



2026:DHC:2128



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

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*Judgment reserved on: 03.02.2026**Judgment pronounced on: 11.03.2026**Judgment uploaded on: 13.03.2026*+ **W.P.(CRL) 76/2023**

SANJAY KUMAR SAIN

.....Petitioner

Through: Mr. Prabhav Ralli, Mr. Samraat Saxena, Ms. Deeya Mittal and Mr. Devvrat Arya, Advocates.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Ms. Rupali Bandhopadhyaya, ASC for the State with Mr. Abhijeet Kumar, Ms. Amisha Gupta, Advocates.

Mr. Sagar Suri and Mr. Kabir Sagar Ghosh, Advocate for re-call applicant.

CORAM:**HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J****CRL.M.A. 11002/2025 (delay in filing the re-call application)**

1. By way of instant application, the applicant seeks condonation of delay of 736 days in filing the re-call application in relation to the judgment dated 01.03.2023 of this Court passed in above-captioned



Criminal Writ Petition.

2. For the reasons stated in the application, the same is allowed and the delay of 736 days in filing the re-call application is condoned.
3. The present application stands disposed of.

CRL.M.A. 11000/2025 (recall of judgment dated 01.03.2023 and/or expunging remarks against re-call applicant)

INTRODUCTION

4. By way of the present application, the applicant, *inter alia*, seeks deletion of the remarks made against him in paragraphs 20 to 22 of the judgment dated 01.03.2023 passed in the above-captioned writ petition.

5. *Vide* the aforesaid judgment, this Court had expunged certain remarks made against the petitioner, Sanjay Kumar Sain, by the applicant herein, who had passed the orders dated 13.10.2022, 24.11.2022, and 07.12.2022 while being posted as learned Additional Sessions Judge, North-East District, Karkardooma Courts, Delhi.

SUBMISSIONS BEFORE THE COURT

6. The learned counsel appearing on behalf of the applicant contends that the present application, seeking recall of the judgment dated 01.03.2023 and, primarily, expunction of the adverse remarks made therein against the applicant – who, at the relevant time, was serving as Special Judge (NDPS)/learned Additional Sessions Judge, North-East District, Karkardooma Courts, Delhi – has been filed on



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the ground that the said judgment was rendered on the very first date of listing without issuance of notice to, or affording any opportunity of hearing to, the applicant herein. It is further submitted that the judgment was passed without calling for or examining the Trial Court Record and without any counter-affidavit from the State, thereby resulting in violation of the principles of natural justice. It is contended that this Court was misled due to suppression of material facts as well as prior judicial orders relating to repeated directions issued by the learned Trial Court to ensure expeditious investigation and timely filing of the FSL reports and charge-sheet in a matter where the accused had been in custody since 2019. Consequently, while certain remarks were made against the petitioner therein, i.e., the DCP concerned, this Court also recorded adverse observations against the applicant herein by treating his judicial directions as disproportionate. It is urged that the said directions were, in fact, issued in bona fide discharge of judicial duties to uphold the constitutional mandate of a speedy trial and were also in consonance with Rule 13 of the Delhi Police (Punishment and Appeal) Rules, 1980. It is further submitted that the judgment dated 01.03.2023 was thereafter circulated by the learned Registrar General of this Court, specifically naming the applicant, thereby causing grave prejudice to his reputation and service record, despite his unblemished career since his induction into the Delhi Higher Judicial Service in the year 2008. Reliance has also been placed upon the decision of this Court in *Ajit Kumar v. State (NCT of Delhi): 2023:DHC:7602*, wherein, in



similar circumstances, recall applications seeking expunction of remarks against a serving judicial officer were entertained and allowed. It is further contended that filing of the present recall application became a necessity for the recall applicant, a serving judicial officer, as the impugned judgment dated 01.03.2023 was subsequently cited by other Bench(es) of this Court, which led to adverse observations being recorded against him. It is submitted that, possibly as a consequence thereof, the recall applicant was transferred as District Judge (Commercial-04) vide transfer order dated 15.05.2024 and also suffered down-gradation of his Annual Confidential Report for the year 2023 from 'A+' to 'B+'. In these circumstances, the recall applicant was constrained to file another recall application before a different Bench which had relied upon the said judgment dated 01.03.2023, as well as a writ petition challenging the down-gradation of his ACR for the year 2023. It is, therefore, prayed that the judgment dated 01.03.2023, passed by this Court be recalled and the adverse remarks expunged in the interest of justice.

7. This Court has **heard** and considered the submissions made before this Court, and perused the case record.

ANALYSIS & FINDINGS

8. While passing the judgment dated 01.03.2023 in the above-captioned writ petition, this Court had come to the conclusion that the delay in furnishing the FSL reports was attributable solely to the FSL. It was observed that the police officers, including the DCP



concerned (the petitioner in the writ petition), could have done little beyond issuing priority letters and regularly following up with the FSL, which, in fact, they had done. In these circumstances, this Court held that the adverse remarks made against the DCP and other police officials, by the concerned Trial Court i.e. the present applicant, were uncalled for.

