

**IN THE COURT OF THE SESSIONS JUDGE, BIRBHUM AT
SURI**

Present : Sri Santanu Jha,
(JO Code-WB00399)
Sessions Judge, Birbhum.

CRIMINAL REVISION NO. 27 of 2025

(CNR no. WBBB01-003723-2025)

(Arising out of Order dated 08.08.2025 passed by Learned Additional Chief
Judicial Magistrate, Suri, Birbhum, in connection with G.R Case no. 427/2024)

1. Afajuddin Mondal
2. Helal Uddin Mondal
3. Ekbal Uddin Mondal @ Md. Ekbal Ahmed
4. Nasim Uddin Mondal @ Mithu @ Md. Nasimuddin
5. Azhar Uddin Mondal
6. Riaj Uddin Mondal

***.....Revisionists / petitioners /
accused persons***

Vs.

1. State of West Bengal
2. Mohammad Hafijur Rahaman (Complainant)

.....Respondents / Opposite parties

Syed Majammal Hossain Ld. Advocate for the revisionists / petitioners

Sri Malay Mukherjee Ld. Public Prosecutor, Birbhum for the
respondent no.1.

Date of delivery of Judgement : 04.07.2026

Instant Criminal Revision no. 27/2025 is directed against the order dated 08.08.2025 passed by the Ld. Additional Chief Judicial Magistrate, Suri, Birbhum in connection with GR Case no. 427/2024 under Section 341/323/324/325/506/34 of the Indian Penal Code. On the basis of a petition under Section 156(3) of Code of Criminal Procedure (Cr.P.C) filed by the defacto complainant / OP no.2 herein,

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specific case was started bearing GR Case no. 427/2024. Petitioners / accused filed a petition on 02.05.2025 praying for rejection of the said criminal case and the Ld. ACJM, Suri, Birbhum was pleased to reject the said petition dated 02.05.2025.

Being aggrieved by and / or dissatisfied with the order dated 08.08.2025 passed by Ld. ACJM, Suri, Birbhum the accused persons / revisionists have made an application praying for allowing the Revision and set aside the impugned order.

The OP no. 1 / State is being represented by Ld. Public Prosecutor. However, the OP no. 2 (the defacto complainant of the said GR Case) has preferred not to contest the instant Criminal Revision.

POINTS FOR CONSIDERATION

Point for consideration which arises in this Criminal Revision is whether the impugned order dated 08.08.2025 in GR Case no. 427/2024 is justified, proper and whether there exists sufficient reason to interfere with the said order.

DECISION WITH REASONS

Heard Ld. Advocate for the revisionists / petitioners and also the Ld. Public Prosecutor, Birbhum.

It has been argued by the Ld. Advocate for the revisionists / petitioners that in view of the well settled principle, the registration of the FIR giving rise to GR Case no. 427/2024 has not been made in accordance with law and it has been erroneous on the part of the Ld. Trial Court to reject the petition of the accused dated 02.05.2025. It is contended that as the petition under section 156 (3) of Cr.P.C was not properly presented, the registration of the FIR was not proper and the GR Case has to be declared as invalid.

Ld. P.P has submitted that upon receiving the order on petition under section 156(3) of Cr.P.C by Md. Hapizur Rahaman, the Officer-in-Charge of Md. Bazar PS started the said PS Case no. 79 / 2024

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dated 10.03.2024 under sections 341 / 323 /324 /325 / 506 / 34 of Indian Penal Code (I.P.C). On 24.04.2024. After proper investigation, charge sheet was submitted against six accused persons (the revisionists herein) and cognizance was taken by the Court upon consideration of the evidence. It is pointed out that at no point the accused persons raised any objection.

After cognizance being taken on 07.06.2024, the case was fixed for appearance before the Court of the Ld. ACJM, Suri, Birbhum and on 18.11.2024 they were examined under Section 251 of Cr.P.C. When the accused persons pleaded not guilty, the Ld. Trial Judge initiated the process of trial and date was fixed for evidence.

At that stage only, the accused persons filed a petition on 02.05.2025 stating therein that the petition by the defacto complainant under section 156(3) of Cr.P.C was not in proper format being without any affidavit as required by the guidelines of the Hon'ble Supreme Court of India. It has been contended in the said petition by the accused persons (revisionists herein) that such a petition under section 156(3) of Cr.P.C was not maintainable and as such, any order allowing the said petition is invalid and bad in law. Said petition has been rejected by the Ld. Additional Chief Judicial Magistrate, Suri, Birbhum at the stage of hearing of evidence and challenging the said order the present criminal revisional application has been filed by the revisionists.

