



2026:DHC:6740



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 04.08.2026

Pronounced on: 17.08.2026

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CNR No. DLHC010245692011

+ **CRL.M.C. 731/2011 & CRL.M.A. 15329/2017**

KEWAL SINGH SANDHU & ANR.Petitioner

Through: **Mr. Anand Varma, Ms. Apoorva
Pandey, Advs.**

versus

STATE & ANR.Respondents

Through: **Mr. Manoj Pant, APP.
SI Nishi Tomar, PS – GK**

CORAM:

HON'BLE MS. JUSTICE MADHU JAIN

JUDGMENT

MADHU JAIN, J.

1. The present petition under Section 482 Cr.P.C. has been filed assailing the judgment dated 08.10.2009 passed by the learned Additional Sessions Judge, South District, New Delhi in Criminal Revision No. 11/2006, whereby the learned Revisional Court set aside the order dated 13.10.2005 passed by the learned Metropolitan Magistrate, New Delhi discharging the petitioners in FIR No. 229/2000, Police Station Greater Kailash, registered under Sections 448 and 354 IPC.

BRIEF FACTS:

2. Petitioner No.1 (since deceased) and petitioner No.2 are stated to



be the owners of property bearing No. B-8A, Kailash Colony, New Delhi. According to the petitioners, the said premises had been given on license to M/s Wimpy International Ltd., which was carrying on its business activities from the said property. The petitioners claim that they were also major shareholders of the said company and disputes had arisen between them and the occupants of the premises regarding possession and use of the property.

3. The case arises out of an incident alleged to have occurred on 31.08.2000. The complainant/respondent No.2, who was working as a receptionist in the office of M/s Wimpy International Ltd. at the aforesaid premises, alleged that at about 2:00 PM, the petitioners along with another person entered the office premises without permission and despite objections raised by the security guard. It was alleged that when the complainant informed them that no senior officer was present in the office and attempted to prevent them from proceeding further inside the premises, petitioner No.2 pushed her and petitioner No.1 caught hold of her arm and attempted to move her aside. It was further alleged that during the incident her suit and chunni were torn and she was threatened with consequences.

4. On the basis of the said allegations, FIR No. 229/2000 came to be registered at Police Station Greater Kailash. During investigation, the police recorded statements of the concerned witnesses and ultimately filed a cancellation report concluding that no sufficient material was available for proceeding against the petitioners.

5. The complainant, however, filed a protest petition against the cancellation report. The learned Metropolitan Magistrate, vide order



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dated 04.09.2002, declined to accept the cancellation report, took cognizance of the offences under Sections 448 and 354 IPC and summoned the petitioners to face trial.

6. Thereafter, the matter proceeded before the learned Trial Court for consideration of notice/charge. The petitioners contended that they were the owners of the property in question, that civil proceedings regarding the premises were already pending, and that they had entered the premises only for the purpose of inspecting the property and preparing a site plan with the assistance of a draftsman. It was also their case that they themselves had lodged a complaint with the police on the same day alleging obstruction and misbehaviour on the part of the complainant.

7. Upon consideration of the material on record, the learned Metropolitan Magistrate, vide order dated 13.10.2005, held that no prima facie case under Sections 448/354/34 IPC was made out against the petitioners. The learned Magistrate observed, inter alia, that the petitioners were owners of the property, that there was no material to indicate any intention to commit house trespass and that the allegations regarding tearing of the complainant's clothes appeared to have arisen during the course of a scuffle when she attempted to obstruct their entry. Accordingly, the proceedings were stopped under Section 258 Cr.P.C. and the petitioners were discharged.

8. Aggrieved by the discharge order, the complainant preferred Criminal Revision No. 11/2006 before the learned Additional Sessions Judge. Vide judgment dated 08.10.2009, the learned Revisional Court allowed the revision petition and held that the learned Magistrate had erred in concluding that no prima facie case was made out. The



Revisional Court observed that the offence of criminal trespass is an offence against possession and not ownership and further held that the allegations regarding use of force against the complainant were sufficient to constitute a *prima facie* case under Section 354 IPC. Consequently, the order dated 13.10.2005 was set aside and the Trial Court was directed to proceed with the case in accordance with law.

9. Aggrieved by the aforesaid revisional order, the petitioners have approached this Court by way of the present petition. During the pendency of the proceedings, petitioner No.1 expired and petitioner No.2 has continued to prosecute the present petition.

