



UPMA010051862024

In the court of the Sessions Judge, Mau.

Present: Sanjay Kumar Yadav-III, HJS.

Judicial Officer Code no. U.P.2023

Criminal Revision No. 304 of 2024

Iqbal Ahmad

---Revisionist

Vs.

State of UP. & Ors.

---Opposite parties.

JUDGMENT

(Delivered on Dt.12.06.2026)

1. Present criminal revision has been preferred under section 438(1) B.N.S.S. against the impugned order dated 04.09.2024 passed by the Judicial Magistrate, Mau in criminal miscellaneous case No. 380 of 2024 titled as 'Iqbal Ahmad Vs. Rubina Khatoon & others' for directing the Station House Officer of Police Station Mohammadabad Gohana, District Mau to register the F.I.R. and investigate the same. By the impugned order, the learned Magistrate has treated the application under section 156 (3) of the Code of Criminal Procedure as complaint.
2. A brief resume of preceding facts indicate that the complainant Iqqbal Ahmad had moved an application under section 156(3) Cr.P.C. before the learned Court concerned against proposed accused persons Rubina Khatoon, Ajmal, Umaira Khatoon, Sonu and Saiyma, in which he had stated that there is dispute in between the parties with regard to share of house. On 20.01.2024 at 4.00 P.M. above persons accused persons namely Rubina Khatoon, Ajmal, Umaira Khatoon, Sonu and Saiyma along with 2-3 unknown persons armed with cudgels came at the house of complainant and they abused using filthy words of mother-sisters. When the

complainant and his family members forbade them from abusing, they assaulted them with cudgels, fists and kicks. When the complainant fled in his house to save himself, accused persons also assaulted him in the house. Accused persons also snatched sarees, cone and Rs.10,000/- etc. and fled from there after hurling threatening. Complainant approached the Police station Mohammadabad Gohana, District Mau, but no action was taken. He also informed the Superintendent of Police, Mau, but his FIR was not registered. On the basis of same, he prayed for directing the Station House Officer of Police Station Mohammadabad Gohana, District Mau to register the F.I.R. and investigate the same. After hearing the learned counsel for the complainant, the learned Court concerned treated the application under section 156(3) of the Code of Criminal Procedure moved by the complainant Iqbal Ahmad as complaint. Feeling aggrieved by the impugned order, the revisionist has preferred this revision.

3. This Court has heard the learned counsel for the parties and perused the record.
4. The learned counsel for the revisionist submits that the learned Court below has not applied its judicial mind in passing the impugned order and he has passed the impugned order summarily in mechanical manner. The learned counsel for the revisionist further submits that from the perusal of the contents of the application moved under section 156 (3) of the Code of Criminal Procedure, it appears that the matter should be investigated by the Police. The learned counsel for the revisionist further submits that on behalf of the opposite party Rubina Khatoon, an application under Section 156(3) of the Code of Criminal Procedure was moved before the learned Court concerned, upon which after hearing the learned counsel for the opposite party, the learned Court concerned passed the order to register

the FIR and investigate the same with regard to the incident dated 20.01.2024 occurred at 4.00 P.M. and FIR in this regard has been registered at the Police Station concerned. In above incident, applicant received injuries on his body and further snatching of sarees, cone, Rs.10,000/- and other goods are also to be recovered by the Police during course of investigation; this fact was also brought to the notice of the Court concerned, but the Court concerned has not considered this aspect and treated the same as complaint holding that all the fact of the incident is in the knowledge of the complainant and matter is related to the familial dispute and no such fact is in existence in the application, for which investigation is essential to be conducted. The learned counsel for the revisionist further submits that the Court concerned has not exercised its jurisdiction vested with him. The learned counsel for the revisionist further submits that the learned Court concerned has committed illegality and impropriety in passing the impugned order. Impugned order is against the natural justice. He prayed that revision be allowed and impugned order be set aside.

5. Learned counsel for the revisionist places reliance on the judgment of Hon'ble Supreme Court in **2005 (1) RBC 298 (SC) Upkar Singh versus Ved Prakash and others.**
6. The learned counsel for the opposite parties submit that the learned Court concerned has not committed any error in passing the impugned order. The learned counsel for the opposite parties further submit that from the perusal of the application, the learned court concerned has not found the matter fit to be investigated by the Police, because all the facts relating to the incident is in the knowledge of the complainant, as there is familial dispute in between the parties and he may produce evidence in this regard before the Court.

