IN THE COURT OF SH. PURSHOTAM PATHAK,
ADDITIONAL SESSIONS JUDGE-05, SOUTH DISTRICT, SAKET COURTS : DELHI

Cr Rev/115/2026
DLST010031222026

SHIV SHANKAR GAUR Vs. THE STATE

SHIV SHANKAR GAUR
S/O SH. SATISH KUMAR
R/O H.NO. 1824-P, SECTOR-64,
BALLABHGARH, FARIDABAD

... Revisionist / Proposed Accused

VERSUS

(1) THE STATE OF DELHI OF NCT

(2) AJAY PRATAP SINGH
S/O SH. SANTOSH KUMAR SINGH
R/O H.NO. 80/C-1, RAILWAY COLONY,
TUGLAKABAD, NEW DELHI-110044

... Respondent/Complainant

DATE OF INSTITUTION	:	17.03.2026
ARGUMENTS HEARD ON	:	11.07.2026
DATE OF JUDGMENT	:	11.07.2026

J U D G M E N T

1. By way of the instant petition, revisionist/proposed accused take exception to an order dated 11.03.2026 passed by Ld. JMFC-02, South District, Saket Court, New Delhi, in case bearing CT no.

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2381/2025, titled as 'Ajay Pratap Singh vs. Shiv Shankar Gaur' whereby Ld. Magistrate directed concerned SHO to register FIR against the accused (revisionist herein) under appropriate provisions of law, while allowing the application of complainant/ respondent No. 2 moved under section 156(3) Cr.P.C. against the revisionist/proposed accused Shiv Shankar Gaur.

2. Facts in brief are that respondent/complainant Ajay Pratap Singh lodged police complaint dated 16.02.2025 against the revisionist/proposed accused regarding the commission of offences of cheating, criminal breach of trust, theft, conspiracy and banking offence. It is alleged that complainant is lawyer by profession. It is stated that a year ago his friend, revisionist borrowed some jewelry on the pretext of marriage in his family with assurance to return the same in few days. He lent jewelry i.e. 10 gold rings and 3 gold chains in presence of his family. It is stated that revisionist/proposed accused delayed return of the same and eventually stopped responding. Later, complainant came to know that revisionist has mortgaged the same with financier Fedbank Financial services, situated at Khirki Extension, Malviya Nagar, New Delhi. It is stated that revisionist deceived the complainant and committed criminal breach of trust with regard to entrustment of jewellery and mortgaged the same without his consent. It is stated that revisionist is liable for theft as well.

3. After hearing arguments on the application, Ld. Trial Court vide impugned order dated 11.03.2026 passed directions to concerned SHO for registration of FIR U/s 316(2) BNS against Shiv Shankar Gaur.

4. Aggrieved of the impugned order dated 11.03.2026, revisionist/proposed accused filed instant revision on the ground that complainant suppressed the fact that revisionist has already filed complaints against him. It is stated that the facts of the complaint filed by complainant does not disclose and even attract the provisions of offence of Criminal Breach of Trust. The complaint has been lodged by the complainant in retaliation. The impugned order of registration of FIR is mechanical in nature and is improper.

5. Record reveals that pursuant to directions of Ld. Magistrate, a ATR came to be filed by concerned Inquiry Officer, PS Saket, wherein it was reported that no cognizable offence is made out and also cause of action arose outside Delhi, hence the jurisdiction lies with Faridabad police as the jewellery was claimed to be handed over at Complainant's house in Faridabad. It is submitted that jewelry was voluntarily handed over by the complainant to the alleged person. It is stated that fraudulent intent from the beginning is not established. No independent evidence of entrustment or acknowledgment exists apart from self

Purshotam Pathak Digitally signed by Purshotam Pathak Date: 2026.07.11 16:48:39 +0530 serving bills. The dispute concerns ownership and recovery of jewellery, hence it is civil in nature.