SUBMISSIONS MADE ON BEHALF OF THE PETITIONERS:

10. Learned counsel for the Petitioner submits that the petitioners are the owners of property bearing No. B-8A, Kailash Colony, New Delhi and are also major shareholders of M/s Wimpy International Ltd., which was operating from the said premises. Learned counsel argued that the petitioners had visited the property on 31.08.2000 along with a draftsman for the limited purpose of inspecting the premises and preparing a site plan in view of the disputes concerning the occupation of the property. In these circumstances, it was contended that their entry into the premises could not constitute criminal trespass, as the essential ingredient of entry with intent to commit an offence, intimidate, insult or annoy the person in possession was wholly absent.

11. Learned counsel further submitted that the learned Revisional Court failed to appreciate that even if the allegations made by the complainant are accepted in their entirety, no offence under Section 448



IPC is disclosed. Reliance was placed on the principle that ownership disputes and questions relating to possession cannot automatically give rise to criminal liability for house trespass in the absence of the requisite criminal intent.

12. With regard to the allegation under Section 354 IPC, learned counsel submitted that the complaint and the supplementary statement of the complainant themselves indicate a scuffle ensued when the complainant attempted to prevent the petitioners from proceeding further into the premises. It was argued that there was no allegation that the petitioners intentionally assaulted the complainant with the intention of outraging her modesty. On the contrary, the complainant stated that her suit and chunni were torn when she was pushed aside during the altercation. Learned counsel contended that the allegations, even if accepted as true, do not disclose the necessary *mens rea* or intention required to constitute an offence under Section 354 IPC.

13. It was further submitted that the learned Revisional Court overlooked the fact that the petitioners themselves had approached the police on the date of the incident and lodged a complaint regarding the conduct of the complainant and the persons occupying the premises. According to the petitioners, this circumstance probables their version and demonstrates that they had no criminal intent when they entered the property.

14. Learned counsel also emphasized that during investigation, the police found insufficient material to proceed against the petitioners and accordingly filed a cancellation report. It was submitted that the Investigating Officer had also recorded that despite best efforts, the



complainant could not be traced for further investigation. In these circumstances, the learned Trial Court was justified in discharging the petitioners, and the learned Revisional Court erred in substituting its own view despite the absence of any perversity or illegality in the discharge order.

15. It was lastly argued that the dispute arose out of property and management issues concerning the premises occupied by M/s Wimpy International Ltd. and that the criminal proceedings were initiated only to harass the petitioners and exert pressure upon them in the ongoing disputes. The impugned revisional order, therefore, deserves to be set aside and the order dated 13.10.2005 discharging the petitioners restored.

16. Learned counsel for the Petitioner places reliance of judgement of supreme court in *Kanwal Sood Vs. Nawal Kishore and Anr.*, (1983) 3 SCC 25, and *Smt. Mathri and Others Vs. State of Punjab.*, 1963 SCC OnLine SC 180.

SUBMISSION MADE ON BEHALF OF THE RESPONDENTS:

17. *Per contra*, Learned APP for the state submitted that the FIR was registered on the complaint of Ms. Kalpana Bhatnagar, who was working as a receptionist at M/s Wimpy International Ltd. According to the complaint, the petitioners, along with another person, entered the office premises without permission and without making any entry in the register maintained for visitors. Despite being informed that no senior officer was available, they allegedly proceeded further into the office and, during the altercation that followed, the complainant was pushed and physically handled by the petitioners, resulting in her suit being torn.



18. It was submitted that although the Investigating Officer initially filed a cancellation report, the learned Metropolitan Magistrate, upon consideration of the material on record and the protest petition filed by the complainant, did not accept the cancellation report and took cognizance of offences under Sections 448 and 354 IPC vide order dated 04.09.2002. The petitioners were accordingly summoned to face trial.

19. Learned APP further submitted that the learned Additional Sessions Judge, while exercising revisional jurisdiction, correctly observed that the offence under Section 448 IPC is an offence against possession and not ownership. Merely because the petitioners claimed ownership of the property or asserted themselves to be major shareholders of the company did not confer upon them an unrestricted right to enter premises which were admittedly in the possession and occupation of another entity. The fact that the petitioners themselves had instituted civil proceedings for eviction and recovery of possession demonstrated that they were not in actual possession of the premises on the date of the incident.

20. It was further submitted that the allegations contained in the complaint clearly disclosed the use of criminal force against a woman. The complainant had alleged that she was pushed by petitioner no.2 and was caught by her arm by petitioner no.1 when she attempted to stop them from proceeding inside the premises. At the stage of framing of charge, the Court is only required to determine whether a prima facie case exists and not whether the allegations are ultimately likely to result in conviction. The learned Revisional Court rightly held that such allegations were sufficient to warrant continuation of the proceedings.



