2026:DHC:27

IN THE HIGH COURTOF DELHIAT NEW DELHI

% Judgment reserved on : 03.12.2025
Judgment pronounced on : 05.01.2026

\+ **CRL.REV.P. 245/2023 & CRL.M.A. 6395/2023**

TULIP MULTISPECIALTY HOSPITAL PRIVATE LIMITED THROUGH ITS AUTHORISED REPRESENTATIVE DR. ANURAG ARORA .....Petitioner

versus

AKHIL SAXENA (EX-DIRECTOR OF TULIP MULTISPECIALTY HOSPITAL PRIVATE LIMITED, NOMINEE DIRECTOR OF SHAREHOLDER/ SAXENA MULTISPECIALTY HOSPITAL PRIVATE LIMITED) & ANR. ..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Tanveer Ahmed Mir, Ms. Pooja Mehra Saigal, Senior Advocates with Mr. Tanmay Mehta, Mr. Simrat Singh Pasay, Mr. Ankit Mittal, Ms. Ariana Ahluwalia and Ms. Yashodhara Singh, Advocates.

For the Respondents : Mr. Vikram Singh Panwar, Mr. Abhimanyu Singh, Mr. Haresh Nair, Mr. Yash Kadyan and Mr. Yash Luthra, Advocates.

CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition is filed under Section 397 read with Section 482 of the Code of Criminal Procedure, 1973 challenging order dated 06.02.2023 (hereafter '**impugned order**') passed by the learned Magistrate, Tis Hazari Courts, New Delhi in a complaint filed by the petitioner being CC No. 5325 (ND) of 2020.

2. The subject complaint was filed by petitioner Tulip Multispeciality Hospital Private Limited (company) against the respondents, who are the ex-directors of the company for unlawfully retaining and misappropriating valuable machines used for diagnostic and surgical operations and other assets owned and belonging to the complainant company. It is alleged that the same have been misappropriated by the respondents for an unauthorized use in their private nursing home "Saxena Multispeciality Hospital Limited".

3. It is alleged that Dr. Anupama Sethi Arora along-with her husband Dr Anurag Arora were running a hospital under the name of "Amar Sethi Hospital" in Tehsil Kharkhoda , near Sonipat, Haryana for more than 13 years. It is alleged that Respondent No.l was a visiting surgeon at the said Hospital for about 10 years during the period from 2004 to 2013.

4. It is alleged that Dr. Anupama Sethi, Dr. Anurag Arora and Respondent No.1 jointly set up a multispeciality hospital. It is alleged

that Respondent No.1 was already running his hospital namely, "Saxena Hospital" at 112/113, T.P. Scheme Sonipat, and the aforesaid parties decided to take on lease a constructed building near Saxena Hospital to start the new multispeciality hospital.

5. It is alleged that in order to start the new multispeciality hospital, the petitioner company was incorporated on 21.02.2013 with an Authorised share capital of Rs.25,00,000, comprising 2,50,000 equity shares of Rs. 10 each. The Issued and Paid up share capital was Rs. 1,00,000 comprising 10,000 equity shares of Rs.10 each.

6. It is alleged that Saxena Multispeciality Hospital Private Limited and Dr. Mrs. Anupama Sethi Arora were the original shareholders of the petitioner company, each holding 5000 equity shares of Rs. 10 each. It is alleged that thereafter Dr. Anurag Arora was inducted as a shareholder, by a transfer of 2500 shares from Dr. Anupama Sethi to him.

7. It is alleged that the first directors of the company were:

i. Dr. Anurag Arora

ii. Dr. Anupama Sethi Arora

iii. Dr. Akhil Saxena (Respondent No.1)

iv. Dr. Divya Saxena (Respondent No.2)

8. It is alleged that at the time of incorporation of the petitioner company, the medical equipment belonging to Amar Sethi Hospital and Saxena Hospital were transferred to the petitioner company.

