

**IN THE COURT OF DIG VINAY SINGH, SPECIAL JUDGE (PC
ACT), CBI-09 (MPs/MLAs CASES), ROUSE AVENUE DISTRICT
COURT, NEW DELHI.**

*In CrI. Rev 14/2025
Filing No.295/2025
CNR no. DLCT11-000296-2025
Under Sections 438/440 of BNSS 2023
(Corresponding to Sections 397 & 399 of Cr.PC)*

STATE

Through the Assistant Commissioner of Police
NDR/ Special Cell Lodhi Colony, New Delhi

.....*Petitioner*

Versus

1. **Mohammad Ilyas** S/o Haji Waseek Ahmed
R/o House no.B-1, 10-A
3rd Floor, Yamuna Vihar, Delhi-110053
2. **Kapil Mishra** S/o Sh. R.P. Mishra
Patel Marg Gali, Block-B, Sant Nagar
Burari, Delhi-110084
3. **Jagdish Pradhan** S/o Sh. Ved Ram
R/o H. No. C-43, Gali no.1,
Harijan Basti, Karawal Nagar
Delhi-110094.
4. **Mohan Singh Bisht** S/o Sh. Kushal Singh Bisht
R/o Dayalpur Extension, Delhi
5. **Satpal Sansad** S/o Late Ram Kishan
R/o H. No.158, Village Basauli,
Baghpat, Uttar Pradesh
Also at: 1001, Patliputra Housing Society,
4 Bangalow, Andheri (W), Mumbai, Maharashtra
6. **Rajeev Arora @ Raju**
Owner of Grocery Shop, viz. Chawla Kiryana Store
D-10/239, Main Brijpuri Road,
Delhi-110094 (Opposite Yamuna Vihar)

7. **Sunil Mohan**
 Owner of Mohan Nursing Home
 C-2/40A, Yamuna Vihar
 New Bhajanpura Petrol Pump
 Delhi-110053

.....**Respondents**

AND

In CrI. Rev 15/2025
Filing No.296/2025
CNR no. DLCT11-000297-2025
Under Sections 438/440 of BNSS 2023
(Corresponding to Sections 397 & 399 of Cr.PC)

- Kapil Mishra**
 S/o Sh. Rameshwar Mishra,
 R/o B-2/212, Yamuna Vihar, Delhi-110053
**Petitioner**

Versus

1. **State NCT of Delhi**
 Through SHO, P.S. Dayalpur,
 Delhi
2. **Mohammad Ilyas** S/o Sh. Haji Waseek Ahmed,
 R/o House no. B-1, 10-A, 3rd Floor,
 Yamuna Vihar, Delhi-110084.

..... **Respondents**

Date of Institution: 09.04.2025
Date of Arguments: 25.10.2025
Date of Decision: 10.11.2025

ORDER

10.11.2025

- 1.1. These two Revision Petitions challenge the same order dated 01.04.2025, aggrieved by a particular direction, passed by Ld ACJM-04, Rouse Avenue Courts, Delhi, in Misc. Criminal Case No. 53/2024 titled as "Mohammad Ilyas v. State & Ors.". According to the revisionists, the order directed 'further investigation' into one of the five incidents claimed

by the complainant. Whereas the complainant claims it directs 'investigation' and not 'further investigation'.

- 1.2. The **first revision by the State** lists seven respondents, including the complainant (Mohammad Ilyas) as Respondent No. 1, and six proposed accused as Respondents Nos. 2 to 7.
- 1.3. The **second, by accused Kapil Mishra**, MLA, names the State and the complainant as respondents. Kapil Mishra is R2 in the State's revision.

2. **BRIEF FACTS:**

- 2.1. The 2020 Delhi Riots claimed 53 lives with over 750 FIRs filed. Delhi Police's Special Cell filed FIR No. 59/2020 on 06.03.2020, suggesting and investigating a larger conspiracy behind the riots. The investigation in this FIR culminated in a charge sheet filed before a Special Designated Court in terms of Section 22 of the NIA Act, which included offences under the IPC, UAPA, and NIA Act. Eighteen accused have been charge-sheeted in that case, and it is presently under trial before the said Special Court. The revisionist claims 'further investigation' was directed in that FIR under the impugned order based on a complaint by Mohammad Ilyas.
- 2.2. An email was sent on 15.03.2020 and a subsequent typed complaint on 17.03.2020 by Mohammad Ilyas, accusing Kapil Mishra and associates of vandalising the vehicles of Muslims and Dalits at Kardampuri, allegedly with the police complicity on 23.02.2020. The complainant also reported threats from DCP Ved Prakash Surya, who allegedly warned protesters that if they didn't stop, they would be killed.
- 2.3. When ignored, the complainant initially filed an application U/s 156(3) of Cr.P.C., as in force at that time, before the Ld CMM of Karkardooma Courts. The said application was submitted on 26.02.2024 and was returned by the concerned CMM for the reason that two of the proposed accused were MLAs, and therefore, the complainant ought to have

approached the Special Designated Courts for trying matters related to MPs/MLAs.

- 2.4. The complainant then filed an application under section 175(3) BNSS on 21.08.2024 before Ld CJM, RADC, seeking the registration of an FIR, as BNSS had come into force w.e.f. 01.07.2024. It was on this application that the impugned order was issued.

3. **IMPUGNED ORDER:**

- 3.1. Before discussing the grievances of the two Revisionists, it would be appropriate to review the impugned order briefly.
- 3.2. The complainant detailed five different incidents that occurred on various days in February 2020 in the common complaint, asserting that police officials were either complicit or failed to act.
- 3.3. Reports were obtained from the DCP North East and the ACP Special Cell regarding the incidents alleged by the complainant. In those reports, the police officials stated that all the alleged incidents were already covered under existing FIRs. Special Cell also claimed they investigated the role of Kapil Mishra in FIR no. 59/2020 and that he had no role in initiating or orchestrating the violence.
- 3.4. While the Ld ACJM found that FIRs had been registered for four out of the five incidents, it expressed concerns about how the police handled the fifth incident, dated 23.02.2020, which is referred to as the '*first incident*' in the impugned order, questioning the investigation, potential bias, and thoroughness. The court ordered further investigation into the incident dated 23.02.2020 involving Kapil Mishra and his associates, citing discrepancies in the police's status reports and also the need to interrogate the DCP mentioned above.
- 3.5. Regarding the '*second incident*' dated 24.02.2020, alleging that rioters set fire to the Victoria School Buses with "Jai Shri Ram" slogans, the police

response was that it is covered under FIR No. 71/2020, PS Dayal Pur. The Ld ACJM, while noting that the Court of Ld ASJ had already taken cognizance of the case and specific directions had been issued, found no merit in intervention, stating that there was no scope to intervene or comment.