6. Ld Magistrate after considering the status report and hearing the arguments, passed the impugned order dated 11.03.2026 *inter-alia* with following observations :-

> ".04. Arguments were heard on behalf of the complainant. Record perused. The present complaint is supported with the affidavit of the complainant. Perusal of the complaint shows that complainant has made clear allegations that he gave his jewellery to accused no. 1 at the request of accused no. 1 for his personal use and accused no. 1 dishonestly misappropriated the jewellery of the complainant by mortgaging it to Fedbank Financial Services and taking money against the jewellery. Therefore, on perusal of the record, this Court is of the view that the allegations made by the complainant disclose commission of cognizable offence of criminal breach of trust punishable under Section 316(2) of BNS by accused no. 1 Shiv Shanker Gaur. Further, police investigation is necessary for collection of evidence including jewellery in the present case. Further the necessary documents regarding the mortgage of jewellery are not in possession of complainant and have to be collected by the police during investigation.
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> 05. Further as per the complaint the accused mortgaged the jewellery to Fedbank Financial Services which is situated at Khirki Extension, Malviya Nagar, Delhi. Therefore, this Court is of the view that jurisdiction of PS Malviya Nagar is made out in the present case.
>
> 06. This Court is also of the view that there are no clear and specific allegations against accused no. 2 Fedbank Financial Services. Therefore no cognizable offence appears to have been committed at this stage by Fedbank Financial Services.

> 07. Accordingly, SHO concerned is directed to register FIR u/s 316(2) BNS against accused no. 1 Shiv Shanker Gaur and file the compliance report on 20.03.2026."

7. Ld. Counsel for the revisionist/proposed accused in addition to above grounds has argued that complainant suppressed the fact from the Court that revisionist has already filed complaints against him. It is argued that the facts of the complaint filed by complainant does not disclose or attract the provisions of offence of Criminal Breach of Trust. The complaint U/s 175(3) BNSS (erstwhile U/s 156(3) Cr.P.C. has been filed by the complainant in retaliation. It is prayed that the impugned order is liable to be set aside.

8. Per contra, Ld. Counsel for respondent vehemently argued that there is no infirmity in the impugned order and Ld. Magistrate, for the right reasons, directed for registration of FIR keeping in view the facts and circumstances of the case. He further argued that the impugned order was passed after considering all the facts and circumstances of the present case. It was argued that instant petition is nothing but a mischievous attempt to aggravate the harassment of respondent. It was further argued that revisionists have not come with clean hands and have suppressed material facts. It was submitted that the present revision petition is misconceived and therefore, the same is liable to be dismissed.

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On the strength of these arguments, respondent seek dismissal of instant revision petition.

9. I have heard rival contentions and perused the record.

10. Here, it is pertinent to refer to the decision of the Hon'ble Supreme Court in the case of **Priyanka Shrivastava Vs. State of U.P. & Others Crl. Appeal No.781/2012 decided on 19.03.2015** wherein the Hon'ble Supreme Court held that the applications under Section 156 (3)Cr.PC should not be mechanically allowed and Magistrate must exercise greater caution, and may also verify the allegation before allowing such an application. The observations are extracted below :

> "Regard being had to the aforesaid enunciation of law, it needs to be reiterated that the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind. He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order.
> xxx xxx xxx That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and can also verify the veracity of the allegations."

11. Further time and again, the higher Courts have directed the Magistrates not to get the FIR registered in a mechanical manner. It has been laid down in a number of judgments by the higher Courts that mere disclosure of cognizable offence shall not be sufficient for a Magistrate to order for registration of FIR. The

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facts which shall be considered by the Magistrate while ordering registration of FIR under Section 156 (3)Cr.PC have been discussed by the higher Courts in numerous judgments.

