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IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-37929-2024 (O&amp;M)

Date of Decision: 26.11.2024

GURMIT SINGH

.. Petitioner

Vs.

STATE OF PUNJAB AND ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Dr. Rau P.S. Girwar, Advocate for the petitioner.

Mr. Anup Singh, AAG, Punjab.

...

**SUMEET GOEL, J. (Oral)**

1. The petition in hand has been preferred with the following substantive prayer:

*“It is, therefore, most humbly prayed that this Hon'ble court may graciously be pleased to:-*

*To allow the Petition under Section U/s 528 Bharatiya Nagarik Suraksha Sanhita, 2023 for issuance of appropriate order or direction to the respondent Nos. 1 to 4 for fair investigation in FIR no. 5 dated 07.01.2024 u/s 306, 506, 34 IPC, PS Sangat, Bathinda i.e. Annexure P-1 through Independent agency or Central Bureau of Investigation i.e. Respondent no. 2 for fair investigation whereas police i.e. Respondent no. 3 to 7 have not conducted the fair investigation and ignored the evidences even completed checked report by District Attorney Bathinda office on dated 02.05.2024 i.e., Annexure P-8 and thereafter, formed illegal Special Investigation as per Annexure P-10 Team only to exonerated Respondent no. 8 to 12 who is accused of abetment of crime by forcibly enter in house and specific Videography and attribution done by Respondent no. 8 who is Intelligence Wing Punjab Police as Intelligence Officer.”*

2. The gravamen of the FIR in question is that it was registered on the basis of the statement of Gurmeet Singh son of Joginder Singh, resident of village Gurusar Sainewala, Police Station Sangat on 07.01.2024 to the

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effect that his son Manminderpal Singh aged about 30 years had been serving as Junior Engineer in Punjab State Power Corporation Limited for the last about 7 years and now he was posted in Mohali. The betrothal ceremony of Manminderpal Singh was solemnized with Sheenu Arora daughter of Ved Parkash, resident of PUDA Colony, House no.365, Malout on 03.07.2023. Thereafter Manminderpal Singh became upset and his relationship with Sheenu Arora became strained and Manminderpal Singh was not agreed to perform his marriage with Sheenu Arora. Gurmeet Singh further stated that they tried their best to understand Manminderpal Singh, but he did not agree. Gurmeet Singh further stated that on 28.12.2023, at about 12:00 noon time, Sheenu Arora along with her brother Karan Arora, cousin Karan resident of Abohar, her father Ved Parkash came to their house on a vehicle make Fortuner and entered into their house forcefully and they left Sheenu Arora in their house. Due to this reason, Manminderpal Singh became upset and he left from his house without giving any information on the same day in the evening hours. On 30.12.2023 at about 09:00 AM, Sheenu Arora in front of Manjeet Kaur (wife of complainant) asked Ranjit Kaur (mother of complainant Gurmeet Singh) that now Sheenu Arora would live with them in their house and abated Ranjit Kaur by saying that she may die by consuming something and on this abetment, Ranjit Kaur administered some insecticide lying in the tractor room of their house and fell down there. Ranjit Kaur was got admitted in Civil Hospital, Bathinda and due to her critical condition, she was referred to Bathinda Neuro Spine and Trauma 24 A Centre, Bathinda and she died on 06.01.2024.

3. Learned counsel for the petitioner has iterated that the police is not conducting the investigation in the correct perspective, primarily, on



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account of influence of respondent No.8, who is working as a police official. It has been submitted that the attitude and conduct of the local police shows that the investigation is being manipulated so as to help the accused especially respondent No.8. Learned counsel for the petitioner has further iterated that despite various representations being made to the police, including senior police officials, no corrective measures are being undertaken by the police for looking into the entire matter in a passionate manner. Learned counsel for the petitioner has further submitted that the petitioner (herein) has preferred an application under Section 190 of Cr.P.C. read with Section 172 of Cr.P.C. before the concerned Judicial Magistrate for monitoring the police investigation as the same is being conducted in a lackluster manner but the same is not bearing out any positive result. Thus, on strength of these submissions, learned counsel for the petitioner has sought for grant of the present petition.

