



2026:AHJ:12345

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 6556 of 2024

Geeta Devi

.....Revisionist(s)

Versus

State Of U.P. And 10 Others

.....Opposite
Party(s)

Counsel for Revisionist(s) : Anupam Shyam Dwivedi,
Smt. Richa Dixita, Sudhir
Dixit

Counsel for Opposite Party(s) : G.A., Gorakh Nath Shukla,
Nitin Raj Singh

Court No. - 45

HON'BLE LAKSHMI KANT SHUKLA, J.

1. Heard Mr. Sudhir Dixit, learned Senior Advocate assisted by Mr. Anupam Shyam Dwivedi, learned counsel for revisionist, the learned A.G.A. appearing on behalf of the State and Mr. Gorakh Nath Shukla, the learned counsel appearing on behalf of opposite party no. 2.

2. Smt. Geeta Devi, the revisionist has approached this Court by means of present Criminal Revision assailing the order dated 21.10.2024 passed by the Judicial Magistrate, Iglas, Aligarh (hereinafter referred to as "the Jurisdictional Magistrate") in Misc. Case No. 148/11/2024, Geeta Devi v. Bhola and others, under Section 175(3) B.N.S.S., Police Station Kotwali Iglas, District Aligarh, whereby the Jurisdictional Magistrate has rejected the application of the applicant-revisionist holding that the matter is purely civil in nature and the application has been moved to give criminal color to a civil matter.

3. Feeling aggrieved by the aforesaid order, the present Criminal Revision has been preferred by the revisionist on the grounds that the impugned order is illegal, perverse, and has been passed without application of judicial mind. It is contended that the Jurisdictional Magistrate has committed a manifest error of law while passing the impugned order, rendering the same

unsustainable in the eyes of law. It is further contended that the impugned order has been passed in a mechanical manner, without considering the material available on record. In view of above, it is prayed that the impugned order be set aside by this Court in the instant Criminal Revision.

4. Elaborating upon his submissions, the learned Senior Counsel appearing on behalf of the revisionist submitted that although the application under Section 175(3) B.N.S.S. contains a detailed narration of incident, the same has not been considered by the learned Jurisdictional Magistrate. Attention of the Court has been drawn to paragraph 3 of the supplementary affidavit dated 07.11.2025, which contains the pedigree of applicant-revisionist.

5. It is contended that the present case involves two distinct individuals bearing the same name, namely, Atar Singh. One is Atar Singh son of Badan Singh and the other is Atar Singh son of Bhawan Singh. According to the pedigree, the forefather of revisionist was Bhawan Singh alias Bhagwan Singh, who had two sons, namely, Ramji Lal and Atar Singh alias Shiv Charan. The said Atar Singh (son of Bhawan Singh) died issueless on 26.09.2013, whereas Ramji Lal was survived by his daughter-in-law (the revisionist) being the widow of his deceased son Niranjan Lal alias Niranjan Singh and her two sons Bires and Rajendra. Ramji Lal also had another son, Banwari Lal, who expired on 24.08.2016.

6. It is further submitted that taking undue advantage of the similarity in names and also the death of Atar Singh son of Badan Singh on 22.12.2007, the opposite party nos. 2,3&4 got their names mutated not only in place of Atar Singh son of Badan Singh but also in respect of Gata No. 1603, admeasuring 0.639 hectare belonged to Atar Singh son of Bhawan Singh, the brother & father-in-law of the revisionist. When Atar Singh son of Bhawan Singh died issueless on 26.09.2013, his legal heirs, namely, the revisionist and her two sons, sought mutation through Form *Pa Ka* -11, whereupon they came to know that even prior to the death of Atar Singh son of Bhawan Singh, the opposite parties, by taking advantage of the death of Atar Singh son of

Badan Singh, had fraudulently secured mutation in respect of the property of a living person, i.e., Atar Singh son of Bhawan Singh. It is further submitted that the said mutation order was stayed by the Tehsildar vide order dated 09.12.2013 which is still in force. However, concealing these facts opposite party nos. 2,3 and 4 executed a sale deed, wherein opposite party nos. 5 to 11 are either vendees or marginal witnesses. The said sale deed has been brought on record as Annexure 7 to the revision.

7. It is further contended that though opposite party nos. 2,3 and 4 had no right, title or interest in the property in question and they were well-versed about the order dated 09.12.2013, they executed a sale deed. Therefore, their actions cannot be said to be merely of a civil nature; rather, the same clearly fall within the ambit of criminal offence, having been committed with the intent to deprive the revisionist of her lawful rights. However, this important aspect has not been considered by the Jurisdictional Magistrate.

