



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**



S.B. Criminal Writ Petition No. 1292/2025

Raju Ram Choudhary S/o Lt. Sh. Moola Ram Choudhary, Aged About 55 Years, R/o House No. C-556 Sarawati Nagar, Basni Jodhpur Currently Posted At Additional Superintendent Of Police (Special Investigation Unit, Crime Against Women) Jaisalmer.

----Petitioner

Versus

1. State Of Rajasthan, Through Pp
2. Su D/o Bhoma Ram, R/o Village Nimbo, P.s. Balesar, Tehsil Balesar, Jodhpur.
3. Prahlad Ram S/o Bhawra Ram, R/o Village Bewala, Tehsil Balesar, Jodhpur.

----Respondents

For Petitioner(s) : Mr. Muktesh Maheshwari
For Respondent(s) : Mr. N.S. Chandwat, DyGA
Mr. P.C. Solanki

HON'BLE MR. JUSTICE FARJAND ALI

Order

REPORTABLE

13/01/2026

1. The present writ petition has been filed by the petitioner under Article 226 of the Constitution of India seeking expunction of certain adverse, sweeping and stigmatic remarks recorded against him and the investigating agency in two orders passed by the courts below, namely, the order dated 28.07.2022 (Annex.5) passed by the learned Sessions Judge, Jodhpur in Criminal Revision No.32/2022 and the subsequent order dated 01.03.2025 (Annex.7) passed by the learned Chief Judicial Magistrate, Balesar in Criminal Case No.170/2022.



2. The writ petition does not assail the jurisdiction of the courts below to entertain the proceedings nor does it seek interference with the operative directions issued therein insofar as they relate to remand or reconsideration. The grievance raised is confined to the recording of adverse remarks which, according to the petitioner, were unnecessary for adjudication, travel beyond the scope of the proceedings, attribute motives and lapses to the investigating officer, and were made without affording any opportunity of hearing.

3. Background facts leading to passing of the impugned orders are that pursuant to registration of the criminal case, investigation was conducted and a report under Section 173 of the Code of Criminal Procedure was submitted before the competent Magistrate. Dissatisfied with the conclusion of the investigation, the complainant moved an application under Section 190 of the Code seeking summoning of additional accused. The learned Magistrate declined the prayer by order dated 04.05.2022. Aggrieved thereby, the complainant preferred a revision petition. The revisional court, by order dated 28.07.2022, set aside the order of the Magistrate and remanded the matter for reconsideration. While doing so, the revisional court recorded certain observations touching upon the investigation and the conduct of the investigating officer. Upon remand, the Magistrate reconsidered the matter and passed a fresh order dated 01.03.2025, wherein further observations of a similar nature were





recorded. It is the remarks contained in these two orders which are sought to be expunged by way of the present writ petition.

4. Learned counsel for the petitioner submitted that the courts below, while exercising limited jurisdiction under Sections 190 and 397 of the CrPC, exceeded their remit by recording conclusions on disputed questions of fact and by attributing negligence and impropriety to the investigating officer. It was contended that such remarks were not essential for the decision of the matter and have serious civil and service consequences, yet were recorded without issuing notice or granting an opportunity of hearing.

5. Per contra, learned Public Prosecutor supported the impugned orders and submitted that the observations were made in the context of ensuring fairness in investigation and protection of the complainant's rights.

6. This Court has heard learned counsel for the parties and has carefully perused the impugned orders.

7. The scope of consideration in the present writ petition is limited to examining whether the remarks recorded in the impugned orders were warranted, necessary and within the permissible bounds of the jurisdiction exercised by the courts below. This Court is not concerned with the merits of the allegations or the correctness of the investigation.

8. For proper appreciation of the controversy, this Court considers it appropriate to extract the relevant remarks which are under challenge.





In the order dated 28.07.2022, at page 19, the revisional court observed as under:

“अब यदि वर्तमान प्रकरण में अनुसंधान अधिकारी द्वारा एकत्रित साक्षिक व अनुसंधान सार पर विचार किया जाए तो निश्चित रूप से यह स्पष्ट हो रहा है कि इस प्रकरण के अनुसंधान अधिकारी श्री राजूराम, तत्कालीन वृत्ताधिकारी, बालेसर, जिला जोधपुर द्वारा इस प्रकरण में एकत्रित साक्ष्य के साक्षिक मूल्यों को कतई गौर से नहीं देखा गया अथवा किसी दुर्भावना या षड्यंत्र के चलते गलत धारा में आरोप पत्र प्रस्तुत किया गया, परन्तु यह भी उल्लेखनीय है कि इस न्यायालय द्वारा निगरानी याचिका में विचारण न्यायालय के आदेश की शुद्धता, वैधता तथा औचित्यता देखी जानी है। दूसरी ओर यह अंकित किया जाना भी समीचीन है कि विचारण न्यायालय द्वारा प्रश्नगत मामले में अनुसंधान अधिकारी के निष्पक्ष अनुसंधान किए जाने अथवा गलत आरोप पत्र प्रस्तुत किए जाने बाबत कोई आदेश पारित नहीं किया है। लिहाजा इस निगरानी याचिका को pratipeshit करने के साथ ही यह निर्देश दिया जाना भी न्यायोचित प्रतीत होता है कि निगरानीकर्ता/प्रार्थिया के प्रार्थना पत्र पर पुनर्विचार करते हुए यदि अनुसंधान अधिकारी के अनुसंधान में कोई अनुचितता अथवा षड्यंत्र जैसा कृत्य प्रकट होता हो तो इस सम्बन्ध में अंक करते हुए अनुसंधान अधिकारी के विरुद्ध भी आवश्यक कार्यवाही सुनिश्चित करने हेतु लिखा जावे।”

