

**IN THE COURT OF DISTRICT & ADDITIONAL SESSIONS JUDGE-II,
DANAPUR, DISTRICT -PATNA (BIHAR)**

**Present-Kshiprachala Anjalee
Additional Sessions Judge II, Danapur**

Criminal Rev. No. 618 of 2024

Date of order:-30-05-2026

**(Under this Criminal Revision, order dated 21-06-2024 passed by Learned
Additional Chief Judicial Magistrate I, Danapur in Complaint Case
No.660(C) of 2024 has been assailed)**

Revisionists	Kanti Devi, W/O Late Rameshwar Prasad, Resident of Village-Piplawan, Police Station- Piplawan, District-Patna, Bihar.
Represented By	Sri Mukund Kumar, Advocate
Opposite Party	1.The State of Bihar. 2.Sonam Kumari, W/O Late Mukesh Kumar, Resident of Village-Piplawan, Police Station- Piplawan, District-Patna, Bihar. 3. Mukesh Kumar, S/O Not known, Bench Clerk, ACJM I, Danapur, Patna
Represented By	Learned Counsel for the Opp. Party No.1: Sri Ramkeshwar Prasad, Addl. P.P. Learned Counsel for the Opp. Party Nos.2 - Sri Yogendra Dwivedi

O R D E R

1. The present criminal revision has been preferred under Sections 438 and 440 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) assailing the order dated 21.06.2024 passed by the learned A.C.J.M.-I, Danapur in Complaint Case No. 660 of 2024, whereby the complainant was directed to furnish sanction order in respect of accused no. 2, namely Mukesh Kumar, a government servant, before consideration of the prayer made under Section 156(3) Cr.P.C. (corresponding to Section 175(3) BNSS).

2. Heard learned counsel for the revisionist, learned APP for the State and learned counsel appearing on behalf of Opposite Party No. 2. None appeared on behalf of the opposite party no. 3 despite service of notice, however, learned APP the State has presented his case before the Court. The records of the court below have also been carefully perused.
3. The principal grievance of the revisionist is that the learned Magistrate has erroneously insisted upon production of sanction under Section 197 Cr.P.C. at the pre-cognizance stage while considering the prayer for forwarding the complaint for investigation under Section 156(3) Cr.P.C.
4. On the other hand, learned counsel for the opposite party submits that one of the accused is a public servant and, therefore, in absence of prior sanction under Section 197 Cr.P.C., no direction under Section 156(3) Cr.P.C. could have been issued.
5. The only issue which falls for determination in the present revision is whether previous sanction under Section 197 Cr.P.C. is a condition precedent for passing an order under Section 156(3) Cr.P.C. directing registration of FIR and investigation against a public servant. It is now well settled that an order under Section 156(3) Cr.P.C. is passed at the pre-cognizance stage. The Magistrate, while exercising jurisdiction under the said provision, does not take cognizance of the offence but merely directs investigation by the police.
6. Recently, the Hon'ble Supreme Court has authoritatively settled the controversy and held that the requirement of previous sanction under Sections 196 and 197 Cr.P.C. (and the corresponding provisions under BNSS) operates only at the stage of taking cognizance and does not extend to the pre-cognizance stage of registration of FIR or investigation under

Section 156(3) Cr.P.C. / Section 175(3) BNSS. The Court further held that an order directing investigation under Section 156(3) does not amount to taking cognizance within the meaning of Section 190 Cr.P.C. and, therefore, insistence on prior sanction at that stage is legally unsustainable. **(Ashwini Kumar Upadhyay v. Union of India & Ors. (W.P. (C) No. 943 of 2021, decided on 29.04.2026).**

7. The aforesaid principle is also in consonance with the settled legal position that investigation and taking cognizance are two distinct stages of criminal proceedings. The question whether sanction under Section 197 Cr.P.C. is ultimately required is to be examined by the competent court at the appropriate stage when cognizance of the offence is proposed to be taken and after considering whether the alleged acts bear a reasonable nexus with the discharge of official duty.
8. In the present case, the learned Magistrate, before even deciding the application under Section 156(3) Cr.P.C., directed the complainant to produce sanction order in respect of accused no. 2. Such direction amounts to importing a statutory requirement at a stage where the law does not contemplate the same. Consequently, this Court is of the considered opinion that the impugned order dated 21.06.2024 suffers from legal infirmity and cannot be sustained in the eyes of law.
9. Accordingly, the revision petition is allowed. The order dated 21.06.2024 passed by the learned A.C.J.M.-I, Danapur in Complaint Case No. 660 of 2024, directing the complainant to furnish sanction order in respect of accused no. 2 before consideration of the application under Section 156(3) Cr.P.C., is hereby set aside.
10. The matter is remitted to the learned court below with a direction to

consider the complaint petition and the prayer made under Section 156(3) Cr.P.C. on its own merits and in accordance with law, uninfluenced by the requirement of prior sanction at the pre-cognizance stage. Needless to observe that if at the stage of taking cognizance the learned court finds that sanction under Section 197 Cr.P.C. is legally required, it shall deal with the issue in accordance with law.

11. Office is directed to remit back the original Court to the concerned Court along with copy of this final order to pass fresh order in accordance of law. The parties are left to bear their own cost. O/C is further directed to consign the record to the record room as per law.

Signed, sealed, and delivered in the open Court.

(Dictated & corrected by me)

(Dictated)

(Kshiprachala Anjalee)
Additional Sessions Judge-II,
Danapur.
Date:30-05-2026

(Kshiprachala Anjalee)
Additional Sessions Judge-II,
Danapur.
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