8. To buttress his submissions, the learned Senior Counsel appearing on behalf of the revisionist placed reliance upon paragraphs 37, 38, 39, 40, 41 and 42 of the judgement of Supreme Court in **Sadiq B. Hanchinmani v. The State of karnataka and others, 2025 SCC OnLine SC 2334**, which are reproduced hereinbelow:

"37. At this juncture, it would be apposite to refer to the position of law enunciated in Madhao v. State of Maharashtra, (2013) 5 SCC 615 : (2013) 4 SCC (Cri) 141, wherein it was held that:

'18. When a Magistrate receives a complaint he is not bound to take cognizance if the facts alleged in the complaint disclose the commission of an offence. The Magistrate has discretion in the matter. If on a reading of the complaint, he finds that the allegations therein disclose a cognizable offence and the forwarding of the complaint to the police for investigation under Section 156(3) will be conducive to justice and save the valuable time of the Magistrate from being wasted in enquiring into a matter which was primarily the duty of the police to investigate, he will be justified in adopting that course as an alternative to taking cognizance of the offence

itself. As said earlier, in the case of a complaint regarding the commission of cognizable offence, the power under Section 156(3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1)(a). However, if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to revert back to the pre-cognizance stage and avail of Section 156(3).'

(emphasis supplied)

38. *In the background of the factual position, the JMFC's Order dated 18.01.2018 cannot be faulted. Enough material is available to justify a full-fledged investigation by the police. The JMFC, to our mind, had rightly referred the matter for investigation to the police since a prima facie case stood made out against the accused, in view of the material that was available with the JMFC. In Ramdev Food Products Private Limited v. State of Gujarat, (2015) 6 SCC 439 : (2015) 3 SCC (Cri) 192, three learned Judges of this Court opined:*

'13. We may first deal with the question as to whether the Magistrate ought to have proceeded under Section 156(3) or was justified in proceeding under Section 202(1) and what are the parameters for exercise of power under the two provisions.

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22. *Thus, we answer the first question by holding that:*

22.1. *The direction under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone the issuance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice it is considered appropriate to straightaway direct investigation, such a direction is issued.*

22.2. *The cases where Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet to determine "existence of sufficient ground to proceed". Category of cases falling under para 120.6 in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] may fall under Section 202.*

22.3. *Subject to these broad guidelines available from the scheme of the Code, exercise of discretion by the Magistrate is guided by interest of justice from case to*

case.

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38. In *Devarapalli Lakshminarayana Reddy v. V. Narayana Reddy* [(1976) 3 SCC 252 : 1976 SCC (Cri) 380], *National Bank of Oman v. Barakara Abdul Aziz* [(2013) 2 SCC 488 : (2013) 2 SCC (Cri) 731], *Madhao v. State of Maharashtra* [(2013) 5 SCC 615 : (2013) 4 SCC (Cri) 141], *Rameshbhai Pandurao Hedau v. State of Gujarat* [(2010) 4 SCC 185 : (2010) 2 SCC (Cri) 801], the scheme of Sections 156(3) and 202 has been discussed. It was observed that power under Section 156(3) can be invoked by the Magistrate before taking cognizance and was in the nature of pre-emptory reminder or intimation to the police to exercise its plenary power of investigation beginning with Section 156 and ending with report or charge-sheet under Section 173. On the other hand, Section 202 applies at post-cognizance stage and the direction for investigation was for the purpose of deciding whether there was sufficient ground to proceed.'

(emphasis supplied)

39. Ramdev (supra) was noticed in *Cardinal Mar George Alencherry v. State of Kerala*, (2023) 18 SCC 730. The High Court, especially vide the First Impugned Order, seems to have been unduly swayed by the usage of the term 'further' by the JMFC. The relevant extract from the First Impugned Order has already been quoted hereinabove. It would be in the fitness of things to note the JMFC's Order dated 18.01.2018:

'...

On perusal of the private complaint, it is noticed that the aforesaid case needs to be further investigated by the police. Hence, this Court feels that the aforesaid case needs to be referred under Sec. 156(3) of Cr.P.C. Hence, the above matter is referred to Khade Bazar P.S. for investigation under Sec. 156(3) of Cr.P.C.

...'

(emphasis supplied)

40. The afore-extract leaves no room of doubt that the JMFC had referred the matter to police under Section 156(3) of the Code, and the usage of 'further' was not in the context of Section 173(8) of the Code, which fine distinction the First Impugned Order has glossed over. The case(s) at hand, in our considered view, demonstrate material showing the commission of cognizable offence(s), on the face of it, which

would merit police investigation. Therefore, interdiction of the Impugned Orders is necessitated.

