

**HIGH COURT OF TRIPURA
AGARTALA
WP(C) 110/2026**

Ranjit Debbarma, MLA, son of Krishna Debbarma, resident of MLA Hostel, Room No.208, New Capital Complex, P.O. Agartala Secretariat-799010, Agartala, West Tripura.

..... PETITIONER

Versus

1. The State of Tripura, represented by its Commissioner & Secretary, Home Department, Government of Tripura, New Secretariat Complex, P.O. Kunjaban-799010, P.S. New Capital Complex, District- West Tripura.

2. The Director General of Police, Government of Tripura, Police Headquarter, Akhaura Road, P.O. Agartala-799001, P.S. West Agartala, District- West Tripura.

3. The Superintendent of Police, West Tripura, Government of Tripura, Akhaura Road, P.O. Agartala-799001, P.S. West Agartala, District- West Tripura.

4. The Officer-in-Charge, West Agartala Police Station, Agartala, District- West Tripura, Pin-799001.

---Respondent(s)

For Petitioner(s)	:	Mr. P. Roy Barman, Sr.Advocate Mr. K. Chakraborty, Advocate
For Respondent(s)	:	Mr. Kohinoor N. Bhattacharjee Government Advocate
Date of hearing	:	19.02.2026
Date of delivery of judgment:		23.02.2026
Whether fit for reporting	:	Yes

**BEFORE
HON'BLE JUSTICE DR. T. AMARNATH GOUD
Judgment & Order**

Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. K. Chakraborty, learned counsel appearing for the petitioner. Also heard Mr. Kohinoor N. Bhattacharjee, learned Government Advocate appearing for the State-respondents.

2. By means of filing this writ petition, the petitioner has prayed for the following reliefs:

- “i) Issue Rule, calling upon the Respondents and each one of them, to show cause as to why a Writ of Certiorari and/or in the nature thereof, shall not be issued, directing them, to transmit the records, lying with them, for rendering substantive and conscionable justice to the Petitioner, and for quashing/setting aside the impugned Letter dated 08.11.2025 (Annexure-3 supra);*
- (ii) Issue Rule, calling upon the Respondents and each one of them, to show cause as to why a Writ of Mandamus and/or in the nature thereof, shall not be issued, mandating/directing them to register an FIR, in connection with the Written Complaint of the Petitioner dated 26.10.2025 (Annexure-1 supra), under the relevant provisions of the Bharatiya Nyaya Sanhita, 2023, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the Information Technology Act, 2000, against one Sri Pranab Sarkar and his associates, and to proceed with the investigation of the case, in accordance with law;*
- (iii) Call for the records, appertaining to this Writ Petition;*
- (iv) After hearing the parties, be pleased to make the Rule absolute in terms of (i) to (iii) above;*
- (v) Costs of and incidental to this proceeding*
- (vi) Any other Relief(s) as to this Hon'ble High Court (vi) may deem fit and proper.”*

3. The petitioner, who is a Member of Tripura Legislative Assembly, has preferred this petition under Article 226 of the Constitution of India for a writ, direction or order to quash the letter dated 08.11.2025, issued by the respondent No.4 herein, and mandating the respondents to register First Information Report (for short "FIR") in connection with the written complaint of the petitioner dated 26.10.2025 and to proceed with the investigation. To begin with, it may be apposite to briefly note the circumstances in which the aforesaid order dated 08.11.2025, came to be passed.

- (a)** The genesis is in a written complaint lodged by the petitioner before the respondent No.4 against one Sri Pranab

Sarkar and his associates informing regarding commission of cognizable offences, and prayed for registration of FIR, in connection therewith. In the written complaint, the petitioner has highlighted his credentiality to be a citizen of India and Permanent resident of Tripura.

(b) The written complaint further reveals that on 24.10.2025 onward an electronic media, named. 'Headlines Tripura National' broadcasted news with regard to possessing of fake Bangladesh Voter ID Card and fabricated Birth Certificate by the petitioner herein, deliberately and intentionally with a view to destroy personal image and bright political career of the petitioner.

(c) The written complaint further reveals that a group of conspirators are involved for preparation of such fake and fabricated important documents and thereafter, these group and some interested reporters subsequently broadcast such deliberate and intentional news on the strength of such fake and fabricated documents with a view to destroy the career of important representatives. It was further alleged that the conspirators in the same manner prepared fake Bangladeshi Birth Certificate and Bangladeshi Voter ID Card in respect of the petitioner mentioning his mother's name as Sumita Debbarma whereas, the actual name of the mother of the petitioner is Madhumala Debbarma.

(d) The written complaint further reveals that the petitioner became victim of such unexpected circumstances following such intentional and deliberate broadcasting without scrutinizing the genuinity of his Voter ID card and Birth Certificate of Bangladesh.

(e) The grounds taken in written complaint further reveals that Mr. Pranab Sarkar neither discussed or consulted with the petitioner regarding issuance of fake and fabricated Bangladeshi Voter Card and Birth Certificate in respect of the petitioner and also did not verify the genuinity of such

Bangladeshi Voter card and Birth Certificate. Another ground taken in the written complaint is that despite other fake and fabricated Bangladeshi Voter Card published in Social Media in respect of apex level Political leaders of Tripura in his channel, Mr. Sarkar and his associates did not publish or broadcast such news which is partiality and biasness as an editor of "Headlines Tripura National".

With regard to the written complaint, the concerned police station entered the information in GD Book vide GD Entry No. 21, dated 26.10.2025.

(e) After submission of the written complaint before respondent No.4, the petitioner vide letters dated 29.10.2025, 29.10.2025, 30.10.2025, 30.10.2025, 29.10.2025 & 30.10.2025, had also approached before the Hon'ble Governor of Tripura, the Hon'ble President of India, the Chairperson of National Commission for Scheduled Tribes, the Assistant Director of National Commission for Scheduled Tribes, the Chairperson of the Parliamentary Committee for Scheduled Tribes, the Hon'ble Chief Minister of Tripura, requesting for taking suitable action against the said accused persons.

(f) Thereafter, vide a communication dated 08.11.2025, the Officer-In-Charge, West Agartala Police Station i.e. respondent No.4, refused to register FIR, on the ground that no cognizable offence has been made out, thereby disposed of the written complaint submitted by the petitioner with a finding as 'No Cognizable Offence' at this stage, in conformity with Section 173 BNSS and prevailing legal principles governing preliminary enquiry and registration of cases. In the communication dated 08.11.2025, it was clarified that if fresh, verifiable evidence indicating commission of cognizable offences comes out, the matter will be reopened forthwith in accordance with law. The complaint made by the petitioner to the officer-in-charge of the police station dated 26.10.2025

and the communication dated 08.11.2025, is reproduced hereunder for better appreciation:

Complaint dated 26.10.2025 made by the petitioner to the O/C, West Agartala PS.