- 3.6. Regarding the '*third incident*' dated 24.02.2020, which alleged that a mosque in Tyre Market was set on fire by the proposed accused no. 3 (R3) and his companions, the police response was that it is covered under FIR no. 33/2020 PS Gokul Puri. Concerning this incident as well, the Ld ACJM concluded that it falls under the existing FIR and found no grounds for intervention.
- 3.7. Regarding the '*fourth incident*' dated 25.02.2020, which alleged that the owner of Mohan Nursing Home and others pelted stones and fired bullets from the roof at women protesters, the police response was that FIR no. 198/2020 had already been registered at PS Bhajan Pura. Concerning this incident, the Ld ACJM concluded that it was also covered under the existing FIR, despite a delay in filing and a slight date mismatch. However, the pictorial description of the offence as alleged in the complaint and that in the FIR were identical. Therefore, the Ld ACJM reiterated that it is not its role to monitor ongoing investigations under the jurisdiction of other courts and, accordingly, found no merit in intervention.
- 3.8. Regarding the '*fifth incident*' dated 26.02.2020 involving arson and looting at Farooqia Masjid with alleged police complicity, the police's response was that FIR No. 64/2020 had already been registered at PS Dayalpur and was under investigation. Concerning this incident as well, the Ld ACJM found no basis for intervention, stating that it "cannot be tasked with the

duty of monitoring the investigation as the Ld ACJM of the particular police station would be the appropriate forum”.

- 3.9. Regarding the '*first incident*' dated 23.02.2020, the complainant alleged that Kapil Mishra and his associates blocked roads at Kardam Puri, vandalised carts belonging to Muslims and Dalits, with police complicity, and that the DCP warned of untoward consequences to the extent of life.
- 3.9.1. In response, the State claimed that it was also covered under FIR No. 59/2020 PS Crime Branch, which involved a larger conspiracy investigation, and that no role of Kapil Mishra was found in initiating or orchestrating the violence.
- 3.9.2. Conversely, the complainant challenged the police's claim, stating that his statement was never recorded and that the police fabricated a false narrative exonerating the offenders and unjustly implicating others.
- 3.9.3. The Ld ACJM, noting that the complainant's credibility was very high because four other incidents reported by him were deemed credible, rejected the prosecution's larger conspiracy theory, citing numerous flaws and suggesting that it was based on guesswork, assumptions, and interpretation. The Ld ACJM observed that Kapil Mishra's police interrogation contained contradictions and supported the complainant's assertion that he was present in the North East district on 23.02.2020 and that people had gathered around him. It also highlighted Kapil Mishra's admission that he went to get the protest site vacated, along with the complainant's allegation of cart breaking within the same timeframe.
- 3.9.4. The Ld ACJM found Kapil Mishra's police interrogation to be insufficient, noting his contradictory statements regarding the delivery of a speech. It also observed that certain portions of Mishra's statement indicated he was taking sides based on religious affiliations, and that his association with 50-60 associates could qualify as a cognizable offence. Furthermore,

Mishra's admission of having spoken to the DCP suggested that his words to the DCP were more like an 'ultimatum' rather than a request, which linked to the complainant's allegation that the DCP warned the protestors of consequences if the protest continued. The Ld ACJM also noted that the “*immediate cause*” of the riots was missing from the prosecution's theory.

- 3.9.5. It deemed Mishra's police questioning inadequate and called for 'further investigation' into the '*first incident*' involving Mishra and his associates. The Ld ACJM also expressed the need to interrogate specific individuals, such as the DCP.
- 3.10. This part of the order is currently under challenge in these two revisions. Notably, the complainant has not challenged the order regarding those four incidents, or even the directions contained in the order regarding the incident in question (*first incident*).

4. **GROUND IN REVISION PETITIONS:**

- 4.1. The primary challenge is that the Ld ACJM acted beyond its jurisdiction. It is claimed that a 'Special Court' was designated for the Delhi riots investigation under FIR no.59/2020, which is pending trial before that court, as notified via Notification no.F.6/13/2020JUDL./Supt.Law/788-793, dated 03.08.2020, to try offences under the NIA Act. That Special Court is the only authority to direct further investigation for FIR no.59/2020. The Ld ACJM's order to investigate an incident linked to this FIR encroached on the powers of the Special Court. It is evident from paragraph 34 of the order and material such as WhatsApp chats from before the riots, showing conspiracy months earlier, that the Ld ACJM was aware of the pending case and proof indicating pre-riot conspiracy.
- 4.2. The revisionist alleges that while the Ld ACJM declined jurisdiction for four incidents and stated that the respective Trial Courts were appropriate

forums, it ignored the Special Court's jurisdiction for the incident involving Kapil Mishra and issued directions.

- 4.3. The order is also illegal because it directs the DCP (North-East) to conduct further investigation, but under u/s 175(3) of BNSS (similar to Sec. 156(3) of Cr.P.C.), a Magistrate can only direct investigation to the SHO, not a higher officer.
- 4.4. Also, while investigations can be directed before cognizance is taken (u/s 210 of BNSS), orders for further investigation after filing a charge sheet can only be made by the Court with jurisdiction, according to section 193(9) of BNSS.
- 4.5. It is claimed that under the guise of further investigation, the Ld ACJM effectively ordered a reinvestigation in a pending trial matter before a Special Court. In this regard, reliance is also placed upon the case of *Major Gurjinder Singh Benipal Vs. State of Punjab, 2012 SCC OnLine P&H 1974*. The revisionist also contends that the very fact that the Ld. ACJM attended to draw different conclusions from the same statements, which are already part of the case pending trial before the Special Court, amounts to an impermissible reinvestigation.
- 4.6. The impugned order is also challenged on procedural, evidentiary, and legal grounds. It is claimed that the Ld ACJM made procedural errors by disregarding police status reports and ignoring settled principles on multiple investigations. Notably, two ATRs, one from DCP North East (dated 24.09.2024) and another from ACP Special Cell (dated 21.10.2024), concluded that Kapil Mishra had no involvement. The ATR of the Special Cell explicitly stated that Kapil Mishra had “no role in the initiation or orchestration of the violence,” and that a group appeared to have “deliberately attempted to falsely implicate him.” Despite these clear findings, the Ld ACJM ordered a further investigation, which is criticised

as a non-application of mind and as a second FIR for the same incident, contrary to law, citing *T. T. Antony Vs. State of Kerala (2001) 6 SCC 181*.

- 4.7. It is also claimed that the ACJM improperly conducted a mini-trial on a preliminary application, exceeding the scope under Section 175(3) of BNSS, by analysing evidence and questioning the nature of Mishra's interrogation. At that stage, the Court's role is limited to determining whether a prima facie cognizable offence has been committed, whereas the Ld ACJM proceeded to analyse the evidence in the matter pending trial before the Special Court in depth. He posed questions about the nature of Kapil Mishra's interrogation, sifted through evidence to distinguish relevant from irrelevant, and presented an in-depth analysis to find grounds for the order, thereby overstepping the mandate. The revisionists also allege the order contains biased remarks, factual inaccuracies, and undue comments based on personal bias, especially about FIR no. 59/2020.
- 4.8. Similarly, unwarranted comments about the prosecution's case in FIR no. 59/2020, stating that "*there are numerous flaws in such theory building and many guesswork, assumptions and interpretation has undergone which are questionable,*" are claimed to have been made. It is argued that such observations by the Ld ACJM are serious and prejudicial against Kapil Mishra, a sitting Minister, which led to inaccurate media reports suggesting that an FIR has been ordered against him, causing significant prejudice.
- 4.9. Regarding the factual inaccuracies, it is also claimed that the Ld ACJM's order proceeds on the finding that "*it is not denied by the prosecution that protests were peaceful and escalated only on 24.02.2020*". It is claimed that such an observation is entirely factually incorrect and contradicts the

written submissions submitted before the Ld ACJM, which clearly stated that riots had already taken place on 23.02.2020.

