously held him in high regard, but their perception had changed after viewing a social media post on Platform X (formerly known as Twitter), wherein the proposed

accused was seen delivering the aforementioned statements. Despite the Complainant's efforts to clarify the matter and present documentary evidence, including the *panchnama* of the ED raid, to demonstrate the falsity of the claims made, the individuals reportedly refused to be convinced. This incident caused the Complainant to recognize the extent of damage inflicted upon his public image, leading him to believe that his reputation and character have suffered irreparable injury in the eyes of general public. Therefore, the Complainant was constrained to institute the instant complaint pursuant to Sections 210 (1) and 223 of BNSS, alleging the commission of an offence of defamation, defined and made punishable under Section 356 of the BNS before the Trial Court.

Proceedings before the Ld. Trial Court in Complaint Case No. 23/2024:

6. In pursuance of the order dated 16.12.2024, notices were issued to the proposed accused nos. 1 and 2 in accordance with the proviso to Section 223(1) of BNSS. Upon a persual of the material available on record, the Ld. Trial Court declined to take cognizance, vide the impugned order.

Grounds raised in the Revision Petition:

7. The impugned order has primarily been assailed on the ground that the learned Trial Court erred in placing reliance upon the documents filed by the proposed accused at the pre-cognizance stage, which is impermissible in law. It is contended that, at this preliminary juncture, prior to the taking of cognizance, the court is not empowered to consider any material or defence submitted by the proposed accused, as the scope of inquiry is confined solely to the complaint and the

supporting materials presented by the complainant. Reliance upon such extraneous documents amounts to a serious procedural irregularity and undermines the due process of law.

Reply filed by the proposed accused :

8. In reply, the proposed accused contends that the ED, vide a tweet dated 07.06.2022 issued from its official Twitter handle, publicly disclosed the recovery of cash and gold coins from premises allegedly linked to the Complainant. It is averred that the recovery of cash and gold coins was the subject of widespread media reportage, based on the information furnished by the ED, which was contemporaneous in nature and clearly establishes that the said information has since remained in the public domain. It is further averred that the impugned interview does not disclose any new or additional allegations but merely reiterates material already available in the public domain. Furthermore, it is submitted that the Complainant's reputation had already sustained adverse impact as a consequence of judicial observations and the factual matrix on record. In view of the foregoing, it is prayed that the present revision petition is devoid of merit and is, therefore, liable to be dismissed.

Submissions by the Ld. Counsel for the Complainant:

9. Ld. Counsel for the Complainant advanced several submissions for consideration. It was contended that ED, after the raid operation, officially tweeted about it, which was picked up by news reports. The official tweet and accompanying news reports merely

indicate recovery of cash from residence of others in the operation but not the complainant himself. However, proposed accused falsely asserted in a media interview that the entire amount was recovered from the Complainant directly. It was further submitted that the cases involving ED and CBI against the Complainant remain sub judice, and as such, any public commentary on their merits is legally impermissible. Additionally, it was urged that the bail orders relied upon by proposed accused while making the contended statements are interlocutory in nature and contain mere *prima facie* observations, which cannot influence the final adjudication of the matter.

10. It is further contended that the Ld. Trial Court erroneously relied upon media reports and the official tweet of the Enforcement Directorate (ED), which is impermissible at the stage of taking cognizance. It is submitted that such material, not being part of the judicial record and untested for admissibility, cannot be the basis for declining cognizance. The Ld. Counsel has further placed reliance on the judgment in *Arvind Kejriwal v. State, Cr.I.M.C. 6347/2019*, to contend that even a retweet amounts to publication and may attract liability for defamation under law.

11. Lastly, it was pointed out that no cash or gold was, in fact, recovered from the premises of the Complainant, as evidenced by the ED's own *panchnama*, which recorded a 'NIL' recovery. Ld. Counsel prays that the revision petition be allowed, as there is apparent illegality in the impugned order.

Submissions by the Ld. Counsel for proposed accused:

12. It is submitted by Ld. Counsel that the statements attributed to the proposed accused are nothing more than a reiteration of information already disclosed in the public domain by the ED through its official communication via a verified social media platform. The proposed accused has not fabricated or distorted any facts, nor has there been any independent assertion or creation of new content by them. Rather, the statements merely reflect and restate the contents of the ED's official disclosure. In the absence of any willful misrepresentation or malicious intent, the proposed accused cannot be held liable for the alleged offence of defamation. If at all any statement is perceived as defamatory, the liability, if any, would lie with the source agency, i.e., the ED, which originally disseminated the information. The proposed accused, being a secondary communicator of officially released material, cannot be fastened with criminal liability, especially in the absence of intent to harm the reputation of the Complainant. It is prayed that the revision petition be dismissed, as no ground exists to warrant interference with the findings of the Ld. Trial Court.

Findings:

13. The BNSS, 2023, which replaces the Code of Criminal Procedure, 1973 (CrPC), introduces a notable shift in procedural fairness by explicitly incorporating a pre-cognizance hearing for the accused under Section 223 of BNSS. This provision mandates that no Magistrate shall take cognizance of an offence without giving the proposed accused persons an opportunity of being heard. This is a significant development in Indian criminal procedure, reflecting a move toward enhancing the

rights of the accused even before formal criminal proceedings are initiated. The rationale is grounded in the principle of *audi alteram partem*.

14. The term “cognizance” signifies the moment when a Magistrate or Court formally takes judicial notice of an alleged offence. It marks the initial stage in the criminal justice process where the judicial mind is applied to the facts presented, not for determining guilt or innocence, but to assess whether there are sufficient grounds to proceed further. Taking cognizance involves evaluating whether the complaint or report discloses a *prima facie* case warranting legal action against the accused.

