



**In The Court of Additional District and Sessions Judge /Special Judge
[Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act] Etah**

Present: Ashok Kumar XIII (J.O. Code – UP2392)

Criminal Revision No. 285 of 2025

Charan Singh, aged about 37 years, Son of Shri Tej Singh, Resident of House No. 2, Gali Number 12, East Punjabi Bagh, West Delhi, Pincode 110026. Presently residing behind Limira International School, G.T. Road, Etah, Police Station Kotwali Nagar, District Etah. ...

Revisionist

Versus

1. State of Uttar Pradesh through District Government Counsel (Criminal), Etah.
2. Subodh Yadav, aged 45 years, Son of Amrit Singh, Resident near Varni Jain Inter College, Etah, Police Station Kotwali Nagar, District Etah.
3. Smt. Shweta Yadav, aged about 42 years, Wife of Subodh Yadav, Resident of Mohalla Nai Basti, Police Station Kotwali Nagar, District Etah.

... Respondents

Judgement

1. This criminal revision preferred under Section 438 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as "BNSS"), is directed against the impugned order dated 18.06.2025 passed by the Learned Chief Judicial Magistrate, Etah (hereinafter referred to as the "Ld. Trial Court") in Miscellaneous Application No. 1156/2025 (CNR No. UPET00113562025) titled "Charan Singh vs. Subodh Yadav and others". By the aforesaid impugned order, the Ld. Trial Court rejected the application filed by the revisionist under Section 173(4) of the BNSS [analogous to Section 156(3) of the Code of Criminal Procedure, 1973], wherein the revisionist had prayed for a direction to the local police to register a First Information Report (FIR) and conduct a thorough investigation into the alleged offences of cheating, forgery, and criminal conspiracy. The revisionist, aggrieved

by the dismissal of his application, prays for setting aside the impugned order and seeks a consequential direction for the registration of an FIR.

2. The factual matrix of the case, as culled out from the pleadings and the application instituted before the Ld. Trial Court, is that the revisionist claimed to have familial relations with opposite party no. 2, Subodh Yadav. It is alleged that on 15.11.2021, opposite party no. 2, along with his wife, opposite party no. 3, Smt. Shweta Yadav, visited the residence of the revisionist. The opposite parties allegedly represented that they were in dire need of financial assistance and offered to sell a plot of land situated at Mohalla Nai Basti Premnagar, abutting a 20-foot wide road. It is the case of the revisionist that initially, he declined the offer, but upon witnessing the opposite parties weeping and pleading, he capitulated and agreed to purchase the said plot. The total sale consideration was allegedly fixed at Rs. 50,00,000/- (Rupees Fifty Lakhs only). Pursuant to this oral agreement, the revisionist asserts that he advanced a sum of Rs. 5,00,000/- on 20.11.2021 vide Cheque No. 375578 and another sum of Rs. 2,00,000/- on 08.12.2021 vide Cheque No. 375579. Furthermore, the revisionist claims to have handed over a massive sum of Rs. 40,00,000/- in hard cash to the opposite parties on 15.12.2021 in the presence of two witnesses, namely Rajnesh Yadav and Praveen Kumar. Consequently, out of the total agreed consideration, only a balance of Rs. 3,00,000/- remained to be paid at the time of the execution of the final sale deed.
3. The grievance of the revisionist is that despite receiving Rs. 47,00,000/-, the opposite parties engaged in evasive tactics and willfully avoided executing the registered sale deed. The situation escalated when, allegedly, opposite party no. 3, acting in collusion with opposite party no. 2, executed a registered sale deed on 11.05.2022 transferring a portion of the subject plot in favour of one Jatinder Singh. The revisionist contends that upon confronting the opposite parties and demanding the return of his money or the execution of the sale deed for the remaining portion of the plot, he was met with criminal intimidation and death threats by goons hired by the opposite parties. Apprehending a threat to his life and property, the revisionist moved a complaint to the Police Station Kotwali Nagar, Etah on 30.04.2025, and subsequently to the Senior Superintendent of Police, Etah via registered post, but no action was initiated. Consequently, the revisionist invoked the jurisdiction of the Ld. Trial Court under Section 173(4) BNSS.
4. The Ld. Trial Court, prior to passing the impugned order, called for a factual report from the concerned Police Station Kotwali Nagar, Etah. The police report

submitted before the Magistrate revealed a significantly different narrative. The report stated that the revisionist, Charan Singh, and the aforementioned purchaser, Jatinder Singh, were essentially business partners engaged jointly in the trade of property dealing. It was disclosed that opposite party no. 2 had initially agreed to sell his property to Jatinder Singh, and the advance payment for this transaction was actually routed through the bank account of his partner, the present revisionist. When the complete payment could not be materialized within the stipulated period of one year, a land dispute erupted. Consequently, Jatinder Singh instituted a civil suit being Original Suit No. 367/2024 against Subodh Yadav and others, while opposite party no. 2 also filed a counter civil suit being Original Suit No. 75/2025 against Jatinder Singh. The police report highlighted that Jatinder Singh had previously filed a similar application under Section 173(4) BNSS against the opposite parties which did not yield the desired result, prompting his business partner, the present revisionist, to file the instant application on identical sets of facts, attempting to give a criminal cloak to an ongoing civil property dispute.