"To.

The officer-In-Charge
West Agartala Police Station
Agartala, West Tripura

Sir,

With due respect, I have the honour to state that I have born at Asrai Para Habitation, Chandpur Village Council, Hezamara BAC Block, Post Office- Chachubazar, Pin-799211, West Tripura District, Tripura State. I have born on last 2nd Day of January Nineteen Hundred and Sixty Four and bought up in the State of Tripura from my childhood.

I have studied initially at Chandpur S/B School upto Class-VIII. After that I got admitted at Agartala Netaji Higher Secondary School. I have appeared Madhyamik Examination & Higher Secondary Examination from Agartala Bodhjung H/S School. After completion of school level education, I got admitted at Agartala Maharaja Bir Bikram College, Agartala, Tripura. As such, I am purely an Indian by birth. My father's name Krishna Debbarma and mother's name- Madhumala Debbarma.

I have submitted nomination before the Election Commission of Tripura with all relevant documents as an Indian. The Election commission considered my nomination prayer fit for candidature. Accordingly, I have participated in the Tripura State Assembly Election in the year 2023 and won the Election from 24-Ramchandraghat Assembly Constituency.

Most surprisingly, on 24.10.2025 arid onwards the electronic media named "Headlines Tripura National" started broadcasting a vibrant and shocking news with a fake Bangladeshi Voter ID Card and a fabricated Birth Certificate in respect of me.

Mr. Pranab Sarkar, the owner cum editor of "Headlines Tripura National", the President of Tripura Press Club, Agartala, is a permanent citizen of Tripura and well conversant knowledge regarding my place of Birth, Schooling, and Collaging etc. as well. Mr. Sarkar and his associates broadcasted such news in his channel deliberately and intentionally with a view to destroy my personal image as well as my bright Political Career.

There is a group of conspirators involved for preparation of such fake and fabricated important documents. The group and some interested reporters subsequently broadcast such deliberate and intentional news on the strength of such fake and fabricated documents with a view to destroy the career of important representatives. The conspirators prepared fake Bangladeshi Birth Certificate and Bangladeshi Voter ID Card in respect of me mentioning my mother's name as Sumita Debbarma. Whereas, my mother's name Madhumala Debbarma in reality.

I become the victim of such unexpected circumstances following such intentional and deliberate broadcasting without scrutinizing the genuinity of the Voter ID card and Birth Certificate of Bangladesh in question in respect of me.

This sort of intentional broadcasting destroyed my bright Political Career and my transparent personal image.

The principal grounds of my complain are as follows: -

01. Mr. Pranab Sarkar did not discuss or consult with me regarding such issue of Fake and Fabricated Bangladeshi Voter Card and Birth Certificate in respect of me. The editor did not verify the genuinity of such Bangladeshi Voter card and Birth Certificate.

02. There are many more fake and fabricated Bangladeshi Voter Card published in Social Media respect of apex level Political leaders of Tripura in his channel. Mr. Sarkar and his associates did not publish or broadcast such news. There is a prominent partiality and biasness as an editor of "Headlines Tripura National".

03. I am an MLA of 24-Ramchandraghat (S/T) Assembly Constituency belongs to Scheduled Tribe. His deliberate and intentional publication and

broadcasting as an Editor in "Headlines Tripura National" entirely an effort to collapsed my Political Career. This sort of activity is a crime completely comes under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

04. The publication and broadcasting done from Agartala Madhyapara from his Office of "Headlines Tripura National" existed under West Agartala Police Station jurisdiction.

05. The slightest delay for filling FIR occurred for collection of evidence.

Under the above, I do hereby request before your kindself to register a specific criminal case against Mr. Pranab Sarkar and his Associates under specific sections of law of BNS-2023, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the Indian Information Technology Act 2000 for broadcasting of such intentional and deliberate publication against me.

Thanking you in an anticipation."

Reply dated 08.11.2025 from the O/c to the petitioner

"To.

Shri Ranjit Debbarma, MLA

MLA Hostel, Room No. 208, New Secretariat
Agartala, Tripura.

Ref:-West Agartala P.S GDE No-21 dated 26/10/2025 & GDE No- 41 dated 08/11/2025
US-173(3) of BNSS 2023.

Sub: Reasoned disposal of your complaint dated 26.10.2025.

Sir,

With reference to the above representation, it is respectfully informed that the matter was examined under Section 173 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS). In terms of Section 173(3) BNSS, a limited preliminary enquiry was undertaken only to ascertain whether the information disclosed a prima facie cognizable offence warranting registration of an FIR.

Findings (speaking order).

1. Defamation (BNS): The allegations predominantly disclose reputational harm. Criminal defamation is defined in Section 356 BNS and, as per the First Schedule, is non-cognizable and bailable. Accordingly, the police cannot register an FIR for defamation alone; cognizance ordinarily lies on a private complaint before the competent Magistrate.

2. Forgery angle (BNS sections 338/340): On the allegation of "fake/fabricated documents," no material emerged to show that the named media persons made, forged, or used as genuine any forged record as required to attract Sections 338/340 BNS. The role imputed is limited to publication/broadcast; no nexus to the act of forgery or to any agreement to forge (criminal conspiracy) is made out at this stage.

3. SC/ST (PoA) Act, 1989: The statute requires that the insult/intimidation/abuse be on the ground of caste/tribe and, where applicable, in public view. The materials furnished relate to nationality assertions and do not disclose targeted conduct on account of your Scheduled Tribe status.

4. Information Technology Act, 2000: On the facts placed and materials verified, the ingredients of any specific IT Act offence (e.g. 66C/66D/67/67A) are not prima facie disclosed-no impersonation, cheating by personation, or electronic obscenity attributable to the named persons was found.

Decision

As the enquiry did not reveal the ingredients of any cognizable offence, no FIR has been registered at West Agartala Police Station. The representation is, therefore, disposed of as "No Cognizable Offence (NCO)" at this stage, in conformity with Section 173 BNSS and prevailing legal principles governing preliminary enquiry and registration of cases.

It is clarified that, should any fresh, verifiable evidence indicating the commission of a cognizable offence come to light, the matter will be reopened forthwith in accordance with law".

