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HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL MISC. WRIT PETITION No. - 4245 of 2026

Rakesh Singh And 4 Others

.....Petitioner(s)

Versus

State Of U.P. And 3 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Tejas Singh
Counsel for Respondent(s)	:	G.A.

Court No. - 47

HON'BLE RAJEEV MISRA, J.

HON'BLE LAKSHMI KANT SHUKLA, J.

1. Heard Mr. Ajay Kumar Singh, the learned Senior Counsel assisted by Mr. Tejas Singh, the learned counsel for petitioners, the learned AGA representing State-respondents 1, 2 & 3 and Mr. Yogesh Mishra, the learned counsel representing first informant/respondent 4.

2. Perused the record.

3. Petitioners Rakesh Singh and 4 others have approached this Court by means of present Criminal Misc. Writ Petition challenging the FIR dated 02.02.2026 lodged by first informant/respondent 4 Vimal Kumar Singh and registered as Case Crime No. 0022/2026 (State of U.P. Vs. Ramasare Singh and others), under sections 191(2), 351(2), 352 and 324(4) BNS, 2023, P.S. Chitaipur, District Varanasi.

4. Present writ petition is a classic example of the war of wits between parties. Before proceeding to consider the submissions urged by the learned Senior Counsel in support of present writ petition as well as the objections raised on behalf of respondents in opposition to present writ petition, necessary facts on the basis of which allegations made in the FIR can be appreciated in law need to be briefly stated.

5. It transpires from record that the land in dispute was initially recorded in the name of Ram Surat, the original tenure holder. Ram Surat, during his life time, executed a gift deed dated 13.12.1954 whereby he gave life interest to his widowed daughter-in-law Bituna Devi (widow of Sheonath, the predeceased son of Ram Surat), 2/3rd share was given in favour of

Musafir, Vijai and Nanku whereas 1/3rd share was given to the sons of Ghunra Devi daughter of Ram Surat. Some persons, who fall within the genealogical table, claimed their right in the land in dispute, on the basis of an unregistered will dated 08.02.2003 alleged to have been executed by Bituna Devi in their favour.

6. The village, where the land in dispute is situate, was brought under consolidation operations by means of a Gazette Notification published Under Section 4(2) of the U.P. Consolidation of Holdings Act, 1953.

7. In the basic year records, the name of Bituna Devi was recorded over the land in dispute. Bituna Devi died on 28.03.2003. Thereafter, objections under section 9-A(2) of the U.P. Consolidation of Holding Act, 1953 were filed by different persons claiming right, title and interest in the estate of Bituna Devi. The said objections came to be dismissed by the Consolidation Officer for want of prosecution vide order dated 02.04.2005.

8. Feeling aggrieved by the order dated 02.04.2005 passed by Consolidation Officer a restoration application was filed by one Rakesh Kumar Singh. The said restoration application came to be allowed by the Consolidation Officer, Final Record II, Varanasi vide order dated 26.03.2015. Surprisingly while allowing the aforementioned restoration application, Consolidation Officer also determined share of the parties which has been elaborated in the order dated 26.03.2015 itself. Upto this stage no right, title or interest of the first informant/respondent 4 Vimal Kumar Singh in the land in dispute stood recognized.

9. Against above order dated 26.03.2015, Jarawati Devi wife of Musafir filed a restoration application. The said restoration application came to be allowed by Consolidation Officer on the same day i.e. 08.06.2016. According to learned Senior counsel for petitioner, the said order was passed in complete violation of the principles of natural justice as no notice or opportunity of hearing was extended by Consolidation Officer to the affected tenure holders before passing the said order dated 08.06.2016. Vide another order dated 22.06.2016, Consolidation Officer also set aside earlier orders dated 03.10.2015, 02.11.2015 and 24.05.2016 passed by Consolidation Officer, whereby compromise entered into by the parties in terms of Rule 109 of the U.P. Consolidation of Holdings Rules

had been accepted and pursuant to which names of present petitioners came to be recorded in the consolidation records in respect of the land in dispute.

10. Feeling aggrieved by above orders dated 08.06.2016 petitioners filed a revision before Deputy Director of Consolidation, Varanasi in terms of Section 48(3) of the U.P. Consolidation of Holdings Act. The said revision came to be dismissed by the Deputy Director of Consolidation, Varanasi vide order dated 19.08.2016.

