



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Miscellaneous (Petition) No. 4439/2023

Dhananjay Kumar S/o Shri Ratan Kumar, Aged About 24 Years,
R/o D-5003, Vrindavan State Godhani Road, Shahar Nagpur,
District Nagpur (Maharashtra), At Present Discharging Duty As
Lieutenant Commander Dhananjay Kumar Mishra (07880-H),
Naval Component, Bangalore.

----Petitioner

Versus

1. State of Rajasthan, through Public Prosecutor.
2. Parul Mishra W/o Lieutenant Colonel Mrityunjay Kumar Mishra, R/o 8/157, Vidhyadhar Nagar, Jaipur.

----Respondents

For Petitioner(s)	:	Mr.Prakhar Gupta with Mr.Udit Sharma Mr.Sanjay Sharma
For Respondent(s)	:	Mr.Gaurav Gupta, Asst. G.A. with Mr.Sapan Soni Mr.Deepak Chauhan with Mr.Shubham Khunteta

JUSTICE ANOOP KUMAR DHAND

Order

20/05/2026

1. By way of filing the instant petition, a challenge has been led to the impugned order dated 11.05.2023, passed by the Additional Sessions Judge No.2, Jaipur Metropolitan-I, by which the revision petition submitted by the complainant-respondent No.2 against the cognizance order dated 08.11.2019, passed by the Metropolitan Magistrate No.13, Jaipur Metropolitan, has been allowed and the order dated 08.11.2019 passed by the Metropolitan Magistrate No.13, Jaipur Metropolitan has been quashed and the matter was remanded to the learned Magistrate



for passing fresh orders at the stage of taking cognizance, in accordance with law.

2. Learned counsel for the petitioner submits that F.I.R. No.113/2017 was registered by the complainant-respondent against the petitioner along-with co-accused persons with the Police Station Mahila Thana (North), Jaipur for the offences punishable under Sections 498A, 406, 354, 377 & 120B IPC. After carrying out investigation in the aforesaid F.I.R., charge-sheet was submitted against the accused Ratan Kumar, Sangeeta and Mrityunjay. Thereafter, cognizance was taken against the accused-Ratan Kumar and Sangeeta for the offence under Sections 498A & 406 IPC whereas cognizance was taken against the accused-Mrityunjay for the offence under Sections 498-A, 406, 321 & 323 IPC. Counsel submits that an application under Section 190 Cr.P.C. was submitted by the complainant for taking cognizance against the petitioner as well, but the same was rejected vide order dated 08.11.2019. Since, no charge-sheet was submitted against the present petitioner and no cognizance was taken against him, hence, the complainant approached the Revisional Court, i.e., Additional Sessions Judge No.2, Jaipur Metropolitan-I assailing the validity of the cognizance order dated 08.11.2019 by way of filing revision petition, wherein a prayer was made by him for taking cognizance against the petitioner. Counsel submits that without service of summons, the learned Revisional Court has allowed the aforesaid revision petition by passing the impugned order dated 11.05.2023 with the direction, as observed in foregoing para. Aggrieved by the aforesaid, a revision petition was submitted before the Court of Additional Sessions Judge No.2, Jaipur





Metropolitan-I and the came to be allowed ex-parte, without service of notice upon the petitioner vide impugned order dated 11.05.2023.

3. Counsel submits that the petitioner is a Lieutenant Commander in the Indian Navy and at the relevant time, he was posted at Port Blair. Counsel further submits that the petitioner never received any notice, but on the basis of the tracking report from Postal Department, the service of notice upon the petitioner was treated as sufficient and accordingly, the matter proceeded ex-parte and thereafter ex-parte order 11.05.2023 has been passed by the Revisional Court, by which the impugned order dated 08.11.2019 has been quashed and the matter has been remanded to the learned Magistrate for passing appropriate orders.

4. Counsel submits that though there is no provision under the Code of Criminal Procedure for effecting service of notice by the registered post and a summon is required to be issued in accordance with Section 68 Cr.P.C. Counsel further submits that a complete mechanism has been provided under Order 31 Rule 5 of the General Rules (Civil & Criminal), 2018 (for short, "the Rules of 2018") for effecting service of notices upon the Sailors, Soldiers & Airmen posted in Indian Armed Forces, but without following the aforesaid provision, contained under the Rules of 2018, the service of notice upon the petitioner has been treated as sufficient whereas the fact remains that when the same was never received by him. Hence, under these circumstances, the order impugned passed by the Revisional Court is not sustainable and the same is liable to be quashed and set-aside.





5. In support of his contention, counsel has placed reliance upon the order passed by this Court in the case of **Deevan Singh Vs. State of Rajasthan & Anr.** while deciding **S.B. Criminal Revision Petition No.104/2025** vide order dated 10.10.2025.

