IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CrMMO No. 831 of 2025
Reserved on: June 19, 2026
Decided on: July 3, 2026
Uploaded on: July 3, 2026

Sanyogita Devi ……..Petitioner

Versus

Nirmal Singh and another ….Respondents

Coram:
Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting? [1]Yes.

For the Petitioner	**:**	Mr. Arun Kumar Goyal, Advocate.
For the Respondents	**:**	Mr. Anmol Bhatnagar, Advocate, for respondent No.1. Mr. Rajan Kahol & Mr. Vishal Panwar, Additional Advocates General with Mr. Ravi Chauhan, Deputy Advocate General, for respondent No.2/State.

Sandeep Sharma, Judge

Through the instant petition filed under S.528 of Bharatiya Nagrik Suraksha Sanhita, 2023 (hereinafter referred to as 'BNSS'), prayer has been made on behalf of the petitioner-complainant (hereinafter, 'complainant') to set aside order dated 28.5.2025 passed by learned Additional Sessions Judge, Palampur, District Kangra, Himachal Pradesh (hereinafter, 'revisional court') in Cr. Revision No. 24 of 2024 (Annexure P-1), thereby setting aside order dated 16.8.2024 passed by learned Additional Chief Judicial Magistrate, Palampur, in CrMA No. 77/2024 (Annexure P-2), allowing application under S.156(3) CrPC, filed by the complainant and directing the police

[1] *Whether the reporters of the local papers may be allowed to see the judgment?*

to register FIR and conduct investigation against respondent No.1/accused (hereinafter, 'accused').

2. Quintessential facts, as emerge from the record and pleadings of parties, are that marriage inter se complainant and accused was solemnized on 16.2.1995, as per Hindu rites and customs and two sons were born out of their wedlock, one in 1996 and another in 2001. However, subsequently, on account of matrimonial discord, above named complainant filed a divorce petition under S.13(1) of the Hindu Marriage Act in the Family Court at Chandigarh, which is still pending. During the pendency of the divorce petition, complainant-Sanyogita Devi left for U.S.A. on 27.9.2019. Since then she is residing in U.S.A. and has not returned.

3. The complainant filed a complaint under S.156(3) CrPC, in the court of learned Additional Chief Judicial Magistrate, Palampur through her General Power of Attorney, Smt. Uma Bakshi, alleging therein that on 19.4.2021, accused, knowing fully well that complainant is residing in U.S.A. got some lady (namely Archana Sharma) admitted for medical treatment at Vivekananda Hospital, Palampur, showing her as his wife. For getting treatment of afore lady, accused used name of complainant and availed medical facility in ECHS (Ex-servicemen Contributory Health Scheme), Palampur vide reservation No. 157826 and in-patient No. 210400430. Complainant alleged that accused submitted bills of treatment to authorities and intentionally committed fraud/cheating with the Government as well as complainant-Sanyogita

Devi, who is residing in U.S.A. since 2019 and has not come back to India (Annexure P-3).

4. Complainant specifically averred in the application that her sister filed an application against the accused before in-charge, Police Station Palampur, Home Minister, Government of India, Director-General of Police, Himachal Pradesh, Shimla, Station Commander, Station Hars, Palampur but no action was taken by any of these authorities against the accused till date, as such, requested that necessary orders be passed for registration of FIR, in exercise of power under S.156(3) CrPC (Annexure P-8).

5. In afore proceedings, learned Additional Chief Judicial Magistrate, Palampur called for report of Superintendent of Police, wherein it came to be reported that the Department has power to deal with the matter and complainant had not suffered any loss nor any gain, as such, no FIR was registered. However, vide order dated 16.8.2024 (Annexure P-2), Additional Chief Judicial Magistrate, directed Station House Officer, Police Station concerned to register FIR and investigate the matter in accordance with law. Pursuant to such order, FIR No. 89, dated 23.8.2024 (Annexure P-3) under S.420 IPC was registered against the accused, at Police Station Palampur.

6. Before challan could be filed in the competent court of law, accused preferred Cr. Revision Petition No. 24/2024 16.10.2024, before the court of revisionary jurisdiction, against order dated 16.8.2024 passed by learned Additional Chief Judicial Magistrate, Palampur, passed in exercise of power under S.156(3) CrPC.

