

In the Court of Sessions Judge, Gonda

Present- Durg Narain Singh, H.J.S.

(J.O. Code- UP-5863)

Criminal Revision No.- 48 of 2026



CNR No. UPGD01000703-2026

Harish Dutt Tiwari, aged about 52 years, S/o Shyamraj Tiwari, R/o Village- Mahadeva, P.S.-Kotwali Dehat, District- Gonda.

...Revisionist/Complainant

Versus

1. Girish Dutt Tiwari, aged about 57 years, S/o Shyamraj Tiwari, R/o Near Dukh Haran Nath Mandir, Mohalla- Kailashpuri Colony, P.S.- Kotwali Nagar, District- Gonda.
2. State of U.P.

... Opposite parties

J U D G M E N T

1. This criminal revision has been preferred by the revisionist/complainant against order dated 16.01.2026 passed by the Judicial Magistrate, Court no.-2, Gonda, in relation to *Misc. case no. 2238 of 2023, Harish Dutt Tiwari Vs. Girish Dutt Tiwari & others*, P.S.- Kotwali Nagar, District- Gonda, Whereby the learned trial court has registered the application moved by the complainant U/s 156(3) Cr.P.C. as *Complaint*.
2. Aggrieved by the impugned order, the revisionist/complainant has preferred the present criminal revision, contending that the learned trial court passed the impugned order in a cursory manner without applying its judicial mind. It is submitted that, while passing the impugned order, the learned trial court failed to consider that the articles, such as the gold chain, cash, and the bank account of the opposite party, are the subject matter of investigation and can be recovered and collected by the police only during the course of investigation. It is further argued that, while passing the impugned order, the learned trial court failed to take into consideration the earlier order passed by the revisional court, wherein it was observed that, *prima facie*, the matter relates to a cognizable offence

and despite the said observation, the learned trial court proceeded to pass the impugned order. It is also submitted that the opinion expressed by the learned trial court that, although the facts prima facie disclose the commission of a cognizable offence, it is not bound to direct registration of an FIR, is not legally tenable. It is further submitted that the opposite parties, on the pretext of providing jobs in government-aided schools, used to accept illegal gratification and that this issue is a matter requiring investigation by the police. It is also alleged that the opposite party, being an advocate by profession, has been misusing his professional position for illegal purposes. Accordingly, prayed that the present revision be allowed and the impugned order be set aside.

3. In support of his contentions, learned counsel for the revisionist/complainant produced following case laws:-

- i- ***Rajina Vs. State of U.P. and Others, 2024 (1) PNP 495 (All)***, wherein the Hon'ble Allahabad High Court held that-

“the allegation against the contesting opposite party was of molesting a minor girl and theft. The police was informed through Dial No. 112. The police came and admitted the victim in the hospital but did not register the FIR. The Magistrate also rejected the application under Section 156(3). In view of the facts, proper investigation was needed. Accordingly, the order was set aside and the Magistrate was directed to decide the matter afresh. The application was allowed.”

- ii- ***Samsad Ahmad Vs. State of U.P. and Another, 2024 (2) P.N.P. 326 (All)***, wherein the Hon'ble Allahabad High Court held that-

“The Magistrate rejected the application for registration of FIR and treated it as a complaint case on the ground that the matter is of a civil nature. The claim was raised on the basis of a Will and the Will appeared to be doubtful as Notary had died earlier to the execution of the Will. Only the police could bring out the truth regarding the death of the Notary. Hence, the order was set aside and the matter was remanded for fresh disposal.”

