

In the court of Dist. & Addl. Sessions Judge, Biraul, Darbhanga.

Present:-

Shiv Kumar

Dist. & Addl. Sessions Judge

Sub Divisional Courts, Biraul, Darbhanga.

Biraul, Dated 03rd of June, 2026.

Criminal Revision No. 05 of 2026

1. Dilkhush Paswan, S/o- Sanjeet Paswan.

2. Gopal Paswan, S/o- Sanjeet Paswan

R/o Village- Patnima Bhogiyani, P.S.- Biraul, Dist.-Darbhanga

.....**Revisionist/Petitioner.**

Versus,

1. The State of Bihar.

..... **Opposite Parties.**

Counsel for Revisionist- Sri Suman Kumar Sahu, Ld. Advocate.

Counsel for State- Sri Bachcha Rai, Ld.A PP.

ORDER

03-06-2026. The present Criminal Revision has been preferred by the above-mentioned revisionist-petitioners against the impugned order dated 17-07-2023 passed by Ld. ACJM, Biraul in connection with Biraul PS case No. 43/2022 (GR No. 77/22) whereby the learned ACJM, Biraul has taken cognizance against five accused as mentioned in para 11 of charge-sheet for the offences u/s 341, 323, 324, 307, 504, 34 of IPC and issued process for securing their presence.

The brief facts of the case as stated in the application of informant in brief is that on 06.02.2022 at around 7:30 PM, informant was returning home after finishing some essential work from his sister's village, Sahasram. As soon as he reached the empty, deserted area between Patniya and Pokhram, near the embankment of the pond, the accused persons namely Dilkhush Paswan, Gopal Paswan, Kanhaiya Paswan, Deepak Paswan and Suraj Paswan and 4-5 other

unknown persons, were armed with knives, fighters and rods in their hands. As soon as they saw informant, they all came together surrounded him from all sides, and started a scuffle to rob him. When informant resisted, Suraj Paswan struck his right eye with a fighter, causing severe injury and wounds to his eye, and everything went dark. Following this, Deepak Paswan struck his head with a knife, which started bleeding, and he fell down. Even in his fallen state, they mercilessly beat him, leaving him in a terrible condition. Dilkhus Paswan snatched a wallet from his pocket containing Rs. 20,000/- cash, his Adhar Card, Driving licence and vehicle documents. Kanhaiya Paswan snatched his Vivo company mobile phone containing an Airtel SIM card. Barun Paswan snatched a gold chain from his neck weighing one bhari valued at around Rs. 45,000/-. They also threatened informant. After that injured was taken to PHC, Biraul.

On the basis of aforementioned information Biraul PS case NO. 43 of 2022 dt. 07.02.2022 has been lodged against 5 accused persons namely 1. Dilkhus Paswan 2. Gopal Paswan 3. Kanhaiya Paswan 4. Deepak Paswan 5. Suraj Paswan. The police after completion of its investigation has submitted charge-sheet bearing No. 212/23 dt. 28.05.2023 against three accused persons namely Dilkhus Paswan, Gopal Paswan and Kanhaiya Paswan as mentioned in para 11 of the charge-sheet. The police has not sent up two accused persons namely Deepak Kumar and Suraj Paswan in the charge-sheet for trial and their names have been mentioned in column 12 of the charge-sheet. After that the Ld. ACJM-I, Biraul has taken cognizance against five accused persons as mentioned in para 11 of the charge-sheet for the offence u/s 341, 323, 324, 307, 504, 34 of IPC by its order dt. 17.07.2023 and directed for issuance of summons against the accused persons for their appearance.

Being aggrieved and dissatisfied by the order dt. 17.07.2023 of the Ld. ACJM-I, Biraul the petitioners (herein revisionists) have filed the present revision petition.

Heard the learned counsel for the revisionists, learned counsel for the State (herein Opposite Party) and perused the record as well as other relevant documents as annexed with this criminal revision petition.