41. This Court in a composition of three learned Judges observed in *Neeharika Infrastructure (P) Ltd. (supra)* as follows:

'16. In a given case, there may be allegations of abuse of process of law by converting a civil dispute into a criminal dispute, only with a view to pressurise the accused. Similarly, in a given case the complaint itself on the face of it can be said to be barred by law. The allegations in the FIR/complaint may not at all disclose the commission of a cognizable offence. In such cases and in exceptional cases with circumspection, the High Court may stay the further investigation. However, at the same time, there may be genuine complaints/FIRs and the police/investigating agency has a statutory obligation/right/duty to enquire into the cognizable offences. Therefore, a balance has to be struck between the rights of the genuine complainants and the FIRs disclosing commission of a cognizable offence and the statutory obligation/duty of the investigating agency to investigate into the cognizable offences on the one hand and those innocent persons against whom the criminal proceedings are initiated which may be in a given case abuse of process of law and the process. However, if the facts are hazy and the investigation has just begun, the High Court would be circumspect in exercising such powers and the High Court must permit the investigating agency to proceed further with the investigation in exercise of its statutory duty under the provisions of the Code. Even in such a case the High Court has to give/assign brief reasons why at this stage the further investigation is required to be stayed. The High Court must appreciate that speedy investigation is the requirement in the criminal administration of justice.'

42. It was further highlighted:

'33.15. When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 CrPC, only has to consider whether the allegations in the FIR disclose the commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR.'

(emphasis supplied)"

9. In view of above, the learned Senior Counsel appearing on behalf of the revisionist contended that the impugned order is illegal, perverse and has been passed without considering the material evidence available on record. It is, therefore, liable to be set aside by this Court in exercise of its revisional jurisdiction.

10. *Per contra*, the learned counsel appearing on behalf of opposite party no. 2 vehemently opposed the revision and submitted that page 14 of the short counter affidavit is a copy of the family register, which indicates that the head of the family was Atar Singh son of Late Bhaman Singh and Ramwati alias Dharmwati Devi wife of Atar Singh along with Bhola and Shivilahri, sons of Atar Singh are recorded as family members.

11. It is further submitted that page 16 of the short counter affidavit contains a copy of the order dated 11.07.2024 passed by the Civil Judge (Junior Division), Iglas, Aligarh in Original Suit No. 85 of 2024, Veerendra Devi and others v. Geeta Devi and others, whereby application 6C2 was allowed *ex parte*, restraining the revisionist not to interfere with the peaceful possession of the plaintiffs of that case. It is thus contended that the Civil Court has *prima facie* recognized the entitlement of the plaintiffs over the property in dispute. Accordingly, it is argued that the dispute is purely civil in nature and does not warrant interference by this Court in its revisional jurisdiction.

12. In reply to the above contentions, learned Senior Counsel appearing on behalf of the revisionist urged that the pedigree presented by the revisionist in her supplementary affidavit dated 07.11.2025 has not been specifically denied by opposite party no. 2, even in his short counter affidavit, filed after the supplementary affidavit. It is urged that in the absence of specific denial, the said facts must be deemed to have been admitted. It is a settled principle of law that in absence of pleadings, no evidence can be looked into.

13. Having heard the rival submissions advanced by the learned counsel for parties and upon consideration of the material available on record, particularly, the specific non denial of the

pedigree, mentioned in paragraph 3 of the supplementary affidavit, the existence of a stay order on mutation passed against opposite party nos. 2,3 and 4 and in favour of the revisionist, as well as the settled legal position that disputes relating to agricultural land and rights therein are primarily determinable by the Revenue Court, this Court is of the view that the present case discloses a *prima facie* instance of unauthorized sale of property knowingly. Such an act cannot be confined merely to a civil wrong but also attracts criminal liability.

14. In view of above discussion, the impugned order is not sustainable in the eyes of law and is liable to be set aside.

15. Accordingly, the revision is **allowed**. The impugned order dated 21.10.2024 passed by the Judicial Magistrate, Iglas, Aligarh in Misc. Case No. 148/11/2024, Geeta Devi v. Bhola and others, under Section 175(3) B.N.S.S., Police Station Kotwali Iglas, District Aligarh is hereby **set aside**. The Jurisdictional Magistrate concerned is directed to pass a fresh order on the matter in accordance with law and after affording due opportunity of hearing to the learned counsel for parties.

16. Let this order be communicated to the Jurisdictional Magistrate concerned by the Registrar (Compliance)

April 21, 2026
Brijesh Maurya

(Lakshmi Kant Shukla,J.)