4. After issuance of notice, learned counsel for the opposite party no.- 1 appeared before the court and filed his objection through paper no. 12 Kha and stated that the impugned order dated 16.01.2026 passed by the learned trial court, whereby the application under Section 156(3) Cr.P.C. was treated as a Complaint, is legal and proper. It is argued that the applicant/revisionist has concealed the material facts, as both the parties are real brothers and are involved in civil and revenue disputes and the present proceedings has been initiated only to create pressure and to give a criminal colour to a civil dispute. It is further submitted that the learned Magistrate is not bound to direct registration of an FIR on every application moved under Section 156(3) Cr.P.C. and has the discretion to

treat such application as a complaint, as held in the case of **Sukhwasi Vs. State of U.P., 2007 (59) ACC 739 (DB)** and **Ram Babu Gupta Vs. State of U.P., 2001 (43) ACC 50 (FB)**. Further, the Hon'ble Apex Court in the case of **Indian Oil Corporation Vs. NEPC India Ltd. & Ors., 2006 (6) SCC 736** has also cautioned against converting civil disputes into criminal proceedings. It is further argued that the scope of revisional jurisdiction is very limited and interference is not warranted unless there is any illegality, irregularity or manifest error in the order of the court below. The learned trial court has passed the impugned order after due consideration of the facts and circumstances. Therefore, the instant criminal revision is liable to be dismissed and the order dated 16.01.2026 deserves to be affirmed.

5. In support of his contentions, learned counsel for the opposite party no.1 produced following case laws:-

- i- **Roli Vs State of U.P. Thru. Addl. Chief Secy. Deptt. Of home lko. and 4 others;** application u/s 528 BNSS no. - 1531 Of 2026, Neutral Citation No. - 2026: AHC-lko:35795, wherein the the Hon'ble Allahabad High Court observed that -"

"where the complainant is in possession of the complete details of the case and also the material evidence and the investigation by the police may not be required, the Magistrate may follow the procedure of a complaint case. It is thus, not necessary that in every case where a complaint has been filed under section 200 of the Cr.P.C., the Magistrate should direct the police to investigate the crime merely because an application u/s 156(3) Cr.P.C. even though the evidence to be led by the complainant is in his possession or can be produced by summoning witnesses, with the assistance of the court or otherwise."

- ii- **Pradeep Kumar Vs. State of U.P and 2 others, Application U/s 528 BNSS No. 18266 of 2025.** Neutral Citation No. - 2026: AHC-lko:31226, Wherein the Hon'ble Allahabad High Court has further affirmed law laid down in case of **Lalaram Vs. State of U.P. and others., 2021(1) ADJ 145**. In case of **Lala Ram (Supra)**, the Hon'ble Allahabad high court, laid down following propositions of law on the basis of various decisions of the Hon'ble Apex Court which is as follows:-

*"17. After considering the entire gamut of the law laid down in various decisions of the Supreme Court and this Court, this Court in **Lala Ram (Supra)** summarized the propositions of law, as follows:-*

"(40.06). In either case, i.e. issuing direction for investigation by the police officer under Section 156(3) Cr.P.C. or taking cognizance and registering it as a complaint case, the Magistrate has to apply judicial mind. There cannot be mechanical exercise of jurisdiction or exercise in a routine manner. Mere statement in the order that he has gone through the complaint, documents and heard the complainant will not be sufficient. What weighed with the Magistrate to order investigation or to take cognizance should be reflected in the order, although a detailed expression of his view is neither required nor warranted.

(40.07). The exercise of discretion by the Magistrate is basically guided by interest of justice, from case to case.

(40.08). However, where some investigation is required which is of a nature that is not possible for the private complainant and which can only be done by the police officer upon whom statute has conferred the powers essential for investigation, the option to direct the registration of the FIR and its investigation by the police officer should be exercised, for example:-

(i) where the full details of the accused are not known to the complainant and the same can be determined only as a result of investigation, or

(ii) where recovery of abducted person or stolen property is required to be made by conducting raids or searches of suspected places or persons, or

(iii) where for the purpose of launching a successful prosecution of the accused evidence is required to be collected and preserved, and to illustrate this, by few example cases may be visualised where for production before Court at the trial.

(a) sample of blood soaked soil is to be taken and kept sealed for fixing the place of incident; or

(b) recovery of case property is to be made and kept sealed; or

(c) recovery under Section 27 of the Evidence Act; or

(d) preparation of inquest report; or

(e) witnesses are not known and have to be found out or discovered through the process of investigation.

(40.09). Where the complainant is in possession of the complete details of all the accused and the witnesses who have to be examined and neither recovery is needed nor any such material evidence is required to be collected which can be done only by the police, no "investigation" would normally be required and the procedure of complaint case should be adopted.