11. Feeling aggrieved by the above order dated 19.08.2016, petitioners approached this Court by filing Writ-B No. 45669 of 2016 (Vijai Vs. Deputy Director of Consolidation, Varanasi and 5 others). Aforesaid writ petition came to be allowed by this Court vide order dated 29.09.2016.

12. Another writ petition being Writ B No. 45671 of 2016 (Vijai Vs. Deputy Director of Consolidation, Varanasi and 5 others) was filed challenging the order dated 22.06.2016 passed by the Consolidation Officer, Varanasi recalling the earlier order dated 03.10.2015, 02.11.2015 and 24.05.2016 passed in proceeding under Rule 109 of the U.P. Consolidation of Holdings Rules. The said writ petition also came to be allowed by this Court vide order dated 29.09.2016.

13. As a consequence of above order dated 29.09.2016 passed by this Court the matter stood remanded before Consolidation Officer for decision afresh.

14. Upon remand Consolidation Officer again allowed the restoration application filed by Jarawati Devi vide order dated 16.09.2017. In view of above order dated 16.09.2017, proceedings under Rule 109 of U.P. Consolidation of Holdings Rules initiated by the parties also came to be negated vide order dated 08.12.2017.

15. Feeling aggrieved by above order dated 16.09.2017, petitioners filed a revision before Deputy Director of Consolidation, Varanasi which revision also came to be dismissed vide order dated 07.11.2017. By the said order, parties were directed to appear before Consolidation Officer for decision of their claims on merits.

16. Thus challenging the above order dated 07.11.2017, petitioners

approached this Court by means of **Writ B No. 5086 of 2018 (Rakesh and 4 others Vs. Deputy Director of Consolidation and 3 others)**. In the aforementioned writ petition an interim order dated 18.09.2018 was passed by this Court. Even otherwise aforesaid order is on record at page 62 of the paper book. For ready reference the same is extracted herein under:-

"Supplementary affidavit filed today by learned counsel for the petitioners is taken on record.

Heard learned counsel for the petitioners and Sri Rajeshwar Singh, Advocate on behalf of respondent No. 3.

The contention of learned counsel for the petitioners is that after remand by this Court vide order dated 29.09.2016, the restoration application filed by respondent No. 3 was decided without hearing the petitioners. The petitioners filed the revision against that order in which specific ground has been mentioned to the effect that the order is ex-parte has been passed on 16.09.2017 of that date Presiding Officer was not available. The said grounds has taken in the memo of revision has not been considered by the D.D.C., while passing the impugned order.

Matter requires consideration.

Learned Standing Counsel has accepted the notice on behalf of respondent Nos. 1 and 2.

Sri Rajeshwar Singh, Advocate has accepted the notice on behalf of respondent No. 3.

Issue notice to respondent No. 4 returnable at an early date. Step be taken within a week by registered/speed post.

All the respondents are directed to file counter affidavit within a month.

List this petition for admission/final disposal in the week commencing 12.11.2018.

Till the next date of listing further proceeding pending before the Consolidation Officer shall remain stayed. "

17. Mr. A.K. Singh, the learned Senior counsel for petitioners in challenge to the impugned FIR submits that in view of the facts as have now emerged on record, the criminal prosecution of petitioners pursuant to the impugned FIR cannot be sustained. According to the learned Senior counsel, the dispute between the parties is basically a civil dispute, which has been dragged into criminal litigation. It is an admitted case of first informant that petitioners are agitating their right, title and interest in the land in dispute. In this regard, the last orders dated 16.09.2017 and 18.12.2017 were passed by the DDC, Varanasi. Vide order dated 16.09.2017, the DDC, Varanasi dismissed the revision filed by petitioners against the order dated 16.09.2017, whereby the restoration application filed by Jarawati Devi seeking recall of the order dated 26.03.2015 was allowed. The DDC, Varanasi, vide order dated 16.09.2017 further remanded the matter before the Consolidation Officer for decision afresh. The High Court, vide interim order dated 18.09.2018 stayed further proceedings upon remand.

18. According to the learned Senior counsel, in case, first informant/respondent-4 had been in actual physical possession then the impugned FIR would not have been lodged in the year, 2021. This clearly shows false implication of petitioners.