4. Notice of motion was issued, vide order dated 07.08.2024, qua respondents No.1 and 3 only.

5. A status report dated 29.08.2024 by way of affidavit of Heena Gupta, PPS, Deputy Superintendent of Police, (Rural) Bathinda was filed in the Court, relevant whereof reads as under:

*4. That on 07.01.2024, on the basis of the statement of Gurmeet Singh, the present case was got registered by SI Gurpal Singh against Sheenu Arora, her father Ved Parkash, her brother Karan Arora and cousin Karan, resident of Abohar. SI Gurpal Singh got registered the present case. On 07.01.2024, inquest report was prepared by SI Gurpal Singh in the dead house of Civil Hospital, Bathinda. On the same day, SI Gurpal Singh visited and inspected the spot on the demarcation of complainant Gurmeet Singh and prepared rough site plan. From the spot inspection, one plastic bottle/vessel of insecticide was recovered and the same was converted into parcel by SI Gurpal Singh, sealed the said parcel with his seal bearing impression GS and took into police possession vide recovery memo.*

*5. That on 08.01.2024, post-mortem examination upon the dead body of Smt. Ranjit Kaur was conducted in Civil Hospital, Bathinda and after the post-mortem examination, the dead body was handed over to complainant Gurmeet Singh, Sardool Singh, Namberdar and Jaswinder*



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*Singh vide receipt dated 08.01.2024. The Viscera parcel and the parcel containing the tissues i.e. containing the complete heart for histopathological examination were handed over to Lady Constable Sandeep Kaur no.1348/BTI by the concerned Doctor. The viscera parcel was deposited in the office of Chemical Examiner, Kharar through Constable Gurpreet Singh no.2149/BTI vide road certificate no.94 on 07.02.2024. The sealed Jar containing the tissues for histopathological examination was deposited in the office of Guru Gobind Singh Medical College and Hospital, Faridkot through Lady Constable Kiranjeet Kaur on 15.02.2024 vide road Certificate no.104 in intact condition.*

*6. That on 01.03.2024, accused Karanveer Singh alias Karan son of Ved Parkash, resident of PUDA Colony, Malout, Karan son of Radhey Sham, resident of Model Town, Abohar joined the investigation in compliance of order passed by this Hon'ble high Court and were released by investigating officer on furnishing their bail bonds and surety bonds.*

*7. That on 27.03.2024, accused Ved Parkash son of Om Parkash and Sheenu Arora daughter of Ved Parkash, both residents of PUDA Colony, Malout joined the investigation in compliance of order passed by the learned Court of Heera Singh Gill, Additional Sessions Judge, Bathinda and they were released on furnishing their bail bonds and surety bonds to the investigating officer.*

*8. That on 30.03.2024, the cause of death in case of Smt. Ranjit Kaur was declared by the doctor due to respiratory failure due to paralysis of respiratory muscles as a result of organophosphorus poison which was sufficient to cause death in ordinary course of nature.*

*9. That on 17.05.2024, the Senior Superintendent of Police, Bathinda constituted a Special Investigation Team vide office order no.12836- 38/C dated 17.05.2023 consisting of Superintendent of Police, City, Bathinda, Deputy Superintendent of Police, PBI-cum-Economic Offences and Cyber Crime, Bathinda and SHO, Police Station Sangat to conduct the investigation and also attest the investigation conducted till date.*

*10. That the Special Investigation Team visited the spot, inspected the spot and videography was also conducted. From the investigation conducted by Special Investigation Team, it is found that although betrothal ceremony of Manminderpal Singh was performed with Sheenu Arora but even then Manminderpal Singh did not marry her, so there was an altercation between both the parties. Panchayats were also convened in the house of Gurmeet Singh as well as in the Police Station between both the parties to ameliorate the situation, but the matter was not resolved as there was a dispute in the house, so Ranjit Kaur remained upset. Smt. Ranjit Kaur was not abated to commit suicide by Sheenu Arora or her any family members. Complainant Gurmeet Singh got registered the present case as his son Manminderpal Singh does not want to marry with Sheenu Arora though their betrothal ceremony was solemnized and complainant Gurmeet Singh got registered the present case with the intention to create a pressure upon Sheenu Arora and her family so that Sheenu Arora and her family also agreed not to perform their marriage.*

*11. That from the investigation conducted by Special Investigation Team, it is found that Sheenu Arora is posted as Sub Inspector in Intelligence Wing, Mohali since 2016. Manminderpal Singh was posted as Junior Engineer in PSPCL, Sangat Mandi and friendship was developed between them. Betrothal ceremony was also solemnized on 03.07.2023 with the consent of both the families. The date of marriage was fixed for 06.02.2024. During this period, Manminderpal Singh had a doubt upon her fiancée and then there was an altercation between Manminderpal Singh and Sheenu Arora, thereafter Manminderpal Singh flatly refused to marry with Sheenu Arora. Then Sheenu Arora along with her family members came to the house of Manminderpal Singh and then there was a dialogue between both the families for about 3-4 hours but could not succeed to its*