9. While expunging the remarks made by the applicant herein, in his judicial orders, against the petitioner and other police officials, this Court had recorded reasons in support of its conclusion, as any court of law is required to do. The Court had *however* confined itself to examining and analysing the impugned orders in question; no personal observations were made against the applicant herein.

10. In this regard, it is also relevant to note that this Court had specifically observed that although, in its opinion, the remarks against the police officials were unnecessary, there was no *malafide* on the part of the applicant, i.e., the learned Trial Court, in making such observations. It was **specifically noted** by this Court that the learned Trial Court was concerned about the delay in framing of charges in the case, particularly since the accused had been in judicial custody for a considerable period of time. It was on account of this anxiety regarding delay in the proceedings that the learned Trial Court i.e. re-call applicant herein had adopted a strict approach, which, however, to the extent it involved passing of remarks against the police officials for delay in furnishing of FSL report by the Director, FSL, was found to be unwarranted by this Court.



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11. Be that as it may, at this stage, it is also relevant to note that during the course of proceedings before the Hon'ble Supreme Court in *Sonu Agnihotri v. Chandra Shekhar and Ors.: Civil Appeal Nos. 388–389 of 2024*, the Supreme Court expressed a *prima facie* view that Rule 6 of Part H, Chapter I of Volume III of the High Court Rules and Orders – providing that it was undesirable for courts to make remarks censuring the actions of police officers – interfered with the discretion available to judges. Pursuant thereto, *vide* Notification No. 01/Rules/DHC dated 15.01.2025, the said Rule stands deleted. The relevant extract of the notification reads as under:

“In exercise of the powers conferred by Section 7 of the Delhi High Court Act, 1966 (Act 26 of 1966) read with Article 227 of the Constitution of India and all other powers enabling it in this behalf, the High Court of Delhi, with the prior approval of the Lt. Governor of the Government of National Capital Territory of Delhi, hereby makes the following amendment in Rule 6 of Part H of Chapter I of Volume III of the High Court Rules and Orders:

Rule 6 of Part H of Chapter I of Volume III of the High Court Rules and Orders shall stand deleted.”

12. Therefore, the Rule which had weighed as one of the considerations in the mind of this Court while passing the judgment dated 01.03.2023 no longer holds the field, having since been withdrawn and deleted.

13. *Nevertheless*, insofar as the grievance of the applicant that adverse observations were made against him is concerned, this Court is unable to accept the said contention. Firstly, this Court had neither



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referred to nor recorded the name of the applicant at any place in the judgment dated 01.03.2023 and had only referred to the “learned Trial Court”, as the Court was examining the legality of the orders passed by the court below and not the conduct of any particular judicial officer.

14. It is a settled position in the judicial hierarchy in India that orders passed by the Trial Courts and District Courts are subject to scrutiny by the High Court, and similarly, orders of a Single Judge of the High Court are amenable to, at times, challenge before a Division Bench, and thereafter the orders of High Court can be assailed before the Hon’ble Supreme Court. In this process of judicial scrutiny, when an order is set aside or modified by a higher court, reasons are naturally recorded for doing so. Such reasons, by their very nature, involve examination of the legality and correctness of the impugned order. The recording of reasons while setting aside an order cannot, by itself, be construed as a reflection on the competence, integrity, or ability of the judicial officer who passed the order, unless there are specific and express observations to that effect.

15. This hierarchical scrutiny of judicial orders is an essential feature of the Indian judicial system, wherein orders are examined at successive levels, but essentially in accordance with law. The higher courts, while exercising such jurisdiction, adjudicate upon the correctness of the order under challenge and not upon the personal competence or otherwise of the judge who authored the order, unless the order is absolutely perverse and absolutely contrary to statutory



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law and settled position of law.

16. Thus, merely because an order of the Trial Court is set aside or modified or stayed by the High Court or modified to some extent or set aside to some extent, as in the present case, no inference can be drawn against the general competence, ability or integrity of the concerned judicial officer in the absence of any specific adverse observations.

17. To put it in other words, as per the judicial hierarchical system, any litigant has a right to challenge or impugn any judgment or observation made by a Trial Court feeling aggrieved by it before the Higher Court, whether on charge, discharge, acquittal, conviction, or expunging of observations made against a counsel, a litigant, or a prosecution agency.

18. In this context, **it is neither extraordinary nor uncommon that an order of a Trial Court is modified, partially modified, set aside, or stayed or partially stayed at any stage of the trial.** Such interventions are an inherent part of the appellate and supervisory jurisdiction exercised by higher courts and have occurred in the past and will continue to so occur. Such judicial interventions are part of the normal functioning of the adjudicatory process in India and there is nothing uncommon or sensational about them, nor can anything be read between the lines to infer that any observation has been made by the Higher Court regarding the competence or integrity of the Trial Court while adjudicating a matter. It will always be essential to deal



with the findings or remarks made by a Trial Court, as will also be the case when the judgments of the High Court are examined by the Hon'ble Supreme Court. However, unless and until a specific observation regarding the competence, integrity, or conduct of the judge is made by the higher court, no such inference can be drawn merely because an order has been set aside on the ground that it was found to be legally unsustainable, or because certain observations made against any party to the litigation, or even against counsel appearing for a party, were found to be unjustified, illegal, or unnecessarily harsh within the parameters of settled principles of law, and consequently set aside, modified, or stayed by the higher court.

