

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Revision Petition No. 888/2008

Sunita W/o Shri Subhash, aged about 20 years, resident of
Mundariya Bada, Tehsil Bhadra District Hanumangarh

-----Petitioner

Versus

1. The State of Rajasthan
2. Bhadar Ram S/o Jetha Ram,
3. Pratap S/o Hanuman

Both resident of Mundariya Bada, Tehsil Bhadra District
Hanumangarh.

-----Respondent

For Petitioner(s)	:	Mr. Rakesh Matoria
For Respondent(s)	:	Mr. S.S. Rathore, Dy.G.A.
For Complainant(s)		Mr. J.K. Suthar, for Mr. R.S. Choudhary

HON'BLE MR. JUSTICE FARJAND ALI

Order

16/07/2025

1. The petitioner happens to be complainant of a criminal case, who set the legal machinery in motion by lodging an FIR No.130/2006 at Police Station Bhadra, District Hanumangarh for committing the offence under Sections 452, 323, 336, 427, 382 & 143 of the IPC. The FIR was lodged against five persons. In the FIR and in the statement of the prosecution witnesses name of four persons were shown as culprit of committing offence of housebreaking, causing injuries, mischief and being part of an unlawful assembly. However, the charge-sheet came to be filed only against three accused persons, namely i.e. Dharmpal, Mahendra and Hanuman. Why the other two persons were

absolved or exonerated was not endorsed in the final report under Section 173 Cr.P.C. Upon filing of the charge-sheet, the petitioner moved an application under Section 190 of the Cr.P.C. averring therein to implead the two respondents, namely Bhadar Ram and Pratap also as an accused. After hearing the learned counsel for the complainant and learned Public Prosecutor, the learned ACJM, Bhadra, passed an order of cognizance against five persons vide order dated 21.07.2006. Three of which were charge-sheeted and two were booked by the learned Magistrate through the order impugned.

2. Aggrieved by the above order, the respondent Nos. 2 and 3 moved a revision petition bearing Revision Petition No.48/2006. The learned Court of revision allowed the petition and set aside the order taking cognizance. The said order is under assail before this Court moved at the behest of the complainant.

3. I have heard learned counsel for the petitioner, learned Public Prosecutor and learned counsel for the respondents.

4. At the outset, it is stated at Bar that respondent No.2 – Bhadar Ram has passed away. The above fact has been verified; thus, the proceedings against respondent No.2 – Bhadar Ram is be dropped hereby as abated.

5. After minutely going through the niceties of the matter and applying the required mind to take cognizance of the offence, it is found that the names of the two persons Bhadar Ram and Pratap was very much available in the FIR and there are allegations against them. The complainant and some of the witnesses corroborated the same fact.

6. I have also gone through the report under Section 173 of the Cr.P.C., whereby these two persons were exonerated; however, found nothing, based on which the Investigating Officer had exonerated the two accused. The same thing was noticed by the learned Magistrate.

7. Admittedly, no logic has been given by the Investigating Officer as to why when the offence was proved against three accused persons since the incident was genuine and how these two persons were separated. It seems that the learned Court of revision has relied upon some defence evidence. It is well nigh settled principle of law that the probative value of defence cannot be seen at the stage of taking cognizance. Cognizance would mean, formal application of mind in a criminal matter to proceed further. Neither it fixes any culpability on the accused nor any meticulous appreciation of evidence is required. Setting aside an order of cognizance based on the defence evidence is neither desirable nor permissible under law. This Court feels that the learned Court of revision has exceeded its jurisdiction and erred in allowing the revision petition. There is a force in the instant revision petition, thus, deserves to be allowed.

8. Accordingly, the revision petition is allowed.

9. The order dated 21.07.2008 passed by the learned Additional Sessions Judge, Bhadra, District Hanumangarh in Criminal Revision Petition No.48/2006 is hereby quashed and set aside. The order passed by the learned Magistrate vide order dated 21.07.2006 is affirmed. The respondent No.2 – Bhadar Ram has passed away, therefore, the respondent No.3 – Pratap S/o

Hanuman is directed to appear before the learned trial Court on or before 29.08.2025 and to move a regular bail application.

10. Upon doing so, the learned Judge shall release him on bail on the same day, on such surety and bond amount as he deem appropriate. It is expected that the learned trial Court shall expedite the judicial proceedings.

11. With these observations, the revision petition stands disposed of.

12. All pending applications are also disposed of.

13. Let the record be sent back forthwith.

(FARJAND ALI),J