(40.10). Category of cases falling under para 120.6 in Lalita Kumari (Supra) i.e.

(a) Matrimonial disputes/family disputes

(b) Commercial offences

(c) Medical negligence cases,

(d) Corruption cases

(e) Cases where there is abnormal delay in filing criminal complaint etc. may fall under Section 202 Cr.P.C .

(40.11). The Magistrate should also keep in view that primarily, it is the duty of the State/police to investigate the cases involving cognizable offence. Generally, the burden of proof to bring the guilt of the accused is on the State and this burden is a heavy burden to prove the guilt beyond all reasonable doubts. This burden should not unreasonably be shifted on an individual/complainant from the State by treating the application under Section 156(3) Cr.P.C. as a complaint case.

(40.12). The investigation which the police officer or such other

person makes in pursuance of the direction of the Magistrate under Section 202(1) Cr.P.C. is the same kind of investigation as is required to be conducted by police officer, under Chapter XII Cr.P.C. which ends with submission of the report as per Section 173(2) Cr.P.C.

(40.13). The distinction between the investigation by the police officer under Section 156(3) and under Section 202(1) Cr.P.C. is that the former is at the pre-cognizance stage and the latter is at post cognizance stage, when the Magistrate is seisin of the case. The investigation under Section 202(1) Cr.P.C. is for the purpose of ascertaining the truth or false hood of the complaint for helping the Magistrate to decide, whether or not there is sufficient ground, for him to proceed further against the accused by issuing process, whereas, the inquiry report under Section 173(2) Cr.P.C. of the investigation made by the police of its own or under the directions of the Magistrate under Section 156(3) Cr.P.C. is for the purpose of enabling the Magistrate to take cognizance of an offence under Section 190(1)(a) Cr.P.C.

(40.14). Once cognizance is taken on the application under Section 156(3) Cr.P.C. by the Magistrate and he embarks upon the procedure embodied in Chapter XV, he would not be competent to revert to the pre-cognizance stage under Section 156(3) Cr.P.C.

(40.15). If the Magistrate did not order for police investigation under Section 156(3) Cr.P.C. and took cognizance of the case, that would not be bar to the exercise of the power of the Magistrate for directing the police investigation under Section 202(1) Cr.P.C.

41. Point nos. 1, 2 and 3 as framed in para 12 of this judgment stands answered as per para no. 40 above."

18. In the opinion of this Court, the consideration by the Learned Magistrate of factors weighing upon his decision to either treat the application moved before him seeking registration of a case and an investigation to be treated as a complaint or to direct registration of a First Information Report, are still the same when it comes to exercise of powers under Section 175(3) B.N.S.S. Thus, the propositions of law summarized in the case of Lala Ram (Supra), as quoted above, still apply to proceedings under Section 175(3) B.N.S.S. The considerations of the Learned Magistrate extracted above on the facts and circumstances of the case, in the opinion of this Court, are in consonance with Paragraph Nos.40.06 and 40.07 of the case of Lala Ram (Supra) extracted above. The Learned Magistrate has given his reasons why a police investigation is not required. He has recorded his satisfaction that nothing has been mentioned in the application, which would require the collection of such evidence which can only be done by a police investigation. One more factor that weighs with this Court while considering the impugned order passed by the Chief Judicial Magistrate, District Kanpur Dehat, is that the alleged attack on the brother of the applicant is stated to have occurred on 19.07.2024. After the lapse of more than one and a half years from the date of the incident, no physical evidence would reasonably remain at an open place, and therefore, recovery of blood-stained soil at this stage would not be possible."