19. Learned Senior counsel for petitioners has further submitted that first informant/respondent-4 never contested any proceeding before the Consolidation Courts. In fact, respondent-4 had filed an impleadment application seeking impleadment in the consolidation proceedings but the same was rejected by the consolidation officer vide order dated 30.01.2017. Respondent-4 is claiming right, title and interest in the land in dispute simply on the basis of an order passed by Niab Tehsildar in proceedings under Section 34 of the U.P. Land Revenue Act. Since mutation proceedings are summary proceedings, therefore, they do not create any right, title or interest and there being nothing on record to establish the title of first informant/respondent-4, the actual possession of petitioners at the behest of first informant/respondent-4 cannot be disputed. Apart from above, it is not clear as to how first informant/respondent-4 came in possession over the land in dispute. Merely, on the basis of an order of mutation, the possession of respondent-4 could not take place.

20. It is lastly contended by the learned Senior counsel for petitioners that the right of petitioners in the land in dispute was recognized, vide order dated 26.03.2015 passed in consolidation proceeding and thereafter, vide orders dated 03.10.2015, 02.12.2015 and 24.05.2016 passed in proceedings under Rule 109 of U.P.C.H. Act. Even if the said orders stand recalled but on account of the interim order dated 18.09.2018 passed by this Court in the writ petition filed by petitioners before this Court and quoted above, , the earlier position shall stand revived. Learned Senior Counsel for petitioners has then referred to the judgement of Supreme Court in ***Shree Chamundi Mopeds Ltd Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras, (1992) 3 SCC 1*** and on basis thereof he would submit that since an interim order staying the consequence of impugned order has already been passed by this Court therefore the position occurring prior to the order impugned in the writ petition filed by petitioners shall stand revived.

21. On the above conspectus, the learned Senior counsel for petitioners would thus submit that the impugned FIR is liable to be quashed by this Court.

22. Per contra, the learned A.G.A. for State-respondents 1, 2 & 3 and Mr. Yogesh Mishra, the learned counsel representing first informant/respondent 4 have vehemently opposed the present writ petition. Learned A.G.A. contends that since upon perusal of impugned FIR, commission of a cognizable offence is clearly disclosed, therefore, no interference is warranted by this Court in present writ petition.

23. On the other hand, Mr. Yogesh Mishra, the learned counsel representing first informant/respondent 4 has also opposed the present writ petition. Apart from adopting the submissions urged by the learned A.G.A. in opposition to present writ petition, it is contended by the learned counsel representing first informant-respondent-4 that in view of the facts and circumstances as have now crystallized on record, petitioners cannot claim any right to possession over the land in dispute. As such, no illegality can be attached to the impugned FIR. He further contends that on date, the matter is yet to be finally decided by the Consolidation Courts regarding the right, title and interest of petitioners in the land in dispute. Secondly, the claim of petitioners in the land in

dispute was recognized under orders dated 03.10.2015, 02.11.2015 and 24.05.2016 passed in compromise proceedings under Rule 109 of the U.P. Consolidation Rules. The said orders have been recalled by the Consolidation Officer and the order of Consolidation Officer has been approved by the DDC, Varanasi, vide order dated 08.12.2017. In the writ petition filed by petitioners challenging the order dated 16.09.2017, the order dated 08.12.2017 has not been impugned. Apart from above, vide order dated 16.09.2017, the DDC, Varanasi has upheld the order of Consolidation Officer recalling the earlier order dated 02.04.2005 and further remanded the matter to the Consolidation Officer for adjudication on merits. The High Court, vide interim order dated 18.09.2018 has only stayed the direction remanding the matter. As such, no benefit can be derived by the petitioners from the ratio laid down by Apex Court in the case of ***Shree Chamundi Mopeds Ltd.*** (Supra). Learned counsel representing first informant-respondent-4 has then placed the Khatauni of 1428-1433F, copy of which is on record at page 65 of the paper book. He has also produced the copy of Khasra, which also shows the possession of first informant/respondent-4 and others. On the bedrock of aforesaid documents, it is thus contended by the learned counsel representing first informant-respondent-4 that since first informant-respondent-4 and others are the recorded tenure holders of the land in dispute and also in possession as per the document of title (Khatauni) as well as the document of possession (Khasra), therefore, petitioners, who are claiming right, title and interest in the land in dispute shall be prospective tenure holders of the land in case their claim is accepted. But simply on the basis of same, they cannot interfere with the possession of first informant/respondent-4 till their right in the land in dispute is recognized in law. He thus contends that in view of above, the criminal prosecution of petitioners is neither malicious nor illegal. As such, no interference is warranted by this Court in present writ petition.