5. Based on the pleadings and the police report, the Ld. Trial Court meticulously analyzed the case and passed a detailed speaking order dismissing the application. The Ld. Trial Court fundamentally reasoned that the revisionist had not approached the court with clean hands, having suppressed the material fact of his business partnership with Jatinder Singh and the pendency of active civil litigation (O.S. No. 367/2024 and O.S. No. 75/2025) concerning the very same property. Furthermore, the Ld. Trial Court observed that the narrative of paying Rs. 7,00,000/- via banking channels and subsequently handing over a colossal sum of Rs. 40,00,000/- in cash without executing any registered agreement to sell or fixing a date for the final execution of the deed was highly improbable, illogical, and opposed to ordinary human conduct. The Ld. Trial Court categorized the entire controversy as a purely civil dispute emanating from an alleged breach of an oral contract for the sale of immovable property. Relying upon a catena of Hon'ble Supreme Court and Hon'ble High Court judgments, including *Mitesh Kumar Vs. State of Karna* *Mitesh Kumar Vs. State of Karnataka and Others (2022) 14 SCC 572*, *Gulam Mustafa Vs. State of Karnataka and Another (2023) SCC Online SC 603*, and *Priyanka Srivastava Vs. State of U.P., 2001 (45) ACC 50* the Ld. Trial Court concluded that the machinery of criminal law was being abused to exact pressure in a civil dispute. Notably, relying on the Hon'ble Supreme Court's mandate in *RBANMS Educational Institution Vs. B. Gunashekhar*, Civil Appeal

- 5200 of 2025 (Arising from SLP(C) No.13679 of 2022), the Ld. Trial Court also directed a copy of the order to the Commissioner of Income Tax, Agra, to initiate necessary action against the revisionist for the alleged unaccounted cash transaction of Rs. 40,00,000/- under the Income Tax Act.

6. The revisionist has assailed the impugned order on multifarious grounds. The primary ground of revision is that the Ld. Trial Court has committed a grave error of law by dismissing the application under Section 173(4) BNSS and thereby causing a miscarriage of justice. It is argued by the Ld. Counsel for the revisionist that the constitutional and statutory framework mandates that if a complaint discloses the commission of a cognizable offence, the Magistrate is bound to order the registration of an FIR. The revisionist contends that it is the prerogative and duty of the investigating agency to test the veracity of the allegations during the investigation, and the Magistrate ought not to conduct a mini-trial or appreciate evidence meticulously at the pre-cognizance stage. It is further argued that the Ld. Trial Court exceeded its jurisdiction by relying heavily on the police report, which went beyond simply stating whether an FIR was registered or not, and improperly delved into the merits of the case.
7. Another ground raised in the revision is that the Ld. Trial Court erred in labeling the dispute as purely civil in nature. The Ld. Counsel for the revisionist asserts that the payment of Rs. 7,00,000/- through banking channels is an undisputed fact that prima facie establishes the transaction and the dishonest intent of the opposite parties who subsequently alienated a portion of the property to a third party. The revisionist emphasizes that he is neither a plaintiff nor a defendant in the civil suits (O.S. No. 367/2024 and O.S. No. 75/2025) mentioned in the Ld. Trial Court's order, and therefore, the pendency of litigation between Jatinder Singh and the opposite parties should not preclude the revisionist from seeking criminal remedies for the distinct fraud perpetrated upon him. Lastly, it is pleaded that the Ld. Trial Court failed to appreciate the arguments and case laws presented by the revisionist during the hearing, thereby rendering the order legally unsustainable.
8. Per contra, the Learned Additional District Government Counsel (Criminal) representing the State opposed the revision petition, fully supporting the rationale adopted by the Ld. Trial Court. It is argued that the revisional jurisdiction is limited to correcting jurisdictional errors, patent illegalities, or perversity, none of which are present in the thoroughly reasoned impugned order. It is contended that Section 173(4) BNSS does not operate as a mechanical post office; the Magistrate is vested

with the judicial discretion to examine whether the application discloses a genuine criminal offence or is a camouflaged civil dispute meant to harass the opposite parties. The State emphatically argues that the deliberate suppression of the business relationship with Jatinder Singh and the ongoing civil litigation manifests malicious intent and abuse of the judicial process. The State further points out that an oral agreement to sell, followed by an alleged massive cash transaction without any registered document, clearly points towards a specific performance dispute for which the competent civil forum has already been approached by the revisionist's partner. Therefore, the impugned order is sound, legally robust, and requires no interference.