4. The contention of Mr. Roy Barman, learned senior counsel appearing for the petitioner is that the complaint itself reveals cognizable offence and despite that the respondent no. 4 being biased intentionally refused to register any FIR. That prior to filing of this writ petition, the petitioner has approached various authorities and sought for relief. He further submits that the respondent no.4 in the name of preliminary inquiry has not register any FIR which tantamounts to give clean chit to Mr. Sarkar, who himself alongwith his associates are engaged in preparing forged documents. That despite the petitioner submitted all his original testimonies to establish his citizenship and resident of Tripura to prove the offence of forgery committed by Mr. Sarkar, the respondent no. 4 did not register any FIR. That Mr. Sarkar and his associates has intentionally created some fake and forged documents in respect of the petitioner only to malign the petitioner. That from the written complaint it has come to fore that Mr. Sarkar has committed offence punishable under Sections 336(4) and 340(2) of BNS, 2023 and the same are cognizable offence and the police authorities were bound to register an FIR against the conspirators on the contrary the respondent no. 4 has opined that the complaint is of 'no cognizable offence'. That the entire preliminary inquiry is perfunctory. In support of his submission, learned senior counsel has heavily relied upon the decision rendered by the apex court in **Vinod Kumar Pandey & ors. Vs. Seesh Ram Saini & ors,** and **Vinod Kumar Pandey & ors. Vs. Vijay Aggarwal & ors.,**

reported in **Manu/SC/1256/2025**, [para 30]; **Ramesh Kumari vs. State (NCT of Delhi) & ors.**, reported in **(2006) 2 SCC 677**, [paras 2 and 3]; **Lalita Kumari vs. Govt. of UP & ors.**, reported in **AIR 2014 SC 187**, [paras 110 and 111]. He prayed to allow the writ petition directing the respondent No.4, the Officer-in-Charge of West Agartala police station to register an FIR and investigate.

5. Mr. Kohinoor N. Bhattacharjee, learned Government Advocate appearing for the State-respondents has submitted that the decision arrived at by respondent no. 4 is in all fairness correct and needs no interference. That since no cognizable offence has been made out despite sincere enquiry, the FIR has not been registered. That as the petitioner was aggrieved by the action of the respondents/police authority he was supposed to approach the court of learned Magistrate with a complaint petition supported by proper affidavit, which opportunity, the petitioner has not availed, and if the petitioner was further aggrieved, he can approach under 226 of the Constitution of India. That alternative remedy lies to approach the learned Magistrate as per Section 173(4) of BNSS, 2023, and in the instant case, mandates of Sections 173 and 175 of BNSS, 2023, has not been availed by the petitioner. That the preliminary enquiry report has been submitted following all procedure. To controvert the submission of counsel for the petitioner, learned Government Advocate has submitted that **Lalita Kumari's** case, reported in **AIR 2014 SC 187** which dealt with the statute of

criminal procedure code, but in the present case, the preliminary enquiry conducted by respondent no.4, is envisaged under the new provision of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, 'BNSS, 2023'). In this context, he has relied upon the decision of **XXX vs. State of Kerala & ors.** reported in **2026 SCC Online SC 114; Sakiri Vasu vs. State of Uttar Pradesh & ors.,** reported in **(2008) 2 SCC 409**. He prayed to dismiss the writ petition.

6. This court has perused the record and also has gone through the references made therein. The court is to be governed by the principle of justice, equity and good conscious. At the very outset, this court has considered the aspect that the complaint was submitted under the provisions of Bharatiya Nagarik Suraksha (for short, BNS) 2023. After meticulous reading of the provisions of law, this court is of the view that if a complaint is submitted on or after 01.07.2024 i.e. after implementation of BNSS, the procedure for investigation and inquiry shall follow the procedure of the BNSS. In para 110 and 111 of **Lalita Kumari's (supra)** reported in **AIR 2014 SC 187**, it has been held thus:

"110) Therefore, in view of various counter claims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR.

Conclusion/Directions:

111) In view of the aforesaid discussion, we hold:

i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case.

The category of cases in which preliminary inquiry may be made are as under:

a) Matrimonial disputes/ family disputes

b) Commercial offences

c) Medical negligence cases

d) Corruption cases

e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above".

6(i) This court deems it necessary to discuss the changes brought to the scheme of Section 154 of the Cr.P.C. by the enactment of the BNSS, 2023. Section 173 of the BNSS, 2023 corresponds to Section 154 of the Cr.P.C. Section 175(1) of the BNSS is in *pari materia* with section 156(1) of the Cr.P.C. except the proviso which empowers the Superintendent of Police to direct the Deputy Superintendent of Police to investigate a case if the nature or gravity of the case so requires. Section 175(2) of the BNSS is identical to Section 156(2) of the Cr.P.C. Section 175(3) of the BNSS empowers any Magistrate who is empowered to take cognizance under Section 210 to order investigation in accordance with Section 175(1) and to this extent is in *pari*

materia with Section 156(3) of Cr.P.C. However, unlike Section 156(3) of the Cr.P.C., any Magistrate, before ordering investigation under Section 175(3) of the BNSS, is required to consider the application, supported by an affidavit, made by the complainant to the Superintendent of Police under Section 173(4) of the BNSS and after conduct of such inquiry as he thinks necessary and consider the submissions made by the police officer order for such investigation.

6(ii) Similarly, introduction of changes by the legislature can be attributed to Section 173 of the BNSS, 2023 which replaces Section 154 of the Cr.P.C., introducing mandatory preliminary inquiries for offenses punishable by 3 to 7 years. Section 173(3) is a newly introduced provision in the BNSS, 2023. This provision has given statutory recognition to the procedure of conducting preliminary enquiry by a police officer. Section 173(3) of the BNSS states that, without prejudice to the provisions contained in Section 175, on receipt of information relating to the commission of any cognizable offence, which is made punishable for three years or more but less than seven years, the officer in charge of the police station may with the prior permission from an officer not below the rank of Deputy Superintendent of Police, considering the nature and gravity of the offence, (i) proceed to conduct preliminary enquiry to ascertain whether there exists a prima facie case for proceeding in the matter within a period of fourteen days; or (ii) proceed with investigation when there exists a prima facie case. Section

173(3) of the BNSS enables the officer in charge of the police station with the prior permission from an officer not below the rank of Dy.S.P, to conduct preliminary enquiry. He can conduct such an enquiry on receipt of information relating to the commission of any cognizable offence, which is made punishable (with imprisonment) for three years or more but less than seven years.

6(iii) However, section 173(3) is incompatible with Section 173(1) of the BNSS. As per Section 173(1) of the BNSS, on receipt of information relating to the commission of a cognizable offence, it is mandatory for the officer in charge of the police station to register the FIR. On the other hand, Section 173(3) of the BNSS states that, on receipt of information relating to the commission of any cognizable offence, which is made punishable for three years or more but less than seven years, the officer in charge of the police station may conduct a preliminary enquiry. To that extent, it appears that, Section 173(3) of the BNSS is incompatible with Section 173(1) of the BNSS.

