



2025:AHC:175557

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

**CRIMINAL REVISION No. - 4946 of 2025**

Reserved on : 03.09.2025

Delivered on : 26.09.2025

Rahul Gandhi

.....Revisionist(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

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Counsel for Revisionist(s)	:	Alok Ranjan Mishra, Sr. Advocate
Counsel for Opposite Party(s)	:	Aman Singh Visen, Satyendra Kumar Tripathi, G.A.

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**Court No. - 82**

**HON'BLE SAMEER JAIN, J.**

1. Heard Sri Gopal Swaroop Chaturvedi, learned Senior Counsel assisted by Sri Alok Ranjan Mishra, learned counsel for the revisionist, Sri Manish Goyal, learned A.A.G. assisted by Sri Roopak Chaubey, learned A.G.A. for the State-respondent and Sri Satendra Kumar Tripathi, learned counsel for the opposite party no.2.

2. The instant revision has been filed by the revisionist with a prayer to set aside the impugned order dated 21.7.2025 passed by the Additional Sessions Judge/Special Judge (M.P./M.L.A.), Court No. 5, Varanasi in Crl. Revision No. 61 of 2025 (Nageshwar Mishra and another Vs. State of U.P. and another), under sections 147, 148 & 152 of BNS-2023, Police Station-Sarnath, District Varanasi.

**Factual Matrix:-**

3. On 26.9.2024, opposite party no. 2 moved an application u/s 173(4) BNSS against the revisionist before learned Magistrate.

4. According to the application dated 26.9.2024 revisionist who is opposition leader of the Country during his U.S.A. visit gave highly objectionable statement that there is insecure environment for Sikh community in India and whether they will be permitted to follow their religious traditions or not and Sikh community also raised objection on the statement given by the revisionist because his statement is for promoting animosity between the groups and the statement given by the revisionist was provocative.

5. According to the opposite party no. 2 the statement of the revisionist was the act of endangering the sovereignty of Country and was an attempt to wage war against Government of India and revisionist conspired for civil war.

6. It is further mentioned in the application dated 26.9.2024 that on 14.12.2019 in Delhi also revisionist during agitation against C.A.A. in a rally gave such speech due to which more than 100 persons lost their lives.

7. In the application dated 26.9.2024 opposite party no. 2 made a prayer to direct the

concerned S.H.O. of police station to lodge FIR against the revisionist and investigate the matter.

8. On 28.11.2024 learned Magistrate dismissed the application moved by opposite party no. 2 under section 173(4) BNSS on the ground that as revisionist gave the statement outside India, therefore, in view of Section 208 BNSS sanction was necessary for registration of the case against him which is not on record and with regard to the speech dated 14.12.2019 delivered by revisionist in Delhi during C.A.A. agitation, prima facie, no cognizable offence is made out against him.

9. Against the order dated 28.11.2024 opposite party no. 2 preferred criminal revision before sessions judge and sessions court allowed the revision filed by him vide impugned order dated 21.7.2025 and remitted back the matter to learned Magistrate to decide it afresh.

10. Hence, the instant revision.

**Argument advanced on behalf of the revisionist:-**

11. Learned Senior Counsel appearing on behalf of the revisionist submits, impugned order dated 21.7.2025 passed by learned lower revisional court is illegal.

12. He further submitted that from perusal of the order dated 28.11.2024 passed by learned Magistrate, it reflects learned Magistrate did not record any finding whether from the alleged statement of revisionist given in U.S.A. any cognizable offence is made out or not and he dismissed the application moved by opposite party No. 2 primarily on the ground that as per section 208 BNSS, sanction is required for registration of the case against the revisionist which is not on record and learned lower revisional court also did not record any finding whether from the application moved by opposite party no. 2 any cognizable offence against the revisionist is made out or not. He further submits, as entire material was before learned lower revisional court, therefore, it was desirable for revisional court to give finding whether from the alleged statement given by revisionist in U.S.A. any cognizable offence is made out or not thus, by remitting the matter to learned Magistrate, learned lower revisional court committed illegality.

13. He further submitted that sanction under section 208 BNSS is required for trial and not for registration of FIR and to investigate the matter, therefore, finding recorded by learned Magistrate in this regard was erroneous but by remitting back the matter to learned Magistrate learned lower revisional court committed illegality as remand was not required.