23. 15. It may be noted here that the village where the land in dispute is situate was de-notified for the purpose of consolidation by means of a Gazette Notification issued by the State Government in exercise of jurisdiction under section 52 of the U.P. Consolidation of Holding Act, 1953. On account of above, the records were transferred from the Consolidation Authority to the Revenue Authority. Bituna Devi died on

28.3.2023 Thereafter, the name of first informant/respondent-4 came to be recorded in the Revenue Record regarding the land in dispute vide order dated 28.5.2003 passed by the Naib Tehsildar in proceedings under Section 34 of the U.P. Land Revenue Act. In the current Khatauni of 1428F to 1433F, copy of which has been brought on record as Annexure 9 to the writ petition, the names of Mr. Vimal Kumar Singh is duly recorded in the column of the tenure holder i.e. Column 2 of the Khatauni which entry occurs at page 66 of the paper book.

24. Having heard, Mr. Ajay Kumar Singh, the learned Senior Counsel for petitioners, the learned AGA for State-respondents 1, 2 & 3, Mr. Yogesh Mishra, the learned counsel representing first informant/respondent-4 and upon perusal of record, this Court finds that on date, petitioners are not the recorded tenure holders of the land in dispute. The right, title and interest of petitioners in the land in dispute is yet to be adjudicated by the Consolidation Courts. By means of the interim order dated 18.09.2018 passed by this Court and having relied upon by the learned Senior counsel for petitioners, no benefit can be derived by the petitioners as vide aforesaid order dated 18.09.2018 (Annexure-7 to the writ petition), this Court has only observed that further proceedings before the Consolidation Officer pursuant to the order of remand passed by the DDC, Varanasi shall remain stayed.

25. Learned Senior counsel for petitioners could not dislodge the submissions urged by the learned counsel representing first informant/respondent-4 to the effect that the village, where the land in dispute is situate was de-notified for the purpose of consolidation. However, in the revenue records, as they exist today, the name of first informant/respondent-4 is duly recorded. The same is evident from the Khatauni of 1428-1433 F, copy of which is on record as Annexure-9 to the writ petition. Learned counsel representing first informant/respondent-4 has also produced the copy of Khatauni of 1428-1433 F as well as the Khasra. In the aforesaid Khasra, first informant/respondent-4 along with others are shown in possession. It may be noticed here that while Khatauni is the document of title, Khasra is the document of possession. It is thus evident that first informant/respondent-4 is not only the recorded tenure holder but also in possession of the land in dispute. In view of above, simply on the ground that the petitioners are claiming right, title

and interest in the land in dispute and also bona-fidely agitating the same shall by itself not create a right in favour of petitioners. The judgment of Supreme Court in ***Shree Chamundi Mopeds Ltd.*** (Supra), relied upon by the learned Senior counsel for petitioners is also of no help to petitioners as the order of DDC, Varanasi in the writ petition wherein an interim order dated 18.09.2018 has been passed is an order of remand and the High Court vide above order dated 18.09.2018 has only stayed further proceedings upon remand. Apart from above, the claim of petitioners is founded on an order passed by the Additional Consolidation Officer in compromise proceedings under Rule 109 of the UP Consolidation of Holdings Rules. The orders passed in proceedings under Rule 109 of the UP Consolidation of Holdings Rules have been called, vide order dated 08.12.2017. There is no interim order passed by the High Court staying the effect and operation of the order dated 08.12.2017. As such, the submissions urged by the learned Senior counsel in support of present writ petition do not create any dent in the impugned FIR nor on the basis of same, it can be conclusively concluded that the criminal prosecution of petitioners is either malicious or an abuse of the process of Court or illegal.. Since a prima-facie case is made out, therefore, no interference is warranted by this Court in present writ petition.