7. Though, in afore revision petition no interim order was passed with regard to stay of the operation of order dated 16.8.2024 but vide order dated 28.5.2025 (Annexure P-1), revisional court allowed revision petition, as a consequence whereof, order dated 16.8.2024, was set aside. While passing afore order, revisional court ordered that effect of setting aside order dated 16.8.2024, shall have effect of setting aside resultant prosecution, as a result thereof, FIR as well as consequential proceedings pending in competent court of law also came to be quashed. In the afore background, complainant has approached this court, in the instant proceedings, praying therein to set aside order dated 28.5.2025.

8. I have heard the parties and gone through the record of the case.

9. Precisely, the grouse of the complainant, as has been highlighted in the petition and further canvassed by Mr. Arun Kumar Goyal, learned counsel for the complainant is that since prior to passing of impugned order dated 28.5.2025, FIR No. 89, dated 28.8.2024 already stood registered pursuant to order dated 16.8.2024, there was no occasion for revisional court to quash the prosecution or the FIR.

10. While referring to judgment passed by High Court of Judicature at Bombay in Writ Petition No. 2517 of 2022 titled **Arun P Gidh** v. **Chandraprakash Singh And Ors**, and connected matters, decided on 10.4.2024, learned counsel for the complainant vehemently argued that in case where, on the basis of order under S.156(3) of the Code, FIR is

registered, remedy of criminal revision under the Code is not an ‘efficacious’ remedy. Learned counsel for the complainant further argued that the revisional court failed to take note of the fact that prior to filing of complaint under S.156(3), complainant had approached police authorities i.e. Station House Officer, Police Station Palampur and Director-General of Police, but since no action was taken, she had no option but to institute proceedings under S.156(3). He further argued that application under S.156(3) was duly supported by an affidavit. He also submitted that since both the requirements as per judgment passed by Hon'ble Apex Court in **Priyanka Srivastava and another** v. **State of U.P. and others**, Cr. Appeal No. 781 of 2012, stood complied with prior to filing of application under S.156(3), revisional court could not have interfered with order dated 16.8.2024. It also came to be argued on behalf of the complainant that challan against accused under Ss. 420 and 417 IPC stood filed on 28.3.2025, perusal whereof clearly reveals that accused is guilty of having committed offence punishable under afore provisions of law. He further submitted that the Department having found accused guilty, has taken action thereby suspending ECHS card of the accused and amount allegedly received by him for treatment given to some lady, in the name of complainant, has also been recovered. He submitted that facts of crime speak for themselves and as such, no illegality can be said to have been committed by learned Additional Chief Judicial Magistrate, while ordering registration of FIR and investigation, in exercise of power under S.156(3) CrPC.

11. To enure his arguments, learned counsel for the complainant has relied upon following judgments in support of his case:

(a) Anurag Bhatnagar v. Stat (NCT (Delhi) 2025 SCC OnLine SC 1514,
(b) Accamma Sam Jacob v. State of Karnataka and another, 2026 SCC OnLine SC 585
(c) State of Karnataka v. T.N. Sudhakar Reddy, 2025 SCC OnLine SC 382
(d) Sakiri Vasu v. State of Uttar Pradesh (2008) 2 SCC 409
(e) Vishwa Mitter v. O.P. Poddar (1983) 4 SCC 701
(f) Arun P. Gidh v. Chandraprakash Singh, 2024 SCC OnLine Bom 1028
(g) Father Thomas v. State of U.P. and others, 2010 SCC OnLine AlL 2438

12. In, **Anurag Bhatnagar** supra, it has been held that a Magistrate ought not ordinarily entertain an application under Section 156(3) CrPC directly unless the informant has availed and exhausted his remedies provided under Section 154(1) and (3) but as the Magistrate is otherwise competent under S. 156(3) CrPC to direct registration of an FIR if the allegations in the application/ complaint disclose commission of a cognizable offence, order passed by Magistrate would not be without jurisdiction and would not stand vitiated on this count. (see para18-34).

13. In the instant case, it was for the Magistrate to see whether there is substantial compliance of S.154(1) and (3) on part of the complainant and it being satisfied, has ordered to register the FIR, thus, no fault could have been found by revisional court in the order of Magistrate.