Similarly, in the subsequent order dated 01.03.2025, para-2 and 3 at page no. 6-7 reads as under:

“इस सम्बन्ध में प्रकरण के अनुसंधान अधिकारी श्री राजूराम, तत्कालीन वृत्ताधिकारी, बालेसर, जिला जोधपुर द्वारा परिवादिया 'सु' के धारा 164 सीआरपीसी के बयान तथा प्रथम सूचना रिपोर्ट में वर्णित प्रथम घटना, जिसमें अभियुक्त प्रहलादराम अन्य व्यक्ति छोटूराम के साथ मिलकर परिवादिया के





घर में घुसकर चाकू की नोक पर डरा-धमकाकर बलात्कार करने का आरोप है, मैं अभियुक्त प्रहलादराम को बिना किसी ठोस आधार के घटना में शरीक नहीं मानकर प्रहलादराम द्वारा मात्र परिवारिया के अश्लील फोटोग्राफ्स फेसबुक पर वायरल करने के तथ्य को ही मानते हुए धारा 457, 384 तथा 376 डी भारतीय दण्ड संहिता के अपराध को पूर्णतः नकारते हुए अभियुक्त प्रहलादराम के विरुद्ध मात्र धारा 67, 67 ए आईटी एक्ट में न्यायालय हाजा के समक्ष आरोप पत्र पेश किया जाना उनके द्वारा विधि के प्रावधानों की पूर्ण अवहेलना और अपने कर्तव्यों के प्रति घोर लापरवाही का द्योतक है।

बलात्कार जैसे संवेदनशील मामलों में अनुसंधान अधिकारी द्वारा विधि के प्रावधानों की इस प्रकार पूर्ण अवहेलना अपेक्षित नहीं है। लिहाजा इस आदेश की एक प्रति श्रीमान् पुलिस महानिदेशक, राजस्थान को प्रेषित की जाकर उनसे अपेक्षा की जाती है कि वे प्रकरण के अनुसंधान अधिकारी श्री राजूराम, तत्कालीन वृत्ताधिकारी, बालेसर, जिला जोधपुर के विरुद्ध उचित कार्यवाही कर न्यायालय को अवगत करावें। ”

9. A careful reading of the aforesaid remarks shows that the courts below have gone beyond what was strictly required for deciding the matters before them. The observations attribute negligence, impropriety and possible mala fides to the investigating officer and virtually record conclusions on the fairness of investigation. Such findings were neither indispensable for remand nor necessary for reconsideration under Section 190 of the CrPC.

10. It is a settled principle that at the stage of cognizance, revision or remand, courts are required to exercise due restraint and to refrain from recording observations which may prejudice





the trial or entail civil or service consequences, particularly in the absence of an opportunity of hearing. Adverse or stigmatic remarks ought not to be made unless they are unavoidable for the decision of the case. It is equally a well-settled proposition of law, founded on the doctrine of *audi alteram partem*, that no person shall be condemned unheard. Any order having civil consequences, including an adverse bearing on service, career or reputation, cannot be sustained unless the person likely to be affected is afforded a reasonable opportunity of being heard. In the present case, serious and stigmatic observations, carrying potential service and career consequences for the petitioner, have been recorded by the courts below without issuance of notice or grant of any opportunity of hearing, which renders the impugned approach clearly violative of the principles of natural justice.

11. This Court is conscious of the seriousness of the allegations involved in the criminal case and the need for a fair and lawful investigation. However, the same objective could have been achieved without recording sweeping remarks of the nature extracted above.

12. For the reasons aforesaid, this Court is of the considered view that the writ petition deserves to be allowed and the impugned orders warrant interference only to the limited extent of expunging the adverse and stigmatic remarks contained therein.

13. Accordingly, the writ petition is allowed. The remarks extracted hereinabove made at page 19 of the order dated





28.07.2022 and at page no. 6-7 of the order dated 01.03.2025, along with any other running or connected adverse and stigmatic observations of like nature contained in the said orders, are hereby expunged.

14. It is clarified that the expunction shall not affect the operative directions passed by the courts below and shall not influence the merits of the criminal proceedings, which shall continue independently in accordance with law.

15. All pending applications are disposed of.

(FARJAND ALI),J

22-Pramod/-