

IN THE COURT OF SESSIONS JUDGE, GAYAJI
Criminal Revision No. 01/2025

dicial Magistrate to give opportunity to the revisionist to be heard before accepting the final report in respect of other accused being O.P. No.- 3 and 4 but in this case the revisionist has not been given any opportunity to be heard at the time of consideration of police report. He concludes that the impugned order passed by the Id. Court below is vague, not sustainable in the eyes of law and same deserves to be set aside.

(4) On the other hand Id. counsel appearing for opposite parties vehemently opposes the prayer of revisionist. He argues that the Id. Court below has not passed any illegal order and order was passed on the basis of material available on the record as well as in the police report. The Id. counsel further contends that had the police submitted report exonerating all the accused persons, the mandatory requirement of notice would have been there but since the police has submitted the charge-sheet against one person, it can not be treated as a final form rather it would be treated as charge-sheet and in the case of submission of charge-sheet, no mandatory notice to the informant is required.

(5) The Id. counsel further submitted that O.P. No. 3 happens to be teacher in Guraru and he resides over there and he was not present at the spot, whereas O.P. No. 4 was also not present at the time of occurrence as he was in Bihar Sharif for treatment of his wife. So, he prays that impugned order does not require any revisional interference.

(6) The Id. counsel of State was also heard.

(7) In view of rival contentions and legal issues raised before this court, the court had on 23.02.2026 requested Sri Yugal Prasad and Sri Kamlesh Kumar, Id. advocates, present in the court room to act as *amicus curiae* to assist this Court to arrive at a correct conclusion based on the law declared by Constitutional Courts on this subject.

IN THE COURT OF SESSIONS JUDGE, GAYAJI
Criminal Revision No. 01/2025

(8) Placing reliance on the decision of Supreme Court in AIR 1985 SC 1285), Sri Yugal Prasad and Sri Kamlesh Kumar, experienced advocates, amicus curiae, contended that it is the informant, who sets the machinery of investigation into motion by filing First Information Report and so any outcome of the investigation of the police is of vital interest of him.

(9) They further contended that upon receiving the report by the police, if Judicial Magistrate decides to take cognizance and issue process irrespective of report has been submitted against all accused or exonerating some of the accused or all accused, the informant is not prejudicially affected because cognizance of offence is taken by the Id. Judicial Magistrate and the case shall proceed. But if the Id. Judicial Magistrate takes the view that though there is sufficient ground for proceeding against some whereas there is no sufficient ground for proceeding against others mentioned in the First Information Report, the informant would certainly be prejudiced because the First Information Report lodged by him would have failed of its purpose, wholly or in part. Moreover, when the interest of the informant in prompt and effective action being taken on the First Information Report lodged by him is clearly recognised by the provisions contained in sub-section (2) of Section 154, sub-section (2) of Section 157 and sub-section (2)(ii) of Section 173, it must be presumed that the informant would equally be interested in seeing that the Magistrate takes cognizance of the offence and issues process, because that would be culmination of the First Information Report lodged by him. There can, therefore, be no doubt that when, on a consideration of the report made by the officer in charge of a police station under sub-section (2)(i) of Section 173, the Magistrate is not in-

IN THE COURT OF SESSIONS JUDGE, GAYAJI
Criminal Revision No. 01/2025

clined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. We are accordingly of the view that in a case where the magistrate to whom a report is forwarded under sub-section (2) (i) of Section 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report.

(10) I have considered the aforesaid submissions advanced by both parties as well submissions advanced by Sri Yugal Prasad and Sri Kamlesh Kumar, experienced advocates, and perused the impugned order dated 23.10.2024. This court finds force in the submissions advanced by Sri Yugal Prasad and Sri Kamlesh Kumar, experienced advocates, who rendered assistance as amicus curiae. Agreeing with the view of Id. amicus curiae, this Court is of the opinion that exonerating two accused being O.P. No. 3 & 4 by the police in its report is tantamount to submission of final form in respect of them and thus opportunity should have been given to the informant of being heard at the time of consideration of report as per mandatory obligation of the Judicial Magistrate and on that score the impugned order passed by Id. Judicial magistrate suffers from illegality and it can not be allowed to stand. As such this revision application is allowed and impugned order passed by Id. Judicial Magistrate is hereby set aside.

IN THE COURT OF SESSIONS JUDGE, GAYAJI
Criminal Revision No. 01/2025

(11) Matter is remitted back to the Id. Judicial Magistrate who will consider the matter afresh and pass an order in accordance with law. Before passing any order on the report, the Id. Judicial Magistrate will issue notice to the informant and after hearing the parties will dispose of the matter.

(12) While parting with the order, this court places on record its deep appreciation for the assistance rendered by Sri Yugal Prasad and Sri Kamlesh Kumar, Id. advocates as amicus curiae.

Let a copy of this order be sent to court concerned forthwith.

(Dictated and corrected)

Sd/-
(M. K. Kaushik)
Sessions Judge, Gayaji
24.03.2026

Date of Judgment/Order	24.03.2026
Date of reserving Judgment/Order	N/A
Uploading Date	25.03.2026
Uploaded by	Steno (Vikash Kumar)