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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Date of decision:31.07.2024

AXXXXXX

....Petitioner

V/s

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Nitish Garg, Advocate for the petitioner.
Mr. Adhiraj Singh Thind, AAG Punjab.

SUMEET GOEL, J. (Oral)

1. The present petition has been filed under Section 528 of BNSS, 2023 with a prayer, primarily, for issuance of directions to respondent Nos.2 and 3 to get the investigation conducted by any Senior Police official in a fair and unbiased manner in FIR No.106 dated 17.05.2024 registered at Police Station City Phagwara, District Kapurthala, Punjab under Sections 354/323/506/34 of IPC.
2. Learned counsel for the petitioner has argued that the Police has registered an FIR, upon representation made by the petitioner, but all the offences have not been added in the FIR. Learned counsel for the petitioner has further argued that the petitioner has lost confidence in the investigating officer and, though a representation was moved before the concerned Senior Superintendent of Police for change of investigating officer, but no action has been taken and hence the petitioner has been constrained to approach this Court by way of the instant petition.

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3. Pursuant to the notice of motion having been issued, a status report by way of affidavit of Jaspreet Singh, PPS, Deputy Superintendent of Police, Sub Division Phagwara Kapurthala has been filed on behalf of the respondents; Para 12 whereof reads as under:-

“12. That upon enquiry it transpired that allegations levelled by petitioner against Jai Kukreja regarding developing physical relation with her prior to marriage and making her pregnant could not be proved as petitioner has failed to produce any cogent evidence as such no action can be taken, moreover present FIR No.106 dated 17.05.2024 u/s 354/323/506/34 IPC has rightly been registered against Jai Kukreja and Megha at P.S. City Phagwara as such Inquiry Officer vide her report dated 18.07.2024 has recommended to close both the complaints and forwarded her report to SSP Kapurthala who approved the same day and thereafter both the complaints were closed.”

Learned State counsel has prayed for dismissal of the instant petition by raising submissions in tandem with the above status report especially the above referred paragraph.

Prime Issue

4. The prime issue for determination in the present petition is whether this Court ought to issue direction(s) under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter to be referred as ‘BNSS’), for registration of an FIR in furtherance of the complaint/representation made by the petitioner to the Police Authorities.

The pivotal legal issue that arises for consideration is the nature, scope & ambit of powers of High Court under Section 528 of BNSS, 2023. The further pivotal issue that arises for consideration is whether a person/complainant ought to approach the High Court under Section 528 of



BNSS, 2023 for issuance of directions for registration of an FIR or such person/complainant ought to approach the concerned Illaqa/Jurisdictional Magistrate, in view of Sections 173 & 175 of BNSS, 2023, in the first instance. Another pivotal legal issue that arises for consideration is the power(s) of a Magistrate *qua* investigation under Sections 173 & 175 of BNSS, 2023.

5. Relevant Statutory provisions
- The Code of Criminal Procedure, 1898 (hereinafter referred to as Cr.PC., 1898)

Section 561-A of the Code of Criminal Procedure, 1898 reads as under:-

“**561A.** *Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.*”

- The Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C., 1973)

Section 154 of Cr.P.C., 1973 reads as under:-

- “**154. Information in cognizable cases.** – (1) xxx xxx xxx
- (2) xxx xxx xxx xxx xxx
- (3) 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 the substance of 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 by this Code,

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Section 156 of Cr.P.C., 1973 reads as under:-

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned.”

Section 482 of Cr.P.C., 1973 reads as under:-

“482. Saving of inherent power of High Court.- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

The Bharatiya Nagarik Suraksha Sanhita, 2023

Section 173 of BNSS, 2023 reads as under:

(4) 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 the substance of 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 by this Sanhita, and such officer shall have all the powers of an officer in charge of the



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police station in relation to that offence failing which such aggrieved person may make an application to the Magistrate.

Section 175 of BNSS, 2023 reads as under:

175. Police officer's power to investigate cognizable case. - (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIV:

Provided that considering the nature and gravity of the offence, the Superintendent of Police may require the Deputy Superintendent of Police to investigate the case.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under Section 210 may, after considering the application supported by an affidavit made under sub-section (4) of Section 173, and after making such inquiry as he thinks necessary and submission made in this regard by the police officer, order such an investigation as above-mentioned.