- 4.10.** It is also claimed that the Ld ACJM attempted to portray Kapil Mishra as the “*immediate cause of the riots*” based on his presence in the area on 23.02.2020, which is claimed to be a flawed conclusion that overlooks detailed evidence of a pre-planned conspiracy. This evidence included WhatsApp chats from various groups explicitly formed for protest and planned to coincide with the visit of the USA President to Delhi. It is further argued that the detailed evidence presented by the State before the Ld ACJM clearly indicated a conspiracy that was pre-planned well before Kapil Mishra’s so-called presence in the area on 23.02.2020.
- 4.11.** It is also claimed that the Ld ACJM artificially enhanced the original complaint by introducing the element of 'violence' by Kapil Mishra, whereas the complaint never claimed any such violence by Kapil Mishra.
- 4.12.** It is also claimed that the complainant intentionally changed the description from 'vehicles' to 'carts' for the purpose of preventing verification or identification of the vehicles.
- 4.13.** It is also claimed that more than 750 FIRs have been registered regarding the incidents of riots, and even if someone claimed destruction of his bicycle, an FIR was registered, and the matter was investigated. Several financial claims have been raised before the competent authority by the concerned persons.
- 4.14.** It is also claimed that the approach of the Ld Trial Court reflects judicial indiscipline and disregard for the hierarchy of Courts, arguing that the Hon’ble Delhi High Court has accepted the prosecution's version in the larger conspiracy case in more than one matter. Even the appeal to the Hon’ble Supreme Court was unsuccessful, thereby enhancing the

credibility of the prosecution's version. Yet, the Ld ACJM chose to comment on the veracity of the prosecution's version.

- 4.15. The State also asserts that the email dated 15.03.2020 was inadmissible in the absence of a certificate of authenticity for the electronic evidence.
- 4.16. In support of its revision, the State cites the cases of *Umar Khalid Vs. State of NCT of Delhi: 2022/DHC/004325*; *Babu Venkatesh and Others Vs. State of Karnataka and Anr. (2022) 5 Supreme Court Cases 639*; *Judgebir Singh and Others Vs. National Investigation Agency (2023) 17 SCC*; and *Sharjeel Imam and Ors. Vs. The State of NCT of Delhi 2025:DHC:7632-DB*.
- 4.17. Kapil Mishra has relied upon the cases of *Usha Chakroborty and Another Vs. State of West Bengal and Another, 2023 SCC OnLine SC 90*; *Alhaj Ebrahim Khan and Ors. Vs. Sopan Pandharinath Lohakare, 2015 SCC OnLine Bom 1668*; *T. T. Antony Vs. State of Kerala (2001) 6 SCC 181*; and *Major Gurjinder Singh Benipal Vs. State of Punjab, 2012 SCC OnLine P&H 1974*.

5. **COMPLAINANT'S STAND:**

- 5.1. Countering the revision Petitions, the complainant asserts that the Special Cell of Delhi Police is colluding with Kapil Mishra, undermining due process, and blocking the investigation into the complaint. He states that, despite there being no connection between FIR No. 59/2020 and the complaint, the Special Cell added irrelevant materials to the record to pre-emptively clear Kapil Mishra. The complainant claims that the very fact that the Special Cell filed extensive material and defended Kapil Mishra strongly suggests collusion.
- 5.2. He also claims that the State's Revision Petition falsely depicts the ACJM's directions as related to FIR No. 59/2020 to mislead this Court and to protect Kapil Mishra. The complainant emphasises that the directions

of the Ld ACJM were limited and specific to investigating the complaint, not FIR No. 59/2020.

- 5.3. The alleged non-compliance with Section 154(3) Cr. P.C. is untrue, as proper complaints were forwarded. If such objections were valid, the State should have raised them before the Ld ACJM, which they did not.
- 5.4. Concerning the State's assertion that the email dated 15.03.2020 was inadmissible, the complainant states that the admissibility of an email can be assessed at the appropriate stage during trial only.
- 5.5. The minor clerical change from vehicles with carts is claimed to be insignificant and cannot discredit the complaint.
- 5.6. The complainant maintains that the order by the Ld ACJM is justified and adheres to specific mandatory directions where a cognizable offence is evident, according to the Supreme Court's rulings.
- 5.7. The complainant claims that Kapil Mishra's grounds are inconsistent and contradictory, claiming the revisionist states the order involves a second FIR at one location and, at another point, refers to it as a re-investigation of FIR No. 59/2020. The complainant insists that Kapil Mishra's claims are incoherent, factually incorrect, and false.
- 5.8. It is asserted that the impugned order, which directs the examination of the complainant and the DCP, North East, to send the order to the correct police station, complies with Sec 154 and Sec 156 of the Cr.P.C. Furthermore, if the Ld ACJM intended to order further investigation in FIR No. 59/2020, it would have been directed to the Special Cell, which appeared before the court, rather than to the DCP, North East. Since the Ld ACJM found no connection between the case investigated by the Special Cell in FIR No. 59/2020 and the incident in question, the directions to the DCP, North East, were appropriate.

- 5.9. The complainant also states that the Special Cell never claimed to have recorded the complainant's statement or investigated the specific incident, thus justifying the order. It is further clarified that the complaint pertains only to the incident observed by the complainant, not to an investigation into a broader conspiracy of riots.
- 5.10. The complainant maintains that the legal position is clear that when a cognizable offence is disclosed, police must register an FIR and investigate, as established by cases like *Amit Kumar & Ors. Vs. Union of India & Ors. (2025) INSC 384*; *Lalita Kumari Vs. State of U.P. (2014)*; and *Mrs Priyanka Srivastava and Another Vs. State of U.P. and Others (2015) 4 S.C.R. 108* and *Sakiri Vasu v. State of U.P. & Ors. AIR 2008 SC 907*.
- 5.11. The complainant claims that both the revision petitions are without merit.

6. **STAND OF OTHER RESPONDENTS:**

- 6.1. **R-2 Kapil Mishra** filed a separate revision; he did not think it necessary to file an individual reply to the revision filed by the State. Instead, he relied on the grounds mentioned in his revision.
- 6.2. **R-5 Satpal Sansad** also chose not to file a reply but presented oral arguments.
- 6.3. **R-3 Jagdish Pradhan and R-4 Mohan Singh Bisht** filed a common reply, claiming, in addition to the stand of the State and Kapil Mishra, that they have been unnecessarily impleaded in the present proceedings; there is no specific role attributed to them; no material exists against them; R-3 is alleged to be concerned with the third and fifth incidents, and R-4 is alleged to be concerned with the fifth incident, for which there are no directions in the impugned order. Since the complainant did not challenge the impugned order, they consider themselves to have been unnecessarily impleaded.