12. In **Mohd. Salim Vs. State** Crl. M.C. No.3601/2009 decided on 10.03.2010, the Hon'ble High Court held :

> "The use of the expression "may" in Subsection (3) of Section 156 of the Code leaves no doubt that the power conferred upon the Magistrate is discretionary and he is not bound to direct investigation by the police even if the allegations made in the complaint disclose commission of a cognizable offence. In the facts and circumstances of a given case, the Magistrate may feel that the matter does not require investigation by the Police and can be proved by the complainant himself, without any assistance from the Police. In that case, he may, instead of directing investigation by the Police, straightaway take cognizance of the alleged offence and proceed under Section 200 of the Code by examining the complainant and his witnesses, if any. In fact, the Magistrate ought to direct investigation by the Police only where the assistance of the Investigating Agency is necessary and the Court feels that the cause of justice is likely to suffer in the absence of investigation by the Police without first examining whether in the facts and circumstances of the case, investigation by the State machinery is actually required or not. If the allegations made in the complaint are simple, where the Court can straightaway proceed further in the matter, instead of passing the buck to the police under Section 156 (3) of the Code. Of course, if the allegations made in the complaint require complex and complicated investigation of which cannot be undertaken without active assistance and expertise of the State machinery, it would only be appropriate for the Magistrate to direct investigation by the Police. The Magistrate is, therefore, not supposed to act merely as a Post Office and needs to adopt a judicial approach while considering an application seeking investigation by the police".

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13. In **Subhkaran Luharuka and Shree Ram Mills Ltd. Vs. State (Govt. of NCT of Delhi) and Utility Premises Pvt. Ltd.** 170 (2010) DLT 516 Crl. M.C. No.612223/2005 and Crl. M.C. No. 613334/2005, the Hon'ble High Court held :

> "For the guidance of subordinate courts, the procedure to be followed while dealing with an application under Section 156 (3) of the Code is summarized as under :
>
> (i) Whenever a Magistrate is called upon to pass orders under Section 156 (3) of the Code, at the outset, the Magistrate should ensure that before coming to the Court, the Complainant did approach the police officer in charge of the Police Station having jurisdiction over the area for recording the information available with him disclosing the commission of a cognizable offence by the person/persons arrayed as an accused in the Complainant. It should also be examined what action was taken by the SHO, or even by the senior officer of the Police, when approached by the Complainant under Section 154 (3) of the Code.
>
> (ii) The Magistrate should then from his own opinion whether the facts mentioned in the complaint disclose commission of cognizable offences by the accused persons arrayed in the Complaint which can be tried in his jurisdiction. He should also satisfy himself about the need for investigation by the Police in the matter. A preliminary enquiry as this is permissible even by an SHO and if no such enquiry has been done by the SHO, then it is all the more necessary for the Magistrate to consider all these factors. For that purpose, the Magistrate must apply his mind and such application of mind should be reflected in the Order passed by him."

14. Now the facts of the present case are to be considered keeping in view the guidelines laid down by the higher courts as discussed above. After considering the same, it is to be seen whether this is a fit case for registration of FIR under Section 156 (3) Cr. P.C. or not. As per the averments made in the complaint, complainant

himself gave alleged jewellery to the proposed accused without any acknowledgment, which is claimed to be mortgaged by him with Financer. It is for the above stated offences that the complainant has sought registration of FIR in the present case.

15. From the perusal of record it appears that there is no documentary evidence/acknowledgment or independent witness to the effect of entrustment of alleged jewellery by the complainant to the revisionist/proposed accused. The core issue between the parties is with regard to recovery of jewellery which is lying mortgaged with financer. Perusal of the exhaustive complaint dated 24.02.2025, lodged by the revisionist/proposed accused against the complainant reveals previous business dealings between them. Also transfer of lakhs of rupees by revisionist/proposed accused in the bank account of complainant as reflected in bank statement of revisionist shows they are in financial dealings ever since October 2024 i.e. after alleged incident of handing over of the jewellery in question in Feb-March, 2024. It is the claim of the complainant that he handed over jewellery to the revisionist/proposed accused in or around Feb-March 2024 which was assured to be returned in few days but not returned. Bank statement of revisionist shows that there is transfer of around 20 lakhs in October-November, 2024 in the bank account of complainant by the revisionist, which has no explanation, specially when such transactions were made after default of non-return of jewellery in March-April, 2024. Furthermore, there is no explanation as to why when jewellery was handed over in Feb-March, 2024 which was to be returned in few day, initial complaint dated 16.02.2025 with regard to non-return of the jewellery was filed by the complainant after an year. The delay of around one year in filing the complaint does not have any plausible explanation. Revisionist/proposed accused has relied upon various whatsapp chats claimed to have taken place between the parties vide which revisionist intends to show apologetic conduct of the complainant.