6(iv) Further, as per the dictum laid down by the Apex Court in the case of **Lalita Kumari (supra)**, a preliminary inquiry is permissible if the information received does not disclose a cognizable offence. On the contrary, Section 173(3) of the BNSS contemplates a situation where the officer-in-charge of the police station on receiving an information which has disclosed not merely any cognizable offence but a cognizable offence which is punishable (with imprisonment) for three years or more but

less than seven years, in such a case, the officer in charge of the police station may conduct a preliminary enquiry to ascertain whether a prima facie case is made out.

6(v) Section 173(4) specifies that any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1), may send such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided under BNSS, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence ***failing which such aggrieved person may make an application to the Magistrate.***

6(vi) In ***Imran Pratapgadhi vs. State of Gujrat***, reported in ***(2026) 1 SCC 721***, in paras 28 to 33, the apex court held as under:

“28. Section 154 of the CrPC does not provide for making any preliminary inquiry. However, as held in the case of Lalita Kumari, a preliminary inquiry is permissible if the information received does not disclose a cognizable offence and indicates the necessity for an inquiry. A preliminary inquiry must be conducted only to ascertain whether a cognizable offence is disclosed. However, sub-Section (3) of Section 173 of the BNSS makes a significant departure from Section 154 of the CrPC. It provides that when information relating to the commission of a cognizable offence which is made punishable for 3 years or more but less than 7 years is received by an officer-in-charge of a police station, with the prior permission of a superior officer as mentioned therein, the police officer is empowered to conduct a preliminary inquiry to ascertain whether there exists a prima facie case for proceeding in the matter. However, under Section 154 of the CrPC, as held in the case of Lalita Kumari, only a limited preliminary inquiry is permissible to ascertain whether the information received discloses a cognizable offence. Moreover, a preliminary inquiry can be made under the CrPC only if the information does not disclose the commission of a cognizable offence but indicates the necessity for an inquiry. Sub-Section (3) of Section 173 of the BNSS is an exception to sub-Section (1) of Section 173. In the category of cases covered by sub-Section (3), a police officer is empowered to make a preliminary inquiry to ascertain whether a prima facie case is made out for proceeding in the matter even if the information received discloses commission of any cognizable offence. That is very apparent as sub-Section (3) of Section 173 refers explicitly to receiving information relating to the commission of a cognizable offence. Therefore, in a case where sub-Section (3) of Section 173 is applicable, even if the information pertaining to the commission of any cognizable offence is received, an inquiry can be conducted to ascertain whether a prima facie case exists for proceeding in the matter. The intention appears to be to prevent the registration of FIRs in frivolous cases where punishment is up to 7 years, even if the information discloses the commission of the cognizable offence. However, under Section 154 of the

CrPC, the inquiry permitted by paragraph 120.2 of the decision in the case of Lalita Kumari is limited only to ascertain whether the cognizable offence is disclosed.

29. Under sub-Section (3) of Section 173 of the BNSS, after holding a preliminary inquiry, if the officer comes to a conclusion that a prima facie case exists to proceed, he should immediately register an FIR and proceed to investigate. But, if he is of the view that a prima facie case is not made out to proceed, he should immediately inform the first informant/complainant so that he can avail a remedy under sub-Section (4) of Section 173.

30. Before we go into the applicability of sub-Section (3) of Section 173 of the BNSS to the facts of the case, we must deal with sub-Section (1) of Section 173. Take a case where a person approaches an officer-in-charge of a police station either personally or by electronic communication and alleges that he has seen 'A' assaulting 'X' with a stick. If the injury caused is simple, it will be an offence punishable under Section 115 (2) of the BNS. As per the first Schedule of the BNSS, it is a non-cognizable offence. Therefore, based on such information, FIR cannot be registered. If grievous hurt is caused, it will be an offence punishable under Section 117 (2) of the BNS, which is a cognizable offence. Therefore, the allegations made in the information furnished to an officer-in-charge of a police station must be examined by the officer only with a view to ascertain whether a cognizable offence is made out. Taking the information as correct, the officer has to determine whether it makes out a case of the commission of a cognizable offence. If the allegation makes out a case of a cognizable offence, unless the offence falls in sub-Section (3) of Section 173, it is mandatory to register FIR.

31. Coming back to the offence punishable under Section 196 of the BNS to decide whether the words, either spoken or written or by sign or by visible representations or through electronic communication or otherwise, lead to the consequences provided in the Section. The police officer to whom information is furnished will have to read or hear the words written or spoken, and by taking the same as correct, decide whether an offence under Section 196 is made out. Reading of written words, or hearing spoken words will be necessary to determine whether the contents make out a case of the commission of a cognizable offence. The same is the case with offences punishable under Sections 197, 299 and 302 of the BNS. Therefore, to ascertain whether the information received by an officer-in-charge of the police station makes out a cognizable offence, the officer must consider the meaning of the spoken or written words. This act on the part of the police officer will not amount to making a preliminary inquiry which is not permissible under sub-Section (1) of Section 173.

32. We will give an example. A person utters the following words. "If the rulers attack me, I will not retaliate and, on the contrary, face the attack with love. If I do that, it will lead to the defeat of the rulers." If the person who furnishes information, alleges that these words are spoken or written to promote enmity between different groups as provided in Section 196, while deciding whether the information is of commission of a cognizable offence, the officer concerned will have to read and understand the meaning of the alleged spoken words. This exercise does not amount to making a preliminary inquiry which is prohibited under sub-Section (1) of Section 173 of BNSS.

33. Sub-Section (3) of Section 173 of the BNSS confers a discretion on the officer receiving information relating to the commission of a cognizable offence to conduct a preliminary inquiry to ascertain whether a prima facie case exists to proceed. This option is available when the offence alleged is made punishable for 3 years or more but less than 7 years. In the facts of the case, all the offences except the offence under Section 57 of the BNS are punishable by imprisonment for less than 7 years. Section 57, on the face of it, is not applicable. Therefore, this option was also available to the police officer in the present case. The officer did not exercise the said option".