6.4. Similarly, **R-6 Rajiv Arora @ Raju & R-7 Sunil Mohan** also claimed to have been unnecessarily joined, stating that allegations against R-6 pertain to the fifth incident, and allegations against R-7 pertain to the fourth incident, qua which there is no direction contained in the impugned order.

7. **SUBMISSIONS OF REVISIONISTS (STATE AND KAPIL MISHRA):**

7.1. The Ld SPP for the State, Mr Amit Prasad, argued that in an application under U/s 175(3) of the BNSS, the order for further investigation issued by the Ld ACJM was made by a court without jurisdiction, as only the specially designated Court has authority over such matters, and is illegal. He also highlighted that the ACJM made specific factual comments about the investigation in a larger conspiracy case that was already pending trial before the Ld. Special Court of Sessions. These comments contradict previous judicial observations, and despite being aware of them, the ACJM issued contrary remarks, which amount to unnecessary judicial insubordination. It was further noted that, in FIR No. 59/2020 PS Crime Branch, the role of Kapil Mishra had already been examined and found to be nonexistent, a fact known to the Ld ACJM. Nevertheless, he proceeded to order further investigation in a case that was already scheduled for trial before the competent Special Court. The charge sheet in FIR No. 59/2020 was provided to the complainant's counsel on 17.09.2020, and the Special Court had taken cognizance. Yet, the complainant persisted with the application before the ACJM, who incorrectly entertained it and issued the unwarranted order. Paragraph 33(d) of the impugned order states that evidence of the larger conspiracy, including WhatsApp chats before 23.02.2020, was available but ignored by the ACJM. The impugned order also references various observations in paragraphs 36(e) to (s), which are

inappropriate and contradictory to the facts established by higher courts. Paragraph 33(i) alleges violence by Kapil Mishra and others without basis in the complaint. Paragraph 33(j) improperly draws conclusions from separate cases. The presence of Mishra near his residence was wrongly taken as involvement, which is unjustified, as local presence alone does not imply involvement. It was also argued that the ACJM's claim that Mishra's presence was the 'immediate cause' of the riots conflicts with evidence suggesting the conspiracy began in November 2019. Mishra's presence alone does not prove conspiracy. The Special Court had accepted the charge sheet, rejected bail applications, and various appeals, some dismissed and some withdrawn, acknowledging the conspiracy. The High Court's decision was challenged in the Supreme Court and withdrawn multiple times. Ld SPP also cited WhatsApp messages indicating the conspiracy started before 23.02.2020. Although the investigation in FIR 59 did not examine the complainant, it was argued that the complainant was aware of the FIR 59 investigation long before submitting the application to the ACJM, as the complaint originated from Mr Mahmood Pracha's email, who also represents some of the accused in FIR No. 59, and the charge sheet was received on 17.09.2020. The application before the ACJM, filed on 21.08.2024, was made well after the charge sheet was provided, suggesting a malicious intent. References were made to observations regarding the Delhi Protest Support Group (DPSG) and WhatsApp chats, which indicated conspiracy as early as December 2019, along with other judicial orders and documents. It was pointed out that the reply and messages attached (Annexure P14) indicated through three WhatsApp groups that the conspiracy to incite riots in Delhi, coinciding with the US President's visit, started in November/December 2019, but the ACJM ignored this. The Court's attention was also directed to an email

dated 15.03.2020 sent at 21:21 hours from Mr Mahmood Pracha to the Delhi Police and others, which included an attachment supposedly being the original complaint. It was argued that this email does not specify that the attachment is a complaint by Mohd. Ilyas. The original complaint, as mentioned in Annexure P9, referred to vehicles, but the one filed before the ACJM changed the description to 'carts', possibly to obscure identification via registration numbers. That proper procedural steps, such as giving the initial complaint to the SHO, were not followed, thereby violating the requirements of Section 154(3) Cr.P.C. The ld SPP relied on *Judgebir Singh v. NIA (2023) 17 SCC 48* to stress that only the specially designated Court could consider further investigation under UAPA. The State also referenced a recent Supreme Court *order in Crl. Appeal No. 184/2020, dated 02.09.2025*, noting that the ACJM's factual observations conflict with those of higher courts. Additionally, reliance was placed on *Priyanka Srivastava v. State (supra)* to argue that the absence of a formal affidavit from the complainant renders the impugned order legally unsustainable. Mr Amit Prasad also cited the case of *Babu Venkatesh & Ors. Vs. State of Karnataka & Anr. (2022) 5 SCC 639*. He pointed out that a simple reading of the complaint shows it does not explicitly mention compliance with Section 173 BNSS (Sec. 154 Cr.P.C). He also argued that the complainant never challenged the impugned order, so he cannot now claim that the order should be interpreted differently or extended to read in any specific manner. The argument is that paragraphs 33(n)(q)(h), 34, 35, and 38 clearly indicate that the order directs further investigation of an ongoing trial, not a new investigation, as the complainant suggests. The order was ultimately described as an act of total judicial misconduct.

- 7.2. Ld Senior Advocate Mr Mahesh Jethmalani, representing Kapil Mishra, in addition contended that the challenged order is entirely unreasonable

and clearly surpasses the jurisdiction of the Ld ACJM by infringing on the authority of the special Court where the charge sheet has been filed and cognizance has been taken. Once the Ld Special Judge was handling the case, and to the ACJM's knowledge, it should have directed the complainant to approach the designated Special Court rather than proceeding with the application. The Ld Senior Advocate also emphasised that this act by the Ld ACJM amounts to outright judicial insubordination, which this Court should strongly condemn to prevent similar incidents in the future. Additionally, he pointed out that the factual comments made by the Ld ACJM on various aspects in the impugned order were entirely unnecessary and display a lack of concern, requiring this Court to issue a stern warning.

8. SUBMISSIONS OF COMPLAINANT:

- 8.1.** On the other hand, the complainant's Ld counsel, Mr Mehmood Pracha, countered the Revisionists' arguments by asserting that the claim that a further investigation was ordered in FIR No. 59/2020 is false. He submits that while the impugned order may lack precise wording specifying instructions to register a fresh FIR, a careful reading indicates it directed an investigation into the incident. No directive was issued to the Special Cell, instead, the order to the DCP, North East, addressed jurisdictional issues, requiring the complaint to be referred to the correct police station, due to ambiguity about which police station had jurisdiction over the incident's location. He argued that under *Sakiri Vasu's case (supra)*, the ACJM was duty-bound to seek the truth, and the impugned order is unchallengeable. Additionally, he suggested collusion between the state and the proposed accused, particularly Mr Kapil Mishra, and questioned why the FIR was not registered, which could have been followed by a closure report if no material was found. Evidence of collusion was also

