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

Reserved on: 01.10.2026
Date of Decision: 14.10.2026
Uploaded on: 14.10.2026

\+ **CRL.M.C. 1961/2025 & CRL.M.A. 8851/2025**

MANISH SRICHAND PARDASANI .....Petitioner
Through: Mr. Gaurav Bahl, Adv.

Versus

THE STATE (NCT) OF DELHI & ANR. .....Respondents
Through: Ms. Meenakshi Dahiya, APP for the State.
Insp. Rahul Soni, PS EOW

CORAM:
HON'BLE MS. JUSTICE MADHU JAIN

JUDGMENT

MADHU JAIN, J.

1. The present petition has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as the "BNSS"), seeking quashing of the order dated 06.02.2025 passed by the learned Chief Judicial Magistrate, South District, Saket Courts, New Delhi, arising out of ***FIR No. 169/2019*** registered at Police Station Economic Offences Wing, Delhi. Vide the impugned order, the petitioner, who was not sent up for trial in the charge-sheet, was summoned for the offences punishable under Sections 409 read with Section 120-B of the Indian Penal Code, 1860 (hereinafter referred to as the "IPC").

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BRIEF FACTS

2. FIR No. 169/2019 was registered on 23.08.2019 on the complaint of respondent No. 2, Anurag Chandra. As per the complaint, respondent No. 2 invested approximately Rs. 7.50 crore in M/s Affinity Beauty Salon Pvt. Ltd. (hereinafter referred to as "ABSPL") in 2016, pursuant to representations made by Vishal Sharma, a Director of ABSPL. It was alleged that the shares were neither allotted nor was the investment returned. The property offered as security was also alleged to have been mortgaged. The complaint further alleged diversion of funds and business proceeds belonging to ABSPL.

3. The allegations concerning the present petitioner arise from the Pali Hill outlet of ABSPL situated in Mumbai. On 08.03.2016, M/s M.S. Luvish Construction Pvt. Ltd. (hereinafter referred to as "MSLCPL"), a company with which the petitioner was associated, entered into a Leave and Licence Agreement with ABSPL in respect of commercial premises measuring approximately 2,100 square feet at M-Square, Dr. Ambedkar Road, Khar (West), Mumbai. According to the petitioner, ABSPL defaulted in payment of licence fees, pursuant to which a legal notice dated 17.10.2018 was issued. It is stated that even after adjustment of the security deposit, an amount of Rs. 29,08,967/- remained outstanding as on 31.01.2019.

4. It is the case of the petitioner that in November 2018, Vishal Sharma approached him with a request to temporarily use the card-swipe machines belonging to M/s Living Liquidz Foods and Beverages Pvt. Ltd. (hereinafter referred to as "Living Liquidz"), of which the petitioner was a Director, as the machines installed at the ABSPL outlet were allegedly not functioning. The

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petitioner claims that the amounts received through the said arrangement were to be adjusted against the outstanding licence fees. The status report referred to in the record indicates that approximately Rs. 16,76,000/- was received through these machines between 08.12.2018 and the first week of January 2019.

5. Respondent No. 2, however, alleges that the arrangement was used to divert the sale proceeds generated at the Pali Hill outlet into the accounts of Living Liquidz, in connivance with Vishal Sharma. The complaint also refers to the alleged concealment of the business operations and receipts of the said outlet during the insolvency proceedings concerning ABSPL.

6. During investigation, the petitioner furnished explanations and documents in response to notices issued by the investigating agency. Upon completion of investigation, the police filed its final report dated 16.08.2024 without arraying the petitioner as an accused. However, vide order dated 06.02.2025, the Learned Trial Court summoned the petitioner for the offences punishable under Sections 409 read with Section 120-B IPC, primarily on the basis of the swipe-machine arrangement and the allegation of diversion of business proceeds. Aggrieved by the said order, the petitioner has approached this Court.

<u>SUBMISSIONS ON BEHALF OF THE PETITIONER</u>

7. Learned counsel for the petitioner submits that the petitioner was neither named as an accused in the FIR nor sent up for trial upon completion of investigation. It is contended that the investigating agency examined the explanation and documents furnished by the petitioner, including the Leave and Licence Agreement and the outstanding dues, but found no material

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warranting his prosecution. Despite the same, the Learned Trial Court proceeded to summon him without identifying any additional material establishing his involvement.