Further, in paras 53.1 and 53.2, the apex court held thus-

"53.1 Sub-Section (3) of Section 173 of the BNSS makes a significant departure from Section 154 of CrPC. It provides that when information relating to the commission of a cognizable offence which is made punishable for 3 years or more but less than 7 years is received by an officer-in-charge of a police station, with the prior permission of a superior officer as mentioned therein, the police officer is empowered to conduct a preliminary inquiry to ascertain whether there exists a prima facie case for 10 (2015) SCC 1 proceeding in the matter. However, under Section 154 of the CrPC, as held in the case of Lalita Kumari, only a limited preliminary inquiry is permissible to ascertain whether the information received discloses a cognizable offence. Moreover, a preliminary inquiry can be made under the CrPC only if the information does not disclose the commission of a cognizable offence but indicates the necessity for an inquiry. Sub-Section (3) of Section 173 of the BNSS is an exception to sub-Section (1) of Section 173. In the category of cases covered by sub-Section (3), a police officer is empowered to make a preliminary inquiry to ascertain whether a prima facie case is made out for proceeding in the matter even if the information received discloses commission of any cognizable offence.

53.2 Under sub-Section (3) of Section 173 of the BNSS, after holding a preliminary inquiry, if the officer comes to a conclusion that a prima facie case exists to proceed, he should immediately register an FIR and proceed to investigate. But, if he is of the view that a prima facie case is not made out to proceed, he should immediately inform the first informant/complainant so that he can avail a remedy under sub-Section (4) of Section 173".

6(vii) In *xxx (supra)*, in paras 31 to 57, the apex court regarding procedural safeguards to be adopted before directing an investigation, has dealt in the following manner:

SECTION 175 (4) IS NOT AN INDEPENDENT PROVISION - REASONS

31. Upon examination of the provision vis-à-vis consideration of the arguments advanced, we find that construing sub-section (4) as a standalone provision is susceptible of giving rise to certain difficulties which compels us to reject such a construction.

31.1 As per the statutory scheme ordained by the BNSS, a person aggrieved by omission/neglect of a police officer having authority to register an FIR, at the first instance, is required to approach the Superintendent of Police under sub-section (4) of Section 173. If recourse thereto does not yield the desired result, the aggrieved person may approach the judicial magistrate under sub-section (3) of Section 175. Resort to the remedy before the Superintendent of Police is a mandatory precondition to invoke the jurisdiction of the judicial magistrate, as held by this Court in *Ranjit Singh Bath v. Union Territory Chandigarh* following earlier decisions.

31.2 However, if sub-section (4) of Section 175 were to be read in isolation or as a standalone provision, it would be open to a complainant to directly approach the judicial magistrate under the said provision while skipping to avail of the remedy provided by sub-section (4) of Section 173 before the Superintendent of Police. This would give rise to anomalous results because sub-section (3) of Section 175 expressly refers to “an application supported by an affidavit made under sub-section (4) of Section 173” which, in effect, mandates that the remedy before the concerned Superintendent of Police be pursued, whereas sub-section (4) thereof contains no such reference. Permitting a complainant to circumvent the statutory hierarchy in cases involving public servants by such an interpretation is likely to produce an outcome which, in our considered view, would run contrary to the legislative intent.

31.3 Further, the requirement of an application supported by an affidavit, which is expressly stipulated in sub-section (3) of Section 175, is conspicuously absent in sub-section (4) thereof. If sub-section (4) of Section 175 is construed in isolation, on its plain reading, such a requirement is entirely absent. We find no discernible reason for the Parliament to prescribe this procedural safeguard in sub-section (3) while omitting it in sub-section (4), thereby undermining the safeguard which *Priyanka Srivastava* (supra) propounded. Had sub-section (4) of Section 175 been intended to operate as an independent provision, it would be reasonable to expect an express exclusion of all the attendant procedural safeguards (the requirement of an affidavit and prior recourse to the Superintendent of Police).

31.4 In addition to the above, the placement of sub-section (4) immediately after sub-section (3) and not as an independent section also persuades us to not read sub-section (4) as a provision that is independent or stands alone.

IS SUB-SECTION (4) TO BE READ AS A PROVISIO TO SUB-SECTION (3) OF SECTION 175?

32. A proviso is an internal aid to construction. It is appended to a section of an enactment or any sub-section of a section.

33. In *Ram Narain Sons Ltd. v. Asstt. CST*, this Court held that it is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other.

34. In *State of Rajasthan v. Vinod Kumar*, a coordinate Bench noted several precedents and held as follows:

22. The natural presumption in law is that but for the proviso, the enacting part of the section would have included the subject-matter of the proviso; the enacting part should be generally given such a construction which would make the exceptions carved out by the proviso necessary and a construction which would make the exceptions unnecessary and redundant should be avoided. Proviso is used to remove special cases from the general enactment and provide for them separately. Proviso may change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable. (Vide *S. Sundaram Pillai v. V.R. Pattabiraman*, (1985) 1 SCC 591, *Union of India v. Wood Papers Ltd.*, (1990) 4 SCC 256, *Grasim Industries Ltd. v. State of M.P.*, (1999) 8 SCC 547, *Laxminarayan R. Bhattad v. State of Maharashtra* (2003) 5 SCC 413, *IRDP v. P.D. Chacko*, 2010 6 SCC 637, and *CCE v. Hari Chand Shri Gopa* (2011) 1 SCC 236.)

35. In our considered opinion, sub-section (4) of Section 175 cannot be considered a proviso for the following reasons:

a. Generally, a proviso is drafted in language such as “*Provided that*”. Plainly, we are not faced with a provision starting with similar words.

b. As formulated in “*Craies on Statute Law*”, 6th Edn., p. 217, and further expounded in *Kedarnath Jute Mfg. Co. Ltd. v. CTO23*, the normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. In the instant case, as we shall hold hereafter, this is not the purport of the concerned sub-section. It, in fact,

creates an additional important safeguard for public servants not present either in the erstwhile Cr. PC or in sub-section (3) of Section 175.

c. Placement of the sub-section is also strongly indicative of the intent of the legislature. The Courts must presume that the legislature intended the provision to be not a proviso when placing the provision as a sub-section rather than a proviso.

d. A test one may apply to determine whether a provision is a proviso rather than a separate provision is to ask whether if the “main” provision is removed, would the concerned provision still be capable of being applied. If yes, then the provision cannot normally be considered a proviso. One may make a reference to the decisions in *S. Sundaram Pillai v. V.R. Pattabiraman*, *Hiralal Rattanlal v. State of U.P.*, and *Union of India v. VKC Footsteps (India) (P) Ltd.* for the formulation of this test. In the instant case, it is but obvious that sub-section (4) can very well be applied if sub-section (3) of Section 175 is erased from the statute book.

36. We are, thus, not inclined to hold that sub-section (4) has to be read as a proviso to sub-section (3) of Section 175.

CONSTRUCTION OF SECTION 175(4)

37. Having held that sub-section (4) of Section 175 is neither an independent / a standalone provision nor a proviso to sub-section (3) thereof, the next question that arises is in relation to the manner in which it ought to be construed.