In this Revision, the accused persons have assailed the order dated 08.08.2025 passed by the Ld. ACJM, Suri, Birbhum, by which the Ld. Magistrate has rejected the prayer of the accused persons for discharge on the ground that the direction for registration of FIR was passed without the prayer being supported by affidavit.

The ld. Advocate for the accused persons submitted that while passing order under section 156(3) of the CrPC, the ld. Magistrate has lost sight of the fact that there was no affidavit in support of the claim

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of the complainant/petitioner as per direction contained in *Priyanka Srivastava and another v. State of U.P. and ors* (Criminal Appeal No. 781 of 2012) and as such registration of the FIR is bad in law and hence, the subsequent proceeding should be held to be illegal and the accused persons should be discharged from this case.

The Ld. Public Prosecutor appearing for the state objected to such prayer submitting that the accused persons have recorded their plea and till such time they have not raised this issue. He also submits that as the police could lodge an FIR on receiving complaint or information from any end, the entire investigation and taking of cognizance cannot be thrown away merely for such technical reason of absence of affidavit when the complaint itself discloses cognizable offence and the jurisdictional Court was satisfied before proceeding further.

The record reveals that Md, Bazar Police Station Case Number 79/2024 dated 10.03.2024 under sections 341/323/324/325/506/34 of the IPC was started on the basis of the complaint of Mahammad Hapijur Rahaman against the accused persons. It further appears that Charge Sheet being number 49/2024 dated 10.03.2024 under sections 341/323/506/34 was submitted against all six (6) FIR named accused persons. Cognizance was taken and surely such cognizance was taken only after due consideration of the gathered evidence. It further appears that on 18.11.2024, the accused persons were examined under section 251 of the CrPC and they pleaded not guilty. Thereafter the application for discharge on illegal registration of FIR was filed on the second day of evidence i.e. on 02.05.2025.

It is true that as per the judgment of *Priyanka Srivastava (supra)* the petition for registration of FIR mandatorily be supported by an affidavit and the same is a compulsory prerequisite to order for investigation by Ld. Magistrate under section 156 (3) of the CrPC and this direction has been enshrined in the section 175(3) of the BNSS. But the accused persons (revisionists) ought to have made the prayer

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earlier, as and when the FIR was registered. They should have raised their objection when investigation was under taken and charge sheet was filed.

In the decision of *S.N. Vijayalakshmi and others v. State of Karnataka and another* reported in 2025 SCC OnLine 1575 it has been observed that the requirement is to safeguard the rights of citizenry and to put a stop to unjust criminal action and filing of vexatious applications to settle personal scores. So, it is necessary to understand the proper perspective behind the factual matrix.

In the case of *S.N. Vijayalakshmi (supra)* it has been further reiterated that not furnishing affidavit is a curable defect and such formalities could be completed before referring the order for registration of FIR. Now, in the case in hand it is true that the affidavit was not found in the record by the Ld. Magistrate but the same is not enough to conclude that the affidavit was not furnished and considered before the Ld. Magistrate passed an order for registration of FIR under section 156(3) of the CrPC. Since, the Ld. Magistrate passed the order for registration of the FIR expectedly after due consideration and the accused raised no objection to the same even after entering appearance in the record and obtaining bail and then recording of their plea. It may therefore be held that the Ld. Magistrate (A.C.J.M) passed the order after being satisfied that all the legal requirements were fulfilled and in reality, offences were committed.

In any event the affidavit could remain in the record of the original M.P. Case as only the complaint is required to be considered as FIR and the affidavit and other documents showing that concerned officer-in-charge and on his inaction the concerned Superintendent of Police were approached are not required to be included and annexed with the FIR. This apart, the said affidavit may have been excluded from the FIR at the Police Station as the same is not required to be considered by the police for investigation but the same is provided for satisfaction of the Ld. Magistrate alone. At this stage no conclusion can

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be drawn with regard to such facts.