14. In **Accamma Sam Jacob** supra, it has been held by Hon'ble Apex Court that a balance has to be struck between the rights of genuine complainants and FIRs disclosing commission of a cognizable offence and the statutory obligation/duty of investigating agency to investigate into cognizable offences, on one hand, and those innocent persons against whom the criminal proceedings are initiated which may be in a given case abuse of process of law and the process. Hon'ble Apex Court held that where police were merely directed to register an FIR and to undertake investigation in accordance with law, at such a stage, court is only required to ascertain whether the allegations in the complaint disclose the commission of a cognizable offence warranting investigation.

15. In the case at hand, contents of complaint do disclose a cognizable offence under Section 420 IPC against the accused and thus, order passed by Magistrate, ordering to register FIR is just and proper.

16. In **Sudhakara Reddy** supra, Hon'ble Apex Court, while quoting judgment in **Kailash Vijavargiya** v. **Rajlakshmi Chaudhri**, (2023)14 SCC 1, held that the legislative intent is to ensure that no information of commission of a cognizable offence is ignored and not acted upon, which would otherwise result in unjustified protection of the alleged offender/accused.

17. In the case at hand, since complainant has brought to the notice of the police and the Magistrate commission of an offence punishable under S.420 IPC, which is a cognizable offence and even record

reveals that Department concerned has recovered the amount embezzled by accused in the shape of claiming medical treatment for a person other than his wife (Archana Sharma), by representing her as his wife (Mrs. Sanyogita Devi) and even his ECHS card stands revoked, which shows prima facie commission of offence under S.420 IPC. Thus, revisional court erred in law, while setting aside order dated 16.8.2024, passed by the Magistrate.

18. In **Sakiri Vasu**, supra, Hon'ble Apex Court held in para-24 that, '…… although S.156(3) is very briefly worded, there is an implied power in the Magistrate under S.156(3) CrPC to order registration of a criminal offence and/or to direct the officer in charge of Police Station concerned to hold a proper investigation and take all such necessary steps that may be necessary for ensuring a proper investigation including monitoring the same.

19. In the case at hand, Magistrate concerned has exercised power under S.156(3) CrPC by ordering registration of FIR and since it had implied power to do so, revisional court, by treating non-compliance of S.154(1) and (3) as jurisdictional error has erred in law, which in normal course, it could not have done.

20. In **Vishwa Mitter** supra, Hon'ble Apex Court held that complaint alleging commission of offences under Ss.78 and 79 of Act and S.420 IPC lodged by dealer and attorney of registered trade marks owner, is maintainable.

21. In this case, complaint has been filed on behalf of Mrs. Sanyogita Devi, by her attorney and sister, Mrs. Uma Bakshi and if

order passed by Magistrate is seen, it specifically mentions that complaint is supported by an affidavit. Applying proposition laid down by Hon'ble Apex Court in case supra, viz. competence of a Power of Attorney or dealer to file complaint, no fault could have been found by revisional court with exercise of power under S.156(3) by Magistrate.

22. In **Arun P. Gidh**, supra, which has been relied by both the sides, it has been held that the proposition that after FIR is registered, revision is not an efficacious remedy, would render the statutory remedy of revision redundant. This court is in full agreement with the judgment passed by larger Bench of Bombay High Court but even in Arun P. Gidh, it has been held that while passing an order staying proceedings at the stage of investigation, revisional court ought to record reasons which weighed with the court to hold that there appears a jurisdictional error in passing an order under S.156(3) of the Code.

23. In this case, though the fact that weighed with revisional court, while setting aside order passed by Magistrate is that complainant did not avail of the remedies under S.154(1) and (3) but in view of law laid down by Hon'ble Apex Court **in Anurag Bhatnagar** supra, that a Magistrate passing an order under S.156(3) without complainant having approached police authorities in terms of S.154(1) and (3) is merely a ‘procedural’ irregularity, this court finds that exercise of revisional power by revisional court though could have been exercised, but not by terming a ‘procedural’ irregularity as a ‘jurisdictional’ irregularity.

