

IN THE COURT OF SESSIONS JUDGE, BARABANKI
(Present- Pratima Srivastava (H.J.S))
Criminal Revision No- 29/2026
CNR No-UPBB 0100 0687 2026

Badri Singh aged about 77 years son of Banwari Singh, resident of village- Atkahiya, Hamlet- Malookpur, P.S. Deva, District- Barabanki.

..... Revisionist/applicant.

Vs

1. State of Uttar Pradesh
2. Rajkishor son of Ayodhya Prasad, resident of Mohalla- Kacheharan, P.S. Kotwali Deva, District- Barabanki.
3. Jaswant son of Mahesh Prasad, resident of Mohalla- Kacheharan, P.S. Kotwali Deva, District- Barabanki.

.....opposite parties.

JUDGMENT

This Criminal Revision under section- 440 B.N.S.S. has been preferred against the order dated 05.01.2026 passed by Additional Chief Judicial Magistrate, Court No. 17, District- Barabanki in Misc. Application No. 256/2025, Badri Prasad vs Rajkishor and others, under section- 173(4) B.N.S.S., P.S. Deva, Barabanki whereby the learned Magistrate has treated the application under section- 173(4) B.N.S.S. as complaint case.

2. In brief, the revisionist/applicant filed an application (under Section-173(4) B.N.S.S. that the revisionist/applicant, Badri Prasad, son of Bankelal, resident of Village Atkahiya, Hamlet Malookpur, P.S. Deva, District- Barabanki, has solemnly stated that a plot of land measuring 0.2190 hectares, Gata No. 1515, situated in Village Deva, Pargana Deva, Tehsil Nawabganj, District Barabanki, belongs to his son Ranvijay Singh and daughter-in-law Saankesha. The property was purchased through a registered sale deed on 12.04.2022 from the account holders Raj Kishor, son of Ayodhya Prasad, resident of Mohalla Kachehran-1, Police Station- Deva, District- Barabanki, and Jaswant, son of Mahesh Prasad, resident of Mohalla Kachehran-1, Police Station- Deva, District- Barabanki, who had developed a residential plotting colony on the land and sold a plot measuring 2000 square feet. Mutation (Dakhil Kharij) for this plot has already been completed. In the said plotting, colony developed by the

property dealer. On dated 28.06.2025, at around 10:00 a.m., the revisionist/applicant went to the disputed plot with labourers and a mason to initiate construction. At that location, Prem, son of Jaswant's paternal uncle, claimed that he had sold the land. The revisionist/applicant then contacted Jaswant on his mobile number 6393292084 and requested him to come to the spot, but he did not come. At that moment, the revisionist/applicant realized that Jaswant, the seller Rajkishor, and Rajkishor's son Kapil Kumar had intentionally cheated, defrauded, and deceived him by executing the sale deed based on forged documents/papers. The revisionist/applicant filed a complaint at P.S. Deva, District Barabanki on 28.06.2025 but no FIR registered against the opposite parties. Regarding this matter, the revisionist/applicant also sent an application via registered post to the Superintendent of Police, Barabanki on 06.08.2025, but the applicant's report was still not registered.

3. Learned Magistrate registered the application under Section-173(4) B.N.S.S. of the revisionist/applicant as miscellaneous and having heard learned counsel for the revisionist at length, vide impugned order dated 05.01.2026 treated application under Section-173(4) B.N.S.S. of the revisionist as complaint case and fixed next date in the case for recording statement under Section 223 B.N.S.S. of the revisionist/applicant. Feeling aggrieved by the said impugned order dated 05.01.2026, revisionist/applicant filed this criminal revision.

4. I have learned counsel for the revisionist/applicant and learned Incharge D.G.C. (Criminal) appearing on behalf of opposite party no.1 as well as learned counsel for the opposite party no. 2 to 3 at length and perused the impugned order and other relevant record carefully.

5. Being aggrieved by the impugned order dated 05.01.2026 revisionist/applicant has moved this revision stating therein that the order in question dated 05.01.2026 is illegal. Learned Magistrate has committed an error in passing the impugned order in question. Learned Magistrate has not applied judicial mind while passing the impugned order and summarily passed the impugned order which is against

principles of law. The learned Magistrate, without applying his mind, registered the case as a complaint, stating that he could present the evidence to the court. In view of the above mentioned facts and circumstances, the impugned order is liable to be set-aside.

