



UPMZ010035832026

**In the Court of Additional Sessions Judge Court No.4/Spl. Judge
(E.C. Act) Muzaffarnagar.**

Present: Anurag Panwar, H.J.S ID: UP 2638

Criminal Revision No. 86 of 2026

1. Pravej S/o Maumeen,
 2. Shahrukh S/o Saleem,
 3. Shadab S/o Harun,
 4. Meegam S/o Abbas,
 5. Afzal S/o Shaukeen,
 6. Mahkar S/o Shaukeen,
 7. Harun S/o Mohd. Shaheed,
- R/o-Village Nangla Rudra, P.S.-Khatauli, District Muzaffarnagar.

... Revisionist

Versus

1. State of U.P. though D.G.C. (Crl.), Muzaffarnagar.
2. Wali Mohd. S/o Kurban, R/o-Village Nangla Rudra, P.S.-Khatauli, District Muzaffarnagar.

... Respondents

Case No.80/2026,

U/Sec.-191(2), 191(3), 190, 115(2), 352,

333, 351(2), 117(2), 110, 109(1) B.N.S.,

P.S.-Khatauli, Distt. Muzaffar Nagar

JUDGEMENT

1. The present criminal revision has been filed against order dated 24.02.2026 passed by Ld. Chief Judicial Magistrate, Muzaffarnagar, whereby the Ld. Trial court has summoned the revisionist to face the trial U/Sec.-191(2), 191(3), 190, 115(2), 352, 333, 351(2), 117(2), 110, 109(1) B.N.S.,
2. An F.I.R was registered against eleven persons, revisionists and four others, alleging that due to personal grudge over an issue, all the

accused armed with rods, sticks and sharp weapons barged into the house of injured Deen Mohammed and badly thrashed all the occupants of the house who were badly injured in the incident.

3. Based on the F.I.R., the police launched an investigation into the alleged offence and after collection of evidence submitted a charge-sheet against eight accused.

4. The Ld. Chief Judicial Magistrate vide impugned order dated 24.02.2026 took cognizance of the offence and summoned the revisionists to face the trial. Apart from other sections, the Ld. Trial Court also passed the summoning order u/s 109(1) BNS though it was not mentioned in the charge-sheet. Aggrieved, the revisionists have filed the present revision.

5. Heard the Ld. Counsel for revisionist and perused the records.

6. The revisionists have raised two pronged attack to assail the order of the trial court. Firstly it has been contended that the Ld. Trial Court had no powers to add section 109(1) BNS in the charge-sheet and the Ld. Trial Court could have passed the summoning order only in the sections mentioned in the charge-sheet and secondly it has been argued that the accused can either be summoned under section 109(1) BNS or section 110 BNS and cannot be summoned under both the sections. The Ld. Counsel for the revisionist has relied upon the decision of Hon'ble Supreme Court in **State of Gujarat Vs. Girish Radhakrishnan Varde, (2014) 3 SCC** and Hon'ble Allahabad High Court in **Shalini Kashyap Vs. State of. U.P. 2022 SCC OnLine All 633**

7. The first argument of the Ld. Counsel for the revisionist requires detailed analysis. The issue whether the magistrate can add or remove sections from the charge-sheet during the stage of taking cognizance has been a matter of considerable debate in the higher echelons of the judiciary.

8. The Hon'ble Supreme Court in **State of Gujarat Vs. Girish Radhakrishnan Varde**, (2014) 3 SCC has held that Magistrate is not empowered either to add or subtract section in the charge-sheet at the time of taking cognizance and he can take cognizance only of those offences, in which, charge-sheet was submitted and only at the time of framing of charges he can add or subtract such sections.

9. While following the aforesaid judgment of the Hon'ble Supreme Court, the Hon'ble Allahabad High Court in **Shalini Kashyap Vs. State of U.P. 2022 SCC OnLine All 633** has been pleased to find the order of magistrate adding sections at the stage of cognizance as erroneous.

10. However, the Hon'ble Allahabad High Court in **Sadab Vs. State Of U.P. 2023 SCC OnLine All 30** while discussing the contrary opinion expressed by the co-ordinate bench of **Hon'ble Allahabad High Court in Smt. Shalini Kashyap Vs. State of U.P (Supra)** has held that *"Therefore, from the law laid down by the Constitution Bench of the Apex Court and above noted other judgments of the Apex Court it appears that Magistrate is having all the authority to take cognizance of any offence on the basis of the material collected by the Investigating Officer during investigation and if he arrives at the conclusion that an offence is also made out, in which, charge-sheet has not been submitted then he can take cognizance for such offence(s) too and can summon the accused and if any such offence is exclusively triable by the court of sessions then he shall commit the case before the court of sessions."*

11. The Hon'ble Allahabad High Court in **Sadab (Supra)** has also discussed the judgment of the **Hon'ble Supreme Court in State of Gujarat Vs. Girish Radhakrishnan Varde (Supra)** and held that though the aforesaid judgment was delivered later on 25.11.2013, the judgment delivered by the Constitution Bench in **Dharam Pal Vs. State of Haryana (2014) 3 SCC 306**, judgments of **Minu Kumari (2006) 4 SCC 356** and **Ajay Kumar Parmar (2012) 12 SCC 406** could not be placed

before the Apex Court in the said case and in view of the aforesaid the view expressed in *Girish Radhakrishnan Varde (supra)* does not prevail. Therefore, it cannot be held that Magistrate is not having any authority to take cognizance for the offences, in which, charge-sheet has not been submitted.