24. In, **Father Thomas** supra, Allahabad High Court held that that when an FIR has been lodged and it does not prima facie disclose commission of a cognizable offence or where there is legal bar to proceeding with complaint/FIR or if it is a case of no evidence or the evidence is wholly inadequate for proving the charge, or it is demonstrated that FIR has been lodged in a mala fide manner, only in those circumstances, with the exercise of extreme circumspection can a writ petition be filed challenging the lodging of the FiR and that too strictly in accordance with the parameters and subject to the restrictions mentioned in *State of Haryana v.Bhajan Lal* and the Full Bench decision in *Ajit Singh @ Muraha v. State of U.P.* and a catena of decisions of the Apex Court. Crux of afore judgment is that in certain compelling circumstances, FIR can be quashed. In the case at hand, since commission of a cognizable offence is prima facie evident, therefore, neither the Magistrate committed any jurisdictional error nor the situation warranted exercise of revisionary power by the revisional court.

25. To the contrary, Mr. Rajan Kahol, learned Additional Advocate General, representing State and Mr. Anmol Bhatnagar, Advocate, appearing for accused, supported the order passed by revisional court. They argued that no complaint under S.156(3) of the Code could have been filed by complainant through her General Power of Attorney. They stated that as per judgment passed by Hon'ble Apex Court in **Priyanka Srivastava** (supra) reported in 2015 (6) SCC 287, complainant could not have filed complaint under S.156(3) before a Magistrate directly,

without having availed remedy as available under S.154(1) and (3). While making this court peruse complaint as well as documents annexed thereto, learned counsel for the respondents vehemently argued that the communication, if any sent to Director-General of Police, praying therein for initiation of criminal proceedings against accused, cannot be construed to be substantial compliance in terms of S.154(1) and (3), which clearly prescribe that, at first instance, report is required to be made to Officer-in-Charge, Police Station and in case, Officer-in-Charge fails to take action, report is required to be made to Superintendent of Police of area concerned and it is only after refusal of afore authorities to lodge FIR that the complainant can approach a Magistrate for registration of FIR and investigation, under S.156(3) CrPC.

26. Learned counsel for the respondents further argued that since, there was no substantial compliance of the provisions contained under S.154(1) and (3) as well as guidelines framed in Priyanka Srivastava (supra) coupled with the fact challan in FIR in question was filed in competent court of law, after passing of order by revisional court on 28.5.2025, no illegality can be said to have been committed by revisional court, thereby quashing FIR and resultant proceedings.

27. While making this court peruse the judgment rendered in **Arun P. Gidh**, it came to be argued on behalf of respondents that if revisional court finds that impugned order suffers from jurisdictional error, it (revisional court) must be construed to have power to stay further proceedings pursuant to FIR, if the matter is still at the stage of

investigation. Learned counsel for the respondents further argued that though in the instant case, no interim order staying further proceedings was passed by revisional court, but once, it is not in dispute that at the time of passing order dated 28.5.2025, charge sheet was not filed in the competent court of law, no illegality can be said to have been committed by revisional court, while quashing order dated 16.8.2024, as also resultant prosecution.

28. Before ascertaining correctness of rival submissions made by the parties to lis, this court, at the first instance deems it fit to take note of judgment passed by Hon'ble Supreme Court of India in **Priyanka Srivastava**, wherein in para-27, it has been held as under:

> "27. In our considered opinion, a stage has come in this country where Section 156(3) Cr.P.C. applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores. We have already indicated that there has to be prior applications under Section 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an the application under Section 156(3) be supported by an affidavit so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section

> 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR."

29. A careful perusal of aforesaid judgment though reveals that application, if any, filed under S.156(3) is to be supported by an affidavit duly sworn by complainant, who seeks invocation of jurisdiction of a Magistrate. Further the very purpose and object of filing affidavit duly sworn in by complainant is to ensure that the 'complainant' should be conscious of the fact that in the event of contents of complaint being wrong, he shall become liable for prosecution, in accordance with law. In the afore judgment, it also came to be clarified that there has to be prior applications under Section 154(1) and 154(3) while filing a petition under Section 156(3). It is only after refusal to act on behalf of authorities prescribed in this provision of law, that the complainant can proceed to file application under S.156(3), seeking registration of FIR and investigation.

30. However, in view of latest judgments passed by Hon'ble Apex Court, in **Anurag Bhatnagar** supra, not taking recourse to S.154(1) and (3) by the complainant is merely a procedural lapse and not a 'jurisdictional' irregularity. Further, this court is of the view that affidavit filed by General Power of Attorney of complainant, can be termed as that of a 'complainant' or an 'informant' which would suffice the

purpose of putting condition of filing affidavit, as held in **Priyanka Srivastava** supra.