37.1 On a plain and contextual reading of the scheme of Section 175, we find that sub-section (3) vests the judicial magistrate (empowered under Section 210) with the power to order investigation, while subsection (4) while conferring similar power additionally prescribes a special procedural safeguard to be observed by the judicial magistrate (empowered under Section 210) where the proposed direction could concern a public servant. While the authority to direct investigation flows from sub-section (3) as well as from sub-section

(4), the latter provides a qualifying procedural layer.

37.2 Ordinarily, sub-sections of a section of an Act usually deal with related, parallel aspects with one sub-section dealing with a general principle and the other providing for a specific aspect, on its own terms. Viewed in this light, sub-section (3) lays down the general principle whereas sub-section (4) dives into specifics of public servants in the given situation, introducing an additional procedural requirement before the power to order investigation is exercised. Consequently, the exercise of power to order investigation must be preceded by satisfaction of not only the conditions expressly stated in sub-section (4) but also those implicit and traceable to sub-section (3).

37.3 Much has been argued by Mr. Dave by referring to the opening words of both sub-sections (3) and (4), which read as “Any Magistrate empowered under section 210”, to buttress his contention that if the requirements of sub-section (4) were intended to operate in addition to sub-section (3), the legislature, in sub-section (4), would have used the expression “Any such Magistrate as above ...” or the like. Having given the contention serious consideration and without being too critical of the legislative draftsman’s efforts, what we infer from the expression “Any Magistrate empowered under section 210” is the emphasis or stress being laid on who is competent to order investigation, namely, the judicial magistrate empowered under Section 210, both by sub-sections (3) and (4) of Section 175. However, in a case to which sub-section (4) is *prima facie* attracted, the additional requirements need also be complied with. Nothing much, therefore, turns on the similarity of the words used.

37.4 The use of the expression “complaint” in sub-section (4) also does not alter this position. Clause (h) of sub-section (1) of Section 2, BNSS defines “complaint” to mean “any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Sanhita, that some person, whether known or unknown, has committed an offence, but does not include a police report”. Though the definition of “complaint” under clause (h), as aforesaid, taken literally, includes oral complaints, the definition clause (Section 2, BNSS) (commonly known as the “dictionary clause” for understanding words and expressions used in enactments) itself qualifies every definition with the rider “(U)nless the context otherwise requires, ...”. In the context of sub-section (4), which operates only as a procedural adjunct to sub-section (3), the word “complaint” in such context clearly requires to be understood in the sense of an ‘allegation’ relating to commission of an offence which, for reasons we propose to discuss hereafter, must be in the form of a written complaint supported by an affidavit and may not include any allegation orally made.

37.5 One mandatory requirement of sub-section (3) is that the application seeking an order for investigation must be supported by an affidavit. It is true that sub-section (4) does not expressly require receipt by a magistrate of a written complaint but refers to a “complaint” only. However, it is illogical that a magistrate would be precluded from ordering investigation against a person who is not a public servant without an affidavit supporting the allegations of cognisable offence committed by him, but may order an investigation against a public servant without needing the informant to swear to the allegations.

37.6 Since sub-section (4) of Section 175 merely provides an additional protective layer in cases involving public servants, all mandatory procedural requirements governing the exercise of power under subsection (3) of Section 175, in our opinion, must necessarily be complied with. Any contrary interpretation would result in incorporation of the procedural safeguard taking cue from the judicial precedent in *Priyanka Srivastava* (supra) in sub-section (3) being robbed off much of its substance. Consequently, a complaint against a public servant, which triggers the procedure under sub-section (4) must, in our view, be also founded on an affidavit.

37.7 The reasons discussed above suffice for us to conclude that an application alleging commission of offence(s) by public servants in discharge of their official duties must also be supported by affidavit.

37.8 Looked from another angle and in addition to the reasons discussed above, there is one more reason for our conclusion. Cognizant of the increasing number of complaints against judicial officers of the trial judiciary, and to prevent harassment of such officers, the Hon’ble the Chief Justice of India *vide* a communication addressed to the Chief Justices of the High Courts emphasized the necessity to ensure that such complaints should not be entertained unless supported by affidavit. The said communication was later circulated as a circular by the Government of India, Ministry of Law and Justice.

37.9 When the authenticity of allegations against a judicial officer is required to be supported by an affidavit, there exists equal justification to insist upon a similar requirement in the case of public servants as well. No rational basis is discernible for drawing a distinction with regard to the insistence on an affidavit. The object underlying such a requirement is common in both cases, namely, to weed out false, frivolous, or vexatious complaints and to strike a balance between bringing public servants to book and protecting them against abuse of the judicial process.

38. Accordingly, in our firm opinion, sub-sections (3) and (4) must be read harmoniously, with the latter understood as a procedural restraint upon the power conferred under both the sub-sections for ordering an investigation, and not as a substantive substitute for the former.

39. To give meaning, we hold that the opening words in sub-section (4) which reads “Any Magistrate empowered under Section 210, may, upon receiving a complaint against a public servant” have to be purposively read as ‘Any Magistrate empowered under Section 210, may, upon receiving a complaint in writing against a public servant of commission of offence arising in course of the discharge of his official duties, supported by an affidavit, order investigation, subject to ...’.

40. So read, in the case of public servants, where the allegation is that an offence was committed in course of the discharge of official duties, the law now provides a two-tier protection. The first operates at the threshold stage, in the form of additional safeguards under sub-section (4) of Section 175 (when a prayer is made seeking an order for investigation against a public servant), and next under sub-section (1) of Section 218 (before cognizance is taken of the offence alleged). The second tier, with which we are presently not

concerned, operates at the stage of taking cognizance when the “previous sanction” of the concerned Government is required.

41. We make it clear that an affidavit, such as the one referred to in subsection (3) of Section 175, must fulfil the conditions provided in Section 333, BNSS which reads as follows:

“333. Authorities before whom affidavits may be sworn.—

(1) Affidavits to be used before any Court under this Sanhita may be sworn or affirmed before—

(a) any Judge or Judicial or Executive Magistrate; or

(b) any Commissioner of Oaths appointed by a High Court or Court of Session; or

(c) any notary appointed under the Notaries Act, 1952 (53 of 1952).

(2) Affidavits shall be confined to, and shall state separately, such facts as the deponent is able to prove from his own knowledge and such facts as he has reasonable ground to believe to be true, and in the latter case, the deponent shall clearly state the grounds of such belief.

(3) The Court may order any scandalous and irrelevant matter in the affidavit to be struck out or amended.”

SUMMARY OF THE DISCUSSION

42. Sub-section (3) and sub-section (4) of Section 175 are not isolated silos but must be read in harmony with sub-section (4) forming an extension of sub-section (3).