12. The **Hon'ble Allahabad High Court in Ram Sajiwan And 3 Others V. State Of U.P. Thru. Prin. Secy. Home Lko Neutral Citation No. – 2024 : AHC-LKO:8171** while discussing the relevant case laws on the subject has held that the legal position is settled beyond any confusion that when any offence is not mentioned in the charge-sheet, the Magistrate has got ample jurisdiction to take cognizance of that offence also.

13. The Hon'ble Allahabad High court in **Nisha Kushwaha Vs. State of U.P. 2025 SCC OnLine All 1782** while relying upon the judgments of Hon'ble Apex Court in **Pramatha Nath Mukherjee Vs. State of West Bengal, 1960 SCC Online SC 76, Dharam Pal and others Vs. State of Haryana and Another, (2014) 3 SCC 306, Nahar Singh Vs. State of Uttar Pradesh and Anr (2022) 5 SCC 295 and Balveer Singh and Another Vs. State of Rajasthan and Another, (2016) 6 SCC 680** has held that “ *it is clear that after receiving the police report, the Magistrate can exercise its power u/ s 190(1)(b) Cr.P.C. and take cognizance of any offence against a person on the basis of material available with the police report without being influenced by the opinion of the Investigating Officer. This power of the Magistrate at the time of taking cognizance includes summoning the person who was not named as an accused in the police report, cognizance of an offence under a particular section(s) even though that section has not been mentioned in the charge-sheet or dropping a section by not taking cognizance in that section on the ground that there is no material in the police report regarding that offence.*”

14. From careful analysis of the aforesaid case laws, this Court comes to a conclusion that the magistrate has been vested with the powers to add or remove sections at the time of taking cognizance in appropriate cases.

15. The second argument of the Ld. Counsel of the revisionist does not have any force. There is no bar in taking cognizance of offence u/s 109(1) and 110 BNS against the accused. At the stage of taking cognizance the court is merely taking judicial notice of the facts and the Court is not required to conduct a mini trial and embark upon deep appreciation of evidence. The Court has to be *prima facie* satisfied that there is enough material on record to summon the accused to face the trial. At the trial stage, when charges are framed, the Court evaluates the evidence and can alter the charge from Section 307 to 308 (or vice-versa) based on whether the medical evidence and the circumstances support an intent to cause death or merely knowledge that death *might* occur.

16. There are eleven persons who are accused in the case. Many different injuries seem to have been inflicted on the person of multiple people. All the injured have suffered multiple injuries and it cannot be said that all the injuries will qualify either as an offence under Section 109(1) or u/s 110 BNS. The act causing the injuries may qualify as an offence under both the aforesaid sections. The act coupled with intention of each of the accused cannot be prejudged at the stage of cognizance and exact role played by each shall be considered at appropriate stages during the course of trial.

17. There are three injured persons in the case who have suffered serious injuries such as broken nose, fracture of posterior part of left side parietal bone and missing multiple teeth in both the upper and lower jaw apart from various other injuries. The medical reports mention many injuries as grievous in nature. All the injured in their complaint and statements recorded by the IO during investigation has categorically

named the revisionists as the assailants. The evidence of an injured witness must be given due weightage being a stamped witness, since his presence cannot be doubted on the place of occurrence. The statement of the injured is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. Thus, the testimony of an injured witness is accorded a special status in law.

18. From the evaluation of material available on record in form of the case diary, medical papers and statement of witnesses there seems to be sufficient material available on record to proceed with the trial against the revisionists.

19. The impugned order dated 24.02.2026 does not suffer from any apparent illegality, irregularity or impropriety. The order is sound exercise of judicial discretion and is based on evidence available on record.

20. In view of the above observations, I am of the view that the present criminal revision does not succeed and is liable to be dismissed.

ORDER

The present revision is dismissed. The record of the trial court be sent back expeditiously.

	(Anurag Panwar)
	I.D.No.2638
Dated :-29.06.2026	Additional Sessions Judge, Court No.4/ Spl. Judge (E.C. Act), Muzzafarnagar.

Judgment signed, dated and pronounced by me in open court today.

	(Anurag Panwar)
	I.D.No.2638
Dated :-29.06.2026	Additional Sessions Judge, Court No.4/ Spl. Judge (E.C. Act), Muzzafarnagar.