19. If it were to be presumed that the passing of an order by a higher court, staying or setting aside an order of the Trial Court, amounts to commenting on the integrity of the Trial Court, no case could ever be decided by a higher Court.

20. At times, in several cases, Trial Courts have made adverse observations even against the lawyers appearing for one of the parties, which have subsequently been expunged by higher courts when found to be unjustified in the circumstances.

21. Thus, to sum up the abovesaid, **the fact that an order passed by a court, whether Trial Court or even High Court, is stayed, modified, or otherwise interfered with by a higher court such as High Court or Supreme Court respectively, cannot, by itself, be regarded as a reflection on the competence or ability of the judge**



who passed the order. Such judicial scrutiny is an inherent feature of the hierarchical structure of courts and forms part of the ordinary course of the adjudicatory process.

22. In this context, the following observations of the Hon'ble Supreme Court in *Sonu Agnihotri v. Chandra Shekhar and Ors.*: 2024 INSC 888, are also apposite to note:

“15.The superior courts exercising such powers can set aside erroneous orders and expunge uncalled and unwarranted observations. While doing so, the superior courts can legitimately criticise the orders passed by the Trial Courts or the Appellate Courts by giving reasons. There can be criticism of the errors committed, in some cases, by using strong language. However, such observations must always be in the context of errors in the impugned orders. While doing so, the courts have to show restraint, and adverse comments on the personal conduct and calibre of the Judicial Officer should be avoided. There is a difference between criticising erroneous orders and criticising a Judicial Officer. The first part is permissible. The second category of criticism should best be avoided...”

(emphasis supplied)

23. In view of the above, this Court is of the opinion that no remarks touching upon the competence, integrity, or personal conduct of the applicant were made in the judgment dated 01.03.2023, review of which has been sought in the present proceedings. To reiterate, as also held by this Court in *Ajit Kumar v. State (NCT of Delhi)* (*supra*), while dealing with a similar recall application filed by a serving judicial officer, no observations were made regarding the competence of the judicial officer concerned.



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24. *However*, considering the anxiety expressed by the applicant, it is, by way of abundant caution, clarified that the observations made in the judgment dated 01.03.2023 were confined solely to the adjudication of the writ petition and the same may not be treated as adverse remarks against the applicant for the purposes of recording or assessing his Annual Confidential Report. It is further clarified that the said observations shall not be construed as reflecting upon his competence or integrity in any manner.

25. This Court reiterates that merely expunging the observations made against the petitioner – a police officer, by the present recall applicant – a judicial officer, cannot be treated as a reflection on the competence and integrity of the judicial officer in question or on the work done by him, as a judge, over the last several years.

26. Another aspect which this Court considers necessary to address is the grievance of the applicant that while directing circulation of the judgment dated 01.03.2023 amongst the judicial officers in Delhi, the covering letter issued by the learned Registrar General of this Court specifically mentioned the name of the applicant, which, according to him, caused embarrassment. In this regard, this Court notes that a similar situation had been brought to the notice of this Court in *Ajit Kumar v. State (NCT of Delhi)* (*supra*), wherein, while circulating the judgment, the name of the concerned judicial officer was mentioned in the covering letter, despite the fact that this Court had consciously refrained from mentioning the name of the judicial officer in the judgment itself. Similarly, in the present case, the name



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of the applicant was not mentioned anywhere in the judgment dated 01.03.2023, but found mention in the covering letter issued for circulating the said judgment. In these circumstances, this Bench, in *Ajit Kumar v. State (NCT of Delhi)* (*supra*), had already issued the following directions:

“9. The judgment dated 22.11.2022 of this Court had also referred to the concerned Court by its number and designation, and not by the name of the judicial officer. Needless to say, it is the individual choice of every Court/Bench concerned to include or not include the name of the judicial officer whose order is under challenge. Having been a proud member of the Delhi Judicial fraternity, this Court can understand, appreciate and feel as to how a judicial officer may feel in case his/her name is circulated along with the judgment to all the judicial officers in Delhi and the circular being in the public domain. **The discomfort felt in such circumstances cannot be undermined. Accordingly, this Court, speaking for itself, directed that henceforth, any order directed to be circulated by this Bench/undersigned shall not mention the name of the concerned judicial officer in the covering letter/circular issued by the Registry to the District Courts and shall instead refer to the court number concerned, as judges preside over courts, and courts do not preside over judges.**”

27. In view of the aforesaid, this Court is of the opinion that no further orders are required to be passed in the present application.

28. Accordingly, the application is disposed of in the above terms.

29. The judgment be uploaded on the website forthwith

DR. SWARANA KANTA SHARMA, J

MARCH 11, 2026/vc

T.D./T.S.