



2025:AHC:166912

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 1232 of 2025

Amrendra Jaiprakash Private
Limited

.....Revisionist(s)

Versus

State Of U.P. And 5 Others

.....Opposite
Party(s)

Counsel for Revisionist(s) Deepankar Chaudhary,
Nikhil Kumar, Vagish
Yadav

Counsel for Opposite Party Ashishek Tripathi, G.A.

Court No. - 86

HON'BLE NALIN KUMAR SRIVASTAVA, J.

1. Heard learned counsel for the revisionist, learned A.G.A. for the State and learned counsel for the opposite party no. 2 and perused the record.

2. The present revision has been preferred by the revisionist against the order dated 14.02.2025 passed by the Chief Judicial Magistrate, Ballia whereby the application under Section 175 (3) B.N.S.S. moved by the revisionist was ordered to be registered as criminal complaint case and feeling aggrieved with the said order, the present revision has been preferred.

3. It is submitted by learned counsel for the revisionist that the revisionist was running a C.N.G. gas agency. On the instructions of the opposite party no. 2, the revisionist deposited a total amount of Rs. 49,52,000/- through RTGS in several heads and receipts were also issued in respect thereof by the opposite party no. 2. It is further submitted that as per instructions made by the opposite party no. 2, no land survey

team visited the village of the revisionist and no C.N.G. gas agency was given to the revisionist by the opposite party no. 2 and its officers opposite party nos. 3, 4 and 5 and in that way cheating was made with the revisionist by the opposite party nos. 2 to 6 resulting into wrongful loss to the revisionist and wrongful gain to the aforesaid opposite parties. It is further submitted that since all the transactions have been made through online, a huge monetary loss has been caused to the revisionist. The matter being related to the cyber crime, the revisionist is not in a position to collect the entire evidence relating to the alleged offence. It is next submitted that while deciding the aforesaid application, the learned Magistrate imposed the burden of collection of evidence upon the revisionist. It is also submitted that the observation given by the learned Chief Judicial Magistrate while passing the impugned order is totally wrong that the complainant/revisionist could easily collect all the evidence relating to this matter. It is next submitted that although an application under Section 175(3) B.N.S.S. may be treated as criminal complaint but it is not so in all cases universally. It was a case which requires thorough investigation but its significance was totally ignored by the learned Magistrate.

4. Per contra, learned counsel for the opposite party no. 2 vehemently opposed the revision and it is submitted that the alleged transaction has taken place online and all the evidence could easily be collected by the revisionist.

5. It is trite law that an application under

Section 156(3) Cr.P.C. can very well be treated as complaint case by the Magistrate in appropriate cases after applying its judicial mind into the allegations of the case. What needs to be considered by the Court is the requirement of evidence with a view to find out a successful prosecution and also whether the complainant itself is capable of collecting evidence to prove his case. This Court in **Gulab Chand Upadhyay Vs. State of U.P. and others 2002 SCC OnLine All 1221** issued some important guidelines as to in what circumstances the Magistrate can order to treat an application under Section 156(3) Cr.P.C. as complaint and relevant paragraphs of the said judgment are pertinent to be quoted as herein-under :-

"20. In these circumstances, the question arises that when a Magistrate is approached by a complainant with an application praying for a direction to the police under Section 156 (3) to register and investigate an alleged cognizable offence, why should he

(A) grant the relief of registration of a case and its investigation by the police under Section 156 (3) Cr.P.C. and when should he

(B) treat the application as a complaint and follow the procedure of Chapter XV of Cr.P.C.

21. The scheme of Cr.P.C. and the prevailing circumstances require that the option to direct the registration of the case and its investigation by the police should be exercised where some

investigation is required, which is of a nature that is not possible for the private complainant, and which can only be done by the police under whom statute has conferred the powers essential for investigation, for example

(1) where the full details of the accused are not known to the complainant and the same can be determined only as a result of investigation, or

(2) where recovery of abducted person or stolen property is required to be made by conducting raids or searches of suspected places or persons, or

(3) where for the purpose of launching a successful prosecution of the accused evidence is required to be collected and preserved. To illustrate by example cases may be visualised where for production before Court at the trial (a) sample of blood soaked soil is to be taken and kept sealed for fixing the place of incident; or (b) recovery of case property is to be made and kept sealed; or (c) recovery under Section 27 of the Evidence Act; or (d) preparation of inquest report; or (e) witnesses are not known and have to be found out or discovered through the process of investigation.

22. But where the complainant is in possession of the complete details of all the accused as well as the witnesses who have to be examined and neither recovery is needed nor any such material evidence is required to be collected which can be done only by the police, no

"investigation" would normally be required and the procedure of complaint case should be adopted. The facts of the present case given below serve as an example. It must be kept in mind that adding unnecessary cases to the diary of the police would impair their efficiency in respect of cases genuinely requiring investigation. Besides even after taking cognizance and proceeding under Chapter XV the Magistrate can still under Section 202(1) Cr.P.C. order investigation, even thought of a limited nature (see para 7 of JT (2001) 2 (SC) 81: ((2001) 2 SCC 628: AIR 2001 SC 571)."

6. In the light of the aforesaid directions if the facts narrated in the case in hand are examined, it can easily be found that the present case is subject of cyber crime. The main accused is a company having its office at Gujrat and its directors, the other co-accused persons of this case also used to sit there. Some of the facts mentioned in the complaint are of such a nature which make the scope of investigation very large and extensive which the complainant is incapable to collect and that is why the thorough investigation made by the police is required in this case. The discretion given by the Magistrate to treat the application under Section 156(3) Cr.P.C. as complaint never needs, that depends solely upon the wish of the Magistrate to pass an order for registration of the F.I.R. on such an application or to register it or to pass order to treat as a criminal complaint. Rather, it always depends upon the facts and circumstances of each case coupled with the judicial discretion of the

Magistrate.

7. In the instant case keeping in view the nature of the offence, this Court is of the view that the learned Magistrate has committed an illegal error by refusing to treat the application under Section 156 (3) Cr.P.C. moved by the revisionist/applicant and to pass the order to treat it as a complaint case.

8. In **Anmol Singh Vs. State of U.P. and others 2021 (1) ADJ 4000** it has been held that merely because facts are in knowledge of the applicant, direction to lodge F.I.R. cannot be refused.

9. In view of the aforesaid discussions, the revision is **allowed**. The impugned order dated 14.02.2025 passed by the Chief Judicial Magistrate, Ballia is hereby set aside and the matter is remanded back to the learned Chief Judicial Magistrate, Ballia to reconsider the matter and pass fresh orders on the application of the revisionist/applicant after affording opportunity of hearing to him in accordance with law.

September 17, 2025

Rmk.

(Nalin Kumar Srivastava,J.)