9. It is alleged that since the building of the petitioner company was approximately 200 metres away from Saxena Hospital, a building where Respondent No.1 operated as a surgeon, it was unanimously decided that the building of Saxena Hospital would be a unit of the petitioner company. It is alleged that the said building was designated as "B" block of the petitioner company and the main building of the petitioner company was designated as "A" block. It is alleged that the accounts of the petitioner company were being maintained in the said "B" block, which was also being run as a back office for the petitioner company.

10. It is alleged that during the period of 2013 to 2019, the respondents drew substantial consultant fees along with a sizable Director's salary from the petitioner company.

11. It is alleged that during the year 2018-2019, Respondent No.1 started another hospital under a new entity "Oranlixir Healthcare Private Limited", incorporated on 14.01.2019. It is alleged that thereafter, the respondents started visiting the aforesaid hospital 2-3 days a week, neglecting their work at the petitioner company. It is alleged that due to the same, an acrimonious environment arose between the directors and after several rounds of discussions and

deliberations, it was decided that the respondents will exit from the petitioner company. It is alleged that an understanding was entered into, in accordance with which, the respondents would transfer their shareholding to Dr. Anurag Arora and Dr. Mrs. Anupama Sethi Arora on an acceptable valuation to be carried out by the statutory auditor of the complainant company.

12. It is alleged that the respondents resigned as Directors of the petitioner company on 04.06.2019.

13. It is alleged that thereafter, the respondents declined to transfer their shareholding in the petitioner company. It is alleged that the respondent usurped Saxena Hospital, which was a unit, “Block B”, of the petitioner company.

14. It is alleged that the respondents denied access to Block B (Saxena Hospital) to Dr. Anurag Arora, Dr. Mrs. Anupama Sethi Arora and their staff even though the entire books of accounts, TALLY account records of the petitioner company and valuable fixed assets including machines belonging to and owned by the petitioner company were lying in the said Block B (Saxena Hospital).

15. It is alleged that the machines lying in the Block B belonging to the petitioner company are valued at Rs. 1.47 crores approximately as on 31.03.2019.

16. Thereafter, the petitioner company filed a complaint against the respondents under Section 452 of the Companies Act, 2013 read with Section 200 of the CrPC before the learned Magistrate.

17. The learned Magistrate took cognizance of the complaint *vide* order dated 18.11.2020 and issued summons to the respondents. The aforesaid order was challenged before this Court, however, the petition was dismissed as withdrawn *vide* order dated 03.05.2021.

18. Thereafter, at the stage of consideration on the aspect of service of notice of accusation under Section 251 of the CrPC, the learned Magistrate discharged the accused.

19. The learned Magistrate noted that Section 452 of the Companies Act is applicable to Officer or Employee of a company and not to the shareholders of the company or to other persons who may be in possession of assets of the company. It was noted that Officer and Employee of the company would also include ex-employees and ex-directors.

20. It was noted that Block B of Tulip Hospital is a building owned by Saxena Hospital and it is not the case of the petitioner company that ownership of the said Block B was ever transferred to the petitioner company by Saxena Hospital.

21. It was noted that the assets of the petitioner company are kept in premises of Saxena Hospital which is a company incorporated under

the companies act and it is a separate legal entity from its directors or shareholders. It was further noted that the possession, retention and/or use of assets of Tulip Hospital (legally or illegally) by Saxena Hospital cannot be termed as illegal possession and misappropriation of assets by the respondents.

22. It was noted that the respondents tendered their resignations which were accepted and ceased to be directors of the petitioner company and it is Saxena Hospital which did not transfer its shareholding in the petitioner company in favour of other shareholders. It was noted that the premises termed as Block B is owned by Saxena Hospital and not by any individual. It was noted that the petitioner company had not paid the entire sale consideration to Saxena Hospital for the assets it had acquired from it in 2013 till the date of filing of the complaint. It was noted that there is no reason to lift the corporate veil to find out who is behind the actions of Saxena Hospital.

23. The learned Magistrate observed that the parties of the present case were already appearing before the NCLT qua disputes between them. It was further observed that the present case is not one of misappropriation or illegal detention of assets by ex-directors of the petitioner company, rather it seems more to be a case of a disgruntled shareholder retaining the assets of the company due to differences

with it and there is no reason to invoke Section 452 of the Companies Act against the respondents.