(4) Any Magistrate empowered under Section 210, may, upon receiving a complaint against a public servant arising in course of the discharge of his official duties, order investigation, subject to-

(a) receiving a report containing facts and circumstances of the incident from the officer superior to him; and

(b) after consideration of the assertions made by the public servant as to the situation that led to the incident so alleged.

Section 528 of BNSS, 2023 reads as under:

“528. Saving of inherent powers of High Court. – Nothing in this Sanhita shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Sanhita, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. ”



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Relevant Case Law

6. The precedents germane to the issue(s) in question are as follows:

I. Re: ***Nature, Scope and Ambit of Powers of a High Court under Section 561 A of Cr.P.C., 1898.***

A Five Judges bench of the Hon'ble Supreme Court in a judgment titled as ***State of U.P. vs. Mohammad Naim, 1964 AIR (Supreme Court) 703***, has held as under:

“7.....It is now well settled that the section confers no new powers on the High Court. It merely safeguards all existing inherent powers possessed by a High Court necessary (among other purposes) to secure the ends of justice. The section provides that those powers which the court inherently possesses shall be preserved lest it be considered that the only powers possessed by the court are those expressly conferred by the Code and that no inherent powers had survived the passing of the Code.....”

II. Re: ***Nature, Scope and Ambit of Powers of a High Court under Section 482 of Cr.P.C., 1973***

(i) A three Judges bench of the Hon'ble Supreme Court in a judgment titled as ***State of Karnataka vs. M. Devendrappa, 2002(3) SCC 89***, has held as under:

“6. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers



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*apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All Courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "**quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae, esse non potest**" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the Court does not function as a Court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself. It is to be exercised **ex debito justitiae** to do real and substantial justice for the administration of which alone Courts exist. Authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent abuse. It would be an abuse of process of Court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers Court would be justified to quash any proceeding if it finds initiation/continuance of it amounts to abuse of process of Court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the Court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."*

(ii) A Three Judges Bench of the Hon'ble Supreme Court in a judgment tilted as **Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur and Ors. Vs. State of Gujarat and Anr., 2017(9) SCC 641** has held as follows:-

"15. The broad principles which emerge from the precedents on the subject, may be summarized in the following propositions:-

(i) *Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of*



justice. The provision does not confer new powers. It only recognizes and preserves powers which inhere in the High Court;

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(iv) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;”

III. Re: **Power(s) of Magistrate under Section 156(3) of Cr.P.C., 1973**

(i) In a judgment titled as **Sakiri Vasu vs. State of U.P. and others, 2008(2) SCC 409**, the Hon’ble Supreme Court has held as under:-

"17. In our opinion Section156(3) Criminal Procedure Code is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an F.I.R. and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. Section 156(3) Criminal Procedure Code, though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation.

18. It is well-settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary to its execution.

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25. We have elaborated on the above matter because we often find that when someone has a grievance that his FIR has not been registered at the police station and/or a proper investigation is not being done by the police, he rushes to the High Court to file a writ petition or a petition under Section 482 Criminal Procedure Code. We are of the opinion that the High Court should not encourage this practice and should ordinarily refuse to interfere in such matters, and relegate the petitioner to his

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*“5. This Court has held in **Sakiri Vasu vs. State of U.P. & Others**, reported in AIR 2008 SC 907, that if a person has a grievance that his F.I.R. has not been registered by the police, or having been registered, proper investigation is not being done, then the remedy of the aggrieved person is not to go to the High Court under Article 226 of the Constitution of India, but to approach the concerned Magistrate under Section 156(3), Cr.P.C. If such an application under Section 156(3), Cr.P.C. is made and the Magistrate is, prima facie, satisfied, he can direct the F.I.R. to be registered, or if it has already been registered, he can direct proper investigation to be done which includes in his discretion, if he deems it necessary, recommending change of*



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the Investigating Officer, so that a proper investigation is done in the matter. We have said this in Sakiri Vasu's case because what we have found in this country is that the High Courts have been flooded with writ petitions praying for registration of the first information report or praying for a proper investigation.

6. We are of the opinion that if the High Courts entertain such writ petitions, then they will be flooded with such writ petitions and will not be able to do any other work except dealing with such writ petitions. Hence, we have held that the complainant must avail of his alternate remedy to approach the concerned Magistrate under Section 156(3), Cr.P.C. and if he does so, the Magistrate will ensure, if prima facie he is satisfied, registration of the first information report and also ensure a proper investigation in the matter, and he can also monitor the investigation."