The learned counsel for the revisionist argued that impugned order is bad in law as well on facts. The impugned order is against the material available on the record. He submits that the impugned order is illegal, arbitrary and contrary to the materials available on record. The Ld. Court below failed to appreciate the contents of the police report submitted under section 173 Cr.P.C. before taking cognizance. That a bare perusal of paragraph no. 11 of the charge-sheet clearly reveals that only three accused persons, namely Dilkhus Paswan, Gopal Paswan and Kanhaiya Paswan have been sent up for trial by the Investigating Officer. The Ld. Magistrate while taking cognizance recorded that the cognizance is being taken against five accused persons as mentioned in paragraph No. 11 of the charge-sheet, which is factually incorrect and contrary to the record. That the names of Deepak Kumar and Suraj Paswan do not find place in paragraph No. 11 of the charge-sheet. Their names have been mentioned in paragraph No. 12 of the charge-sheet, wherein the Investigating Officer has specifically not sent them up for trial. Thus, the police report exonerated the said two persons and no material was found sufficient against them for submission of charge-sheet. That while it is true that a Magistrate may disagree with the conclusion of the Investigating Officer and take cognizance against persons not sent up for trial, such power can be exercised only upon application of judicial mind to the materials collected during investigation and by recording reasons indicating satisfaction regarding the involvement of such persons. In the present case, the impugned order does not disclose any such consideration or satisfaction. Rather, the Ld. Magistrate proceeded on the erroneous assumption that all five accused persons had been charge-sheeted in paragraph No. 11 of the police report. That the very foundation of the impugned order is therefore based upon a patent factual error apparent on the face of the record. The cognizance order, insofar as it relates to Deepak Kumar and Suraj Paswan, suffers from complete non application of mind and is liable to be set aside. That he submits that the cases of Dilkhus Paswan and Gopal Paswan were separated and transmitted to the Juvenile Justice Board, Darbhanga, as both were found to be juveniles on the date of occurrence. Subsequently, the Ld. Juvenile Justice Board, Darbhanga, after trial acquitted both the juveniles vide order dt. 17.06.2025. He submits that the impugned order dt. 17.07.2023, therefore, suffers from material irregularity,

illegality and non application of judicial mind and is liable to be interfered with in exercise of revisional jurisdiction. In view to the facts and circumstances stated hereinabove, he prayed to set aside the order dt. 17.07.2023 passed by the Ld. ACJM-I, Biraul.

The learned counsel for the State(OP) though opposed the revision petition but fairly admitted that two accused persons namely Dilkhus Paswan and Gopal Paswan have been acquitted by the Juvenile Justice Board, Darbhanga by its order dt. 17.06.2025 in the present case.

After hearing both sides and from perusal of records of the present case and the documents annexed with the present revision petition it has been found that from a plain reading of the impugned order dt. 17.07.2023, it appears that the Ld. ACJM-I, Biraul, while taking cognizance of the offences under sections 341, 323, 324, 307, 504, 34 of IPC observed that five accused persons had been charge-sheeted in paragraph No. 11 of the charge-sheet. However, on perusal of the charge-sheet, this Court finds that Paragraph No. 11 mentions only three accused persons namely Dilkhus Paswan, Gopal Paswan and Kanhaiya Paswan who were sent up for trial by the Investigating Officer.

It further appears that the names of Deepak Kumar and Suraj Paswan have been mentioned in paragraph No. 12 of the charge-sheet and they were not sent up for trial by the Investigating Officer. Thus, the observation recorded by the the Ld. Magistrate that all the five accused persons were charge-sheeted in paragraph No. 11 is factually incorrect and contrary to the materials available on record.

This court further finds that the cases of Dilkhus Paswan and Gopal Paswan were transmitted to the Juvenile Justice Board, Darbhanga as submitted by both counsels(counsel for revisionist and counsel for State). It is not in dispute that the Ld. Juvenile Justice Board, Darbhanga, after conclusion of the inquiry, acquitted both the aforesaid accused persons namely Dilkhus Paswan and Gopal Paswan by its order dt. 17.06.2025.

In the facts and circumstances of the case, this Court is of the considered opinion that the Ld. Magistrate proceeded on an erroneous factual premise that

all the five accused persons had been charge-sheeted in paragraph 11 of the charge-sheet. The impugned order, therefore, reflects non application of mind to the contents of the police report and suffers from material irregularity and illegality. Accordingly the order dt. 17.07.2023 passed by Ld. ACJM, Biraul, Darbhanga taking cognizance against the five accused persons cannot be sustained in the eye of law and is liable to be set aside.

ORDER

Consequently, the revision petition is **allowed**. The impugned order dt. 17.07.2023 passed by the Ld. ACJM, Biraul, Darbhanga is hereby set aside. The matter is remitted to the Ld. Court below for passing a fresh order on the question of cognizance in accordance with law after considering the charge-sheet and materials available on the record and after applying its independent judicial mind. Let the lower court records(if any) be sent back forthwith along with a copy of this order. The revision file be consigned to the record room as per law.

(Dictated)

(Shiv Kumar)
Addl. Sessions Judge,
Biraul(Darbhangha)
03.06.2026

The order has been corrected, pronounced, signed and dated by me in the open court.

(Shiv Kumar)
Addl. Sessions Judge
Biraul