As such applying the doctrine “*omnia praesumuntur rite et solemniter esse acta*” it can be said that for mere absence of the affidavit, which is not required to be included in the GR Record, it cannot be said that the same was not there when the Ld. Magistrate passed the order of registration of the FIR in the MP Case. It would be profitable to mention here that in the decision of *Gopal Narain v. State of Uttar Pradesh and another* reported in AIR 1964 SC 370, the Hon’ble Apex Court has been pleased to observe that there is a presumption, when a statutory authority makes an order, that it has followed the prescribed procedure.

Upon hearing the submission from both sides, it can be concluded that there is nothing on record to say that the direction of *Priyanka Srivastava (supra)* regarding affidavit was not observed by the Ld. Magistrate when the direction for registration of FIR was passed, more-so when the accused remained silent till completion of investigation and then taking of cognizance by the Ld. Magistrate applying its mind on the basis of final report of such investigation and recording of their plea.

Having said that, as per the settled law, police should initiate investigation whenever information regarding cognizable offence is received in whatever form and mode. Now police started investigation on the basis of complaint with or without affidavit and charge sheet was filed on the conclusion of such investigation. This being the case, registration of the FIR cannot be questioned at this stage as the complaint disclosed cognizable offence and receiving the same from the court, police started investigation by treating the same as FIR. Therefore, it cannot be said that the accused are entitled to be discharged in spite of evidence against them. It is difficult to agree with the submission made by the revisionists.

In the decision of *Anurag Bhatnagar and another v. State (NCT*

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of Delhi) and another reported in 2025 SCC OnLine SC 1514, the Hon'ble Apex Court has been pleased to observe as follows:

“Once much water has flown down the bridge subsequent to the order of registration of FIR and the registration of FIR, giving rise to a fresh cause of action to challenge the charge sheets, we are of the opinion that the High Court has rightly refused to exercise its discretionary jurisdiction so as to interfere with the FIR as the investigation have been completed and the charge sheets have been filed.”

As discussed above, in the case in hand also it is seen that the investigation has been completed and then the charge-sheet has been filed and the Ld. Magistrate has taken cognizance of the offences on the basis of such charge-sheet and then finding prima facie materials, plea has been recorded under section 251 of the Cr.P.C. This being the situation, the registration of the FIR cannot be faulted with at this advance stage when the case is fixed for recording of evidence. The Ld. ACJM appears to have passed a proper order.

Lastly, when the GR Record reveals that the police registered one complaint petition as an FIR and initiated investigation, and then the FIR was sent to the Ld. Magistrate in accordance with law and then charge sheet was filed after completion of investigation and the Ld. Magistrate took cognizance of offence based on such report and then proceeded to record plea of the accused persons, one has to agree with the Ld. Magistrate that he cannot go back and declare the registration of FIR as bad and illegal in that GR record and then discharge the accused persons, at this stage.

So, this Revisional Court finds that there is no illegality in the order of the Ld. ACJM observing that he has no power to recall his own order for registration of the FIR at the subsequent stage. It would be profitable to discuss the decision of *Adalat Peasad v. Rooplal Jindal and ors* reported in **(2004) 7 SCC 338** wherein the Hon'ble Apex Court

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has been pleased to observe that no specific provision is required for recalling an erroneous order, amounting to one without jurisdiction, does not lay down the correct law and that the subordinate criminal courts have no review power or inherent power akin to section 482 of the Cr.P.C. corresponding to section 528 of the B.N.S.S.

Considering all aspects as discussed above, there appears no illegality or infirmity in the order dated 08.08.2025 of the Ld. ACJM by which he has declined to discharge the accused persons and hold registration of the FIR as bad in law by recalling his order in the MP Case directing to registration of the FIR. Accordingly, there is nothing to interfere with the order under challenge.

As a result, the revisional application fails.

Hence, it is

ORDERED

that the instant Criminal Revision bearing no. 27 of 2025 be and the same is hereby dismissed on contest.

The impugned order dated 08.08.2025 passed by Ld. Additional Chief Judicial Magistrate, Suri, Birbhum in GR Case no. 427/2024 is, hereby affirmed.

The instant Revision is, thus, disposed of.

Let a copy of this order be sent to Ld. Additional Chief Judicial Magistrate, Suri, Birbhum along with T.C.R.

Note in relevant register and upload in CIS.

Dictated & Corrected by me.

Sessions Judge, Birbhum.

Sessions Judge, Birbhum.

(JO Code-WB00399)