14. He further submitted that for direction to lodge the FIR and to investigate the matter on the application moved under section 173(4) BNSS it is necessary that from perusal of such application cognizable offence is made out and as revisionist had appeared before the lower revisional court and had made submission that even application moved by opposite party No. 2 did not disclose any cognizable offence including offences under sections 147, 148 & 152 BNS, therefore, instead to remit the case learned lower revisional court ought to decide it on merit after recording the finding whether any cognizable offence is made out against the revisionist or not and thus, committed illegality.

15. He further submitted that from perusal of the application dated 26.9.2024 no cognizable offence against the revisionist is made out including offences under sections 147, 148, 152 BNS as alleged by the opposite party no. 2.

16. He further submitted that on the basis of statement given by the revisionist in

U.S.A. it cannot be said that he either waged war against the Government of India or made attempt to wage war or abetted the waging war against Government of India.

17. He further submitted that even from the alleged statement of the revisionist it cannot be said that revisionist conspired to commit the offence of waging war against Government of India.

18. He further submitted that even from the alleged statement given by the revisionist, prima facie, it can not be said that by giving such statement revisionist endangered the sovereignty, unity and integrity of India.

19. He further submitted that even entire statement given by the revisionist in U.S.A. has not been quoted by the opposite party no. 2 in the application dated 26.9.2024 and therefore, it cannot be gathered that revisionist committed any cognizable offence.

20. He placed reliance on the following judgements of the Apex Court :-

(i) **Kedar Nath Singh Vs. State of Bihar, 1962 (0) AIR (SC) 955;**

(ii) **Balwant Singh and another Vs. State of Punjab, 1995 (0) AIR (SC) 1785;**

(iii) **Bilal Ahmed Kaloo Vs. State of Andhra Pradesh, 1997(0) AIR (SC) 3483;**

(iv) **Manzar Sayeed Khan Vs. State of Maharashtra, 2007(0) AIR (SC) 2074;**

(v) **Patricia Mukhim Vs. State of Meghalaya and others, 2021(0) AIR (SC) 1632;**

(vi) **S.G. Vombatkere Vs. Union of India; (2022) 3 SCC (CrI) 154;**

(vii) **Order dated 12.9.2023** passed by the Hon'ble Apex Court in the matter of **S.G. Vombatkere Vs. Union of India in Writ Petition (Civil) No. 682 of 2021** with Writ Petition (Civil) Nos. 552, 773, 802, 1181, 1279, 1381 of 2021; Writ Petition (Criminal) Nos. 106, 304, 307, 498, 217 and 216 of 2021 and 408 of 2022, Contempt Petition (Civil) Nos. 300 and 301 of 2021 in Suo Motu Writ Petition (Civil) No. 3 of 2021.

21. He further submitted that there was absolutely no need for lower revisional court to remit back the matter as he could very well decide the issue whether any cognizable offence against the revisionist is made out or not including offences under sections 147, 148, 152 BNS.

22. He further submits, however, neither learned magistrate nor lower revisional court while passing respective orders could record any finding whether application moved by opposite party no. 2 discloses any cognizable offence against the revisionist or not but in the instant revision this Court can record this finding.

23. He further submits, if instant revision filed by revisionist is not allowed then matter will again be agitated before learned Magistrate and thereafter parties will again contest the matter and therefore, it is desirable that this Court should decide the matter finally.

24. He further submitted that therefore, by setting aside the impugned order dated 21.7.2025 passed by the lower revisional court instant revision may be allowed.

#### **Submission advanced on behalf of the State and opposite No. 2:-**

25. At the very outset, learned counsel for the opposite party no. 2 submitted that impugned order dated 21.7.2025 is only a remand order and therefore, it is an

interlocutory order and therefore, instant revision is not maintainable.

26. Learned AAG, however, submitted that though impugned order dated 21.7.2025 is a remand order but as it touches the important question of law, therefore, it cannot be said to be an interlocutory order. He, however, further submitted that there is no illegality in the impugned order dated 21.7.2025 passed by the lower revisional court.

27. He further submitted that the order dated 28.11.2024 passed by learned Magistrate was pertinently illegal order as while passing the same learned Magistrate failed to properly appreciate the provisions of Section 208 BNSS and wrongly dismissed the application moved by the opposite party no. 2 under section 173(4) BNSS on the ground that there is no sanction of the Central Government against the revisionist which was required under section 208 BNSS.

28. He further submitted that from perusal of section 208 BNSS it is apparent that for registration of the FIR and to investigate the matter, no sanction is required and sanction is required only for inquiry and trial. He further submitted that even learned counsel for the revisionist also admitted this fact and therefore, there is no illegality in the impugned order dated 21.7.2025 passed by learned lower revisional court.