implied by the inclusion of other respondents involved in different incidents, which the impugned order did not address. Since the Special Cell never investigated the complainant, there was no obstacle to doing so. Ld counsel pointed out that the ACJM's observations as to the interrogation of Kapil Mishra in FIR No 59 were prompted by detailed reports from investigating agencies, and criticised the investigation into Kapil Mishra for only examining his speech. He challenged the revisionist's claim about changing vehicle descriptions, arguing no such plea was made to the ACJM. The delay in filing the complaint was justified, as the environment did not permit earlier reporting, and the current complaint was filed promptly after a prior petition was returned. He emphasised that Kapil Mishra was not part of the group opposing the CAA, which led to protests. Instead, he was part of the opposing side and justified the need for a separate FIR due to conflicting conspiracies, citing legal precedents similar to cross-cases. He maintained that the complainant's statements were based solely on personal observations unrelated to other groups, requiring a distinct investigation. Citing the cases of *Lalita Kumari* (Supra) and *Amit Kumar* (Supra), Mr Pracha argued the revisions lack merit, rendering the impugned order unchallengeable. Mr Pracha contended that the impugned order shows the Ld. ACJM applied his mind correctly. He refuted claims that higher courts had upheld the facts, stating that those were bail appeals and not final judgments. He also suggested that the wording of the order on FIR registration might be incorrect, in the impugned order proposing the possibility of remanding the matter to the Ld. ACJM for fresh consideration. Lastly, he claims that the complainant properly followed the legal procedures under Sections 175 BNSS (Sec. 156 Cr.P.C.) and Section 173 BNSS (Sec. 154 Cr.P.C.).

9. SUBMISSIONS OF OTHER RESPONDENTS:

- 9.1. On behalf of R3 and R4, Ld Senior Advocate Mr Pawan Narang argued that the complainant's conduct clearly shows a malicious attempt to get an FIR registered against the respondents despite knowing that an FIR was already registered and under investigation, both in the larger conspiracy case and other incidents. Even after being aware of the prior FIRs, a false complaint was filed. When the police report for the earlier FIR arrived, the complainant, regarding these respondents, attempted to change course. The complainant's shift in approach after learning that an FIR against these respondents had already been investigated, along with allegations of unsatisfactory investigation, suggests an intent to target specific individuals. The Court's attention is drawn to paras 19 and 20 of the impugned order. It is alleged that the complainant did not approach the ACJM with a clear conscience. It is claimed that R3 and R4 were only concerned with incident number 3 & 5, for which the impugned order is not against these respondents but against the complainant, who did not challenge it. R3 and R4 are not involved in incident no. 1, which is in question.
- 9.2. Ld senior Advocate Mr Vaibhav Gaggar, representing R5, stated that this respondent is also not involved in incident no. 1, which is the focus of the revision in the impugned order. He clarified that the allegations against R5 pertain to incident no. 5, for which no directive has been given.
- 9.3. Ld Advocate Sh. Vishal Kumar for R6 argued that R6 is not involved in incident no. 1 and there are no allegations against him related to this incident. He requested that his reply to the revision be treated as his arguments.
- 9.4. Ld counsel Sh. Amit Sharma for R7 echoed the arguments of Ld SPP for the State and other respondents, also asserting that during the

investigation, his mobile was not at the specified location on the relevant date and time.

10. ANALYSIS, REASONING AND CONCLUSION:

10.1. A mere perusal of the impugned order reveals that it suffers from a serious jurisdictional error and is illegal as far as it directs 'further investigation' into the 'first incident' alleged by the complainant. The Ld ACJM has repeatedly used the word 'further investigation', and not once has he mentioned that the order directs the investigation and registration of an FIR regarding the 'first incident'.

10.2. Paragraph no.36(h) of the impugned order specifically **questions why further investigation is needed**. It then proceeds to analyse the interrogation of Kapil Mishra in the investigation conducted in FIR No. 59/2020 and finally directs the DCP North East to get a '**further investigation**' conducted.

10.3. Paragraph no.36(h) of the impugned order reads as follows;

*“.....if Court fully subscribes to the stand of the prosecution cum Special Cell and assume each and everything presented as a gospel truth, **there are reasons which are being outlined herein before and herein after to order for further investigation.**” (emphasis mine).*

10.4. Similarly, in paragraph no.36(s), following words are used;

*“.....**This Court directs further investigation in the present case with respect to the first incident against proposed accused no.2 and his associates only, with following mandatory directions.....**”.*

10.5. Likewise, in paragraph no.37 of the impugned order, the words used are;

*“37. **Let the further investigation** be initiated with respect to proposed accused no.2 and his associates with respect to first incident only and cognizable offence has been disclosed by the complainant.”*

- 10.6. In paragraph no.38, again the word mentioned is '**further investigation**', not 'investigation' or any direction to the police to register an FIR and initiate investigation.
- 10.7. Throughout the impugned order, there is no indication that the Ld ACJM intended a fresh FIR to be registered and the matter to be investigated anew. The term “further investigation” is used everywhere.
- 10.8. Although the law mandates that the officer-in-charge of the police station must register the FIR for a cognizable offence disclosed, even if a Magistrate does not explicitly state so while directing investigation under Section 175(3) BNSS, the order should at least clearly indicate that the Magistrate's requirement and direction are for 'investigation.' In this case, the order merely suggests a direction for further investigation and does not specify an investigation.
- 10.9. Once the final report arising from FIR no.59/2020 was already under trial before a superior court of a Special Judge, and this was known to the Ld ACJM, had the Ld ACJM intended the registration of a fresh FIR, he should have been specific.
- 10.10. Judicial orders, especially those affecting rights and potentially affecting someone's liberty, must be unambiguous. Any such order that could impact someone's rights and liberty must be explicit and free from conflicting interpretations. If the Ld. ACJM believed that the alleged 'first incident' had not been investigated in FIR No. 59/2020; he should have explicitly stated so in his order and directed an investigation and the registration of a new FIR accordingly. Without such a specific observation for investigation or the registration of a new FIR, the repeated use of the term “further investigation” in the impugned order led to differing interpretations by both parties. The fact that the impugned order has been

interpreted differently by both sides indicates that it suffers from a material flaw.

- 10.11.** Although the order does not explicitly direct the Special Cell for further investigation or that it should relate to FIR no. 59/2020, a bare reading of the impugned order clearly indicates that it repeatedly directs further investigation.
- 10.12.** The Ld ACJM should have also refrained from making any unnecessary comments about the investigation in FIR no.59/2020, if the Ld ACJM was of the view that the first incident had not been investigated in it, especially when that matter is pending trial before a higher court. If the Ld ACJM believed that the incident was improperly investigated in FIR No. 59/2020, it lacked jurisdiction to entertain the complaint, as the matter is already under trial before a higher designated Court. If the Court found that the incident had not been investigated anywhere, it could not have merely ordered further investigation.
- 10.13.** The proviso to Section 193(9) BNSS explicitly states that further investigation during the trial requires that Court's permission where the trial is pending. Not only is the Ld. Special Court trying the riots case related to a larger conspiracy under FIR No. 59/2020 a Court of original cognizance, and no other Court can take cognizance of the offence, but also even if it were a simple Court of Session, once the trial is committed or the higher Court takes cognizance, and after the enactment of Sec. 193(9) of BNSS, further investigation during the trial could not have been conducted or ordered without the permission of the Court trying the case, which in this instance was done by Ld. ACJM.
- 10.14.** The Ld ACJM's explicit statement that, for the other four incidents, it cannot be tasked with the duty of monitoring the investigation as the learned Trial Court of the particular Police Station would be the

appropriate forum, along with his comprehensive re-evaluation of the investigation into the 'first incident', reflects an inconsistent application of judicial principles regarding oversight of ongoing investigations, and demonstrates an overreach into an area reserved for the designated Court.