24. The question before the learned Magistrate was that having gone through the record and consequently coming to the conclusion that no *prima facie* case is made out against the accused persons, is the court obligated to still serve a notice of accusation upon the accused.

25. The learned Magistrate placed reliance on the judgment of Hon'ble Supreme Court in ***Bhushan Kumar & Anr. v. State (NCT of Delhi) & Anr.* : (2012) 5 SCC 424** and observed that it is the bounden duty of the trial court to carefully go through the allegations made and consider the material to come to the conclusion whether or not commission of any offence is disclosed and if the answer is in the negative, then the accused shall be discharged as per Section 239 of the CrPC.

26. It was noted that the Hon'ble Supreme Court in ***Subramanium Sethuraman v. State of Maharashtra & Anr.* AIR 2004 SC 4711** and this Court in ***Court On Its Own Motion v. State Crl.* Ref.4 of 2019** has held that the court of the magistrate does not have the power to discharge the accused upon his appearance in court in a summons trial case. The learned Trial Court noted that both ***Subramanium Sethuraman v. State of Maharashtra &Anr.***(*Supra*) and **Court On Its Own Motion v. State** (*Supra*) say nothing about reading or not

reading Section 239 CrPC into summons trial complaint case procedure.

27. The learned Magistrate, relying on the judgment of **Bhushan Kumar** (*Supra*) and coming to the conclusion that no case whatsoever is made out against the accused persons, discharged the respondents in terms of Section 239 of the CrPC.

28. The learned counsel for the petitioner submitted that the impugned order has been passed in disregard of the judicial pronouncement rendered by Full Court of this Court in a reference "***In RE: Courts on its own motion v. State* : Crl. Reference No. 4 of 2019**" whereby it was clarified that the Trial Court cannot be conferred with the inherent powers, either to review or recall the order of issuance of process. It was held that "*The Court of a Magistrate does not have the power to discharge the accused upon his appearance in Court in a summons trial case based upon a complaint in general, and particularly in a case under Section 138 of the N.I. Act, once cognizance has already been taken and process issued under Section 204 Cr.P.C.*"

29. He submitted that the reliance placed by the learned Magistrate on the case of ***Bhushan Kumar and Anr. v. State(NCT of Delhi)*** (*Supra*) is misconceived and misplaced. He submitted that the issue with regards to Section 239 CrPC being read into Section 251 CrPC is only an observation made by the Hon'ble Supreme Court of India

whilst the same was not the issue that the court was called upon to adjudicate in the aforesaid matter. He further submitted that the decision in the aforesaid judgment has been rendered by a two Judge Bench of the Hon'ble Supreme Court, in contrast the decision rendered in "***In RE: Courts on its own motion v. State*** (Supra) refers to relies upon a three judge decision of the Hon'ble Apex Court in the case of ***Subramanium Sethuraman v. State of Maharashtra* : (2004) 13 SCC 324**. He submitted that the decision in ***Subramanium Sethuraman v. State of Maharashtra*** (*Supra)* was approved by the five judge bench in the matter of ***In Re: Expeditious trial of cases under Section 138 of NI Act* : 2021 SCC Online SC 325.**

30. He submitted that this decision has not been referred to in the judgment of ***Bhushan Kumar and Anr. v. State*** (*Supra*) and to the said extent the judgment is *per incuriam*.

31. He submitted that the aforesaid judgments unequivocally hold that Section 239 of the CrPC cannot be read into the summons case as it falls within Chapter XIX under the head "Trial of warrants case by Magistrate" and deals only with warrants cases, whereas Trial of Summons Cases by Magistrate falls within chapter XX of the CrPC.

32. *Per Contra*, the learned counsel for the respondents submitted that the learned Magistrate has rightly discharged the respondents by placing reliance on the judgment of ***Bhushan Kumar and Anr. v. State*** (*Supra*). He submitted that the Hon'ble Supreme Court in the

aforesaid case has observed that at the stage of Section 251 of CrPC, the Magistrate ought to go through the allegations in the complaint and if the same do not disclose any offence, the Magistrate is bound to discharge the accused under Section 239 of the CrPC.

