



UPHR010034412026

In the Court of Sessions Judge, Hardoi

Present: Reeta Kaushik, H.J.S.

(J.O. Code: U.P. 5728)

Criminal Revision No. 86/2026

01. Rakesh Kisan son of Swami Dayal
 02. Rajesh Kisan son of Kissa
 03. Smt. Rajeshwari wife of Rakesh Kisan
 04. Smt. Rajvati wife of Rajesh Kisan
- All R/o Vill. Virni, P.S. Bilgram, District Hardoi.

----- **Revisionists.**

Versus

State of U.P. through D.G.C. (Crl.), Hardoi

----- **Opposite Party.**

JUDGMENT

1. This criminal revision u/s 438 B.N.S.S. has been filed by the revisionists/applicants, Rakesh Kisan & Ors., being aggrieved by the order dated 09.03.2026 passed by the Court of Addl. Civil Judge (J.D.), Court No. 3, Hardoi, in Case No. 28781/2022, N.C.R. No. 79/2025, State v. Rakesh Kisan & Ors., whereby the application filed by the revisionists/applicants u/s 468 Cr.P.C. read with Section 258 Cr.P.C. has been rejected.
2. Briefly, the facts of the revision are that an application u/s 468 read with Section 258 Cr.P.C. was filed by the applicants/revisionists, Rakesh and others, before the Court of J.M.-I, Hardoi, stating that the incident occurred and the F.I.R. was registered on 06.06.2019, while cognizance was taken by the Court on 03.12.2022 upon submission of the chargesheet. Since Section 323 I.P.C. provides for a punishment of one year and Section 506 I.P.C. provides for imprisonment of up to two years, u/s 468 Cr.P.C., cognizance of offenses punishable with imprisonment of less than three years must be taken within three years, making the cognizance in this case time-barred. The applicants further contended that u/s 473 Cr.P.C., the Court may condone delay at the time of taking cognizance, but since no condonation application was filed then, the delay cannot be condoned now, and therefore, in view of Section 258 Cr.P.C., any irregularity in the summons trial should be rectified and the accused be discharged or acquitted in the interest of

justice.

3. The trial court, vide its order dated 09.03.2026, has rejected the application filed by the revisionists/accused u/s 468 Cr.P.C. read with Section 258 Cr.P.C.

4. On behalf of the revisionists, it has been stated as the basis of the revision that the trial Court has passed its order in an arbitrary and whimsical manner against the principles of law. While passing its order, the trial Court did not properly examine the papers available on record u/s 468 and Section 258 Cr.P.C. The trial Court is not barred from taking cognizance after the lapse of time u/s 468 Cr.P.C., but limited powers have been given u/s 471 Cr.P.C. that the Court may condone the delay prior to taking cognizance. The cognizance that has been taken is contrary to law and against the available facts and is liable to be set aside. The order of the trial Court is liable to be set aside being contrary to law and facts. Therefore, a prayer has been made to allow the revision and set aside the order dated 09.03.2026 passed by the learned trial Court.

5. On the other hand, learned D.G.C. (Crl.) for the State has submitted that there is no illegality or irregularity in the impugned order and learned trial Court having applied its judicial mind properly, has passed the impugned order. Revision lacks merit and deserves to be dismissed.

6. I have heard learned counsel for the revisionists and learned D.G.C. (Crl.) appearing for the State, at length and gone through the record.

7. From the perusal of the concerned file, it is clear that the revisionists/accused filed an application on 04.04.2025 in the Court concerned u/s 468 Cr.P.C. read with Section 258 Cr.P.C. for discharging them u/s 258 Cr.P.C. in which they stated that incident alleged in this case occurred on 06.06.2019 and cognizance on chargesheet has been taken on 03.12.2022. Chargesheet has been filed u/s 323 and 506 I.P.C. Under Section 323 I.P.C., imprisonment for one year and u/s 506 I.P.C., imprisonment for two years is provided. As per provisions of Section 468 Cr.P.C., cognizance for the offense in which punishment provided is less than three years can be taken within three years. Therefore, cognizance dated 03.12.2022 was time barred u/s 468 Cr.P.C. Section 473 Cr.P.C. does not bar the taking of cognizance after the prescribed period of limitation but if no application for condoning delay is filed at that time, the limitation cannot be condoned. Section 258 Cr.P.C. provides that if any irregularity is committed in any summons trial case, then accused is liable to be discharged u/s 258 Cr.P.C.

8. Learned trial Court rejected this application by order dated 09.03.2026 holding that I.O. filed chargesheet with delay and reason for delay was shown as covid-19 pandemic and Court taking this reason as

sufficient for delay in filing chargesheet, has taken cognizance. In such circumstances, application of accused is not liable to be accepted.