6. On the other hand, learned Incharge D.G.C. (Criminal) and learned counsel for the opposite party no. 2 to 3 submitted that learned Magistrate has not committed any illegality or irregularity in passing the impugned order and has applied judicial mind properly. Learned Magistrate has clearly mentioned in the impugned order that all the facts and circumstances of the case are in the knowledge of the revisionist and no new evidence is to be collected by the investigating officer and on the basis of facts mentioned in the applicant under Section- 173(4) B.N.S.S. the matter requires no investigation. Hence, there is no illegality or irregularity in the impugned order. This revision lacks merit and deserves to be dismissed.

7. On an application moved under Section- 173(4) B.N.S.S., learned Magistrate has following three options:-

- (i)** If from the contentions of the application a cognizable offence is made out and in the facts and circumstances of the case, the Magistrate thinks it just and proper, he may order for investigation.
- (ii)** If from the contentions of the application a cognizable offence is made out but in the fact and circumstances of the case, the Magistrate thinks that there is no necessity of any investigation, he may register the application as a complaint case.
- (iii)** If from the contentions of the application, the Magistrate came to the conclusion that no cognizable offence is made out, he may reject the application.

8. I have gone through the impugned order of learned Trial Court. Perusal of the record shows that the learned Magistrate found that from the contentions of the application moved under Section- 173(4) B.N.S.S., a cognizable offence is made out but in the facts and circumstances of the case, it is not proper to get the case investigated, therefore he registered the application under Section-

173(4) B.N.S.S., as complaint case. Looking into the facts and circumstances of the case, the revisionist/applicant may prove his case before the learned Magistrate. No investigation by the police is required in this matter.

9. In the case of **Sukhwasi Son of Hulasi vs. State of Uttar Pradesh (Full Bench) 2007 A.C.C. 739**, The Hon'ble High Court, Allahabad has held that-

"It is not incumbent upon a Magistrate to allow an application under Section- 156 (3) Cr. P. C. and there is no such legal mandate. He may or may not allow the application in his discretion, and he has a discretion to treat an application under Sections 156 (3) Cr. P. C. as a complaint."

10. In the case of **Chandrika Singh Son Of Late Kali vs. State of U.P., Station House , 2007 Cri LJ 3169**, the Hon'ble High Court has held that-

"The Magistrate is not always bound to pass an order for register of the case and investigation after receipt of the application Under Section- 156(3) Cr. P.C. disclosing a cognizable offence. The Magistrate may use his discretion judiciously and if he is of the opinion that in the circumstance of the case it will be proper to treat the application as a complaint case then he may proceed according to the procedure provided under Chapter XV of Cr.P. C. I am also of the opinion that it is not always mandatory in each and every case for the Magistrate to pass an order to register an investigate on receipt of the application under Section- 156(3) Cr.P.C. "

11. In the case of **Ram Babu Gupta vs. State of U. P. 2011 (43) ACC 50.**, the Hon'ble Apex Court has held that-

"The Magistrate can treat an application under Section- 156 (3) Cr.P.C. as a complaint."

12. According to police report of concerned police station, no case has been registered in connection with the said case. From the perusal of record, there is no need to investigate in the said case, hence, the learned trial court ordered revisionist/applicant to prove his case by producing evidence.

13. Keeping in view the facts and circumstances of the case, and law laid down in the above cited cases, I am of the considered view that the impugned order dated 05.01.2026 is just and proper and learned Magistrate has not committed any illegality or impropriety in passing the impugned order. Learned Magistrate has clearly perused the impugned order that police investigation is not required in the said case because new facts and circumstances of the case are not to be collected. Revisionist/applicant may prove his case by producing evidence. Hence, the impugned order needs no interference and the same is sustainable in the eyes of law. Hence, this revision lacks merit and is liable to be dismissed.

ORDER

This criminal revision no. 29/2026, Badri Singh vs State of U.P. and others is dismissed. The order dated 05.01.2026 passed by learned Magistrate is upheld. A copy of the said order be sent to the concerned court.

Dated:-03.06.2026

(Pratima Srivastava)
Sessions Judge,
Barabanki.
JO Code - UP1899

The judgment signed, dated and pronounced by me in the open court today.

Dated:-03.06.2026

(Pratima Srivastava)
Sessions Judge,
Barabanki.
JO Code - UP1899