33. He submitted that this view has been consistently followed by this Court in ***S.K. Bhalla v. State &Ors* : (2011) 180 DLT 219**, ***Era Infra Engineering Ltd. v. SICOM Ltd.* : 2015 SCC OnLine Del 8294**and ***Urshila Kerkar v. Make My Trip (India) Private Ltd.* : 2013 SCC OnLine Del 4563.**

Analysis

34. In the present case, the petitioner company filed a complaint against the respondents under Section 452 of the Companies Act, 2013 and Section 200 of the CrPC before the learned Magistrate. The learned Magistrate took cognizance of the complaint *vide* order dated 18.11.2020 and issued summons to the respondents. Thereafter, at the stage of consideration on the aspect of service of notice of accusation under Section 251 of the CrPC, the learned Magistrate discharged the respondents.

35. The question to be determined in the present case is that: whether the learned Magistrate could have discharged the respondents for the offence under Section 452 of the Companies Act at the stage of

consideration on the aspect of service of notice of accusation under Section 251 of the CrPC.

36. Section 251 of the CrPC provides that, "*When in a summons-case the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked whether he pleads guilty or has any defence to make, but it shall not be necessary to frame a formal charge.*" A bare reading of the aforesaid provision shows that the provision only contemplates that the particulars of the alleged offence be stated to the accused and does not empower the Magistrate to conduct a mini-trial. The provision of Section 251 of the CrPC neither expressly nor by implication provides the Magistrate with the power to drop proceedings against the accused or to recall summons.

37. A three Judge Bench of the Hon'ble Apex Court in ***Subramanium Sethuraman v. State of Maharashtra*** (*Supra*) relying on the dictum of ***Adalat Prasad v. Roopal Jindal*****: (2004) 7 SCC 338** has observed that the order of issuance of process being an interlocutory order cannot be reviewed and it is impermissible for a Magistrate to reconsider his decision to issue process. The Hon'ble Apex Court further categorically observed that a summons case is covered under Chapter XX of the CrPC which does not contemplate a stage of discharge like Section 239 of the CrPC which provides for

discharge in a warrants case. The relevant paragraphs of the judgment have been reproduced below:

> *"14. In Adalat Prasad case [(2004) 7 SCC 338 : 2004 SCC (Cri) 1927 : (2004) 7 Scale 137] this Court considered the said view of the Court in K.M. Mathew case [(1992) 1 SCC 217 : 1992 SCC (Cri) 88] and held that the issuance of process under Section 204 is a preliminary step in the stage of trial contemplated in Chapter XX of the Code. Such an order made at a preliminary stage being an interlocutory order, same cannot be reviewed or reconsidered by the Magistrate, there being no provision under the Code for review of an order by the same court. Hence, it is impermissible for the Magistrate to reconsider his decision to issue process in the absence of any specific provision to recall such order. In that line of reasoning this Court in Adalat Prasad case [(2004) 7 SCC 338 : 2004 SCC (Cri) 1927 : (2004) 7 Scale 137] held: (SCC p. 343, para 16)*
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> *"Therefore, we are of the opinion, that the view of this Court in Mathew case [(1992) 1 SCC 217 : 1992 SCC (Cri) 88] that no specific provision is required for recalling an erroneous order, amounting to one without jurisdiction, does not lay down the correct law."*
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> *….*
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> *16. The next challenge of the learned counsel for the appellant made to the finding of the High Court that once a plea is recorded in a summons case it is not open to the accused person to seek a discharge, cannot also be accepted. The case involving a summons case is covered by Chapter XX of the Code which does not contemplate a stage of discharge like Section 239 which provides for a discharge in a warrant case. Therefore, in our opinion the High Court was correct in coming to the conclusion that once the plea of the accused is recorded under Section 252 of the Code the procedure contemplated under Chapter XX has to be followed which is to take the trial to its logical conclusion."*
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> (emphasis supplied)