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*logical end. As the family of Sheenu Arora felt humiliated because Manminderpal Singh refused to marry her after betrothal ceremony, so on 28.12.2023 Sheenu Arora was left in the house of Manminderpal Singh. Then complainant Gurmeet Singh called the family of Sheenu Arora in the house of Sarabjit Singh Sarpanch of village Ruldu Singh Wala, then there was a dialogue between both the parties but the matter was not resolved. Then Gurmeet Singh gave information to police station Sangat also. On that day, Sheenu Arora stayed in the house of Manminderpal Singh at village Gurusar Sainewala. On the next day, Sukhbir Singh son of Dharam Singh, resident of village Gurusar Sainewala came to their house and he tried his best to resolve differences between Manminderpal Singh and Sheenu Arora.*

*12. That from the investigation conducted by Special Investigation Team, it is found that after the betrothal ceremony, Manminderpal Singh does not want to marry with Sheenu Arora whereas Sheenu Arora wants to marry with Manminderpal Singh.*

*13. That from the investigation conducted by Special Investigation Team it is also found that Sheenu Arora stayed two days in the house of Manminderpal Singh and there was no quarrel of Sheenu Arora with Smt Ranjit Kaur. Sheenu Arora did not abet Smt. Ranjit Kaur to consume any poisonous substance. From the investigation, it is also found that Sheenu Arora, Karan Arora, Ved Parkash, all residents of PUDA Colony, Malout and Karan resident of Abohar were found innocent and a detailed investigation report no.536-5A dated 30.07.2024 was submitted to the then Senior Superintendent of Police, Bathinda and the said investigation report was approved by the Senior Superintendent of Police, Bathinda on 02.08.2024.*

*14. That a cancellation report has been prepared by SHO, Police Station Sangat on 03.08.2024 and the same would be presented in the Court of Learned Area Magistrate for its adjudication.*

*15. That the investigation of the present case has been conducted by Special Investigation Team in a free and fair manner. The investigation conducted by SI Gurpal Singh and SI Gurtej Singh was set aside by the investigation report of Special Investigation Team. It is apt to mention here that challan prepared by SHO, Police Station Sangat dated 29.03.2024 was not submitted in the learned Court of Area Magistrate at Bathinda and Special Investigation Team was constituted to conduct the investigation of the present case. Thus the said investigation has been superseded by the investigation report of Special Investigation Team as the same has been approved by the Senior Superintendent of Police, Bathinda."*

6. Learned State counsel has raised submissions in tandem with the above said status report/reply and has sought for dismissal of the petition in hand.

7. I have heard learned counsel for the rival parties and have perused the available record.



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8. At this juncture, it would be apposite to refer herein to a judgment passed by this Court in **CRM-M-34678-2024** in “**AXXXXX Vs. State of Punjab and others**”, relevant whereof reads as under:

*“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 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 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



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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, in fact, 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 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, in fact 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.

*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/Jurisdiction Magistrate is worrisome. It avoidably prolongs the grant of relief(s) that the litigant seeks apart from adding

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*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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9. The substantive prayer made in the petition in hand is for a direction for fair investigation of the FIR in question on the basis of certain infirmities/errors, allegedly being pointed out in the investigation, at the instance of the petitioner. It is not in dispute and is rather conceded that the petitioner (herein) has already preferred an application under Section 190 of Cr.P.C. read with Section 172 of Cr.P.C., 1973 before the concerned Judicial Magistrate at Bathinda for seeking a weekly report of the diary of investigation as also for monitoring of investigation. As per the case pleaded by the rival parties before this Court, the said petition is still pending adjudication and has not been finally ratiocinated upon by the concerned Judicial Magistrate. In the considered opinion of this Court, the petitioner ought to have continued to pursue this petition pending before the concerned Jurisdictional Magistrate as also make further prayer(s) therein, if so deemed appropriate and permissible in law. 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 to be a fit one for exercise of its inherent jurisdiction under Section 528 of BNSS, 2023 to grant the petition in hand.

**Decision**

10. The instant petition filed under Section 528 of BNSS, 2023 stands dismissed.

11. Needless to state herein that this Court has not delve into the merits of the matter and the same is left open to be considered in appropriate proceedings including the petition, shown to be pending adjudication, before the concerned Jurisdictional Magistrate.



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12. Ordered accordingly.
13. Pending applications, if any, shall also stand disposed off.

26.11.2024  
*Jasmine Kaur*

(SUMEET GOEL)  
JUDGE

|                           |     |    |
|---------------------------|-----|----|
| Whether speaking/reasoned | Yes | No |
| Whether reportable        | Yes | No |