26. It was also contended by the learned senior counsel that the impugned FIR has been registered pursuant to an order passed by the jurisdictional Magistrate in exercise of jurisdiction under Section 173 (4) BNSS i.e. 156 (3) Cr.P.C. According to the learned senior counsel, even though pursuant to the order passed by the jurisdictional Magistrate directing therein that an F.I.R. be registered and the same be investigated, and the consequential FIR has been registered yet thereafter can be examined by this Court in exercise of jurisdiction under Article 226 of the Constitution of India, this Court can examine the veracity of the order passed by the jurisdictional Magistrate. In support of above submission, he has relied upon the judgment of Supreme Court in ***Om Prakash Ambadkar Vs. State of Maharashtra and Others, (2026) 2 SCC 622.*** Since paragraphs 2, 3, 10, 11, 12, 13, 14, 21, 22, 23, 24, 25, 26 & 27 of the aforesaid report are relevant qua the submissions urged by the learned senior counsel for petitioner, therefore, the same are reproduced herein below:-

“2. This appeal arises from the impugned common judgment and order

passed by the High Court of Judicature at Bombay, Nagpur Bench, Nagpur dated 16-10-2019 [Om Prakash Ambadkar v. State of Maharashtra, 2019 SCC OnLine Bom 13471] in Criminal Application No. 33/2012 by which the High Court rejected the application filed by the appellant herein under Section 482 of Code of the Criminal Procedure, 1973 (hereinafter referred to as “CrPC”) and thereby affirmed the order passed by the Judicial Magistrate First Class, Digras under Section 156(3)CrPC directing the police authorities to register the FIR against the appellant herein for the offence punishable under Sections 323, 294, 500, 504 and 506, respectively, of the Penal Code, 1860 (for short “IPC”).

3. It appears from the materials on record that the original complainant preferred an application under Section 156(3)CrPC in the Court of Judicial Magistrate First Class, Digras praying that the police authorities be directed to register his FIR for the offences enumerated above.

10. Ordinarily, Section 156(3)CrPC is invoked by the complainant when the police authorities decline to register a first information report. In such circumstances, a private complaint may be made in the Court of the Judicial Magistrate and the complainant may pray that police investigation be ordered under Section 156(3)CrPC. However, it is the discretion of the Magistrate concerned whether to order police investigation under Section 156(3)CrPC or take cognizance upon the complaint and issue process or dismiss the complaint under Section 203CrPC.

11. Over a period of time and in view of many decisions of this Court, if the officer in charge of the police station concerned for some reasons declines to register the FIR, then the law has left it open for the complainant to file an appropriate application before the Magistrate and pray for police investigation. Once an order is passed for police investigation under Section 156(3)CrPC, then it becomes a police case. At the end of the investigation the police may either file a charge-sheet or file an appropriate closure report.

12. However, what is important to observe is that whenever any application is filed by the complainant before the Court of Judicial

Magistrate seeking police investigation under Section 156(3)CrPC, it is the duty of the Magistrate concerned to apply his mind for the purpose of ascertaining whether the allegations levelled in the complaint constitute any cognizable offence or not. In other words, the Magistrate may not undertake the exercise to ascertain whether the complaint is false or otherwise, however, the Magistrate is obliged before he proceeds to pass an order for police investigation to closely consider whether the necessary ingredients to constitute the alleged offence are borne out on plain reading of the complaint.

13. In the case on hand, it appears that the Magistrate passed an order directing police investigation mechanically and without ascertaining whether the allegations levelled disclose commission of any offence or not.

14. It is the case of the complainant that the appellant herein committed offence punishable under Section 294IPC. The Magistrate very promptly accepted this contention without ascertaining if the necessary ingredients required to constitute the offence were disclosed in the complaint or not. In our view, even if all the allegations as levelled in the complaint are believed to be true, none of the ingredients to constitute the offence punishable under Section 294IPC could be said to be borne out.

21. We fail to understand how the Magistrate could have directed the police to investigate into the offence of defamation punishable under Section 500IPC. We are at a loss to understand as to why this aspect was not looked into even by the High Court.

22. The aforesaid reflects the mechanical manner in which the order came to be passed for police investigation under Section 156(3)CrPC. It was expected of the High Court to look into all these relevant aspects before rejecting the petition filed by the appellant herein under Section 482CrPC.

23. The allegations as regards simple hurt also do not inspire any confidence.

24. This Court in a plethora of its decisions, more particularly in Ramdev Food Products (P) Ltd. v. State of Gujarat [Ramdev Food

Products (P) Ltd. v. State of Gujarat, (2015) 6 SCC 439 : (2015) 3 SCC (Cri) 192] , has laid emphasis on the fact that the directions under Section 156(3) should be issued only after application of mind by the Magistrate. Para 22 of the said decision reads thus: (SCC p. 456)

“22. Thus, we answer the first question by holding that:

22.1. The direction under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone issuance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice it is considered appropriate to straightaway direct investigation, such a direction is issued.