31. At this stage, Mr. Arun Kumar Goyal, learned counsel for the complainant, while making this court peruse copy of affidavit adduced on record (Annexure P-7 colly) attempted to argue that affidavit stands filed on behalf of the complainant Sanyogita Devi. Though, having carefully perused the afore documents, this court is not persuaded to agree with Mr. Goyal since perusal of afore document nowhere suggests that same has been filed in support of application under S.156(3), rather, afore document authorizes sister of complainant namely Uma Bakshi to prosecute present proceedings or other cases through valid Power of Attorney, duly executed by her, but the order passed by Magistrate specifically states that the complaint is accompanied by affidavit of General Power of Attorney (though this court could not lay its hand on such affidavit in the paper-book).

32. It came to be argued on behalf of complainant that affidavit if any filed by sister of the complainant in support of application, is to be construed as affidavit of the complainant herself, which otherwise was required to be filed in compliance of judgment passed in **Priyanka Srivastava**.

33. This Court is in agreement with the submission of learned counsel for the complainant, for the reason that though in terms of judgment passed by Hon'ble Apex Court in **Priyanka Srivastava** (supra), affidavit of complainant is required to be filed, thereby certifying that contents of application are true to the best of her

(complainant's) personal knowledge and, in case, contents of same are found to be false/incorrect, the complainant renders himself/herself liable for penal consequences, but since the factum of filing of affidavit of General Power of Attorney has not been disputed, in view of decision in **Vishwa Mitter** supra, this court is satisfied that the said condition stands satisfied in this case.

34. Taking cognizance of the complaint made on behalf of complainant though her Power of Attorney, Director-General of Police referred the matter to Superintendent of Police, Kangra at Dharamshala, as is evident from communication dated 3.4.2023, placed on record by the petitioner as Annexure P-12, but Superintendent of Police, after having conducted enquiry, apprised Director-General of Police that police investigation is not required on account of matrimonial dispute inter se parties. Said authority also apprised Director-General of Police that matrimonial dispute is pending adjudication before competent court of law at Chandigarh.

35. Learned counsel for the complainant attempted to argue that direct communication sent to Director-General of Police who subsequently forwarded the same to Superintendent of Police, could be said to be substantial compliance of S.154(1) and (3) CrPC, and this court is persuaded to accept the aforesaid submission, for the reason that availing remedies under S.154(1) and (3) (or for that matter, not availing the same) is a procedural lapse, as such, it ought not have weighed with the revisional court, while passing the impugned order, thereby setting aside order passed by Magistrate.

36. Though, in view of the detailed discussion made herein above, this court is of the considered view that the order passed by revisional court does not sustain in the eyes of law, but to have clarity in the matter, this court deems it fit to elaborate upon another question i.e. “whether revisional court, while exercising power under S.397, could have ordered for setting aside order under S.156(3) CrPC passed by Magistrate, directing to register FIR and resultant proceedings initiated pursuant to such order?”.

37. Having carefully perused judgment rendered by a larger Bench of High Court of Judicature at Bombay in **Arun P. Gidh** alongwith connected matters, this court is persuaded to agree with learned counsel for the accused that the answer to afore question has been already given in the afore judgment.

38. Careful perusal of aforesaid judgment reveals that having taken note of conflicting views in judgments of co-ordinate Benches of equal strength, a learned Single Judge of Bombay High Court framed following question/reference for decision by larger Bench:

> “Whether remedy of revision under Section 397 of the Cr.P.C., is available to the person aggrieved by an order directing investigation, to be made pursuant to an order passed under Section 156(3) of Cr.P.C.?”
>
> [**See para-45 of Arun P. Gidh (supra)**]

39. Though, after having considered the matter in detail, larger Bench, while holding that decision of the Division Bench in the case of **Kailash Dattatraya Jadhav** vs. **State of Maharashtra**, that in a

case where on the basis of an order under sub-Section (3) of Section 156 of the Code, FIR is registered, the remedy of revision under the Code, is not an efficacious remedy, lays down the correct position in law, answered the question in the negative, however, while answering question No.2, held that revision court can interfere with an order under sub-section (3) of S.156, at the stage and to the extent, as indicated in para-126 of its judgment. Paras 119 to 129 of judgment in **Arun P. Gidh** supra, are reproduced herein below:

> "119. The distinction propounded by Mr. Ostwal cannot be said to be inconceivable. The illegality in the order passed by the Magistrate may manifest in the form of procedural breach or want of compliance of the pre- requisite under the statute or a law declared by the Supreme Court. For instance, if the Magistrate passes an order under Section 156(3) without an affidavit having been filed in the manner ordained by Priyanka Srivastava (supra), the procedural irregularity would be writ large. Likewise, if an order is passed in respect of an act done by a public servant while acting in official capacity or in discharge of his official duties without the previous sanction envisaged under Section 197 of the Code, where the proviso to Section 156(3) introduced by the Maharashtra Amendment operates, the legality of the order under Section 156(3) can be questioned on that ground.
>
> 120. In the case of Jacob Mathew V/s. State of Punjab and Anr.55 55(2005) 6 SCC 1 WP2517-20222+-.DOC the Supreme Court directed that a private complaint of medical negligence may not be entertained, unless the complainant has produced prima facie evidence before the Court in the form of a credible opinion given by another competent doctor to support a charge of rashness or negligence, on the part of the accused doctor. The investigating officer should, before proceeding against the doctor accused of rash or negligent act or omission, obtain an independent and competent medical opinion preferably from a doctor in government service qualified in that branch of medical practice. If a direction for

registration of FIR without adhering to the aforesaid mandate is given, it may be assailed as being illegal for being in violation of the law declared by the Supreme Court. It can be conceivably urged that, in the aforesaid cases, when the order of the Magistrate is set aside, all the actions which have been taken, in the interregnum, must be declared illegal and non-est.

121. Mr. Ponda joined the issue by canvassing a submission that it is well settled principle of criminal jurisprudence that the illegality committed during the course of investigation does not affect the competence and jurisdiction of the Court. A strong reliance was placed on the observations of the Supreme Court in the case of State of Haryana and Ors. V/s. Bhajan Lal and Ors.56 to lend support to the submission that the invalidity of the preceding investigation does not vitiate the resultant prosecution, unless miscarriage of justice has been caused thereby. In the case of Bhajan Lal (Supra), in the context of the investigation having been carried out by an 561992 Supp.(1) SCC 335 WP2517-20222+-.DOC officer, who was not empowered under Section 5A of the Prevention of Corruption Act, 1947, the Supreme Court enunciated the position in law as under :

"119. It has been ruled by this Court in several decisions that Section 5-A of the Act is mandatory and not directory and the investigation conducted in violation thereof bears the stamp of illegality but that illegality committed in the course of an investigation does not affect the competence and jurisdiction of the court for trial and where the cognizance of the case has in fact been taken and the case is proceeded to termination, the invalidity of the preceding investigation does not vitiate the result unless miscarriage of justice has been caused thereby See (1) H.N.Rishbud and Inder Singh V/s. State of Delhi; (2) Major E.G.Barsay v/s. State of Bombay; (3) Munna Lal V/s. State of Uttar Pradesh 59; (4) S.N.Bose V/s. State of Bihar; (5) Muni Lal V/s. Delhi Administration; (6) Khandu Sonu Dhobi V/s. State of Maharashtra. However, in Rishbud Case, and Muni Lal Case, it has been ruled that if any breach of the said mandatory proviso relating to investigation is brought to the notice of the court at an early stage of the trial, the court will have to consider the nature and extent of the

violation and pass appropriate orders as may be called for to rectify the illegality and cure the defects in the investigation."

(emphasis supplied)

122. The submission of Mr. Ponda, based on the prosecution not being completely vitiated by an illegality in investigation does not afford a 57(1955) 1 SCR 1150 58(1962) 2 SCR 195 59(1964) 3 SCR 88 60(1968) 3 SCR 563 61 (1971) 2 SCC 48 62 (1972) 3 SCC 786 WP2517-20222+-.DOC complete answer to the issue raised by Mr. Ostwal. The patent illegality in the order of the Magistrate passed under Section 156(3) of the Code, as is evident, relates to at a stage anterior to investigation. In a sense, the order passed by the Magistrate, in the circumstances, highlighted above, takes the colour of an order passed in breach of a jurisdictional condition, either prescribed by the statute or postulated by a precedent. Thus, we are afraid to accede to the submission that such an illegality in the order can be equated with an illegality committed during the course of investigation.