6. *Per contra*, learned counsel appearing on behalf of the complainant-respondent supports the contentions, raised by counsel for the petitioner so far as the objection taken by him with regard to service of notice upon the Soldiers, Sailors and Airmen posted in Armed Forces in terms of the provisions contained under Order 31 Rule 5 of the Rules of 2018.

7. Heard and considered the submissions made at the Bar and perused the material available on record.

8. This fact is not in dispute that one F.I.R. was registered against the petitioner along-with co-accused persons wherein the petitioner was not charge-sheeted and thereafter, an application under Section 190 Cr.P.C. was submitted by the complainant for taking cognizance against the petitioner. This fact is also not in dispute that the said application, submitted by the complainant, was rejected by the learned Metropolitan Magistrate No.13, Jaipur Metropolitan vide order dated 08.11.2019. This is also not in dispute that a revision petition was submitted by the complainant assailing the validity of the order dated 08.11.2019 before the Court of Additional Sessions Judge No.2, Jaipur Metropolitan-I.

9. This fact is further not in dispute that at the time of issuance of notices by the Revisional Court to the petitioner, he was posted as Lieutenant Commander in the Indian Navy at Port Blair. This fact is also not in dispute that the revision petition submitted by





the respondent was allowed ex-parte by the Revisional Court vide impugned order dated 11.05.2023.

10. The question which emerges is as to "whether the petitioner was served with the notice of the aforesaid revision petition or not?"

11. As per the order sheet of the Revisional Court, notices through registered post were sent to the petitioner and on the basis of the tracking report furnished by the Department of Post, the service upon the petitioner was treated as complete and accordingly, the matter proceeded ex-parte and the ex-parte order impugned dated 11.05.2023 has been passed by the Revisional Court.

12. Now, the question that comes up for consideration of this Court is as to 'Whether the service of summons upon a person, who is posted as Soldier, Sailor or Airman in the Armed Forces can be treated as sufficient service, if the summons are send by the registered post?'

13. Special provisions have been enacted by the Legislature by incorporating Order 31 Rule 5 of the Rules of 2018, which deals with the situation where proceedings have been initiated against the Soldiers, Sailors and Airmen posted in any wing of the Armed Forces, i.e., Indian Army, Indian Navy and Indian Airforce. For ready reference, relevant provision contained under Order 31 Rule 5 of the Rules of 2018 is reproduced as under:-

"5. Process of soldiers, sailors and airmen-

Process of officer, soldier, sailor or airman, shall be sent for service to his Commanding Officer, together with a copy to be retained by the person concerned, in such cases, sufficient time shall be





given to make arrangements for relieving the concerned person.”

14. Perusal of the aforesaid provision makes it explicitly clear that it is mandatory for the Presiding Officer to send the summons for service to the Commanding Officer of such Soldier, Sailor or Airman along-with a copy, which is required to be retained by the person concerned. The aforesaid exercise is required to be done with simple reason that sufficient time is granted for making necessary arrangements for relieving the concerned person from the operations of the Armed Forces.

15. In the instant case, the notices have not been sent to the petitioner, in terms of the above statutory/mandatory provisions contained under Rule 31 Rule 5 of the Rules of 2018. On this count alone, the order impugned passed by the Revisional Court is not sustainable and the same is liable to be quashed and is hereby set-aside. The matter is remitted to the Revisional Court for passing a fresh order, after providing due opportunity of hearing to the petitioner.

16. Since, the petitioner is aware about filing of the revision petition against him, before the Court of Additional Sessions Judge No.2, Jaipur Metropolitan-I, therefore, he is directed to place a copy of this order before his Commanding Officer and seek permission to appear before the Revisional Court through his counsel as physical presence of the petitioner is not required for raising arguments before the Revisional Court. It is expected from the Commanding Officer for passing appropriate orders allowing the petitioner to appear before the Revisional Court through his





counsel or through Video Conferencing in order to defend his case before the Revisional Court.

17. With the aforesaid observation, the instant petition stands disposed of. Looking to the fact that the matter pertains to the year 2017 and almost nine years have passed, it is expected from the Revisional Court to make all possible endeavours to decide the revision petition expeditiously as early as possible, preferably within a period of six months.

18. Before parting with this order, it is made clear that the Revisional Court would pass fresh order, after affording due opportunity of hearing to both the sides, without being influenced by its earlier order dated 11.05.2023.

19. It has been apprised at the Bar that on the basis of the impugned order 11.05.2023 passed by the Revisional Court, cognizance has been taken against the petitioner by the Court of Metropolitan Magistrate No.13. Under these circumstances, this Court has no hesitation to observe that once, the original order passed by the Revision Court dated 11.05.2023 has been set-aside, as a necessary corollary, the cognizance order passed by the lower Court against the petitioner automatically stands set-aside.

(ANOOP KUMAR DHAND),J

Aayush Sharma/135