9. Upon a careful perusal of the revision petition, the impugned order, the Trial Court record, and after hearing the elaborate submissions advanced by both sides, the following pertinent issues arise for the determination of this Court:

1) **Issue No. 1:** What is the scope of Revisional Jurisdiction of this Court under Section 438 of the BNSS in interfering with an order passed under Section 173(4) of the BNSS?

2) **Issue No. 2:** Whether the Ld. Magistrate is legally bound to direct the registration of an FIR upon the mere filing of an application under Section 173(4) BNSS, or whether the Magistrate possesses judicial discretion to decline such a prayer?

3) **Issue No. 3:** Whether, based on the material on record, the present dispute is inherently of a civil nature wrapped in a criminal guise to exert undue pressure, thereby justifying the Ld. Trial Court's refusal to invoke criminal machinery?

10. Regarding Issue No. 1, the law pertaining to the exercise of revisional power by the Sessions Court is well-settled. Under Section 438 of the BNSS (akin to Section 397 of the CrPC), the revisional court is empowered to call for and examine the record of any proceeding before any inferior criminal court situated within its local jurisdiction for the purpose of satisfying itself as to the correctness, legality, or propriety of any finding, sentence, or order. However, it is a cardinal principle of criminal jurisprudence that revisional jurisdiction is not an appellate jurisdiction. This Court cannot substitute its own view for that of the Ld. Trial Court merely because a different view is possible. Interference is warranted only when the impugned order is manifestly illegal, suffers from a jurisdictional error, is perverse, or fails to consider vital material on record leading to a gross miscarriage of

justice. This Court shall examine the impugned order dated 18.06.2025 strictly upon this well-defined anvil.

11. For Issue No. 2 regarding discretion under Section 173(4) BNSS, the revisionist has strenuously argued that the use of the word "shall" or the scheme of the Sanhita implies a mandatory duty upon the Magistrate to order an investigation once an application alleging a cognizable offence is filed. This argument, though attractive at first blush, flies in the face of established judicial precedents. Section 173(4) of the BNSS is in *pari materia* with Section 156(3) of the CrPC. The Hon'ble Apex Courts have repeatedly held that the power under this section is discretionary and must be exercised with circumspection and judicial application of mind. The Magistrate is not bound to direct an investigation merely because an application has been moved.
12. The Ld. Trial Court rightly relied upon the Full Bench decision of the Hon'ble Allahabad High Court in ***Ram Babu Gupta Vs. State of U.P.* [2001 (43) ACC 50]**, which categorically establishes that an order under Section 156(3) CrPC is a judicial order requiring the application of mind, and the Magistrate has the discretion to either order an investigation or treat the application as a complaint case under Section 200 CrPC, or even reject it if it fails to disclose any cognizable offence or is found to be frivolous. Furthermore, the Hon'ble Supreme Court in ***Priyanka Srivastava Vs. State of U.P.* (2015) 6 SCC 287** explicitly mandated that applications under Section 156(3) CrPC must be supported by an affidavit, and the Magistrate must be vigilant against the abuse of this provision by unscrupulous litigants seeking to settle personal or civil scores. Therefore, the Ld. Trial Court committed no illegality in calling for a report from the police station to ascertain the factual position and subsequently exercising its judicial discretion to dismiss the application upon finding it unmeritorious. The argument of the revisionist that the police report went beyond its mandate is also not tenable, as the Ld. Magistrate is fully entitled to ascertain preliminary facts to prevent the abuse of the court's process before setting the criminal investigation machinery into motion.
13. The Issue No. 3 is regarding civil dispute given a criminal colour. This is the crux of the present controversy. The fundamental distinction between a mere breach of contract (a civil wrong) and the criminal offence of cheating (Section 316 BNS / Section 420 IPC) lies in the intention of the accused at the time of the inception of the transaction. For an offence of cheating to be constituted, it must be shown that the accused possessed a fraudulent or dishonest intention from the very beginning.

A subsequent failure to fulfill a promise does not automatically transmute a civil breach into a criminal offence.