16. There is clear admission on the part of complainant that he handed over jewellery in question to the revisionist/proposed accused at his house in Faridabad. Therefore, the alleged handing over or entrustment of jewelery, if any, took place at the house of the complainant situated at Sector-64, Ballabhgarh, Faridabad and not within the jurisdiction of PS Saket. Hence, report of the IO in his ATR that jurisdiction lies at Faridabad, appears to be plausible. There is no proof of alleged entrustment of jewellery either in form of written document or thorough any independent witness and it is an admitted voluntary handing over, therefore, fraudulent intent on the part of revisionist from inception does not stand established. ATR suggest that no cognizable offence is made out and dispute regarding recovery of jewellery is civil in nature.

17. Therefore, evidently in the said action taken report, it was conclusively opined by the concerned Inquiry Officer that the allegations made by complainant could not be substantiated and seems to be self motivated. However, the impugned order is conspicuously silent as to why Ld. JMFC chose to disagree with the opinion of the concerned Inquiry Officer and ordered for registration of FIR. It would be no gainsaying that reasons are the life and soul of any judicial order.

18. In my considered view, the reasons for disagreeing with the ATR, should have been reflected from the impugned order itself. Reliance is placed upon judgment of Hon'ble Delhi High Court in ***Harpal Singh Arora & Ors Vs State & Anr***, 2008 (103) DRJ 282, the specific question formulated by Hon'ble High Court was as follow:-

> " (b) Is a Magistrate, when approached thereafter by a complainant with a complaint under Section 190 read with Section 200 CrPC along with an application under Section 156 (3) Cr.PC seeking a direction for investigation by the police, bound to deal with the said report before disposing of the application under Section 156 (3) CrPC and proceeding with the complaint under Section 200 CrPC?"

19. While answering to the said question, it was observed by Hon'ble High Court at paragraph 16 as under :-

> "16. Considering the fact that the learned MM called for the report of the CAW Cell, which is fairly detailed, the proper course of action before ordering an investigation under Section 156 (3) would have been to examine that report before deciding

to issue a direction for investigation. When the police in the CAW Cell has come to conclusion that no cognizable offence is made out, the Magistrate cannot brush aside that conclusion lightly. Although that the said conclusion of the CAW Cell is not binding on the Magistrate at that stage, since his order is a judicial one he must give reasons, however brief, why he is inclined to order investigation notwithstanding the said report. Question (b) is answered accordingly."

20. In my considered view, failed obligation and frustrated expectations cannot and must not lead to any criminal liability.

21. Seen in the light of aforesaid background, it was expected from Ld Magistrate that the order should have been manifestation of the exercise of discretionary powers based with sound logic and principles. However, sans any reasoning, this court is not in a position to analyze on what grounds, the Ld Trial court got persuaded for direction of registration of FIR.

22. Further, after going through the allegations made in the complaint, I am of the view that no investigation in the instant case by police is warranted as all the evidence is within knowledge of complainant, he and his family members being the witnesses of the alleged offences. Even the identity of the accused persons is known to the complainant. Therefore, in the facts and circumstances of the present case, I am of considered view that instead of ordering registration of FIR (which entails serious consequences), Ld Magistrate should have asked the complainant to lead pre-summoning evidence in support of his allegations so as to arrive at just decision. If required, the assistance of the police can be had by Ld Magistrate by resorting to provisions of 202 Cr.P.C.

23. In the case at hand, I find that the Ld. Magistrate erred in law by passing the impugned order. **Accordingly, the impugned order dated 11.03.2026 thereby directing concerned SHO to register an FIR U/s 316(2) BNS, against the revisionist/proposed accused stands set aside being not sustainable in the eyes of law. Ld. Magistrate shall accordingly fix the matter for pre-summoning evidence for a suitable date. The instant revision stands allowed accordingly.**

24. TCR along with a copy of this judgment be sent to Ld Trial Court for information.

25. **Revision file be consigned to Record Room after due compliance.**

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ANNOUNCED IN THE OPEN COURT
TODAY ON THIS
11th DAY OF JULY, 2026
(This judgment contains total 13 signed pages)

(PURSHOTAM PATHAK)
ASJ-05(SOUTH)
SAKET COURTS: N.D