(iii) A three Judges bench of the Hon'ble Supreme Court in a judgment titled as ***M. Subramaniam and another vs. S. Janaki and another*** **2020(16) SCC 728**, has held as under:

*"6. The said ratio has been followed in **Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage and Others**, (2016) 6 SCC 277, in which it is observed.*

"2. This Court has held in Sakiri Vasu v. State of U.P., that if a person has a grievance that his FIR has not been registered by the police, or having been registered, proper investigation is not being done, then the remedy of the aggrieved person is not to go to the High Court under Article 226 of the Constitution of India, but to approach the Magistrate concerned under Section 156(3) CrPC, 1973. If such an application under Section 156(3) CrPC, 1973 is made and the Magistrate is, prima facie, satisfied, he can direct the FIR to be registered, or if it has already been registered, he can direct proper investigation to be done which includes in his discretion, if he deems it necessary, recommending change of the investigating officer, so that a proper investigation is done in the matter. We have said this in Sakiri Vasu case because what we have found in this country is that the High Courts have been flooded with writ petitions praying for registration of the first information report or praying for a proper investigation.



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3. We are of the opinion that if the High Courts entertain such writ petitions, then they will be flooded with such writ petitions and will not be able to do any other work except dealing with such writ petitions. Hence, we have held that the complainant must avail of his alternate remedy to approach the Magistrate concerned under Section 156(3) CrPC, 1973 and if he does so, the Magistrate will ensure, if prima facie he is satisfied, registration of the first information report and also ensure a proper investigation in the matter, and he can also monitor the investigation.”

IV. Doctrine of implied powers (QUANDO LEX ALIQUID ALICUI CONCEDIT, CONCEDERE VIDETUR ET ID SINE QUO RES IPSA ESSE NON POTEST & UBI ALIQUID CONCEDITUR, CONCEDITUR ET ID SINE QUO RES IPSA ESSE NON POTEST)

(i) A Five - Judges bench of the Hon'ble Supreme Court in a judgment titled as ***Bidi, Bidi Leaves and Tobacco Merchants' Association, Gondia and others vs. State of Bombay, 1962 AIR (Supreme Court) 486,*** has held as under:-

“20. One of the first principles of law with regard to the effect of an enabling act”, observes Craies, “is that if Legislature enables something to be done, it gives power at the same time by necessary implication to do everything which is indispensable for the purpose of carrying out the purposes in view”. The principle on which the doctrine is based is contained in the legal maxim '**Quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest**'. This maxim has been thus translated by Broom thus: “whoever grants a thing is deemed also to grant that without which the grant itself would be of no effect”. Dealing with this doctrine Pollock, C.B., observed in ***Fenton v. Hempton, (1858) 117 RR 32 at p.41 : II MOO PC 347***” it becomes therefore all important to consider the true import of this maxim, and the extent to which it has been applied. After the fullest research which I have been able to bestow, I take the matter to stand thus : Whenever anything is authorised, and especially if, as matter of duty, required to be done by law, and it is found impossible to do that thing unless something else not

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(ii) In a judgment titled as *Savitri vs. Govind Singh Rawat: AIR 1986 SUPREME COURT 984*, the Hon'ble Supreme Court has held as under:-

(iii) A Five Judges bench of the Hon'ble Supreme Court in a judgment titled as ***Manoj Narula vs. Union of India: (2005) 7 SCC 52***, has held as under:-

60. Dixon, J, in **Australian National Airways Pty Ltd. v Commonwealth**, (1945) 71 CLR 29, 85, said: ‘I do not see why we should be fearful about making implications’. The said principle has been approved in **Lamshed v Lake**, (1958) 99 CLR 132, 144-5, and thereafter, in **Payroll Tax Case** (1971) 122 CLR 353, 401. ### Thus, the said principle can be taken aid of for the purpose of interpreting constitutional provision in an expansive manner. But, it has its own limitations. The interpretation has to have a base in the Constitution.”

Re: *Nature, scope and ambit of power(s) of the High Court under Section 528 of BNSS, 2023.*

AJAY KUMAR
2024.08.01 18:08
I attest to the accuracy and
integrity of this document



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provision *may* alter any word therein. This, by itself, establishes this provision as an immanent attribute, even ineffaceable, and an enduring doctrine of inherent powers of the High Court. For over a century now, despite overhauling of laws twice during this period, the latest being BNSS of 2023, this provision remains untouched.

