UPET010049902025

In The Court of Special Judge [Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act] Etah

Presided By: Ashok Kumar XIII, (J.O. Code – UP2392

Criminal Revision No. 293 of 2025

Smt. Poonam Agarwal, Age: 50 years, Wife of Shri Vishal Agarwal, Resident of Share Broker Security Ltd. Office, Railway Road, Behind Shaheed Park Water Tank, Opposite Hanumangarhi, Police Station Kotwali Nagar, District Etah. ... Revisionist

Versus

1. State of Uttar Pradesh, Through District Government Counsel (Criminal), Etah.

2. Omprakash, Age: 78 years, Son of Ramswaroop Mishra, Resident of 74, Shantinagar, Police Station Kotwali Nagar, District Etah. ... Opposite Parties

JUDGEMENT

1. The present criminal revision petition, preferred under the provisions of Section 438 of Bharatiya Nagarik Suraksha Sanhita, 2023 [BNSS] / corresponding to the provisions of the Section 397 read with Section 399 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C."), is directed against the impugned judicial order dated 09.05.2025 passed by the Court of Ld. Additional Chief Judicial Magistrate, Court Room No. 17, Etah (hereinafter referred to as the "Ld. Trial Court"). Vide the impugned order, the Ld. Trial Court, while adjudicating upon a Protest Petition (Paper No. 24-A) filed by Opposite Party No. 2, rejected the Final Report (F.R. No. 189/2019, re-submitted on 29.08.2024 after further investigation) submitted by the Investigating Officer in Case Crime No. 999 of 2018 under Sections 409, 420, 467, 468, and 471 of the Indian Penal Code, 1860 (hereinafter "IPC"), Police Station Kotwali Nagar, District Etah. Consequent to the rejection of the said Final Report, the Ld. Trial Court took cognizance of the matter and summoned the Revisionist/Accused to face trial. The Revisionist has

approached this Revisional Court with a prayer to set aside the said impugned order dated 09.05.2025, contending that it suffers from manifest jurisdictional error, patent illegality, procedural impropriety, and an absolute non-application of judicial mind to the evidentiary material available on the case diary.

2. A comprehensive perusal of the factual matrix, which is indispensable for the lawful disposal of this revisional adjudication, reveals that Opposite Party No. 2 (hereinafter referred to as the "Complainant") initiated the criminal legal process by moving an application under Section 156(3) of Cr.P.C. before the Ld. Chief Judicial Magistrate, Etah (registered as Misc. Case No. 101/2018). In the said application, the Complainant alleged that the Revisionist resides in his vicinity and operates a commercial establishment as a share broker associated with Reliance Securities Ltd. The Complainant asserted that he opened a trading account in the firm of the Revisionist for the purpose of buying and selling shares. To fund this account, he claimed to have deposited a total sum of Rs. 4,06,080/- through seven distinct cheques between 27.06.2009 and 20.06.2011 specifically Cheque 16743 for Rs. 35,000/-; Cheque 16742 for Rs. 40,000/-; Cheque 16744 for Rs. 50,000/-; Cheque 16748 for Rs. 80,000/-; Cheque 16747 for Rs. 60,000/-; Cheque 16751 for Rs. 60,000/-; and Cheque 16750 for Rs. 81,080/-. The core of the prosecution story postulates that the Complainant never authorized any trading on his behalf, nor did he execute any consent letter or authorization document. It is alleged that the Revisionist, harboring a dishonest intention to embezzle the entrusted funds, clandestinely and illegally traded shares by forging the Complainant's signatures and misappropriated the financial corpus. The Complainant allegedly discovered this systemic fraud on 05.07.2017, when he was informed by the firm that continuous transactions had been occurring in his account and only a residual balance of Rs. 1,00,000/- remained. Upon the direction of the concerned Magistrate under Section 156(3) Cr.P.C., an FIR was registered at Police Station Kotwali Nagar as Case Crime No. 999 of 2018.