- 10.15.** The impugned order thus reveals a serious jurisdictional error that makes the order illegal and unsustainable concerning the 'first incident'. It is illegal, improper, and incorrect, as it exceeds jurisdiction and constitutes a case of jurisdictional overreach.
- 11.** A Magistrate, when considering an application u/s 175(3) of BNSS (Section 156(3) of Cr.P.C.), should primarily determine whether a cognizable offence is disclosed and if police assistance is needed for investigation, rather than extensively scrutinising and dismissing the findings of an ongoing, complex investigation concerning a larger conspiracy. The scope of that provision is minimal, focusing on whether the allegations amount to a cognizable offence and whether the collection of evidence by the police is required.
- 11.1.** The allegations regarding the incident in the application u/s 175(3) BNSS filed by the complainant contain only one paragraph (no. 2), which reads as follows:-

“That on 23.02.2020, Kapil Mishra and his associates blocked the road at Kardampuri and started breaking the carts of Muslims and Dalits. The police officers were standing with them and thereafter, the atmosphere in the area became deteriorate, after some time DCP Ved Prakash Surya started wandering in the streets by saying that if you did not stop this protest, then the consequences will happen here that you all will be killed.”

- 11.2.** These allegations claim that Kapil Mishra and his associates blocked the road and began breaking the carts of Muslims and Dalits. It also mentions that police officers stood with them, then the environment in the area worsened, and after some time, the DCP was wandering the streets. The

DCP warned that if the protest did not stop, severe consequences would follow, and everyone could be killed.

- 11.3. The allegations in the complaint do not specify how many associates of Kapil Mishra were present. The complaint does not explicitly mention the presence of five or more associates. Even if the allegations in para 2 of the application are accepted as true, they only state that Kapil Mishra blocked the road with his associates, without specifying their number, not even approximately, and that they broke carts. Interestingly, to establish a cognizable offence, the Ld. ACJM inferred from the statement of Kapil Mishra recorded in FIR No. 59/2020, concluding that more than five persons were present based on his statement.
- 11.4. To initiate legal action, the application should have clearly disclosed the commission of a cognizable offence, which it lacks. To assume a cognizable offence, the Ld. ACJM relied on analogies and inferences from Kapil Mishra's questioning in the larger conspiracy case.
- 11.5. Interestingly, in para 2 of the application concerning this incident, the complainant does not mention being physically present there or witnessing the incident himself. Instead, the complainant references five different incidents on different dates at various places, all aggregated in one application, raising the question of whether the complainant was present during all those incidents. Not only did the complainant not explicitly state in the application of being present at the scene during the incident in question, but the specific time of the incident is neither mentioned nor is it clear whether it occurred in the morning, afternoon, or evening. Though in the complaint to the police, the time of the incident is described as noon.
- 11.6. Records from the Trial Court show that during the proceedings in the application, the SHO of PS Dayal Pur recorded the complainant's

statement on 24.09.2024, which was filed in the court record as noted in the order sheet on 25.09.2024. The complainant never disputed this recording of his statement, and when this statement was placed on record in the original by the SHO, counsel for the complainant was present in the Court.

- 11.7. The said statement mentions that whatever complaint the complainant wanted to give has been written in the complaint, and the complainant does not wish to provide any other statement regarding it. He also mentions in his statement dated 24.09.2024 that the **complainant has no direct involvement in the incidents described in his complaint, and no incident with him occurred during the riots**. It went on to state that **'whatever the complainant saw'**, he gave a complaint about it and that he does not want to say anything else.
- 11.8. Even this statement does not provide details regarding the time, the exact location at Kardampuri, the number of associates, or other specifics of the incident.
- 11.9. Even if it is taken that the complainant saw this incident, the application does not specify the number of associates with Kapil Mishra. Whether it was five or fewer is not indicated. The only offence mentioned is 'mischief', which is a non-cognizable offence unless it involves five or more people. An assembly of five or more persons can be deemed unlawful if they share a 'common object' to commit mischief or other offences, as per Sec. 141 of the IPC. Since the complaint does not specify the number of involved persons, the Ld ACJM inferred from Kapil Mishra's statement recorded under FIR no. 59/2020 that the number was more than five.
- 11.10. It should also be noted that the complaint given to the police or the application filed in court does not mention any 'violence' by Kapil Mishra

and his associates on 23.02.2020; it only references vandalism of carts. **However, in the impugned order, the Ld ACJM introduced the act of “violence” by Kapil Mishra and his associates in para 33(i) & (k), despite the complaint and the statement of 24.09.2024 not alleging any violence.**

- 11.11.** The offence of Mischief alone would be non-cognizable. But if committed by an unlawful assembly with a common object, as described in Sec. 141, it becomes cognizable. The Ld ACJM inferred from Kapil Mishra’s statement recorded in FIR No. 59/2020 that the offence was cognizable.
- 11.12.** Throughout the complaint, neither any offence alleged to have been committed is described nor any provision of IPC or other offence sought to be invoked by the complainant is mentioned. The prayer part of the complaint only states that an FIR be ordered under Sec. 175(3) BNSS against the named proposed accused, and that an investigation be conducted. In the impugned order, the Ld. Magistrate did discuss the offence of 'mischief', which is a non-cognizable offence, and 'unlawful assembly' for mischief, which is a cognizable offence.
- 11.13.** Had only the complaint been perused, it would not disclose the commission of a cognizable offence, as only mischief is disclosed, which is a non-cognizable offence, and for unlawful assembly to meet the definition of Sec. 141 IPC, the minimum number of persons is not even claimed.
- 11.14.** The allegations by the complainant are there that the DCP and the police force were in connivance with Kapil Mishra and his associates, or that they acted in concert, or that the DCP extended threats to life, but the complainant nowhere even claimed that the warning to end protest was 'criminal intimidation' by the DCP or anyone else.

- 11.15.** The first application under Section 156(3) of the Cr.P.C. was filed by the complainant before the KKD courts very belatedly, several months after the incident occurred. It is claimed to have been filed on 07.11.2020 and was returned on 26.02.2024, and the complainant then filed a fresh application under Section 175(3) BNSS on 21.08.2024, again after spending six months on re-filing. One also wonders what collection of evidence the complainant expected after so many months, especially considering the nature of the offence alleged in paragraph 2 of the complaint.
- 11.16.** Recently, the Hon'ble Supreme Court in *Om Prakash Ambadkar v. State of Maharashtra & Ors., 2025 INSC 139*, while examining the scope of Sec. 156(3) Cr.P.C., observed that it is the duty of the concerned Magistrate to consider whether the allegations **in the complaint** amount to a cognizable offence and whether the essential elements of the offence are evident from the **plain reading of the complaint** (*para 11 of the judgment*). The judgment also holds that a Magistrate should pass an order only if he is satisfied that the information discloses the commission of cognizable offences and that police investigation is necessary to gather evidence, which is not available to the complainant or cannot be obtained without police assistance. Therefore, while a Magistrate is not required to determine whether the complaint is false or not, he must ascertain whether the allegations in the complaint constitute any cognizable offence and if the necessary ingredients are apparent **from the plain reading of the complaint**.
- 11.17.** Upon Sec. 175(3) BNSS coming into force w.e.f. 01.07.2024, besides considering the application supported by an affidavit made by the complainant to the Police, a Magistrate can conduct such inquiry as he

considers necessary. Additionally, a Magistrate must consider the submissions made by the police officer before ordering an investigation.