43. The power to order investigation is conferred upon a judicial magistrate by sub-section (3) of Section 175. Sub-section (4) of Section 175 too confers such power but prescribes a special procedure to be followed in case of a complaint against a public servant alleging commission of offences in the discharge of official duties.

44. The expression “*complaint*” in sub-section (4) of Section 175 does not encompass oral complaints. Having regard to the text of the provision and the context in which it is set, and in light of our conclusion that subsection (4) is not a provision which stands alone or is a proviso to subsection (3), the term must derive its meaning in sync with allegations of cognisable offence levelled in an application of the nature referred to in sub-section (3) of Section 175, i.e., an application supported by affidavit.

WHEN MUST SECTION 175 (4) BE INVOKED – A GUIDE FOR JUDICIAL MAGISTRATES

45. Having clarified the symbiotic relationship between sub-sections (3) and (4) of Section 175, it is indispensable to indicate the circumstances in which the procedure under sub-section (4) could get activated. Significantly, sub-section (4) of Section 175 uses the modal verb “*may*” and not ‘*shall*’. In the context where it finds place and the object that is sought to be achieved, “*may*” has to be read as “*may*”, bearing an element of discretion, and not ‘*shall*’. The principles, discussed in the following paragraphs, are intended to guide judicial magistrates at the stage of considering applications under Section 175.

46. Upon receiving a complaint under sub-section (4) of Section 175, BNSS alleging commission of an offence by a public servant arising in course of the discharge of his official duties, the magistrate may do either of the following:

46.1 Reading the complaint, if the judicial magistrate is *prima facie* satisfied that commission of the alleged act giving rise to an offence arose in course of discharge of official duties by the public servant, such magistrate may not have any option other than following the procedure prescribed under sub-section (4) of Section 175 of calling for reports from the superior officer and the accused public servant.

46.2 Or, on a consideration of the complaint, where the judicial magistrate entertains a *prima facie* doubt depending upon the circumstances as to whether the offence alleged to have been committed by the public servant arose in course of discharge of his official duties, such magistrate might err on the side of caution and proceed to follow the procedure prescribed in sub-section (4) of Section 175.

46.3 Or, where the judicial magistrate is satisfied that the alleged act of offence was not committed in the discharge of official duties and/or it bears no reasonable nexus thereto, and also that the rigors of sub-section (4) of Section 175 are not attracted, the complaint may be dealt with in accordance with the general procedure prescribed under sub-section (3) of Section 175.

47. It is hereby clarified that the judicial magistrate would continue to retain the authority to reject an application under sub-section (3) of Section 175, lodged against a public servant, where such magistrate finds that the allegations made therein are wholly untenable, manifestly absurd, or so inherently improbable that no reasonable person could conclude that any offence is disclosed. However, it is needless to observe, such an order of rejection ought not to be based on whims and fancy but must have the support of valid reasons.

48. A situation may arise where, in an appropriate case, the judicial magistrate has called for a report from the concerned superior officer under clause (a) of sub-section (4) of Section 175, but such officer fails to comply with the direction or does not submit the report within a reasonable period of time. What is the course open to the magistrate in such a situation? In the unlikely event of such a situation, we hold, the judicial magistrate is not obliged to wait indefinitely for compliance and may proceed further in accordance with sub-section (3) of Section 175 after considering the version of the accused public servant under clause (b) of sub-section (4) of Section 175, if on record. What would constitute ‘reasonable time’ cannot be determined in rigid or inflexible terms and must necessarily depend upon the facts and circumstances of each case before the judicial magistrate who has to take the call.

QUESTION (A) : WHETHER THE SINGLE JUDGE EXCEEDED HIS JURISDICTION?

49. Perusing the prayers in the writ petition, we find that the appellant had sought directions for registration of an FIR, securing compliance with this Court’s directions in *Lalita Kumari* (supra), and for a declaration that the acts of the police officials were not in the discharge of official functions and, therefore, not covered by the protection afforded under Section 175(4), BNSS.

50. Should the Single Judge have entertained the writ petition, interpreted Section 175(4) and granted relief to the appellant? We think not.

51. As rightly held by the Division Bench, the Single Judge could not have granted relief that the appellant did not pray. We may profitably refer to the decisions of this Court in *Krishna Priya Ganguly v. University of Lucknow*³⁰, *Om Prakash v. Ram Kumar*³¹ and *Bharat Amratlal Kothari v. Dosukhan Samadkhan Sindhi*³² where this Court held that the writ court will, normally, grant relief that is prayed; and, though discretion to

grant relief under Article 226 is wide, the writ court cannot, ignoring and keeping aside the norms and principles governing grant of relief, proceed to grant a relief not even prayed by the petitioner.

52. Having prayed for directions in the writ petition to register an FIR and to secure compliance with the directions made by this Court in *Lalita Kumari* (supra) and that too, at a stage, when the JMFC seized of the application under Section 210 read with sub-section (4) of Section 173, BNSS had called for a report in exercise of power conferred by subsection (4) of Section 175, there was no occasion for the Single Judge to interpret sub-section (4) and interfere with the proceedings that had been set in motion pursuant to the order of the JMFC. The Single Judge would have been justified in interpreting the law if the order of the JMFC, by which he had called for a report in accordance with sub-section (4) of Section 175, BNSS been challenged in a petition under Section 528 thereof or even under Article 227 of the Constitution – which is not the case here. The JMFC having called for a report from the superior police officer by his order, it was a judicial order passed in exercise of power conferred by sub-section (4) of Section 175. A three-Judge Bench of this Court in *Radhe Shyam v. Chhabi Nath*³³ has held that a judicial order in a civil matter cannot be challenged in a writ petition under Article 226 of the Constitution. In *Pradnya Pranjal Kulkarni v. State of Maharashtra*³⁴, the principle has been extended by this Court to judicial orders passed in criminal matters. Notwithstanding that such a judicial order could not have been challenged in a writ petition under Article 226 of the Constitution and despite the absence of any challenge to the JMFC's order, the Single Judge directed the Magistrate to pass an order in accordance with the law that such Judge declared. This was plainly impermissible. Nevertheless, as directed by the Single Judge, the JMFC proceeded to direct registration of an FIR against the accused persons. In effect, the Single Judge directed the Magistrate to recall his own order – which again constitutes exercise of a power unknown to the law of criminal procedure.

53. We, thus, agree with the Division Bench that the facts before the Single Judge did not call for an interpretation of sub-section (4) of Section 175, BNSS.

QUESTION (B): WHETHER IN THE PRESENT CASE, THE ALLEGED ACTS OF THE PUBLIC SERVANTS WERE IN THE DISCHARGE OF THEIR OFFICIAL DUTIES?