3. During the course of the initial investigation, the Investigating Officer (I.O.) examined the banking records and concluded that no substantive criminal offence was made out, thereby filing Final Report No. 189/2019. The Complainant, aggrieved by this conclusion, filed a protest petition against this F.R. on 04.10.2021. Acting upon this protest petition, the Ld. Magistrate ordered further investigation on 06.10.2022. During the subsequent further investigation, the I.O. re-examined the evidentiary trail, summoned specialized banking records from the

State Bank of India, recorded statements of witnesses, and once again concluded that the dispute was entirely civil, regulatory, and mathematical in nature. The I.O. submitted a reiterated Final Report on 29.08.2024. The Complainant filed another protest petition - Paper No. 24-A. The Ld. Trial Court, vide the impugned order dated 09.05.2025, observed that the I.O. had failed to record the oral statement of the Complainant during the further investigation, and on this singular premise, summarily rejected the Final Report, passing an operative order to summon the accused for trial. The present revision petition arises from this specific adjudicatory exercise of power by the Ld. Trial Court.

4. The Revisionist has assailed the impugned order on an array of meticulously drafted legal and factual grounds, which are encapsulated and detailed as follows: (a) That the impugned order dated 09.05.2025 is a non-speaking, unreasoned order, passed arbitrarily and fundamentally against the settled principles of law. The Ld. Trial Court has wholly failed to evaluate or even reference the documentary evidentiary material available in the Case Diary (Parcha) compiled by the Investigating Officer. (b) That the Ld. Trial Court completely ignored the explicit and admission-based evidence collected by the Investigating Officer, specifically documented in Special Case Diary (S.C.D.) No. 4. When the I.O. explicitly questioned the Complainant regarding the exact location or document where his signatures were allegedly forged, the Complainant categorically replied, "I do not know." Furthermore, the Complainant failed to produce a single forged document on the case record, nor was any such document recovered by the I.O. Thus, the foundational allegations under Sections 467, 468, and 471 IPC are factually destitute. (c) That the documentary evidence unequivocally demonstrates that the Complainant (Opposite Party No. 2) voluntarily opened his Client ID No. 05719915 on 02.09.2008, organically linking his mobile number (9410266***), email ID (vijaylie***@rediffmail.com), and State Bank of India Account No. 1085307****. The Case Diary reveals that a mandatory SMS and email alert system for every singular transaction was active on his account. Therefore, the theory of "clandestine, unauthorized trading" occurring silently over several years is a technological and factual impossibility. (d) That the mathematical computation relied upon by the Complainant to allege embezzlement is demonstrably false and has been conclusively disproved by independent banking records. As per S.C.D.-18, the I.O. verified the official bank ledgers from S.B.I., which revealed that out of the alleged seven deposited cheques, Cheque No. 16748 (for Rs. 80,000/-) and

Cheque No. 16747 (for Rs. 60,000/-) were never encashed or debited from his account; they were dishonoured. Consequently, the actual total amount credited to the trading firm was only Rs. 2,66,080/-, and absolutely not Rs. 4,06,080/- as fraudulently claimed in the FIR. (e) That the statement of the witness Manoj recorded in S.C.D.-11 establishes through unimpeachable ledgers that in the year 2011, payouts of Rs. 81,040/-, Rs. 50,787/-, and Rs. 11,744/- were successfully remitted to the Complainant. Crucially, the remaining balance of Rs. 1,76,910/- was actively and consciously transferred by the Complainant himself to his own wife's bank account. Thus, the Complainant effectively recovered a total of Rs. 3,20,481/. This mathematical reality proves that the Complainant extracted more money than his actual invested principal of Rs. 2,66,080/-, rendering the allegation of financial misappropriation entirely fictional. (f) That the Revisionist acts merely as a sub-broker or facility provider. The entire trading mechanism, record-keeping, ledger maintenance, and software infrastructure are controlled by Reliance Securities Ltd., which operates strictly under the regulatory framework and jurisdiction of the Securities and Exchange Board of India (SEBI). Any discrepancy in accounting is subject to SEBI's grievance redressal mechanism, not criminal prosecution. (g) That the Ld. Trial Court, in a glaring procedural lapse, summoned the Revisionist without even specifying the penal Sections under which the cognizance was taken and the accused was directed to face trial.