6. Learned DGC (Crl.) for the State/O.P. No.-2 also opposed the instant criminal revision and vehemently argued that the learned Magistrate has not committed any error while passing the impugned order, as there is nothing in the application moved under Section 156(3) Cr.P.C. [Section

173(4) BNSS] which requires investigation by the police. He further submitted that the Magistrate is not bound in every case to direct registration of an FIR merely because the application discloses commission of a cognizable offence. The Magistrate is fully competent to exercise judicial discretion in the facts and circumstances of each case. It was submitted that under Section 190 Cr.P.C., the Magistrate is empowered either to take cognizance directly or to direct the police to investigate the matter and submit a report under Section 173 Cr.P.C. It was further submitted that instead of directing investigation under Section 156(3) Cr.P.C. [Section 173(4) BNSS], the Magistrate is equally competent to treat such application as a Complaint and proceed in accordance with the provisions of Chapter XV of the Cr.P.C., even if a cognizable offence is disclosed.

7. Learned DGC (Crl.) for the State further submitted that in the case of ***Sukhwasi Vs. State of U.P.***, (2007) 59 ACC 730, which has also been referred to in the impugned order passed by the learned Magistrate, Gonda, the Division Bench of the Hon'ble Court has clarified that on receiving an application under Section 156(3) Cr.P.C. [Section 173(4) BNSS], even if a cognizable offence is disclosed, the Magistrate is not bound in every case to direct lodging of FIR and investigation by the police. It has been reiterated that the Magistrate is competent to treat an application under Section 156(3) Cr.P.C. as a complaint. The said principle has also been recognized by the Hon'ble Apex Court in ***Suresh Chandra Jain Vs. State of Madhya Pradesh***, (2001) 42 ACC 459, wherein it has been held that the Magistrate has the authority to treat such application as a complaint. Thus, the learned Magistrate had jurisdiction to treat the application under Section 156(3) Cr.P.C. as a complaint and no illegality or jurisdictional error has been committed while passing the impugned order. It has been further submitted that in the case of ***Lalita Kumari Vs. State of U.P.***, (2014) @ SCC1, it has been observed by the Hon'ble Apex Court that the police has no option but to register an FIR under Section 154 Cr.P.C. upon receipt of information disclosing commission of a cognizable offence. However, the said judgment does not lay down any proposition that the Magistrate, while exercising jurisdiction under Section 156(3) Cr.P.C., is mandatorily required to direct registration of FIR and investigation in every case. The said judgment does not deal with the discretion of the Magistrate to treat an application under Section 156(3) Cr.P.C. as a complaint. Accordingly, it was submitted that the impugned order has been passed in accordance with law and does not suffer from any illegality,

infirmity or jurisdictional error warranting interference by this Court. Hence, it was prayed that the instant criminal revision be dismissed.

8. Heard, learned counsel for both the parties and perused the record.
9. Learned counsel for the revisionist has drawn the attention of this Court towards the impugned order and submitted that the conclusion arrived at by the learned trial court is not supported by proper discussion or appreciation of the allegations made in the application. It is further argued that a bare perusal of the application discloses commission of cognizable offences; however, the learned trial court without properly considering the nature of allegations and the necessity of investigation, proceeded to treat the application under Section 156(3) Cr.P.C. [Section 173(4) BNSS] as a complaint case which is contrary to the settled principles of law. It is submitted that the allegations involve recovery of articles and collection of evidence which could not be effectively undertaken by the complainant himself and required police investigation. Therefore, the impugned order suffers from illegality and is improper exercise of jurisdiction, thus it is liable to be set aside.
10. From the perusal of record, it transpires that in the present matter, the application U/s 156(3) Cr.P.C has been ordered to be registered as complaint and fixed 25.02.2026 for recording the evidence of complainant U/s 223 BNSS (section 200 Cr.P.C.). Verbatim of the observations made in the impugned order is as under-

“ पत्रावली वास्ते आदेशार्थ पेश हुई। प्रार्थना पत्र पर उभयपक्ष को पूर्व में सुना जा चुका है।