- 11.18.** However, during an inquiry before ordering an investigation as permitted under Sec. 175(3) BNSS, a Magistrate cannot introduce facts that are absent in the complaint, as has been done in the present matter, by including the allegation of violence which is not present in the complaint.
- 11.19.** Instead of focusing and limiting observations to whether the 'first incident' has been investigated or not, and whether it discloses a cognizable offence requiring investigation, the Ld ACJM examined and made observations on matters already under trial before a higher Court. His assertion that the prosecution's theory-building had "*numerous flaws*" and involved "*guess work, assumptions, and interpretation*" prematurely adjudicates the merits of an ongoing trial.
- 11.20.** The impugned order also heavily relies on interpretations of Kapil Mishra's statements during interrogation in FIR no. 59/2020, such as characterising his conversations with the DCP as an "*ultimatum*" rather than a "*request or assertion.*" Similarly, the Court interprets the distinction of "*DUSRI TARAF MUSLIM*" as clearly establishing "*sides.*" These interpretations are subjective inferences that delve into the merits and intentions behind the statements, which are beyond the limited scope of merely determining whether a cognizable offence is disclosed and investigation is warranted at the initial stage of Section 175(3) BNSS.
- 11.21.** The Court's detailed questioning of the technique used by the interrogator while questioning Kapil Mishra in FIR no. 59/2020, such as not challenging Mishra's changing version regarding speeches, rendered those observations as exceeding the Magistrate's role in ordering an investigation.

- 11.22.** The order also shows inconsistency and selectivity, as it notes that the Ld ACJM lacked jurisdiction over four of the five incidents because they had already been investigated under different FIRs. In contrast, for the fifth incident, it ordered further investigation while appreciating the evidence collected during the investigation of FIR No. 59, particularly regarding the examination of Kapil Mishra.
- 11.23.** While the Ld ACJM recognises the need to interrogate DCP Ved Prakash Surya, also to uncover the “*immediate cause*” of the riots and what transpired between him and Kapil Mishra, the extensive theoretical criticism of the prosecution’s narrative goes beyond the primary purpose of an order under Section 175(3) BNSS. While the Ld ACJM seems to have carefully considered the matter, the scope and depth of its intervention exceeded the permissible boundaries of a Magistrate’s power u/s 175(3) of the BNSS, engaging in speculative interpretations akin to a trial.
- 11.24.** On one hand, Ld. ACJM thoroughly considered and analysed the questioning of Kapil Mishra in FIR No. 59/2020 while passing the impugned order regarding the incident dated 23.02.2020. On the other hand, the complainant wants this Court to believe that no further investigation was ordered. If Ld. ACJM was satisfied that the incident dated 23.02.2020 was a separate incident, there was no need or reason to analyse the material or investigation conducted in FIR No. 59/2020. That itself suggests that what the Ld. ACJM intended was further investigation, a term he repeatedly used in his order, rather than a new investigation into the incident. This constitutes a serious jurisdictional error and an encroachment into the authority of a superior Court, which is the Court of original cognizance.

- 11.25.** Unwarranted, speculative, and prejudicial remarks have been made in the order concerning an investigation pending trial before a higher court. There is a conflation between re-investigation and further investigation in the impugned order. The Ld ACJM has stated at one point that he does not believe the prosecution's version that the investigation in FIR no. 59/2020 was conducted specifically regarding Kapil Mishra. However, he went on to provide detailed criticism of the Special Cell's manner of interrogation of Kapil Mishra and the conclusion that Kapil Mishra had no role in initiating or orchestrating violence, thereby making the impugned order legally challengeable and unsustainable.
- 12.** If the argument of the complainant is accepted that the impugned order directs investigation and not further investigation, the impugned order violates Section 175(4) of BNSS qua public servant, the DCP. Although the revisionists or other respondents have not raised this argument, it is admitted that the application in question was filed on 21.08.2024, and the complainant itself titled it under Section 175(3) of BNSS. Although the incident occurred on 23.02.2020, by the time the complainant filed the application in question, the BNSS had come into force.
- 12.1.** An application under Section 175(3) of BNSS for directing the police to register an FIR can be filed for an incident that occurred before 1st of July 2024 (the date when BNSS came into force), provided the FIR had not been registered (as claimed by the complainant in this case) and no prior application, trial, inquiry, investigation, or proceeding was **pending** before 1st July 2024. The key question is whether there was any Pending Proceeding before 1st July 2024. As per Section 531(2)(a) BNSS, any application, trial, inquiry, or investigation pending immediately before the commencement of this Sanhita shall be disposed of, continued, held, or made, as the case may be, in accordance with the provisions of the Code

of Criminal Procedure, 1973, as in force immediately before such commencement. If no application under Section 156(3) CrPC was **pending** before 1st July 2024, and no FIR was registered (per the complainant's own claim), then there was no pending proceeding. The earlier application under Section 156(3) Cr.P.C. filed by the complainant before the KKD courts was returned on 26.02.2024, and the complainant filed a fresh application under Section 175(3) BNSS on 21.08.2024, i.e. after BNSS came into force. Hence, no prior application, trial, inquiry, investigation, or proceeding was **pending** before 1st July 2024. Thus, Section 531(2)(a) BNSS does not apply in this case.

- 12.2.** Section 175(3) of BNSS requires that a Magistrate empowered to take cognizance under Section 210 may, after considering an application supported by an affidavit made under Sub-Section 4 of Section 173 of BNSS and after making such inquiries as deemed necessary, along with submissions from the Police Officer, order such an investigation as mentioned in Section 175.
- 12.3.** Section 175(4) of BNSS also sets an additional condition where the complaint is against a public servant arising “*in the course of the discharge of his official duties*”. It states that upon receiving a complaint, a Magistrate empowered under Section 210, for such cases against a public servant arising during the discharge of official duties, may order an investigation, but must satisfy two conditions specified in Clauses (a) and (b) of Sub-Section 4. Clause (a) requires that such an investigation can only be initiated if a report containing the facts and circumstances of the incident has been received from a superior officer. Clause (b) requires that the investigation be ordered after considering the assertions made by the public servant regarding the situation that led to the alleged incident.