5. Per contra, the Ld. Additional District Government Counsel (Criminal) appearing on behalf of Opposite Party No. 1 (State), supported by written submissions and arguments of the Ld. Advocate of Opposite Party No. 2, vehemently opposed the revision petition. The opposition fundamentally rests on the premise that the Investigating Officer acted in collusion with the accused person. It is contended that despite specific directions from the Ld. Trial Court on 06.10.2022 to conduct a thorough re-investigation, the I.O. deliberately abstained from recording the oral statement of the Complainant/Informant and mechanically forwarded the previous conclusions to shield the accused. The Complainant asserts that additional financial instruments, such as a Demand Draft of Rs. 65,163/- dated 06.10.2008 and a cheque of Rs. 25,000/- dated 24.10.2008, were not credited to his account by the company. The State argues that at the stage of taking cognizance and issuing process, the Magistrate is not required to meticulously weigh the evidence or conduct a mini-trial, but is merely tasked to assess whether a prima facie case is disclosed from the averments in the protest petition and the FIR. Thus, they argue,

the Ld. Trial Court was well within its jurisdictional competence to reject the Final Report and issue summons based on the Complainant's assertions.

6. Having heard the comprehensive arguments advanced by both sides and upon perusal of the trial court records, the protest petition, the Final Reports with accompanying Case Diaries, and the impugned order, this Revisional Court formulates the following core legal issues for determination:

Issue No. I: Whether the Ld. Trial Court committed a jurisdictional and procedural illegality by passing a non-speaking summoning order and failing to specify the exact penal sections for which the accused was being summoned to face trial?

Issue No. II: Whether the Ld. Trial Court erred in law by taking cognizance upon rejecting the Final Report without applying its judicial mind to the conclusive documentary evidence present in the Case Diary specifically the banking ledgers, and whether the Ld. Magistrate misapplied the settled legal procedure laid down by the Hon'ble Allahabad High Court regarding the treatment of Protest Petitions?

Issue No. III: Whether the essential ingredients of the offences of Cheating, Criminal Breach of Trust, and Forgery are prima facie made out, or whether the Ld. Trial Court failed to appreciate that the dispute—arising out of share trading and settlement of financial ledgers—is inherently a civil and commercial dispute governed by the specialized regulatory framework of the SEBI Act, 1992?

7. Issue No. I pertains to requirement of a speaking srder and specification of offences - A careful reading of the operative portion of the impugned order dated 09.05.2025 reveals that the Ld. Trial Court concluded the proceedings with a rudimentary, one-line directive: " The Final report is rejected and the accused is summoned for trial”. It is a foundational principle of criminal jurisprudence that the issuance of process is an extremely serious matter. It restricts the liberty of an individual, tarnishes their reputation, and forces them to face the severe rigours of a criminal trial.

8. The Hon'ble Supreme Court of India, in the landmark judgment of **Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749**, unequivocally laid down the legal threshold for summoning an accused:

"Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused

must reflect that he has applied his mind to the facts of the case and the law applicable thereto."

9. Expanding upon this inviolable doctrine, the Hon'ble Apex Court in **Mehmood Ul Rehman v. Khazir Mohammad Tunda, (2015) 12 SCC 420**, ruled decisively that a Magistrate taking cognizance must explicitly record his satisfaction about the existence of a prima facie case, and vitally, *must specify the specific penal offences* under which the accused is summoned. The Hon’ble Supreme Court observed:

"The Magistrate has to apply his mind and record his satisfaction that there are sufficient grounds for proceeding against the accused. A blanket order of issue of process without specifying the offence for which the accused is summoned is bad in law."