8. Learned counsel further submits that the petitioner was neither a Director nor a shareholder of ABSPL and had no dealings with respondent No. 2 concerning the investment made in 2016. His association with ABSPL arose solely from the commercial arrangement relating to the Pali Hill premises. It is argued that the swipe machines were used only towards the end of 2018 and the amounts received were adjusted against the licence fees already payable to MSLCPL. According to learned counsel, such a transaction cannot be treated as criminal breach of trust in the absence of any material indicating dishonest conduct.

9. Learned counsel further submits that the essential ingredients of Section 409 IPC are not satisfied, as neither was any property entrusted to the petitioner by respondent No. 2 nor is there any material indicating dishonest misappropriation by him in any of the capacities contemplated under the said provision. Learned counsel submits that merely being a Director of Living Liquidz cannot give rise to personal criminal liability. It is also argued that there is no material indicating any agreement or meeting of minds between the petitioner and Vishal Sharma so as to attract Section 120-B IPC.

10. Lastly, learned counsel submits that the learned Trial Court could not have invoked the power under Section 319 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the "CrPC"), without any evidence having been recorded during an inquiry or trial. It is argued that the impugned order reflects non-application of judicial mind and warrants interference in exercise

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of the inherent powers of this Court. Reliance is placed upon ***State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335.***

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

11. Per contra, learned APP for the State opposes the present petition and submits that the decision of the investigating agency not to array a person as an accused does not bind the Learned Trial Court. It is contended that where the material accompanying the police report discloses prima facie involvement, the Learned Trial Court is competent to summon such a person at the stage of taking cognizance.

12. Learned APP further submits that the allegations are not confined to the initial investment of Rs. 7.50 crore but also concern the subsequent diversion of business proceeds belonging to ABSPL. It is alleged that the installation of the Living Liquidz swipe machines at the Pali Hill outlet and the receipt of approximately Rs. 16.76 lakh through those machines constitute a specific transaction indicating the petitioner's involvement. The explanation that the amount was adjusted against outstanding licence fees is disputed and, according to learned counsel, is a matter to be examined during trial.

FINDINGS AND ANALYSIS

13. This Court has heard learned counsel for the parties and perused the material available on record.

14. The principal question which arises for consideration is whether the Learned Trial Court was justified in summoning the petitioner despite his name not figuring as an accused in the charge-sheet, and whether the material on record disclosed sufficient grounds for proceeding against him.

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15. At the outset, the contention that the Learned Trial Court could not have summoned the petitioner without invoking Section 319 CrPC deserves consideration. ***In M/s SWIL Ltd. v. State of Delhi, (2001) 6 SCC 670***, the Hon'ble Supreme Court drew a distinction between the power of a Magistrate to issue process at the stage of taking cognizance and the power to summon an additional accused under Section 319 CrPC during an inquiry or trial. The said principle was reiterated in ***Nahar Singh v. State of Uttar Pradesh, (2022) 5 SCC 295***, wherein it was held that a Magistrate may summon a person not named in the police report if the material placed before the Court prima facie indicates his involvement in the commission of the offence.

16. Thus, merely because the investigating agency did not array the petitioner as an accused in the charge-sheet, the Learned Trial Court was not precluded from summoning him. The Trial Court is required to independently examine the material collected during investigation and is not bound by the conclusion arrived at by the investigating agency. The contention founded upon Section 319 CrPC, therefore, does not assist the petitioner, insofar as the impugned order was passed at the stage of taking cognizance and issuance of process.

17. However, the power to summon a person who has not been charge-sheeted must be exercised upon due application of judicial mind. In ***Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749***, the Hon'ble Supreme Court observed that summoning an accused in a criminal case is a serious matter and cannot be undertaken mechanically. The Hon'ble Supreme Court held:

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> *"Summoning of an accused in a criminal cases is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."*

18. Similarly, in ***Lalankumar Singh v. State of Maharashtra (2022) 14 SCR 573***, the Hon'ble Supreme Court reiterated that an order issuing process must indicate sufficient grounds for proceeding against the accused. Although detailed reasons are not necessary at this stage, the order must reflect consideration of the material forming the basis of the alleged offence.

19. In the present case, the material relied upon against the petitioner concerns the installation and use of swipe machines belonging to Living Liquidz at the Pali Hill outlet of ABSPL. The status report records that approximately Rs. 16.76 lakh was received through the said machines during

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December 2018 and January 2019. The allegation of respondent No. 2 is that the arrangement was used to route the business proceeds of ABSPL into the accounts of Living Liquidz, with the knowledge and involvement of the petitioner and Vishal Sharma. The Learned Trial Court has referred to this transaction while issuing process against the petitioner.