[N] Extent of interference by the Revisional Court :

123. To what extent, can the revisional court intervene in an order passed under Section 156(3) of the Code, which suffers from such an illegality, is the moot question ? In such a scenario, the submission that since the initial order passed by the Magistrate suffers from a patent illegality, every thing which has been done pursuant to such order must go, appears alluring.

However, the instances of illegalities, which we have adverted to, by way of illustration, may not be susceptible for determination in black and white. Cases may arise which are conditioned by the peculiar facts. For instance, it could be urged that though an affidavit is filed in conformity with the mandate of Priyanka Srivastava (supra), yet the affidavit does not conform to the necessary requirements. Such a contention would bring in an element of factual determination. Likewise, whether there was necessity of sanction, as envisaged by the proviso to Section 156(3) of the Code, introduced by the Maharashtra Amendment, would again be rooted in thickets of facts of the WP2517-20222+-.DOC given case. Therefore, it may not be advisable to lay down an absolute proposition that when revisional

court interferes with the order passed under Section 156(3) on the ground of patent illegalities, as illustrated above, all the subsequent actions must fall through.

124. In our view, the stage at which the revisional Court interferes with the order under Section 156(3) assumes critical salience and the correct approach would be the one that allows the revisional court to exercise the discretionary jurisdiction in such manner as is warranted by the facts of the case even where the order suffers from a jurisdictional error.

125. To equip the revisional court to exercise the discretion in a correct manner, it may be advantageous for the revisional court to ascertain whether, pursuant to the direction of the Magistrate, FIR has, in fact, been registered. Two situations are conceivable : pre and post-registration of FIR pursuant to the order by the Magistrate.

126.

(a) If the FIR is yet not registered, an interim order passed by the revisional court, staying effect and operation of the impugned order under Section 156(3), will have full play and the investigating agency cannot proceed to register the FIR and enter into investigation lest the order passed by the revisional court would be denuded of the meaning and content.

(b) Such an interim order before the registration of the FIR will operate with full force and vigor, irrespective of the nature of the infirmity in the impugned order which weighed with the revisional court to stay such an WP2517-20222+-.DOC order.

(c) On the other hand, if the FIR has already been registered, before the revisional court passes an interim order, then the nature of the infirmity in the impugned order may become relevant.

(d) If the revisional court finds that the impugned order suffers from jurisdictional error, (of the nature referred to in Para Nos.119, 120 and 122 above), in our considered view, the revisional court must be construed to have the power to stay further proceedings pursuant to the registration of the FIR if the matter is still at the stage of investigation.

(e) We hasten to add that while passing such an order of stay of the proceedings at the stage of investigation, the revisional Court ought to

record reasons which weighed with the court to hold that there appears a jurisdictional error in passing an order under Section 156(3) of the Code and thereupon, in terms, direct that the further proceedings be stayed.

(f) However, where the investigation culminates into lodging of the chargesheet and/or cognizance has been taken by the jurisdictional court, the interim order or final order passed by the revisional court setting aside the order passed by the Magistrate under Section 156(3), will not have the effect of quashing the resultant prosecution.

127. We are unable to persuade ourselves to agree with the submission of Mr. Desai that the view that after FIR is registered revision is not an efficacious remedy, would render the statutory remedy of revision redundant. The order passed by the revisional Court setting aside a direction for WP2517-20222+-.DOC investigation, even after registration of the FIR, cannot be said to be bereft of any utility. If such an order is passed before the completion of investigation, the investigating agency may take the same into account in determining the course the investigation shall culminate into. If such an order is passed, post lodging of the chargesheet, the jurisdictional Magistrate may have the benefit of the said order at the stage of taking cognizance or during the course of the inquiry, as envisaged by the Code. The High Court may also have due regard to the order of the revisional Court while considering the prayer for quashing the FIR and/or prosecution in exercise of writ or inherent jurisdiction.

128. The conspectus of aforesaid discussion is that in our view, the decision of the Division Bench in the case of Kailash Dattatraya Jadhav (supra), that in a case where on the basis of an order under sub-Section (3) of Section 156 of the Code, FIR is registered, the remedy of revision under the Code, is not an efficacious remedy, lays down the correct position in law.

[O] ANSWERS

129. We are, therefore, inclined to answer question (i) in the negative. As regards question (ii), in our view, the revisional Court can interfere with an order under Section 156(3) at the stage and to the extent indicated in paragraph 126 above.