7.1. Section 528 of BNSS, 2023 is, in fact, reiteration of statutory recognition of the doctrine of inherent jurisdiction of a High Court. This doctrine received statutory recognition, for the first time, when Section 561-A was inserted in the Code of Criminal Procedure Code of 1898 by way of the Code of Criminal Procedure (Amendment Act), 1923. By way of introduction of Section 561-A in Cr.P.C., 1898, the legislature recognized the existence of inherent powers in a High Court and provided that nothing in the Code can be deemed to limit inherent powers of a High Court to make such order(s) as would be necessary to give effect to any order under the Code *or* to prevent abuse of process of any Court *or* to otherwise secure the ends of justice. The Hon'ble Supreme Court in the judgment of **Mohammad Naim** (supra), while dealing with ambit of Section 561-A of Cr.P.C., 1898, has held that this Section gives no new powers to a High Court; it only provides that powers which a High Court already inherently possesses, shall be preserved and a provision has been inserted into the statute book *lest* it would be misconstrued that only those powers are possessed by a High Court which are expressly conferred by the Code of Criminal Procedure & that all such inherent powers stand extinguished after the Code came into force. In essence, this provision refers to residuary plenary powers of a High



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Court to do justice. It is notable that such inherent powers, which received statutory recognition at the end of legislature, empowers a High Court to exercise such inherent jurisdiction not only in respect of proceedings before it but also in respect of proceedings pending before the Subordinate Courts. The legislature, acknowledging the significance and importance of such inherent powers, chose to keep alive the provision of Section 561-A of Cr.P.C., 1898 in the Cr.P.C., 1973 as also the statute currently in vogue i.e. BNSS, 2023, with no change whatsoever, *albeit* only by renumbering the provision as Section 528.

7.2. The important aspect that immediately next craves attention is as to what are the “*inherent powers of a High Court*” recognized under Section 528 of BNSS, 2023. At the outset, it deserves to be noticed that these inherent powers are not defined in the statute. Inherent powers are essentially those powers which *ipso facto* exist in the Court by virtue of its existence. The phraseology of inherent powers as defined in the dictionaries is as under:-

- (a) Black’s Law Dictionary defines ‘inherent powers’ as “Existing in something as permanent, essential, or characteristic attribute.”
- (b) Webster’s New World Law Dictionary defines it as “A power that must be deemed to exist in order for a particular responsibility to be carried out.”
- (c) Oxford (Advanced Learner’s Dictionary) defines “inherent” as “existing as a natural or permanent feature”.

The Hon’ble Supreme Court in the case of “**Devendrappa**”(supra), while interpreting Section 482 of Cr.P.C., 1973,



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has relied upon the maxim of “*quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsa, esse non potest*” (when the law gives a person anything it also gives him that without which the thing itself cannot exist) to hold that the inherent powers of a High Court are all such powers which are necessary to do the right and to undo a wrong in the course of administration of justice. The Hon’ble Supreme Court, in this judgment, has further referred to the maxim “*ex debito justitiae*” to say that such powers are given to do real and substantial justice for which purpose alone a High Court exists. The Hon’ble Supreme Court in the judgment of ***Parbatbhai*** (supra) has further held that the powers under Section 482 of Cr.P.C., 1973 are aimed at preserving the inherent powers of a High Court to prevent abuse of the process of any Court or to secure the ends of justice. The ratio decidendi of these judgments; though rendered by Hon’ble Supreme Court in context of provisions of Section 482 of Cr.P.C., 1973; would apply, with complete vigour, to the provision of Section 528 of BNSS, 2023 as well since there is no alteration in the wording of this provision.

7.3 A cumulative reading of the abovesaid would show that the inherent powers of a High Court are powers which are incidental replete powers, which if did not so exist, the Court would be obliged to sit still and helplessly see the process of law and Courts being abused for the purposes of injustice. In other words; such power(s) is intrinsic to a High Court, it is its very life-blood, its very essence, its immanent attribute. Without such power(s), a High Court would have form but lack the substance.