38. It is pertinent to note that the decision in ***Subramanium Sethuraman v. State of Maharashtra*** (*Supra)* was approved by the

five judge bench of the Hon'ble Apex Court in the matter of ***In Re: Expeditious trial of cases under Section 138 of NI Act :*** **2021 SCC Online SC 325**, which held as under:

> *"20. Section 143 of the Act mandates that the provisions of summary trial of the Code shall apply "as far as may be" to trials of complaints under Section 138.* ***Section 258 of the Code empowers the Magistrate to stop the proceedings at any stage for reasons to be recorded in writing and pronounce a judgment of acquittal in any summons case instituted otherwise than upon complaint. Section 258 of the Code is not applicable to a summons case instituted on a complaint.*** *Therefore, Section 258 cannot come into play in respect of the complaints filed under Section 138 of the Act.* ***The judgment of this Court in Meters and Instruments (supra) in so far as it conferred power on the Trial Court to discharge an accused is not good law.*** *Support taken from the words "as far as may be" in Section 143 of the Act is inappropriate. The words "as far as may be" in Section 143 are used only in respect of applicability of Sections 262 to 265 of the Code and the summary procedure to be followed for trials under Chapter XVII. Conferring power on the court by reading certain words into provisions is impermissible. A judge must not rewrite a statute, neither to enlarge nor to contract it. Whatever temptations the statesmanship of policymaking might wisely suggest, construction must eschew interpolation and evisceration. He must not read in by way of creation. The Judge's duty is to interpret and apply the law, not to change it to meet the Judge's idea of what justice requires. The court cannot add words to a statute or read words into it which are not there.*
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> *21.* ***A close scrutiny of the judgments of this Court in Adalat Prasad (supra) and Subramanium Sethuraman (supra) would show that they do not warrant any reconsideration. The Trial Court cannot be conferred with inherent power either to review or recall the order of issuance of process.*** *As held above, this Court, in its anxiety to cut down delays in the disposal of complaints under Section 138, has applied Section 258 to hold that the Trial Court has the power to discharge the accused even for reasons other than payment of compensation. However, amendment to the Act empowering the Trial Court to reconsider/ recall summons may be considered on the recommendation of the*

> *21 Committee constituted by this Court which shall look into this aspect as well.*
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> *22. Another submission made by the learned Amici Curiae relates to the power of the Magistrate under Section 322 of the Code, to revisit the order of issue of process if he has no jurisdiction to try the case. We are in agreement with the learned Amici Curiae that in case the Trial Court is informed that it lacks jurisdiction to issue process for complaints under Section 138 of the Act, the proceedings shall be stayed and the case shall be submitted to the Chief Judicial Magistrate or such other Magistrate having jurisdiction.*
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> (emphasis supplied)

39. The Division Bench of this Court in ***Court on its own Motion v. State*** (*Supra*) has also observed that the Magistrate does not have the power to discharge the accused upon its appearance in Court in a summons trial case based upon a complaint in general, once cognizance has already been taken and process issued under Section 204 of the CrPC.

40. In the present case, the learned Magistrate has discharged the respondents at the stage of consideration on the aspect of service of notice of accusation under Section 251 of the CrPC after taking cognizance of the offence and issuing summons to the respondents.

41. The learned Magistrate has placed reliance on the Judgment of ***Bhushan Kumar & Anr. v. State*** (*Supra*) in which the Hon'ble Apex Court made the following observations:

> *"20. It is inherent in Section 251 of the Code that when an accused appears before the trial court pursuant to summons issued under Section 204 of the Code in a summons trial case, it is the bounden duty of the trial court to carefully go through the allegations made*

> *in the charge-sheet or complaint and consider the evidence to come to a conclusion whether or not, commission of any offence is disclosed and if the answer is in the affirmative, the Magistrate shall explain the substance of the accusation to the accused and ask him whether he pleads guilty otherwise, he is bound to discharge the accused as per Section 239 of the Code."*