10. A blanket order to "summon the accused" without indicating whether the accused is being summoned for criminal breach of trust under Sec 409 IPC, for cheating under Sec 420 IPC, or forgery under Sec 467/468 IPC leaves the accused entirely defenseless as they are fundamentally deprived of knowing what specific criminal charges they are required to answer. The impugned order in the present case is entirely silent on the provisions of law invoked against the Revisionist. The Ld. Trial Court merely recorded the narrative of the Complainant and abruptly concluded that the accused be summoned. This total absence of reasoning and specification of penal provisions is not a mere procedural irregularity curable under Section 465 Cr.P.C., but a fatal jurisdictional illegality that strikes at the very root of the impugned order, rendering it wholly unsustainable in the eyes of the law.

11. Issue No. II pertains to procedure upon rejection of final report and application of judicial mind. The jurisprudence regarding the procedural options available to a Magistrate upon receipt of a Final Report (Closure Report) under Section 173(2) Cr.P.C. is well-settled. When a protest petition is filed by the informant against a Final Report, the Ld. Magistrate possesses three distinct legal pathways, as expounded by the Division Bench of the Hon'ble Allahabad High Court in **Pakhandu v. State of U.P., 2001 (43) ACC 1096**: (i) He may agree with the police report and drop the proceedings. (ii) He may disagree with the conclusions of the police report and take cognizance under Section 190(1)(b) Cr.P.C. *straightaway* on the basis of the evidentiary material collected in the Case Diary by the Investigating Officer. (iii) He may treat the protest petition as a regular complaint and proceed under Chapter XV of the Cr.P.C., thereby recording the sworn statements of the complainant and witnesses under Sections 200 and 202 Cr.P.C.

12. Crucially, the Hon'ble Allahabad High Court in *Pakhandu* (supra), which was later reaffirmed by the Hon'ble Supreme Court in **Vishnu Kumar Tiwari v. State of Uttar Pradesh, (2019) 8 SCC 27**, elucidated a strict embargo. The Courts held that if a Magistrate decides to bypass the complaint case procedure under Sections 200/202 Cr.P.C. and chooses to take cognizance directly under Section 190(1)(b) Cr.P.C. by rejecting the Final Report, his judicial satisfaction *must be derived exclusively from the material collected by the police during the investigation i.e., the Case Diary*. The Magistrate is legally barred from importing extraneous facts, averments, or new documents annexed with the Protest Petition to take cognizance under this specific route. If the Magistrate intends to rely on the new or additional facts averred in the Protest Petition, he is legally bound to treat it as a Complaint Case.

13. Applying this immutable legal principle to the case at hand, the Ld. Magistrate's reasoning is profoundly flawed and legally perverse. The impugned order explicitly states that the I.O. did not record the statement of the complainant during re-investigation, and relying almost entirely on the averments made by the Complainant in the Protest Petition (Paper 24-A), the Ld. Magistrate rejected the F.R. By doing so, the Ld. Magistrate relied on the Protest Petition without following the mandatory procedure of Chapter XV for recording statements under Sec 200/202 Cr.P.C.

14. Furthermore, the Ld. Magistrate completely turned a blind eye to the robust, unassailable documentary evidence compiled by the I.O. in the Case Diary. The Case Diary (S.C.D.-18) contains explicit banking records obtained directly from the State Bank of India. These records conclusively prove that out of the alleged deposited sum of Rs. 4,06,080/-, two major cheques (Nos. 16748 and 16747) totaling Rs. 1,40,000/- were never encashed and bounced. The total actual deposit was merely Rs. 2,66,080/-. Further, S.C.D.-11 establishes that the Complainant received massive financial payouts and personally transferred Rs. 1,76,910/- to his own wife's bank account, resulting in a total retrieval of Rs. 3,20,481/-.