9. The revisionists have himself asserted that Section 468 Cr.P.C. does not bar taking cognizance even after period of limitation but has argued that the Court does not have unlimited or unfettered power to take cognizance u/s 473 Cr.P.C. The power conferred by Section 473 Cr.P.C. is subject to statutory requirements prescribed therein and the Court must be satisfied on the facts and circumstances of the case that the delay has been properly explained or that is necessary to take cognizance in the interest of justice. In the present case, it has been mentioned that In-charge Officer, P.S. Bilgram, District Hardoi has on 24.11.2022 filed application for condoning delay in filing chargesheet with the averments that chargesheet could not be filed within time due to covid-19 pandemic. Thus, the delay reason mentioned by concerned officer in-charge for filing chargesheet by delay was found sufficient by the P.O. concerned. Hence, the argument of the revisionists, that due to the fact that delay was not sufficiently explained, cognizance was time barred is not sustainable.

10. Section 2(w) of Cr.P.C. describes the summons-case as a case relating to an offense, not being a warrant-case. The definition of warrant-case is provided in Section 2(x) of Cr.P.C. according to which a warrant-case means a case relating to an offense punishable with death imprisonment for life or imprisonment for a term exceeding two years. The offense u/s 323, 504 I.P.C. involved in the case in hand are not punishable with imprisonment for a term exceeding two years. Therefore, the offense being summons case, the procedure for trial of summons case provided under Chapter XX of Cr.P.C. ought to be adopted in this case.

11. Section 258 Cr.P.C. provides power to stop proceedings in certain cases. It provides that in any summons-case instituted otherwise than upon complaint, a Magistrate may for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal, and in any other case release, the accused, and such release shall have the effect of discharge.

12. In the case of ***John Thomas v. Dr. K Jagadeesan, AIR 2001 SC 2651***, the Hon'ble Supreme Court in respect to powers of the Court u/s 258 Cr.P.C. with regard to summons-cases laid down the law as follows:-

One of the normal rules in summons cases is that once trial started, it should reach its normal culmination. Section 258 is included in chapter XX of the Court in the form of an exception to the aforesaid normal progress chart of the trial in summons cases. But by Section

258 Cr.P.C., the power of the Court to discharge an accused at midway stage is restricted to those cases instituted otherwise than on complaints wherein no material witness was examined at all. Summons cases are generally of two categories. Those instituted upon complaints and those instituted otherwise than upon complaints. The latter category would include cases based on police reports. Section 258 Cr.P.C. is intended to cover those cases belonging to one category alone i.e. summons cases instituted otherwise than upon complaints. The segment separated at the last part of the section by the words "and in any other case" is only a sub-category or division consisting of "summons cases instituted otherwise than upon complaints". That sub- category is not intended to cover all summons cases other than those instituted on police report. In fact, Section 258 vivisects only "summons cases instituted otherwise than on complaints" into two divisions. One division consists of cases in which no evidence of material witness was recorded. The section permits the court to acquit the accused prematurely only in those summons cases instituted otherwise than on complaints wherein the evidence of material witnesses was recorded. But the power of court to discharge an accused at midway stage is restricted to those cases instituted otherwise than on complaints wherein no material witness was examined at all.

13. In the present case, admittedly the police has filed chargesheet for the offense punishable u/s 323, 504 I.P.C. which shows commission of the non-cognizable offense. Therefore, as per the provisions of the explanation of Section 2(d) of Cr.P.C, the police report i.e. the chargesheet in this regard submitted by the police shall be deemed to be a complaint.

14. In the present case, the learned trial Court has not specifically ordered that present case shall be proceeded as complaint case. But since the chargesheet submitted by the police in this case pertains to the non-cognizable offense it amounts to a complaints as per explanation u/s 2(d) of Cr.P.C. Therefore, the provisions of Section 258 Cr.P.C. is not applicable in this case and the contentions raised on behalf of the revisionists in this regard have no force.

15. So far as the question of not adopting the procedure of a complaint case in summoning the accused persons is concerned. As there is no separate procedure provided for the trial of summons cases instituted on complaint and since there is no binding on Magistrate to summon complaint and the witness if a public servant acting or purporting to act in the discharge of his official duties files the complaint and since the police officer in this case has

submitted a chargesheet deemed to have been a complaint acting as a public servant in the discharge of his official duties, therefore, there was no need to examine the complainant by Magistrate as per provisions of Section 200 Cr.P.C.

16. A perusal of the trial Court record shows that the learned Magistrate has adopted the procedure provided for trial of summons cases as is revealed from the ordersheet of the case on record. No formal charge has been framed against that accused persons by the learned Magistrate before proceeding to record prosecution evidence, instead the statements of accused stating substance of accusation to them, has been recorded and further date has been fixed for evidence.

17. Looking into the entire facts and circumstances of the case, I am of the view that Magistrate has committed no error while passing order dated 09.03.2026. Therefore, this revision has no force. Therefore, no interference is required in the impugned order. Hence, the revision is liable to be dismissed.

ORDER

This criminal revision stands dismissed. Impugned order dated 09.03.2026 is hereby confirmed. Let the trial Court's record be remitted back immediately along with a copy of this judgment.

Dated: 17.08.2026

(Reeta Kaushik)
Sessions Judge,
Hardoi.

Judgment signed, dated and pronounced today, in the open Court.

Dated: 17.08.2026

(Reeta Kaushik)
Sessions Judge,
Hardoi.