7. This Court has considered the submissions advanced by both the parties. In the case of **Amit Kapoor Vs. Ramesh Chander,(2012) 9 SCC 460**, Hon'ble Supreme Court has held as to when revisional jurisdiction U/s. 397 Cr.P.C. can be invoked, like where the decisions under challenge are grossly erroneous or there is no compliance with the provisions of law or the finding recorded is based on no evidence or material evidence is ignored or judicial discretion is exercised arbitrarily or perversely etc. It has also been held that revisional jurisdiction of the higher Court is a very limited one and can not be exercised in a routine manner. In the case of **Sukhwasi vs State of up,2007 (59) A.C.C 739**, The Division Bench of Hon'ble Allahabad High Court has held that the Magistrate is not always bound to pass an order to register a case and investigate the same, when application under section 156 (3) of the Code of Criminal Procedure is moved and that he has the discretion in the matter and can, in appropriate cases, refuse to order for registration. Hon'ble Court has further held that the provision under section 156 (3) of the Code of Criminal Procedure should be used sparingly. They should not be used unless there is something unusual and extra ordinary like miscarriage of justice, which warrants a direction to the police to register a case. Such applications should not be allowed, because the law provides them with an alternative remedy of filing a complaint.
8. From the perusal of impugned order, it appears that the Court concerned has observed that all the fact of the incident is in the knowledge of the complainant and matter is related to the familial dispute and no such fact is mentioned in the application, for which investigation is essential to be conducted. From the perusal of record, it shows that on behalf of the opposite party Rubina Khatoon, an application under Section 156(3) of the

Code of Criminal Procedure was moved before the learned Court concerned, upon which after hearing the learned counsel for the opposite party, the learned Court concerned passed the order to register the FIR and investigate the same with regard to the incident dated 20.01.2024 occurred at 4.00 P.M. and FIR in this regard is said to have been registered at the Police Station concerned, in which the date of incident i.e. 20.01.2024 occurred at 4.00 O'clock has been mentioned. In above incident, complainant is said to have received injuries on his body and snatching of sarees, Rs.10,000/-, cone etc. are also to be recovered by the Police during course of investigation. The revisionist has moved an application under section 156 (3) of the Code of Criminal Procedure before the Court concerned in regard to the same incident, which has been treated as complaint by the Court concerned. It is principle of natural justice as to when an F.I.R. from the side of accused has been registered at the Police Station, then cross case should have also been registered at the Police Station.

9. In the case of **2005 (1) RBC 298 (SC) Upkar Singh versus Ved Prakash and others**, Hon'ble Supreme Court has held that if one F.I.R. has been registered on the complaint of the accused in regard to the same incident, then second FIR in regard to the same incident can be registered at the instance of complainant. According to section 397 of the Code of Criminal Procedure, Revisional Court has to examine the correctness, legality and propriety of the order of the Court below. In the present case, the learned Judicial Magistrate, Mau has not appreciated the facts of the case properly, as an order for registration of FIR has already been passed against the revisionist/applicant and others, while revisionist's case comes within the purview of cross case, thus the learned Magistrate erred on this point; he holds that all the facts of the case are

in knowledge of the applicant and treated the application as complaint.

10. In view of the principles laid down by Hon'ble Apex Court in **Upkar Singh versus Ved Prakash and others (supra)**, impugned order does not appear to have been passed properly according to law as propounded by Hon'ble Supreme Court. Therefore, this criminal revision is liable to be allowed and impugned order deserves to be set aside.

ORDER

Criminal revision no. 304 of 2024 is allowed and the impugned order dated 04.09.2024 passed by the Judicial Magistrate, Mau in criminal miscellaneous case No. 380 of 2024 titled as 'Iqbal Ahmad Vs. Rubina Khatoon & others' is hereby, set aside. The learned Judicial Magistrate, Mau is directed to pass afresh order on the application moved under section 156 (3) of the Code of Criminal Procedure, after affording opportunity for hearing to the revisionist in the light of observations made in the body of judgment. Let a copy of this judgment be sent to the Court of Judicial Magistrate, Mau along with record. Revisionist is directed to appear before the Court of learned Judicial Magistrate, Mau on 25.06.2026. Record of this revision be consigned according to rules.

Dated: June 12, 2026 **(Sanjay Kumar Yadav-III)**
Sessions Judge,
Mau.

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

Dated: June 12, 2026 **(Sanjay Kumar Yadav-III)**
Sessions Judge,
Mau.