29. He further submitted that however, while passing the impugned order dated 21.7.2025 learned lower revisional court did not give any finding whether cognizable offence is made out against the revisionist or not including the offences under sections 147, 148, 152 BNS from his statement given in USA but it was absolutely not required for him to record such finding.

30. He further submitted that as while passing the order dated 28.11.2024 learned Magistrate did not give any finding whether statement given by revisionist in U.S.A. discloses any offences under sections 147, 148, 152 BNS and he dismissed the application on the ground of sanction, therefore, there was no need for lower revisional court to give any finding in this regard.

31. He further submitted that as in the order dated 28.11.2024 finding recorded by the magistrate with regard to section 208 BNSS was erroneous, therefore, learned revisional court after rectifying the mistake remitted back the matter to take fresh decision and therefore, it cannot be said that impugned order dated 21.7.2025 is illegal.

32. He further submitted that the scope of criminal revision under section 438 BNSS is very limited and revisional court under section 438 BNSS can only check the correctness, legality or propriety of any finding of the order passed by the inferior court and revisional court can not record any finding on the facts of the case on its own.

33. He further submitted that the lower revisional court could not give its own finding whether any cognizable offence against the revisionist is made out or not as this power is vested with learned Magistrate. He further submits, pursuant to the impugned order, learned Magistrate will decide whether from the allegation made in the application dated 26.9.2024 moved by opposite party no. 2, any cognizable offence is made out against the revisionist or not including the offences under sections 147, 148, 152 BNS.

34. Learned counsel for the opposite party no. 2 also submitted that as far as legality of the impugned order dated 21.7.2025 is concerned, the impugned order dated 21.7.2025 cannot be said to be illegal.

35. He further submitted that while passing the impugned order dated 21.7.2025 if lower revisional court would have recorded the finding whether any cognizable

offence is made out against the revisionist or not from his USA statement then he would have definitely committed the illegality as no such finding has been recorded by the magistrate concerned while passing the order dated 28.11.2024.

36. He further submitted that as order dated 28.11.2024 passed by the learned magistrate was illegal, therefore, lower revisional court by setting aside the order, remitted back the matter to take the fresh decision and therefore, it cannot be said that impugned order dated 21.7.2025 is illegal.

37. Learned AAG and learned counsel for the opposite party no. 2 also submitted that as impugned order is not illegal, therefore, this Court can not delve into the controversy in revisional jurisdiction whether the alleged statement given by the revisionist in U.S.A. discloses any cognizable offence or not including the offences under section 147, 148, 152 BNS and it should remain open to the Magistrate concerned to give finding in this regard.

38. Learned AAG placed reliance upon the following judgements passed by the Apex Court:-

(i). **Amit Kapoor Vs. Ramesh Chander, 7(1980)1 SCC 43;** and

(ii) **K. Ravi Vs. State of Tamil Nadu and Another, 2024 SCC OnLine SC 2283.**

39. They further submitted that therefore, the instant revision is devoid of merit and is liable to be dismissed.

**Analysis and conclusion:-**

40. By way of instant revision, revisionist challenged the order dated 21.7.2025 passed by the lower revisional court by which lower revisional court allowed the revision filed by opposite party No. 2 and set aside the order dated 28.11.2024 passed by the learned magistrate concerned and remitted back the matter for fresh decision.

41. From the impugned order dated 21.7.2025, however, it reflects, it is remand order but considering the fact that while passing the same the lower revisional court allowed the revision filed by the opposite party no. 2 after disturbing the finding recorded by the learned magistrate, therefore, it cannot be said that the impugned order dated 21.7.2025 is an interlocutory order and therefore, in view of this Court against the impugned order dated 21.7.2025 the instant revision is maintainable.

42. From the record, it reflects that on 26.9.2024 opposite party no. 2 moved an application against the revisionist who is sitting Member of Parliament and is leader of opposition in Lok Sabha under section 173(4) BNSS on the ground that revisionist given a statement in U.S.A. and considering his statement he committed offences punishable under sections 147, 148, 152 BNS and therefore, a direction be given to lodge FIR against him and to investigate the matter but vide order dated 28.11.2024 learned Magistrate dismissed his application on the ground that as per section 208 BNSS for registration and investigation of the case, sanction is required. Against the order dated 28.11.2024 when opposite party no. 2 preferred criminal revision before the sessions court then learned lower revisional court vide impugned order dated 21.7.2025 allowed the revision filed by him and set aside the order dated 28.11.2024 passed by the magistrate and remitted back the matter for fresh decision on the ground that however, under section 208 BNSS sanction is required but not for registration of the FIR and for investigation of the matter rather for inquiry and trial. Considering the provisions of section 208 BNSS the observation made by the lower revisional court cannot be said to be illegal. Even learned counsel for revisionist admitted that sanction is not required under section 208 BNSS for registration and investigation of the case.