21. Learned APP argued that the order of discharge passed by the learned Trial Court amounted to an impermissible appreciation of evidence at a preliminary stage. The learned Revisional Court therefore rightly set aside the discharge order and directed that the proceedings continue in accordance with law.

FINDINGS AND ANALYSIS:

22. This Court has considered the submissions advanced by learned counsel for the petitioners, learned APP for the State and perused the material placed on record.

23. The principal grievance of the petitioners is that the learned Revisional Court erred in setting aside the order of discharge. According to the petitioners, even taking the allegations in the FIR and the complainant's statements at their highest, no offence under Sections 448 or 354 IPC is made out.

24. At the outset, it must be borne in mind that while exercising jurisdiction against an order setting aside a discharge, this Court is not required to meticulously evaluate the evidence. The settled position is that at the stage of charge, the Court is only required to see whether the material discloses a *prima facie* case or raises a strong suspicion of the commission of an offence. In ***State of Bihar v. Ramesh Singh***, (1977) 4 SCC 39, the Supreme Court held that at the initial stage, if there is a strong suspicion which leads the Court to think there is ground for presuming that the accused has committed an offence, it is not open to the Court to hold that there is no sufficient ground for proceeding. In ***Union of India v. Prafulla Kumar Samal***, (1979) 3 SCC 4, it was



similarly observed that where the material discloses grave suspicion against the accused which has not been properly explained, the Court would be justified in proceeding to trial.

25. The petitioners claim of ownership and majority shareholding cannot, at this stage, become a ground for discharge. As the learned Revisional Court correctly held, criminal trespass is an offence against possession, not ownership. The record shows that the premises were under license to M/s Wimpy International Ltd., that disputes over occupation were already pending and that the petitioners had themselves instituted civil proceedings for recovery of possession which is itself an indication that possession did not vest in them on the date of the incident.

26. Learned counsel for the petitioner's placed reliance on ***Kanwal Sood (supra)***, to submit that mere occupation, even if unauthorized is not criminal trespass. That case does not come to the aid of petitioners. In ***Kanwal Sood (supra)***, the appellant was already in peaceful possession of the premises, and the question was whether her continued stay after a notice to vacate amounted to trespass. Here, the petitioners were never in possession to begin with the premises were occupied by the licensee company and it is the petitioners who sought entry against the wishes of the occupant.

27. Equally unpersuasive is the submission that no offence under Section 354 IPC is disclosed. The complaint specifically alleges use of force when the complainant tried to prevent the petitioners from proceeding further into the office. Whether the acts were intentional, accidental or otherwise explainable is a matter for evidence at trial. At



this stage, the Court is not expected to conduct a mini-trial or weigh possible defenses. The defense that the petitioners had come only to inspect the property and prepare a site plan with a draftsman is a matter to be established at trial, not a ground for discharge.

28. The order dated 13.10.2005 shows that the learned Magistrate did not confine himself to the record forming part of the final report but took into account documents produced by the defense during arguments on charge, the documents being the sale deed in favour of the petitioners, a legal notice, receipts for property tax paid to the MCD, and the pleadings and orders in the petitioners own civil suit for ejectment. It is settled law that at the stage of framing of charge, the Court's enquiry is confined to the record produced by the prosecution under Section 173 Cr.P.C., and the accused has no right at that stage to produce material to demonstrate his innocence, this principle was reiterated by the Supreme Court in ***State of Orissa v. Debendra Nath Padhi***, (2005) 1 SCC 568. An order of discharge built on such material extraneous to the police report could not have been sustained even independently of the reasoning given by the learned Revisional Court.

29. The scope of interference under Section 482 Cr.P.C. remains extremely limited. In ***State of Haryana v. Bhajan Lal***, 1992 Supp (1) SCC 335, the Supreme Court cautioned that this inherent power is to be exercised sparingly, only where continuation of proceedings would amount to an abuse of process. The present case discloses no such abuse. The learned Revision court has assigned cogent reasons for setting aside the discharge, founded on the allegations in the complaint, the statements recorded during investigation, and the correct legal position on



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possession and trespass. The impugned judgment neither suffers from perversity nor discloses any jurisdictional error warranting interference.

CONCLUSION:

30. Accordingly, this Court finds no ground to interfere with the impugned judgment dated 08.10.2009 passed by the learned Additional Sessions Judge.

31. The petition is, accordingly, dismissed. Pending application(s), if any, stand disposed of. The *interim* order, if any, stands vacated.

32. Copy of this judgement be sent to learned Trial court for necessary information and compliance.

**MADHU JAIN
(JUDGE)**

AUGUST17, 2026/P