- 12.4. Under U/s 175(4) of BNSS, receiving a report containing the facts and circumstances of the incident from the superior officer to the public servant, and considering the assertions made by the proposed accused public servant regarding the situation that led to the alleged incident, is mandatory before passing an order U/s 175(3) BNSS against a public servant accused of committing a cognizable offence arising during the discharge of official duties. It may also be noted that the words "*in the course of the discharge of his official duties*" substantially differ and are wider in scope from the words, "*while acting or purporting to act in the discharge of his official duty*".
- 12.5. A mere look at the allegations in para 2 and as analysed in the impugned order prima facie shows that the **accusations against the DCP** concern an incident that occurred during the discharge of his official duties. Not only are there allegations in the complaint as to the police's complicity and threat extended by the DCP, but the Ld ACJM also specifically directed a personal interrogation of the DCP regarding his interactions with Kapil Mishra and the so-called extension of threats that the protest site be vacated, or else consequences would follow, which the complainant claims included a threat to kill protesters. Although the DCP was not enlisted as a proposed accused in the complaint, averments are indeed there against him. In the impugned order, the DCP has been directed to be specifically interrogated to explain what transpired between him and Kapil Mishra, as well as the warning he extended after the alleged conversation between the DCP and Kapil Mishra. In para no. 36(t) and 36(s) the personal interrogation of DCP is insisted.
- 12.6. In the present matter, the DCP was discharging his duty when he was present with his police force at the location on 23.02.2020. It is not disputed that the DCP was on duty at the time of the incident.

- 12.7. Therefore, the allegations by the complainant that the DCP and the police force were in connivance with Kapil Mishra and his associates, or that they acted in concert, or that the DCP extended threats to life, would attract Sec. 175(4) BNSS and the necessary prerequisites were not complied with. Therefore, obtaining a report from a superior officer was essential before any investigation could start, and the public servant (DCP) should have been heard. This was not done. Therefore, even if the impugned order were for a fresh FIR and investigation, it would not have been legally sustainable due to the absence of compliance with Section 175(4) of the BNSS.
- 12.8. It may also suggest that the Ld ACJM's direction was not for registration of an FIR and investigation into the incident, but only for a further investigation. The Ld ACJM could not have ordered such a further investigation because FIR No. 59/2020 was already under trial following the submission of a final report. Under Section 193(9) of BNSS, such a further investigation could not have been ordered by the Ld ACJM after the matter had been taken cognizance of by the Ld Special Judge.
13. **For the foregoing reasons, the impugned order is jurisdictionally flawed and legally unsustainable, and it must be set aside.**
14. Though, as a consequence of the above analysis, the other arguments raised by the revisionist and the complainant become academic, they may briefly be mentioned.
- 14.1. The argument that the direction given to DCP North East is illegal, as such a direction could only have been given to the SHO, is inconsequential because the order itself clarifies that the DCP North East was directed due to ambiguity regarding the Police Station's jurisdiction over the incident location.

- 14.2. The claim that a second FIR for the same incident cannot be ordered, based on reliance on *T. T. Anthony's case*, can be countered by stating that had the Ld ACJM observed that the complaint had not been investigated in any FIR, including FIR No.59, then directing the registration of an FIR would have been permissible, as it would not have constituted a second FIR. However, this required a clear finding by the Ld ACJM that the complaint was not investigated in FIR No. 59/2020 or any other FIR.
- 14.3. Even if Kapil Mishra's role, concerning conspiracy, was investigated, and the incident, as alleged by the complainant, was not probed, a separate FIR could have been directed, and this would have been legally permissible. However, this required a specific finding that there was no connection between the incident alleged by the complainant and the investigation in FIR No. 59/2020, and that the complaint disclosed a cognizable offence that requires the collection of evidence by the police.
- 14.4. The revisionist's claim that there was no certificate under Section 65B of the Evidence Act/63 BSA filed in support of the email dated 15.03.2020 is not to be examined at this stage, as it is a matter which could have been considered during trial.
- 14.5. The argument that the vehicle descriptions were changed to carts, which were allegedly damaged, is also not something that can be considered at this stage or during proceedings under 175(3) BNSS.
- 14.6. Relying on the cases of *Babu Venkatesh (supra)* and *Priyanka Srivastav (supra)*, the Ld SPP for the State emphasised that the complaint or application filed by the complainant under section 175(3) BNSS does not specify whether there was compliance with Section 173 of BNSS (Sections 154 of the Cr.P.C.). He argued that, apart from paragraph no. 21, the complainant failed to mention adherence to these provisions.

- 14.7. In the case of *Babu Venkatesh (Supra)*, relying on the case of *Priyanka Srivastava Vs. State of U.P. (2015) 6 SCC 287*, the Hon'ble Supreme Court specifically observed that filing an affidavit in support of the complaint is mandatory, and in its absence, the direction to register an FIR in that matter was quashed. In the present case, an affidavit in support of the complaint indeed exists. In the case of *Priyanka Srivastava (Supra)* in paragraph no. 31, the Hon'ble Supreme Court specifically observed that there must be prior applications U/s 154(1) & 154(3) Cr.P.C. when filing a petition U/s 156(3) Cr.P.C., and both those aspects should be explicitly stated in the application along with the necessary documents to support them.
- 14.8. In the present case, it is explicitly stated in paragraphs 10 to 12. Besides para 21 of the application preferred by the complainant, wherein the complainant stated that the complainant had sent a complaint to the DCP earlier, and no action was taken thereon, the complainant has also mentioned in paras 10 to 12 about filing of complaint dated 15.03.2020 through e-mail; followed by written complaint dated 17.03.2020 given to the SHO which was received in the Police Station Dayalpur vide Diary no.74 on that very day, followed by complaint sent to DCP through post on 17.03.2020 itself. The trial court record confirms that the complaint was submitted to PS Dayalpur on 17.03.2020, as reflected in Annexure B attached to the application, and that a complaint was also sent by post to the same station, followed by a complaint to the DCP North East via post on the same day. Although there may be no gap between submitting the complaint to the SHO and mailing a copy to the DCP, that does not negate the fact that the complaint was indeed delivered to the SHO and also forwarded to the DCP. These facts address the arguments raised by the State and others, and further discussion by this Court is unnecessary.

15. For the reasons mentioned in paragraphs 10 to 13 of this order, the impugned order, viewed from any perspective, is fundamentally flawed, illegal, and improper, rendering it unsustainable. **It is set aside regarding the direction for further investigation into the incident mentioned in paragraph 2 of the application, which is referred to as the "first incident" in the impugned order.** Concerning the other findings of the Ld ACJM regarding the four additional incidents, the complainant did not challenge the order, therefore, the present order does not address them, and they have not been considered. The impugned order dated 01.04.2025 passed by the Ld ACJM-04, Rouse Avenue Courts, Delhi, in Misc. Criminal Case No. 53/2024 titled "Mohammad Ilyas v. State & Ors." **is thus set aside to the extent discussed above.** Ld ACJM to proceed with the application of the complainant in accordance with the law. Both revision petitions are accordingly disposed of. A digitally signed copy of this order be placed in both the revisions.
- 15.1. A digitally signed copy of this order be given dasti to both the revisionists, the complainant, the other respondents, and also sent to the Ld Trial Court. The Trial Court's record be returned forthwith. Both the revision files be consigned to the Record Room.

*Announced in the open Court
on the 10th Day of November 2025*

DIG
VINAY
SINGH

Digitally
signed by DIG
VINAY SINGH
Date:
2025.11.10
14:05:46
+0530

**DIG VINAY SINGH
SPECIAL JUDGE (PC ACT),
CBI- 09 (MPs/MLAs CASES),
RADC, NEW DELHI (m)**