14. Evaluating the facts in light of this principle, the entire case set up by the revisionist is predicated on an oral agreement to sell immovable property. The revisionist claims to have paid Rs. 7,00,000/- via bank channels and a staggering Rs. 40,00,000/- in cash. However, there is a conspicuous absence of any registered 'Agreement to Sell' (Iqrar-nama). The Ld. Trial Court critically and correctly observed that the conduct of a person paying Rs. 47,00,000/- out of a total consideration of Rs. 50,00,000/- without executing any legal document and not fixing any specific date for the registration of the final sale deed for a mere balance of Rs. 3,00,000/-, is highly repugnant to ordinary prudence.
15. Moreover, the Ld. Trial Court accurately identified the deliberate suppression of material facts by the revisionist. The police report brought to light the fact that the revisionist and Jatinder Singh operate jointly in the property business. The dispute arose regarding the non-payment of the total consideration within the stipulated time of one year, which resulted in civil litigation. The fact that Jatinder Singh instituted Civil Suit No. 367/2024 for an injunction, and opposite party no. 2 filed Civil Suit No. 75/2025, establishes beyond any pale of doubt that the core dispute pertains to the specific performance of a contract and possession of immovable property. The revisionist's defense that he is not a named party in those civil suits is a mere technical camouflage to obscure his business association with Jatinder Singh.
16. The Ld. Trial Court meticulously referred to a plethora of apex court judgments. In **Wyeth Limited & Others Vs. State of Bihar & Another** [Criminal Appeal No. 1224/2022 (Special Leave Petition (Crl.) No. 10730 of 2018)] and **Usha Chakraborty & Anr. Vs. State of West Bengal & Anr.** [Criminal Appeal No. of 2022 (Arising out of SLP (Crl.) No. 5866 of 2022)], the Hon'ble Supreme Court categorically held that criminal proceedings are liable to be quashed if there is an attempt to give a colour of criminal offence to a civil dispute. Similarly, in **Mitesh Kumar Vs. State of Karnataka and Others** (2022) 14 SCC 572, the apex court strongly discouraged the practice of imparting a criminal colour to civil disputes merely to take advantage of relatively quick relief or to exert extra-judicial pressure. In **Gulam Mustafa Vs. State of Karnataka and Another** (2023) SCC Online SC 603, the Hon'ble Apex Court reiterated that initiating criminal action in purely civil disputes relating to land and money solely for exerting pressure is

nothing but an abuse of the process of the Court. The Ld. Trial Court correctly applied these binding precedents to the present facts, concluding that the revisionist was utilizing the criminal justice system as a tool for recovery and specific performance, remedies for which strictly lie before a competent Civil Court.

17. Additionally, the Ld. Trial Court's direction to forward a copy of the order to the Commissioner of Income Tax, Agra, under the mandate of the Hon'ble Supreme Court in, **RBANMS Educational Institution Vs. B. Gunashekhar [Civil Appeal No. 5200 of 2025]**, exhibits a profound application of judicial mind. The revisionist's blatant averment of engaging in an unaccounted cash transaction of Rs. 40,00,000/- in relation to immovable property triggers serious implications under the Income Tax Act, and the Trial Court was well within its rights, and indeed bound by duty, to notify the relevant statutory authorities.
18. In view of the exhaustive analysis undertaken above, this Court is of the considered opinion that the Ld. Trial Court has committed no error, illegality, or impropriety in dismissing the application under Section 173(4) BNSS. The Ld. Magistrate has painstakingly evaluated the factual assertions against the bedrock of settled legal principles. The finding that the present complaint is a classical example of a purely civil dispute regarding the breach of an agreement to sell, maliciously dressed up as a criminal offence to bypass civil remedies and coerce the opposite parties, is firmly supported by the material on record. The concealment of concurrent civil litigation further fortifies the conclusion that the applicant did not approach the court with clean hands. The impugned order is a highly reasoned, legally pristine, and well-articulated piece of judicial pronouncement that warrants absolutely no interference in the exercise of revisional jurisdiction. The grounds agitated in the present revision petition are found to be bereft of any legal merit and substance.

Order

The Criminal Revision Petition No. 285 of 2025 preferred by the revisionist Charan Singh is hereby rejected on merits. The impugned order dated 18.06.2025 passed by the Ld. Chief Judicial Magistrate, Etah in Miscellaneous Application No. 1156/2025 is affirmed and upheld in its entirety.

Send a copy of this order to the Ld. Trial Court forthwith for information and necessary compliance. The revision file be consigned to the Record Room after due compliance.

Date: 10.04.2026

(Ashok Kumar XIII)
Special Judge [SC/ST (PA) Act]
Etah