54. The answer to this question should well be avoided having regard to the particular jurisdiction of the High Court, which the appellant had invoked, coupled with the pendency of the appellant's application before the JMFC. We, thus, refrain from so answering lest any observation prejudicially affects any party to the proceedings before the JMFC. Invocation of the writ jurisdiction under Article 226 of the Constitution by the appellant was ill-advised. Not only did the appellant approach the writ court when proceedings before the JMFC under Section 175, BNSS were underway and thereby indulged in pursuing parallel remedies, no interference was even merited having regard to the relief claimed.

55. Be that as it may, at the insistence of the parties, we now proceed on a limited examination as to whether the appellant could at all have sought any declaratory relief of the nature claimed before the Single Judge in the writ petition.

56. Although declaratory relief can, *inter alia*, be sought before a writ court and granted by it upon establishment of a threatened breach or an apprehended breach of a legal right at the instance of a respondent, being a public authority, the nature of declaratory relief prayed by the appellant could not have been granted by the writ court without a challenge being mounted to the order of the JMFC calling for a report. Seeking a declaratory relief that the acts of offence committed by the accused public servants did not arise in the discharge of official duties by them without the order of the JMFC (calling for a report) being challenged would have necessarily required the writ court to embark on a fact-finding exercise in that behalf, as if it were a court of a magistrate. A writ court is a court exercising high prerogative writ jurisdiction; such court could not have been urged by the appellant to convert itself into a court for conducting sort of a magisterial inquiry. The Single Judge overlooked this fundamental flaw.

57. Thus, no relief could have been granted by the High Court to the appellant in exercise of writ jurisdiction."

7. Coming to the issue of relief sought for by the petitioner to register a specific case under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. A mere allegation of preparing a fake birth certificate and Bangladeshi ID card does not automatically trigger the SC/ST (Prevention of Atrocities) Act, 1989. From the written complaint, it is seen that petitioner only has assumed that the conspirators might have prepared fake Bangladeshi Birth Certificate and Bangladeshi Voter ID card in respect of him, but

the petitioner failed to provide any supporting documentation, evidence, or *prima facie* proof of the alleged offense under the SC/ST (Prevention of Atrocities) Act. Further, the complaint itself does not demonstrate *prima facie* any intent on the part of Mr. Sarkar to insult or intimidate the petitioner-complainant in order to humiliate him, as being a member of a scheduled caste or scheduled tribe. Furthermore, as per the complaint, the petitioner has sought for registering the FIR under Indian Information Technology Act, 2000. After preliminary inquiry, the respondent no. 4 by his communication dated 08.11.2025 reached to a conclusion that Sections 66-C, 66-D, 67 and 67-A of the IT Act, are not *prima facie* established. Section 66-C and 66-D of the Act, deals with fraud, identity theft, or impersonation using computer resources whereas Section 67 and 67-A of the Act deals with publishing or transmitting obscene or sexually explicit material in electronic form. From the complaint itself, it is revealed that no offence of publication or transmission of any material in electronic form, as provided under Section 67 of the IT act, is made out. Equally, no case of publication or transmission of material containing sexually explicit act or conduct, as provided under Section 67A, is made out from the bare reading of the complaint. Even in the complaint itself there is insufficient evidence to establish fraudulent or dishonest intent, to prove Mr. Sarkar had caused damage to a computer system, as required by the law under Section 66 of the IT Act, 2000. Furthermore, the complainant has also failed to prove that he

has received any offensive message through any digital/ electronic media or that Mr. Sarkar or his associates have dishonestly received any stolen computer resource of communication or that Mr. Sarkar has fraudulently or dishonestly used electronic signature, password or any other unique identification of the complainant or Mr. Sarkar and his associates have cheated the complainant by personation or has intentionally or deliberately published or captured or transmitted the image of private area of the complainant without his consent, thus, the complaint does not disclose any offense to come under the purview of any of sub-sections of Section 66 of the IT Act, 2000.

The entire matter is only at a premature stage and the investigation has not proceeded with except some preliminary effort taken on the date of the registration of the case. The evidence has to be gathered after a thorough investigation. At this stage, when there are only allegations and recriminations but no evidence, this Court cannot anticipate the result of the investigation and render a finding on the question of mala fides on the materials at present available. Thus, the conclusion reached at by the respondent No.4 is correct and requires no interference.

8. From the communication dated 08.11.2025 issued by the respondent No.4, it is evidently clear that after enquiry ingredients of cognizable offence have not been revealed and in conformity with Section 173 BNSS, 2023, FIR has not been registered but, the respondent No. 4 has clarified that as and

when fresh and verifiable evidence regarding cognizable offence will come to light, the matter will be reopened forthwith in accordance with law. Thus, the respondent no. 4 has acted in consonance with the provisions of BNSS, 2023, which according to this court, is acceptable. From the very elaboration of Section 173(3) of the BNSS, 2023, police can decline to register an FIR after a preliminary inquiry if the offense carries a punishment of 3 to 7 years and no *prima facie* case is found. From the above catena of decisions rendered by the apex court, where it has been pointed out that a complainant can approach the High Court if a Magistrate refuses to direct the police to file an FIR. In this case, without exhausting the remedies under Section 173(1) and 173(4) of BNSS, 2023, the petitioner has approached this High Court by filing the instant writ petition for mandamus, which according to this court is not permissible in the set facts of this case.

9. In view of the allegations made by the petitioner on the basis of Voter ID card of Bangladesh, the provisions under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the Indian Information Technology Act, 2000, do not attract and, thus, the relief sought for is *ex facie* irrelevant. Insofar as other allegations are concerned, the same are non-cognizable and bailable, and thus, the communication made by the respondent No.4 dated 08.11.2025 needs no interference and the same stands upheld. Since the entire complaint runs in the existence of BNSS, 2023, any procedure under Cr.P.C. and IPC

cannot be made applicable and old criminal laws i.e. Cr.P.C. and IPC are irrelevant to the facts of the case and are redundant.

10. Once specific provision provided under the BNSS, 2023 was considered, and directions/observations have been issued by the Hon'ble Supreme Court, this Court does not deem it appropriate to issue any mandamus directing the authorities for consideration of the petitioner's complaint since the same is barred under Section 173(1) and 173(4) of BNSS.

11. With the above discussions and observations made, this writ petition is liable to be dismissed. Accordingly, the same is dismissed. However, the petitioner is at liberty to approach the concerned Magistrate by filing an appropriate application under the appropriate provisions of BNSS, 2023, if so desired.

12. As a sequel, pending application(s), if any, stands closed and disposed of.

JUDGE

**SAIKAT
KAR**

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