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These powers of a High Court hence deserve to be construed with the widest possible amplitude. These inherent powers are in consonance with the nature of a High Court which ought to be, and has in fact been, invested with power(s) to maintain its authority to prevent the process of law/Courts being obstructed or abused. It is a trite posit of jurisprudence that though laws attempt to deal with all cases that may arise, the infinite variety of circumstances which shape events and the imperfections of language make it impossible to lay down provisions capable of governing every case, which in fact arises. A High Court which exists for the furtherance of justice in an indefatigable manner, should therefore, have unfettered power(s) to deal with situations which, though not expressly provided for by the law, need to be dealt with, to prevent injustice or the abuse of the process of law and Courts. The juridical basis of these plenary power(s) is the authority; in fact the seminal duty and responsibility of a High Court; to uphold, to protect and to fulfill the judicial function of administering justice, in accordance with law, in a regular, orderly and effective manner. In other words; Section 528 of BNSS, 2023 reflects peerless powers, which a High Court may draw upon as necessary whenever it is just and equitable to do so, in particular to ensure the observance of the due process of law, to prevent vexation or oppression, to do justice *nay* substantial justice between the parties and to secure the ends of justice.

7.4. Accordingly, it is unequivocal that the inherent powers of a High Court; recognized by way of Section 528 of BNSS, 2023; are powers which are unbridled, unfettered and plenary in nature. These powers are to



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be exercised keeping in view the following salutary purposes viz; (a) to give effect to any order passed under the code (b) to prevent abuse of process of any Court (c) to otherwise secure the ends of justice. It is neither conceivable nor desirable to lay down any exhaustive set of guideline(s) to govern the exercise of this plenary inherent jurisdiction, however alluring this aspect may be. Such exercise of power would definitely be dependent upon the factual matrix of the case which the Court is in seisin of. It was said by Lord Denning, an observation which met with approval by the Hon'ble Supreme Court, that:

".....Each case depends on its own facts, and a close similarity between one case and another is not enough, because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (As said by Cardozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, its broad resemblance to another case is not at all decisive."

Re: Power(s) of a Magistrate under Sections 173 and 175 of BNSS, 2023 qua registration of an FIR and investigation therein.

8. The aspect of powers of a Magistrate under Section 156(3) of Cr.P.C. have been dealt with by the Hon'ble Supreme Court in the case of **Sakiri Vasu** (supra), wherein, it has been held that the Magistrate has sufficient powers to direct for registration of an FIR as also monitor the investigation thereof. The Hon'ble Supreme Court in the case of **Sudhir Bhaskarrao Tambe** (supra), has further held that the Magistrate can issue directions for proper investigation and can even direct for change of



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investigating officer, in the exercise of his judicial discretion. A Three Judges Bench of the Hon'ble Supreme Court in the case of ***M. Subramaniam*** (supra) has reiterated the ratio-decidenti of the judgments in the cases of ***Sakiri Vasu*** (supra) and ***Sudhir Bhaskarrao Tambe*** (supra).

8.1 A comparative analysis of Section 154 of Cr.P.C., 1973 and Section 173 of BNSS, 2023 especially a comparative analysis of Section 154(3) of Cr.P.C., 1973 and Section 173 (4) of BNSS, 2023 shows that a mirifical change has been brought in by addition of the words "*failing which such aggrieved person may make an application to the Magistrate.*" In plain words, the legislature has mandated by way of this statutory incorporation that in case the Officer in charge of a Police Station (commonly referred to as 'Station House Officer/SHO' in this part of the country) and thereafter the concerned Superintendent of Police refuses to register an FIR, the aggrieved person is entitled to make an application to the Illaqa/Jurisdictional Magistrate for such purpose.

8.2 A Magistrate; in terms of provisions of Section 175(4) of BNSS, 2023; is empowered to order for "*investigation*". It goes without saying that it is an elementary principle of construction that a power to do an act cannot be implied unless the doing of such an act is essentially necessary for effectual exercise of the jurisdiction or power conferred by the statute so that if such implication is not made, it would not be possible to effectually exercise the jurisdiction or power and the conferment of the jurisdiction or power would be rendered futile or purposeless. The principle on which the implication of power is permitted to be made is that where the Legislature