प्रार्थी के प्रार्थना पत्र अन्तर्गत धारा 156 (3) दं०प्र०सं० का संक्षेप में कथन है कि विपक्षी सं०-01 का जालसालों का एक गिरोह है जो अपने जाल में फंसा कर सरकारी मान्यता प्राप्त स्कूल में नौकरी दिलाने के नाम पर घूस लेते हैं। कई करोड़ रुपये की ठगी करके अचूक सम्पत्ति अर्जित कर चुके हैं। अपने मन्सूबे का इस्तेमाल कर गलत धन की उगाही करते हैं। प्रार्थी से आपसी जमीन के बावत विवाद करके परेशान करते हैं तथा जमीन जायदाद को हड़प करने हेतु प्रार्थी को जान से मार डालने का षड्यन्त्र करते हैं। प्रार्थी ने इसके बावत प्रार्थना पत्र दिया परन्तु कोई कार्यवाही नहीं हुई। दिनांक-02.06.2023 को प्रार्थी शाम करीब 07:00 बजे अपने कार्यालय से घर जा रहा था तो धानेपुर रोड पर विवेकानन्द स्कूल के आगे विपक्षी गिरीशदत्त अपने दो अन्य साथियों के साथ मिले और जान से मार डालने की धमकी देते हुए घर लिए। उन दोनों अज्ञात व्यक्तियों ने प्रार्थी को पकड़ लिया तथा गले से सोने की दो तोला जंजीर तथा मु०-11,000/- रुपये छीन लिया तथा विपक्षी गिरीशदत्त ने प्रार्थी को जन से मारने की नियत से कट्टे से फायर कर दिया। प्रार्थी नीचे झुककर गिर गया जिससे बाल-बालबच

गया। तमाम लोगों के दौड़कर वहां आ जाने पर विपक्षीगण अपने साधन से भाग गये। इसकी इतला प्रार्थी ने थाने पर दिया परन्तु रिपोर्ट नहीं लिखी गयी तब प्रार्थी ने पुलिस अधीक्षक महोदय, गोण्डा को प्रार्थना पत्र दिया। कार्यवाही न होने पर प्रार्थना पत्र अन्तर्गत धारा-156 (3) दं०प्र०सं० श्रीमान जी के समक्ष प्रस्तुत कर रहा है।

सुना तथा पत्रावली व माननीय निगरानी सत्र न्यायालय के आदेश दिनांकित 12.11.2025 का ससम्मान अवलोकन किया। अवलोकन से विदित है कि प्रार्थी हरीशदत तिवारी द्वारा प्रार्थना पत्र अन्तर्गत धारा-156 (3) दं०प्र०सं० दाखिल कर विपक्षीगण के विरुद्ध मुकदमा पंजीकृत करने हेतु याचना की गयी थी। प्रार्थी के उक्त प्रार्थना पत्र को न्यायालय द्वारा दिनांक 01.09.2020 ¹/₄correct date 26.09.2024¹/₂ को निरस्त किया गया, जिसके विरुद्ध प्रार्थी ने निगरानी योजित किया जिसमें दिनांक 12.11.2025 को माननीय निगरानी न्यायालय द्वारा आदेश पारित करते हुए न्यायालय के आदेश दिनांकित 10.09.2020 ¹/₄correct date 26.09.2024¹/₂ को निरस्त करते हुए पुनः सुनवाई कर आदेश पारित किये जाने हेतु आदेशित किया गया।

माननीय निगरानी न्यायालय के आदेश के अनुक्रम में पत्रावली को पुनः सुना गया। पत्रावली के अवलोकन से यह विदित होता है कि प्रार्थी घटना के समस्त तथ्यों व विपक्षीगण से पूर्ण परिचित है। प्रार्थी के प्रार्थना पत्र में वर्णित तथ्यों एवं अन्तरवस्तुओं के अवलोकन से स्पष्ट है कि प्रार्थी अपने प्रार्थना पत्र में उल्लिखित तथ्यों को मौखिक अभिलेखीय साक्ष्य से साबित कर सकता है। पुलिस द्वारा किसी विवेचना की आवश्यकता प्रतीत नहीं होती है। माननीय उच्च न्यायालय इलाहाबाद की खण्ड पीठ के निर्णय **सुखवासी प्रति उ०प्र० राज्य 2007 (59) ए०सी०सी० 739** में माननीय न्यायालय द्वारा यह अवधारित किया गया है कि, मजिस्ट्रेट धारा-156 (3) दं०प्र०सं० में दिये गये प्रार्थना पत्र के आधार पर अभियोग पंजीकृत किये जाने तथा विवेचना किये जाने हेतु आदेश पारित करने को बाध्य नहीं है, भले ही प्रार्थना पत्र के तथ्यों से संज्ञेय अपराध होना पाया जाता हो।