The Reference is answered accordingly."

40. As per aforesaid judgment, there can be two situations, firstly, at the time of filing of criminal revision petition, laying challenge to an order passed under sub-section (3) of S.156 of the Code, directing registration of FIR, FIR is yet to be registered and secondly, FIR stands registered pursuant to such order. If FIR is not registered, revisional court can pass an interim order thereby staying operation of order passed under S.156(3) and pursuant to same, investigating agency cannot proceed to register FIR nor enter into investigation. Such order, however, can be passed by revisional court in case it finds that order under S.156(3) suffers from jurisdictional error, as detailed in paras-119 and 120 of the judgment.

41. However, there can be yet another situation, where FIR has been already registered before revisional court passes an interim order, then nature of infirmity in the impugned order may become relevant. In case revisional court finds that impugned order suffers from jurisdictional error, it must be construed to have power to stay further proceedings pursuant to registration of FIR, if matter is still at the stage of investigation.

42. However, where the investigation culminates into lodging of the chargesheet and/or cognizance has been taken by the jurisdictional court, the interim order or final order passed by the revisional court setting aside the order passed by the Magistrate under Section 156(3), will not have the effect of quashing the resultant prosecution.

43. Admittedly, in the case at hand, FIR had not culminated into filing of charge sheet/ *Challan* or cognizance having been taken by jurisdictional court therefore, revisional court had power to stay further proceedings pursuant to registration of FIR. In the case at hand, since no interim order was passed by revisional court staying order of magistrate, therefore, the FIR was registered, however, before passing order by revisional court, FIR stood registered but same had not culminated into filing of charge sheet or taking cognizance by the trial court.

44. Though, it came to be vehemently argued by learned counsel for the complainant that after registering FIR, police have presented challan in the court concerned on 28.3.2025 (Annexure P-4) but perusal of reply filed by respondent-State filed under the signatures of Superintendent of Police, Kangra at Dharamshala, clearly reveals that after registration of FIR, final report under S. 173 was prepared and presented for judicial verdict on 9.6.2025 i.e. after passing of order by revisional court.

45. Though, careful perusal of Annexure P-4, placed on record, suggests that final report under S.193 BNSS (earlier S.173 CrPC) was prepared on 23.8.2024, but it was filed in the court of Judicial Magistrate First Class, which took cognizance and issued summons on 23.6.2025 returnable for 10.9.2025 in police challan No. 63/2025, titled State v. Nirmal Singh.

46. Since, FIR lodged pursuant to order passed by Additional Chief Judicial Magistrate Palampur under S.156(3) had not culminated into

filing of chargesheet or taking cognizance by the court concerned, prior to passing of order by revisional court on 28.5.2025 (Annexure P-1), no illegality can be said to have been committed by the revisional court, in exercising revisionary power.

47. As per judgment rendered by Bombay High Court in **Arun P. Gidh** (supra), if revisional court finds an order passed under S.156(3) to be suffering from jurisdictional error, it must be construed to have power to stay further proceedings pursuant to registration of FIR, if the matter is still at the stage of investigation. Since, in the case at hand, investigation had not culminated into filing of charge sheet nor cognizance was taken by jurisdictional court, at the time of passing of order by revisional court, it (revisional court) was well within its jurisdiction to exercise revisionary power, but for the reasons discussed herein above, the order passed by revisional court, thereby setting aside order dated 16.8.2024, ordering registration of FIR, is not sustainable, as it has given unnecessary weightage to procedural lapse, by treating it as 'jurisdictional' irregularity.

48. In view of the detailed discussion made herein supra, the petition is allowed. Order dated 28.5.2025 passed by the learned Additional Sessions Judge Palampur (Annexure P-1) is quashed and set aside. Order dated 16.8.2024 passed by learned Additional Chief Judicial Magistrate Palampur (Annexure P-2) is restored. Consequential proceedings i.e. discharge of the accused is also set aside. The proceedings against the accused shall go on from the stage, where discharge was ordered.

49. Learned counsel for the parties are directed to appear before the learned Judicial Magistrate, Palampur on **5.8.2026**, enabling it to proceed with the matter in terms of directions contained in the order.

Petition stands disposed of in the afore terms. All pending applications stand disposed of.

(Sandeep Sharma)
Judge

July 3, 2026
(vikrant)