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enacts a provision conferring a jurisdiction or power, it must be deemed to have also given at the same time by necessary implication, power to do all such acts and employ all such means as are essentially necessary for its execution, for otherwise the legislative will would be frustrated and the provision would be reduced to futility. The implication of power can, therefore, be made by judicial construction where it is clear that without such power a provision of the statute conferring jurisdiction or power would be rendered meaningless or ineffectual. The legal maxim “***QUANDO LEX ALIQUID CONCEDIT, CONCEDERE VIDETUR ET ID SINE QUO RES IPSA ESSE NON POTEST***” means that whoever grants a thing is deemed also to grant that without which the grant itself would be of no effect. A five - Judges Bench of the Hon’ble Supreme Court in case of ***Bidi, Bidi Leaves and Tobacco Merchants’ Association, Gondia*** (supra) has relied upon this maxim to hold that the doctrine of implied powers ought to be legitimately invoked when it is found that a duty has been imposed or a power has been conferred by a statute and it is further found that the duty cannot be discharged or the power cannot be exercised at all unless some auxiliary or incidental power is assumed to exist. Further; the maxim ***UBI ALIQUID CONCEDITUR, CONCEDITUR ET ID SINE QUO RES IPSA ESSE NON PROTEST*** reflects the basic principles of jurisprudence where anything is conceded, there is conceded also anything without which the thing itself cannot exist. Such a construction would, infact, advance the object of the legislation. This maxim has met with approval from the Hon’ble Supreme Court in case of ***Savitri*** (supra). In other words, implied



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powers are legitimate power granted by way of statute which are not clearly and explicitly stated in the Constitution. Section 175 of BNSS, 2023 has vested the Magistrate with the power to order for investigation. The implied grant of such power, but of-course is, and, infact can only be effectively exercised if it involves within its ambit such powers as are truly incidental and ancillary for doing all such acts or employing all such means as are necessary to make the grant of such power effective. In other words, details could not be read into by implication, the drafting of legislation would be an indeterminable/infinite process and the legislative intent would likely be defeated by a most insignificant omission. This aspect of power, by way of doctrine of implication, has also met with favour from the Hon'ble Supreme Court in the five - Judges Bench judgment of *Manoj Narula* (supra). To put it in another way, the law is required to be applied, not only to what appears to be regulated by its expressed dispositions but to all cases where a just application of such law may be made and which appear to be comprehended either within the consequences that may be gathered from it.

8.3 Therefore, the statutory provisions of Sections 173 and 175 of BNSS, 2023; when read in the light of the dicta of the above said judgments; clearly show that the Magistrate has been endowed with all requisite powers including direction for registration of an FIR, monitor investigation in such FIR as also direct for change of investigating officer if circumstances of the case so require. These powers, of course, are required to be exercised in consonance with the well settled norms of judicial discretion.



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Re: Exercise of powers by a High Court under Section 528 of BNSS, 2023 when requisite relief(s) can be sought for by invoking power(s) of a Magistrate under Sections 173 and 175 of BNSS, 2023

9. The issue that next requires to be addressed is; as to whether a High Court has jurisdiction under Section 528 of BNSS, 2023; to entertain any plea seeking registration of an FIR and/or constitution of an SIT (Special Investigating Team) and/or change of Investigating Officer for conducting investigation in an FIR & prayers of akin nature *once* the Magistrate has sufficient powers to adjudicate these pleas. This aspect assumes significance as also relevance of a very high degree since this Court faces incessant petitions being filed wherein prayer(s) of above kind are made. The pertinent question, thus arises, is as to what is the appropriate remedy(s) available to a complainant in case the police refuses to proceed further and/or register an FIR as per the requirements of law.

10. The factum of a Magistrate having requisite powers to direct for registration of an FIR, monitor investigation therein as also order to change of investigating officer cannot be construed to be *ipso facto* taking away the innate powers of a High Court under Section 528 of BNSS, 2023 to issue such direction(s). *Ordinarily*, a litigant/ complainant ought to approach the Magistrate in the first instance for issuance of such like direction(s) but the same does not divest a High Court of its inherent plenary jurisdiction. The tendency to approach a High Court directly even when an independent and robust mechanism for dispensation of justice is available in the Illaqa/