माननीय उच्चतम न्यायालय के अयतन निर्णय **मोना पवार प्रति माननीय इलाहाबाद उच्च न्यायालय द्वारा रजिस्ट्रार 2011 (2) ए०सी० जे० पेज नं०-1691** के निर्णय में दिये गये विधि सिद्धांत के आलोक में एवं सम्बन्धित थाने की आख्या एवं प्रार्थी के प्रार्थना पत्र में वर्णित तथ्यों एवं अन्तरवस्तुओं के आलोक में इस प्रकार के सभी साक्ष्य प्रार्थी के संज्ञान एवं नियंत्रण में है, जिन्हें प्रार्थी स्वयं प्रस्तुत करके अपने केस को साबित कर सकता है। इसलिये विवेचना कराये जाने कोई पर्याप्त आधार नहीं है। उपरोक्त के आलोक में प्रार्थना पत्र परिवाद के रूप में दर्ज किये जाने योग्य है।

आदेश

प्रार्थी हरीशदत तिवारी का प्रार्थना पत्र अन्तर्गत धारा-156(3) दं०प्र०सं० परिवाद के रूप में पंजीकृत हो। विपक्षीगण को नोटिस जारी हो। परिवादी नोटिस की पैरवी अन्दर सप्ताह करे। पत्रावली वास्ते बयान परिवादी अन्तर्गत धारा-200 दं०प्र०सं० दिनांक 25.02.2026 को पेश हो।

11. It is settled law that while exercising jurisdiction under Section 156(3) Cr.P.C. [Section 173(4) BNSS], the Magistrate is required to apply his

judicial mind to the facts and circumstances of the case and to record reasons for adopting either of the courses available under law i.e., directing investigation by the police or treating the application as a Complaint. The said principle has been reiterated by the Hon'ble Apex Court in the cases of **Ramdev Food Products (P) Ltd. Vs. State of Gujarat, (2015) 6 SCC 439** and **Anil Kumar Vs. M.K. Aiyappa, (2013) 10 SCC 705**.

12. In the given facts and circumstances of the present case, it cannot be overlooked that where the allegations involve recovery of articles, collection of evidence, verification of documents or gathering of material which is beyond the reach of the complainant, the Magistrate, while considering whether to treat an application under Section 156(3) Cr.P.C. [Section 173(4) BNSS] as a complaint, is required to examine whether the complainant would be in a position to collect and produce such evidence before the Court by himself or whether the assistance of police investigation is necessary for a proper and effective adjudication of the matter.
13. With regard to above mentioned fact, the Hon'ble Allahabad High Court in the case of **Gulab Chand Upadhyaya Vs. State of U.P. and others, (2002) 44 ACC 670**, issued some directive guidelines in the matter of the discretion of Magistrate to decide the application U/s 156 (3) Cr.P.C., in a particular manner and held that:

"21. The scheme of Cr.P.C. and the prevailing circumstances require that the option to direct the registration of the case and its investigation by the police should be exercised where some "investigation" is required, which is of a nature that is not possible for the private complainant, and which can only be done by the police upon whom statute has conferred the powers essential for investigation, for example

- (1) where the full details of the accused are not known to the complainant and the same can be determined only as a result of investigation, or*
- (2) where recovery of abducted person or stolen property is required to be made by conducting raids or searches of suspected places or persons, or*
- (3) where for the purpose of launching a successful prosecution of the accused evidence is required to be collected and preserved. To illustrate by example cases may be visualised where for production before Court at the trial*
 - (a) sample of blood soaked soil is to be taken and kept sealed for fixing the place of incident; or*
 - (b) recovery of case property is to be made and kept sealed; or*
 - (c) recovery U/s 27 of the Evidence Act; or*
 - (d) preparation of inquest report; or*
 - (e) witnesses are not known and have to be found out or*

discovered through the process of investigation."