15. If the Ld. Magistrate was taking cognizance on the Police Report by rejecting the I.O.'s subjective conclusion, how could she possibly ignore the objective, incontrovertible bank statements present in the very same Case Diary that entirely annihilate the theory of embezzlement? The Ld. Magistrate cannot cherry-pick the FIR's allegations while completely ignoring the independent, documentary banking proofs gathered by the police. The Hon'ble Supreme Court in

Sau Kamal Shivaji Pokarnekar v. State of Maharashtra, (2019) 14 SCC 350, mandated that the Magistrate must ensure that the foundational elements of an offence are prima facie satisfied by the material on record. The Ld. Magistrate failed in this primary judicial duty.

16. Issue No. III is related to the issue of cloaking a civil dispute with criminality and lack of forgery evidence. The allegations pertaining to Sections 467, 468, and 471 IPC for committing forgery and using forged documents, are entirely unsustainable. The Case Diary (S.C.D.-4) records the Complainant's own explicit admission during the investigation. When asked by the I.O. to point out exactly where his signatures were forged or to produce the forged authorization letters, the Complainant stated, "I do not know." The I.O. did not recover any forged document. The Hon'ble Supreme Court in **Sheila Sebastian v. R. Jawaharaj, (2018) 7 SCC 581**, categorically held that a charge of forgery cannot sustain unless the accused has made a "false document" as defined under Section 464 of the IPC. The Court observed:

"A claim of forgery cannot be sustained under Section 465, 467, or 468 IPC unless there is an actual making of a false document by the accused. The making of a false document is the sine qua non for forgery."

In the absolute absence of any physical or electronic forged document on record, the invocation of forgery sections by the Ld. Magistrate demonstrates a severe lack of judicial scrutiny.

17. The final, and arguably most significant dimension of this case is the inherent commercial nature of the transaction. The dispute fundamentally arises from a broker-client relationship pertaining to the trading of securities in the stock market. The Revisionist is merely a franchisee/sub-broker acting under the umbrella of Reliance Securities Ltd. The trading of shares, maintenance of Demat accounts, execution of trades, margin requirements, and settlement of funds are strictly and exhaustively governed by the **Securities and Exchange Board of India Act, 1992 (SEBI Act)** and the associated SEBI (Stock Brokers) Regulations, 1992.

18. The legislature has provided a complete and comprehensive mechanism under the SEBI Act for investor protection. Specifically, **Section 11(1) of the SEBI Act, 1992** states:

"Subject to the provisions of this Act, it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit."

19. Furthermore, regarding the redressal of investor grievances—which is exactly what the Complainant's case, which is about alleging trades without consent and accounting mismatch—**Section 15C of the SEBI Act, 1992** mandates:

"Penalty for failure to redress investors' grievances.—If any listed company or any person who is registered as an intermediary, after having been called upon by the Board in writing, to redress the grievances of investors, fails to redress such grievances within the time specified by the Board, such company or intermediary shall be liable to a penalty..."

20. The Investigating Officer correctly observed that the Complainant's Client ID was registered with a verified mobile number and email ID. Under mandatory SEBI guidelines, all stock exchanges (NSE/BSE) dispatch SMS and email alerts directly to the client's registered contacts at the end of every trading day, detailing the trades executed. It is inherently improbable to accept that "unauthorized trading" occurred over several years without the Complainant's knowledge, especially when he was actively transferring residual funds from this very trading account to his wife's bank account.

21. The Hon'ble Supreme Court has continuously warned the judiciary against the growing and disturbing tendency in business circles to convert purely civil, accounting, or commercial disputes into criminal cases to apply pressure for financial settlements. In the landmark case of **Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736**, the Hon'ble Apex Court vehemently deprecated this practice:

"Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged... The criminal courts are not meant to be used for settling scores or pressurising parties to settle civil disputes."