20. The petitioner, on the other hand, has offered an explanation for the arrangement. He relies upon the Leave and Licence Agreement dated 08.03.2016, the outstanding licence fees and the legal notice dated 17.10.2018 to contend that the amounts received through the swipe machines were adjusted against contractual dues. The record also indicates that the petitioner had no direct dealings with respondent No. 2 in relation to the original investment. These circumstances are relevant to the petitioner's defence. However, the explanation offered by the petitioner is disputed by respondent No. 2, and its correctness cannot be conclusively determined merely on the basis of the rival assertions at this stage.

21. It is also relevant that the investment of approximately Rs. 7.50 crore was made in 2016, whereas the disputed swipe-machine arrangement operated between December 2018 and January 2019. The amount received through the machines cannot, therefore, be equated with the original investment. However, the allegation against the petitioner is not that he directly received the amount invested by respondent No. 2, but that he participated in the subsequent diversion of business proceeds generated by ABSPL. Whether the said allegation is ultimately established would depend upon the evidence adduced during trial.

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22. Insofar as Section 409 IPC is concerned, it is settled that mere receipt of money or association with a company does not, by itself, constitute criminal breach of trust. In **Kailash Kumar Sanwatia v. State of Bihar, (2003) 7 SCC 399**, the Hon'ble Supreme Court explained that entrustment of property or dominion over property, coupled with dishonest misappropriation or conversion, constitutes the essential foundation of criminal breach of trust. Section 409 IPC further requires that such entrustment or dominion be held in one of the capacities specified under the provision.

23. In the present case, the petitioner was admittedly associated with Living Liquidz, whose swipe machines were used at the Pali Hill outlet. However, his position as a Director cannot, by itself, establish the ingredients of Section 409 IPC. The question whether the petitioner exercised dominion over the relevant proceeds in a capacity contemplated under the provision and whether the amounts were dishonestly diverted would require consideration of the material relating to the arrangement. These are matters which the learned Trial Court would be required to examine at the appropriate stage.

24. As regards the allegation under Section 120-B IPC, the existence of an agreement between two or more persons to commit an illegal act, or a lawful act by illegal means, is essential. Such an agreement may be inferred from the conduct of the parties and the surrounding circumstances, although it cannot be presumed merely from a business association. In the present case, the allegation is that the swipe-machine arrangement was used in concert with Vishal Sharma to divert the business proceeds of ABSPL. Whether the arrangement was entered into for adjustment of outstanding dues, as claimed

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by the petitioner, or formed part of the alleged diversion is a disputed question requiring examination of the relevant material.

25. The scope of interference under Section 528 BNSS is well settled. In ***State of Haryana v. Bhajan Lal (supra)***, the Hon'ble Supreme Court identified the circumstances in which criminal proceedings may be quashed, including cases where the allegations, even if accepted in their entirety, do not disclose the commission of an offence. At the same time, the inherent jurisdiction of the High Court is not intended to substitute a detailed examination of disputed evidence at the threshold of criminal proceedings.

26. In the present case, the impugned order, though brief, refers to the use of Living Liquidz swipe machines, the receipt of proceeds generated at the ABSPL outlet and the allegation that the arrangement facilitated diversion of funds in concert with Vishal Sharma. The Learned Trial Court has thus identified the transaction forming the basis of the allegations against the petitioner. While a more detailed discussion of the ingredients of the alleged offences would have been desirable, this Court is not persuaded that the petitioner's commercial explanation, which is disputed by the complainant, furnishes sufficient ground to quash the summoning order at this stage.

27. It is clarified that the observations made herein are confined to the examination of the impugned summoning order. Neither the petitioner's position as a Director of Living Liquidz nor the receipt of approximately Rs. 16.76 lakh through its swipe machines is being treated as conclusive proof of entrustment, dishonest misappropriation or conspiracy. The learned Trial Court shall independently consider the material against the petitioner, including the requirements of Sections 409 and 120-B IPC, at the appropriate

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stage, without being influenced by any observation made in the present judgment.

CONCLUSION

28. In view of the foregoing discussion, this Court finds no ground to interfere with the impugned summoning order dated 06.02.2025 in exercise of its inherent jurisdiction under Section 528 BNSS. Accordingly, the present petition stands dismissed. Pending application(s), if any, stand(s) disposed of.

29. A copy of this judgment be sent to the learned Trial Court for information and necessary compliance.

MADHU JAIN
(JUDGE)

OCTOBER 14, 2026/YT

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