14. Also, the Hon'ble Allahabad High Court in the case of **Anmol Singh Vs. State of U.P. and Others, (2021) 117 ACC 146** reiterated that -

"The magistrate should apply judicial mind while exercising his powers U/s 156 (3) Cr.P.C. He could not act in a mechanical or casual manner and go on with the complaint after getting the report. The course adopted by the Magistrate i.e. direction to the police for registration of FIR and making investigation or to treat the application as a complaint case, must be supported by reasons. The order must also reflect that the Magistrate on relevant considerations has adopted one of these two modes open to him. Mere mention in the order that he has gone through the complaint and the police investigation is not required or otherwise, would not be sufficient compliance of application of judicial mind while deciding application U/s 156(3) Cr.P.C."

15. Same view has been affirmed by the Hon'ble Allahabad High Court in the Case of **Lalaram (Supra) and Roli (Supra) discussed as above.**

16. This court in its previous decision dated 12.11.2025 in criminal revision no. 548/2024, held that the allegations made in the application u/s 156(3) Cr.P.C. discloses the commission of cognizable offences. So, now question only remains whether the learned trial court was required to order for investigation or treat the same as complaint.

17. In application of complainant some short of cheating and gaining property by illegal way has been alleged. It has further been alleged that on 02.06.2023, while the complainant was returning from his office, opposite party no. 1 along with two unknown persons intercepted him near Vivekanand School, threatened him, snatched his gold chain and cash amounting to Rs. 11,000/-, and thereafter opposite party no. 1 allegedly fired at him with an intention to kill. The complainant narrowly escaped and the accused persons fled from the spot. Thus, from the nature of allegations and the evidence required to be collected, it is apparent that the complainant is not in a position to produce the relevant evidence or effect recovery himself. The same can only be done by the investigating agency by exercising its statutory powers. Therefore, police investigation in the matter is required as argued by the learned counsel for the revisionist.

18. The learned Magistrate, however, failed to properly appreciate the legal principles laid down in the case of **Sukhwasi Vs. State of U.P. (supra)**. although the said judgment recognizes that the Magistrate has the discretion to treat an application under Section 156(3) Cr.P.C. as a

complaint, such discretion is required to be exercised judiciously after considering the nature of allegations, the requirement of investigation and the facts and circumstances of each case. In the present matter, in view of the law laid down by the Hon'ble Allahabad High Court in case of Lalaram (Supra) and Roli (Supra) the learned Magistrate, while passing the impugned order, did not properly consider the necessity of police investigation in view of the allegations made and the nature of evidence required to be collected. Therefore, the order passed by the learned Magistrate treating the application under Section 173(4) BNSS [Section 156(3) Cr.P.C.] as a complaint case cannot be sustained in the eyes of law.

- 19.** Hence, in view of the aforesaid discussion and the legal principles laid down in the judgments referred herein above, this Court is of the considered opinion that the impugned order suffers from illegality, infirmity and improper exercise of jurisdiction. Accordingly, the present criminal revision succeeds and is liable to be allowed.

Order

Criminal Revision no. **48/2026, Harish Dutt Tiwari Vs. Grish Dutt Tiwari and others;** is hereby **allowed**.

Order passed by learned Judicial Magistrate, Court no.-2, Gonda in relation to Misc. Case No. 2238 of 2023 titled ***Harish Dutt Tiwari Vs. Grish Dutt Tiwari and others***, dated 16.01.2026 is hereby **set-aside**.

Learned Magistrate of the court concerned is directed to pass order afresh after giving opportunity of hearing to complainant/revisionist in light of the case laws and observations made herein above in the text of the judgment.

A copy of this judgment and along with lower court record be sent to learned trial court. Revisionist is directed to appear before the learned trial court on **12.08.2026** for further proceedings.

Consign as per law.

Date- 18.07.2026

(Durg Narain Singh)
Sessions Judge,
Gonda
ID No. UP 5863

Today, this order has been pronounced by me in the open Court.

Date- 18.07.2026

(Durg Narain Singh)
Sessions Judge,
Gonda
ID No. UP 5863