22. This principle was strongly reiterated in **State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335**, **Sushil Sethi v. State of Arunachal Pradesh, (2020) 3 SCC 240** and **Prof. R.K. Vijayasarathy v. Sudha Seetharam, (2019) 16 SCC 739**, clarifying that the essential ingredients of cheating - dishonest intention at the very inception, and criminal breach of trust - entrustment and deliberate misappropriation, must be explicitly present.

23. In the present scenario, the Complainant engaged in a commercial venture of share trading, which inherently carries severe market risks and requires constant ledger reconciliation. Any discrepancy regarding the non-reflection of specific Demand

Drafts, disputes over brokerage charges, or allegations of trades executed without specific consent, fall squarely within the domain of the Grievance Redressal Mechanism like the SCORES platform and Arbitration panels established by the Stock Exchanges under the aegis of SEBI. The Investigating Officer correctly inferred from the bank ledgers that there was no criminal misappropriation, but rather a reconciliation dispute where the Complainant had already recovered more than his net deposited principal. The Ld. Trial Court committed a grave jurisdictional error by allowing the machinery of the criminal justice system to be misused as a tool for recovery or accounting settlement, entirely ignoring the exhaustive regulatory framework of the SEBI Act.

24. The cumulative effect of the aforesaid legal, statutory, and factual scrutiny leads this Court to an inescapable conclusion. The Ld. Additional Chief Judicial Magistrate passed the impugned order dated 09.05.2025 in a highly mechanical, arbitrary, and perfunctory manner. The order is legally vitiated on three concurrent fronts: Firstly, it is a non-speaking order that fails to specify the penal provisions under which the Revisionist has been summoned, paralyzing her fundamental right to a fair defense and violating the mandate of the Hon'ble Supreme Court in *Mehmood Ul Rehman (supra)*. Secondly, it exhibits a total non-application of judicial mind to the incontrovertible documentary evidence - bank records, cheque dishonour memos, fund transfers to wife, embedded within the Case Diary, thereby violating the procedural parameters of taking cognizance upon a police report as established in *Pakhandu v. State of U.P (supra).* Thirdly, it unlawfully permits the weaponization of criminal law to adjudicate a pure accounting and trading dispute between a client and a stock-broker, sidestepping the dedicated statutory grievance mechanisms provided by the SEBI Act, 1992, and ignoring the binding precedents of the Apex Court in *Indian Oil Corpn.* and *Bhajan Lal (supra)*.

25. Such an order is perverse, legally unsustainable, and warrants immediate interdiction by this Revisional Court to prevent a gross miscarriage of justice and the blatant abuse of the judicial process.

ORDER

In light of the comprehensive discussions, reasoning, and the settled propositions of law elucidated above, the present Criminal Revision No. 293 of 2025 is hereby **ALLOWED** on merits.

The impugned order dated 09.05.2025, passed by the Ld. Additional Chief Judicial Magistrate, Court Room No. 17, Etah, in relation to F.R. No. 189/2019 arising out of Case Crime No. 999/2018 (Police Station Kotwali Nagar), is hereby **SET ASIDE**.

The matter is remanded back to the Ld. Trial Court with a specific direction to reconsider the Protest Petition (Paper No. 24-A) and the Final Report submitted by the Investigating Officer afresh. The Ld. Trial Court shall pass a speaking, reasoned, and legally sound order strictly in accordance with the law, keeping in mind the documentary evidence present in the Case Diary specifically the banking ledgers, dishonoured cheques, and the Complainant's admissions and the observations made by this Revisional Court regarding the civil/regulatory nature of stock-market disputes governed by the SEBI Act, and the mandatory necessity of specifying offences, without being influenced by the fact of the earlier erroneous summoning order.

Send a copy of this order along with the Trial court record, if any, to the Ld. Trial Court forthwith for information and necessary compliance.

The revision file be consigned to the Record Room after due compliance.

Date: 17.04.2026

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