22.2. The cases where the Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet to determine “existence of sufficient ground to proceed”. Category of cases falling under para 120.6 in *Lalita Kumari* [*Lalita Kumari v. State of U.P.*, (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] may fall under Section 202.

22.3. Subject to these broad guidelines available from the scheme of the Code, exercise of discretion by the Magistrate is guided by interest of justice from case to case.”

25. Thus, there are prerequisites to be followed by the complainant before approaching the Magistrate under Section 156(3)CrPC which is a discretionary remedy as the provision proceeds with the word “may”. The Magistrate is required to exercise his mind while doing so. He should pass orders only if he is satisfied that the information reveals commission of cognizable offences and also about the necessity of police investigation for digging out of evidence neither in possession of the complainant nor can be procured without the assistance of the police.

26. It is, thus, not necessary that in every case where a complaint has been filed under Section 200CrPC the Magistrate should direct the police to investigate the crime merely because an application has also

been filed under Section 156(3)CrPC even though the evidence to be led by the complainant is in his possession or can be produced by summoning witnesses, with the assistance of the court or otherwise. The issue of jurisdiction also becomes important at that stage and cannot be ignored.

27. In fact, the Magistrate ought to direct investigation by the police only where the assistance of the investigating agency is necessary and the court feels that the cause of justice is likely to suffer in the absence of investigation by the police. The Magistrate is not expected to mechanically direct investigation by the police without first examining whether in the facts and circumstances of the case, investigation by the State machinery is actually required or not. If the allegations made in the complaint are simple, where the court can straightaway proceed to conduct the trial, the Magistrate is expected to record evidence and proceed further in the matter, instead of passing the buck to the police under Section 156(3)CrPC. Of course, if the allegations made in the complaint require complex and complicated investigation which cannot be undertaken without active assistance and expertise of the State machinery, it would only be appropriate for the Magistrate to direct investigation by the police authorities. The Magistrate is, therefore, not supposed to act merely as a post office and needs to adopt a judicial²⁷. In fact, the Magistrate ought to direct investigation by the police only where the assistance of the investigating agency is necessary and the court feels that the cause of justice is likely to suffer in the absence of investigation by the police. The Magistrate is not expected to mechanically direct investigation by the police without first examining whether in the facts and circumstances of the case, investigation by the State machinery is actually required or not. If the allegations made in the complaint are simple, where the court can straightaway proceed to conduct the trial, the Magistrate is expected to record evidence and proceed further in the matter, instead of passing the buck to the police under Section 156(3) CrPC. Of course, if the allegations made in the complaint require complex and complicated investigation which cannot be undertaken without active assistance and expertise of the State machinery, it would only be

appropriate for the Magistrate to direct investigation by the police authorities. The Magistrate is, therefore, not supposed to act merely as a post office and needs to adopt a judicial approach while considering an application seeking investigation by the police. approach while considering an application seeking investigation by the police.”

26. Placing reliance upon the aforesaid observations made in aforementioned paragraphs of the above report, the learned Senior counsel for petitioners vehemently urged that the Jurisdictional Magistrate completely lost sight of the fact that for the offence complained of, no police investigation was required as there was no such material i.e. documentary or oral evidence which could not be produced by the first informant or the same not be got produced before Court through the Court itself. He, therefore, submits that in view of above, the Jurisdictional Magistrate upon receipt of application under Section 173(4) BNSS was not under a legal obligation to mechanically allow the same. As such, the impugned order passed by the learned Magistrate is not only arbitrary but also in excess of jurisdiction. As such, the same is liable to be quashed by this Court.

27. We deliberately segregated the aforesaid submission from the discussion in previous part of this order primarily for the reasons that (a) neither the order of Jurisdictional Magistrate has been brought on record, (b) neither the same has been impugned in present writ petition and (c) no pleadings and grounds in support of above submissions have been raised in support of the same.

25. As a result, the present writ petition fails and is liable to be dismissed.

26. It is, accordingly, **dismissed**.

(Lakshmi Kant Shukla,J.) (Rajeev Misra,J.)

March 17, 2026

Arti