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Jurisdiction Magistrate is worrisome. It avoidably prolongs the grant of relief(s) that the litigant seeks apart from adding to the cost of litigation. The Magistracy, indubitably, is a robust judicial set up which has been specifically put in place for expeditious and accessible judicial remedy within reasonable and easy reach of the litigant. By-passing the Magistracy, without a justifiable cause, is patent subversion of judicial authority in general. Instead knocking at the doors of a High Court directly indicates indifference towards the judicial process. Indubitably, the volume of such petitions pouring into a High Court is stalling the working as also proficiency of the Constitutional Court. Accordingly, unless there are accentuating facts/ circumstances, a litigant/ complainant ought not to approach a High Court under Section 528 of BNSS, 2023; in the first instance; seeking direction(s) for registration of an FIR, fair investigation therein etc. This Court must hasten to add a word of caution *viz* a petition filed under Section 528 of BNSS, 2023 thereby invoking the inherent powers of a High Court for above said like prayer(s) is “*maintainable*” in *stricto-sense* but it may not be “*desirable*” to entertain such a petition *lest* High Court may be flooded with litigations of this kind. To say, by way of simile, the difference between “*maintainability of a petition*” and “*desirability to entertain a petition*” is as distinct and stark as the difference between chalk and cheese. The exercise of such power(s) by a High Court would depend upon the facts/circumstances of a particular case.

11. As a sequel to above rumination, the following postulates of law emerge:



I. An Illaqa/Jurisdictional Magistrate has; by virtue of Sections 173 and 175 of BNSS, 2023; the necessary powers and jurisdiction to grant plea(s) for issuance of direction(s) for registration of an FIR, monitoring of investigation in an FIR, change of investigating officer and prayer(s) of alike nature.

II. *Ordinarily*, an applicant/complainant ought to approach, in the first instance, the Court of Illaqa/Jurisdictional Magistrate to seek prayer(s) for issuance of direction(s) for registration of an FIR, monitoring of investigation in an FIR as also other prayers of akin nature.

III. In a given case, if the facts/circumstances so warrant, the High Court is well within its jurisdiction to entertain and consider plea(s) seeking registration of an FIR, monitoring of investigation in an FIR, constituting an SIT (Special Investigating Team), change of investigating officer & all such prayer(s) of such kind and nature. However, it would be prudent that an applicant/complainant, while seeking to invoke the jurisdiction of a High Court under Section 528 of BNSS, 2023 in the first instance seeking prayer(s) of above nature, shows sufficient cause for not having approached the Illaqa/Jurisdictional Magistrate in the first instance.

IV. A High Court, in its inherent jurisdiction under Section 528 of BNSS, 2023 has unbridled, unfettered and plenary powers. The only restriction on exercise of such powers is self-restraint. No inflexible and comprehensive guidelines can conceivably be enumerated governing the exercise of these intrinsic powers by a High Court under Section 528 of BNSS, 2023. There is no gainsaying that the nature, mode and extent of such exercise of powers by a High Court under Section 528 of BNSS, 2023 shall depend upon the judicial discretion exercised by a High Court in the facts and circumstances of a given case.

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12. Now this Court reverts to the facts of the present case to ratiocinate thereupon.

12.1 The prime prayer made in the petition is for issuance of directions to respondent Nos.2 and 3 (Director General of Police, Punjab and Senior Superintendent of Police, Kapurthala) to get the investigation of the FIR conducted by any Senior Police official in a fair and unbiased manner. The petitioner (herein) who claims herself to be a victim of beatings, sexual assault etc. has chosen to invoke the inherent jurisdiction of this Court under Section 528 of BNSS, 2023 without even referring to, much less disclosing any impediment being faced by her in approaching the concerned Illaqa/Jurisdictional Magistrate by invoking Section 175 of BNSS, 2023. In the considered opinion of this Court, the petitioner ought to have approached the concerned Illaqa/Jurisdictional Magistrate in the first instance who is well empowered to grant the substantial relief(s) sought for in the present petition. No such accentuating facts/circumstances have been brought forward by the petitioner which may warrant interference by this Court under Section 528 of BNSS, 2023. Accordingly, this Court does not find the present case a fit one for exercise of its jurisdiction under Section 528 of BNSS, 2023.

Decision

13. The instant petition filed under Section 528 of BNSS, 2023 stands dismissed. Needless to state herein that this Court has not delved into the merits of the matter and the same is left open to be considered in



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appropriate proceedings, if so initiated. There is no gainsaying that the petitioner, if so advised, will be at liberty to file an appropriate petition, *inter alia*, under Section 175 of BNSS, 2023 for redressal of her grievance(s), in accordance with law.

(SUMEET GOEL)
JUDGE

July 31, 2024
Ajay

Whether speaking/reasoned:	Yes
Whether reportable:	Yes