15. While the precise contours of the opportunity of being heard, at the stage of cognizance remain undefined, judicial interpretation, particularly in decisions such as *State of Orissa v. Debendra Nath Padhi* (2005) 1 SCC 568 and *Nitya Dharmandra vs. Sri Gopal Sheelum Reddy* AIR 2017 SC 5846, clarifies that the accused may, at this stage, only respond to materials submitted by the Complainant or the prosecution. No right exists in law for the proposed accused to produce defence evidence at this juncture, except in rare and exceptional cases where such evidence is of sterling quality and demonstrably capable of demolishing the case right at its inception.

16. In light of the aforementioned legal principles, the Court must assess whether the record contains sufficient material to justify taking cognizance of the offence of defamation under Section 356 of

BNS, 2023.

17. Section 356 of BNS, 2023 defines defamation as an act of making or publishing, by spoken or written words, signs, or visible representations, any imputation concerning a person with the intent to harm, or with knowledge or reason to believe that such imputation will harm, the reputation of that person. The provision further extends to imputations directed at deceased individuals, associations, or collective bodies, and includes statements made ironically or in the form of alternatives, provided they diminish a person's moral, intellectual, or professional standing, credibility, or social reputation in the eyes of others. Accordingly, the essential components constituting the offence of defamation are as follows:

1. An imputation made or published concerning a person;
2. Such imputation must be conveyed through words spoken or written, signs, or visible representations;
3. The imputation must be made with the intent to harm, or with knowledge or reason to believe that it would harm, the reputation of the person concerned.

18. It is not in dispute that no material, incriminating or otherwise, was recovered from the house of the Complainant during the search operations conducted by the ED. Therefore, the statement made by the proposed accused, being factually inaccurate, appears to be *prima facie* false. However, it is the case of the proposed accused that such a statement was made based upon the information disseminated by the ED

through its official handle on platform X (formerly Twitter) subsequent to the said search operation.

19. This brings to fore the pertinent question as to whether the information publicly released by the ED via its official communication constituted the foundation or proximate cause for the alleged statement made by the proposed accused.

20. Upon persual of the contents of the said tweet, which still remains publicly accessible, it is evident that the first impression conveyed by the language used therein is that the seizure of cash and gold was effected from the premises of the Complainant. The Screenshot of the tweet is reproduced below for ready reference:-

← Post

ED @dir_ed

ED has conducted searches on 6.6.2022 under PMLA,2002 at the premises of Satyender Kumar Jain and others. Various incriminating documents, digital records, cash amounting to Rs. 2.85 Crore and 133 gold coins weighing 1.80 kg in total from unexplained source have been seized.



4:35 PM · Jun 7, 2022

lava chak Jain

21. The manner in which the phrase “*at the premises of Stayender Kumar Jain and others*” is employed tends to create an impression that the recoveries, including cash and gold, were made from the premises of the Complainant himself. The subsequent inclusion of the phrase “*and others*” in a subtle and ambiguous manner, following the explicit naming of the Complainant, fails to clearly attribute the recoveries to ‘others’ whose residence were involved in the raid operation. Given the admitted fact that no recovery whatsoever was made from the house of the Complainant during the search, the implication conveyed through the tweet stands in stark contradiction to the factual matrix and significantly undermines the accuracy and veracity of the information presented.

22. Upon consideration of the material on record, it is evident that the statement attributed to the proposed accused is a verbatim reiteration of a tweet published by the ED through its official social media handle. The proposed accused has neither fabricated facts nor disseminated any misleading information; rather, the statement in question merely reproduces what was officially communicated by the ED. There is no compulsion stated/brought on record that the proposed accused had any independent means or obligation to verify the veracity of the said content, particularly as the tweet pertains to investigative findings arising from a search conducted by the ED. In the absence of any material suggesting malicious intent, it cannot be *prima facie* inferred that the proposed accused acted with the intention to defame or malign the Complainant.

23. This Court is of the view that the judgment of *Arvind Kejriwal vs. State (supra)* relied upon by the Complainant is factually distinguishable and does not apply to the present case. In the cited decision, the allegation pertained to the act of retweeting content originally posted by a private individual. However, in the present matter, no such act of retweeting has been attributed to the proposed accused. Instead, the statement in question is founded upon an official communication issued by a government agency through its verified social media handle that being ED, the agency that itself conducted the raid. Hence, any official tweet is rather what comes from horse's mouth itself. The impugned statement is, therefore, based on information emanating from an official source and not from any private or unverified origin. Accordingly, the factual foundation of the present case diverges significantly from the cited decision, rendering its applicability untenable.

24. It is incumbent upon an investigative agency such as the ED to act impartially and uphold the principles of fairness and due process. Any dissemination of information, including but not limited to official social media platforms, must be accurate, non-misleading, and free from sensationalism. The presentation of facts in a manner that is misleading, scandalous, or intended to defame or politically prejudice an individual would not only undermine the integrity of the agency but may also amount to an abuse of power and violation of the individual's fundamental rights, including the right to reputation under Article 21 of the Constitution.

25. In light of the foregoing analysis, this Court finds itself in full concurrence with the conclusions arrived at by the Ld. Trial Court, to the effect that sufficient ground does not exist to justify the invocation of jurisdiction for taking cognizance of the offence as defined and punishable under Section 356 of BNS. Accordingly, **the instant revision petition is dismissed.**

26. A copy of this order, along with the Trial Court Record, be sent to the Ld. Trial Court.

27. Let a copy of this order be given *dasti* to both the parties.

28. Revision file be consigned to the Record Room.

Announced in the open Court
on 31.07.2025.

(Jitendra Singh)
Special Judge (PC Act) CBI-23
(MPs/MLAs Cases)
Rouse Avenue Court Complex,
New Delhi; 31.07.2025