42. The respondent has further relied on judgments of the coordinate benches of this Court in ***Era Infra Engineering Ltd. v. SICOM Ltd.***(*Supra*)and ***Urshila Kerkar v. Make My Trip (India) Private Ltd.***(*Supra*) where discharge at the stage of Section 251 of the CrPC has been allowed while placing reliance on the judgment of the Hon'ble Supreme Court in ***Bhushan Kumar & Anr. v. State*** (*Supra*). Further reliance has also been placed on ***S.K. Bhalla v. State & Ors*** (*Supra*) where a similar view as in ***Bhushan Kumar & Anr. v. State*** (*Supra*) had been taken by the coordinate bench of this Court.

43. It is relevant to note that the issues being determined in the case of ***Bhushan Kumar & Anr. v. State*** (*Supra*) were: "*(a) Whether taking cognizance of an offence by the Magistrate is same as summoning an accused to appear? (b) Whether the Magistrate, while considering the question of summoning an accused, is required to assign reasons for the same?*".

44. The Hon'ble Apex Court in ***State of Gujarat v. Utility Users' Welfare Assn.,* (2018) 6 SCC 21** has propounded the use of "the inversion test" to identify what is the *ratio decidendi* in a judgment. In order to test whether a particular proposition of law is to be treated as

the *ratio decidendi* of a particular judgment, the proposition shall be inversed i.e. to remove from the text of the judgment as if it did not exist. If the conclusion of the case would still have been the same even without examining the proposition, then it cannot be regarded as the *ratio decidendi* of the case.

45. The observations made by the Hon'ble Apex Court in paragraph 20 of ***Bhushan Kumar & Anr. v. State*** (*Supra*) regarding permissibility of discharge at the stage of Section 251 of the CrPC were merely made as a passing reference and was not the issue being determined in the aforesaid case. Applying the inversion test to the aforesaid case, even upon removal of paragraph 20 from the judgment, the conclusion would still have been the same. Thus, the same could not be said to be *ratio decidendi* of the judgment especially considering the fact that larger benches of the Hon'ble Supreme Court have explicitly stated that summons cases are covered by Chapter XX of the Code which does not contemplate a stage of discharge like for a warrants case under Section 239 of the CrPC.

46. Thus, the reliance placed upon paragraph 20 of the judgment of ***Bhushan Kumar & Anr. v. State*** (*Supra*) by the Magistrate and in the cases of ***Era Infra Engineering Ltd. v. SICOM Ltd.***(*Supra*) and ***Urshila Kerkar v. Make My Trip (India) Private Ltd.***(*Supra*) is misplaced especially considering the fact that the larger benches of the Hon'ble Apex Court have held a view to the contrary.

47. This Court in a recent judgment of ***TV Today Network Ltd. v. Ramesh Bidhuri*** **: 2025 SCC OnLine Del 8215** while determining the same issue has also held that Section 251 of the CrPC contemplates only that the particulars of the offence be explained to the accused and it does not empower the Magistrate to undertake a mini-trial or to evaluate defence on merits.

48. It is pertinent to note that Chapter XX of the CrPC does not either explicitly or by implication provide for discharge of an accused in a summons trial. Thus, the Magistrate is not empowered to discharge an accused in a summons trial at the stage of Section 251 of the CrPC after having taken cognizance of an offence and issued summons to the accused. The same would amount to recalling of summons by the Magistrate which as noted in a catena of judgments is impermissible in law.

49. In the opinion of this Court, the learned Magistrate erred in discharging the respondents of the offence under Section 452 of the Companies Act at the stage of consideration on the aspect of service of notice of accusation under Section 251 of the CrPC.

50. In view of the above, the revision petition is allowed and the impugned order is set aside.

51. Let the matter be listed on 16.01.2026 before the learned Magistrate for further proceedings.

52. It is made clear that this Court has not examined the merits of the case and the order has been passed on the limited issue as noted above.

53. The petition stands disposed of. Pending applications also stand disposed of.

AMIT MAHAJAN, J

JANUARY 05, 2026
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