43. It appears, revisionist is aggrieved with the remand order as according to him there was no need to remit the matter back to magistrate and revisional court itself could record the finding from the application dated 26.9.2024 moved by the opposite party no. 2, whether any cognizable offence against the revisionist is made out or not including offences under sections 147, 148, 152 BNS but in spite of that no finding has been recorded by lower revisional court in this regard and therefore, according to revisionist impugned order dated 21.7.2025 is illegal.

44. Therefore, in the instant revision it is to analyse, whether it was necessary for the revisional court to give finding whether any cognizable offence is made out against the revisionist or not while passing the impugned order dated 21.7.2025 and whether this Court at this stage can give such finding or not.

45. The revisional power of this Court and court of sessions is regulated by section 438 BNSS which runs as follows:-

**"438. Calling for records to exercise powers of revision.**

*(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on his own bond or bail bond pending the examination of the record.*

*Explanation.-All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 439.*

*(2)The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.*

*(3)If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them."*

46. From perusal of Section 438 BNSS, it is apparent that the revisional power of this Court and court of sessions are same.

47. According to section 438 BNSS this Court or court of sessions may check the correctness, legality or propriety of any finding recorded by the inferior court. Therefore, section 438 BNSS itself suggests that the revisional power of this Court and court of sessions is limited to check the correctness, legality and propriety of any finding recorded by the inferior court.

48. The Apex Court in the case of **Amit Kapoor(supra)** on which reliance was placed by the State after considering the revisional power under section 397 Cr.P.C. (Section 438 of BNSS) observed that the jurisdiction of the court under section 397 Cr.P.C. can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court as the case may be. It is further held that this power is very limited one. The Apex Court also observed that legality, propriety or correctness of an order passed by the Court is the very foundation of exercise of jurisdiction under section 397 Cr.P.C. (section 438 BNSS).

49. The Apex Court in the case of **K. Ravi (supra)** also observed that the scope of

interference and exercise of jurisdiction under section 397 Cr.P.C. is extremely limited.

50. Therefore, it appears, it was incumbent upon lower revisional court to check the correctness and legality of the order dated 28.11.2024 passed by the learned magistrate concerned and as according to the revisional court the finding recorded by learned magistrate was erroneous, therefore, lower revisional court rightly set aside the order dated 28.11.2024 and remitted back the matter and therefore, it cannot be said that while passing the impugned order dated 21.7.2025 lower revisional court committed any illegality.

51. Further, from the order dated 28.11.2024 passed by the learned magistrate, it reflects that while dismissing the application moved by opposite party no. 2 under section 173(4) BNSS no finding was recorded whether from the statement of revisionist given at U.S.A., any cognizable offence is made out or not and his application was dismissed mainly on the ground of requirement of sanction, therefore, in view of this Court, it was not required for lower revisional court to give such finding of facts on merit while passing the impugned order dated 21.7.2025.

52. As already observed, there is no illegality in the impugned order and therefore, it can not be set aside. Thus, this Court after setting aside the impugned order dated 21.7.2025 cannot record any finding on its own whether from the application moved under section 173(4) BNSS any cognizable offence is made or not.

53. In considered view of this Court, learned magistrate concerned before him the application under section 173(4) BNSS has been filed by the opposite party no. 2 is empowered to decide whether from the application moved by opposite party no. 2 any cognizable offence is made out against the revisionist or not.

54. Needless to say that if any application under section 173(4) BNSS is moved against an individual then before giving direction to register the case and to investigate the matter, it is necessary for the magistrate concerned to record the finding whether any cognizable offence against said individual is made out or not as for registration of the FIR and to investigate the matter, it is necessary that a cognizable offence is made out.

55. Therefore, from the discussion made above, I find no illegality in the impugned order dated 21.7.2025 passed by the lower revisional court and therefore, the instant revision is devoid of merit.

56. Accordingly, instant revision stands **dismissed**.

**September 26, 2025**  
Ankita

**(Sameer Jain,J.)**