



(This judgment and order is corrected as per Speaking to the Minutes order dated 12.11.2025)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 781 OF 2025

Namrata d/o Subhash Pawar
Age : 35 years, Occ : Service,
R/o : 14-B, Sumangal, Shradhha Colony,
Jalgaon, Tq. And Dist. Jalgaon

... Petitioner
(Ori. Accused No. 9)

VERSUS

1. The State of Maharashtra
Through Investigating Officer,
Police Station Sindhkheda,
Tq. Sindhkheda, Dist. Dhule
2. Krishna Kumar Chaganlal More
Age : 45 years, Occ : Legal Practitioner,
R/o : Vishwakarma Complex, Datta Mandir,
Devpur, Dhule, Tq. And Dist. Dhule

... Respondents
(Res. No. 2 is Ori. Complainant)

Advocate for the Petitioner : Mr. V. D. Sapkal, Senior Counsel i/b
Mr. Umesh Bodkhe Patil a/w Mr. Yash A. Jadhav
APP for Respondent No.1-State : Ms. M. N. Ghanekar
Advocate for Respondent No. 2 : Mr. Mohit S. Shah

CORAM : SACHIN S. DESHMUKH, J.

Reserved On : 16th October, 2025
Pronounced On : 10th November, 2025

JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard finally
with the consent of the parties.

2. The petitioner has challenged the order dated 31.05.2025 rendered by the learned Additional Sessions Judge, Dhule in Criminal Revision Application No. 24 of 2025, confirming the order dated 06.05.2025 of the learned Judicial Magistrate First Class, Sindhkheda, in Criminal Misc. Application No. 50 of 2025, directing the registration of crime and investigation of the same under Section 175(3) of the Bhartiya Nagarik Suraksha Sanhita, 2023 (hereinafter "BNSS" for short).

3. Pursuant to the order rendered by the learned Magistrate, the Crime No. 112 of 2025 was registered at Sindhkheda Police Station in relation to alleged irregularities in allotment of plots in Nardana Industrial Area of Tahsil Sindhkheda, Dist. Dhule. The complainant, a Practicing Lawyer, filed a private complaint alleging that certain individuals obtained allotment of industrial plots in connivance with the officials of the MIDC, including the present petitioner, who is working as an Assistant, in order to commit the offences of criminal breach of trust, cheating and forgery.

4. Aggrieved by the said order of learned Magistrate, the petitioner approached the Revisional Court. The revision came to be dismissed endorsing the order of the learned

Magistrate. Therefore, petitioner has approached this Court under Article 226 and 227 of the Constitution of India.

5. The learned Senior Counsel Mr. Sapkal for petitioner submits that the order of the learned Magistrate vis-a-vis the Revisional Court are vitiated on account of non-application of mind. The Magistrate has grossly erred in recording that the complaint discloses cognizable offence warranting the investigation by the Police Machinery without assigning any reasons indicating judicial satisfaction.

6. The learned Senior Counsel further submits that the learned Magistrate has committed overreach while directing to file charge-sheet. Statutory scheme under BNSS does not empower a Magistrate to issue such direction to the Investigating Officer to file charge-sheet. The statutory mandate incorporated in the statutory provisions by the legislature is with an object to protect the public servant from false and frivolous complaints and eventual prosecution, within meaning of Section 66 of Maharashtra Industrial Development Act, 1961 (hereinafter "the Act of 1961") read with Section 2(29) of BNS is violated.

7. It is further submission that the provisions of Chapter

XIII of the BNSS, more particularly, sub-section (4) of Section 175 which is aimed to protect the public servant against initiation of unwarranted proceedings, the Magistrate is under statutory obligation to receive the report containing the facts and circumstances of the incident from the Officer Superior to such officer, against whom the complaint is presented. This statutory protection could not be annihilated by the learned Magistrate while passing the order of registration of crime.

8. The learned Senior Counsel in support of submissions has placed reliance on the following judgments :-

- (i) **Abhinanda Jha Vs. Dinesh Mishra (AIR 1968 SC 117),**
- (ii) **Madhubala Vs. Suresh Kumar [(1997)8 SCC 476],**
- (iii) **Om Prakash Ambadkar Vs. State of Maharashtra (AIR 2025 SC 970),**
- (iv) **Prajna Prakash Nayak Vs. State of Odisha and Ors. (Criminal M. P. 107 of 2025),**
- (v) **Arun P. Gidh Vs. Chandraprakash Singh and Ors. (2024 SCC OnLine Bom. 1028),**
- (vii) **Pawan Kharbanda Vs. State of Punjab and Another (2025 SCC OnLine P&H 642).**

9. Per contra, the learned counsel for respondent No. 2 – informant Mr. Shah has supported the impugned order

submitting that the procedure contemplated under Section 175(4) of the BNSS is not attracted in the present case. The petitioner is not a public servant, since the petitioner is not appointed by the State Government. It is further submitted that the Section 66 of the Act of 1961 provides the definition of the Employees of MIDC and it does not fall within the definition of expression incorporated in Section 2(29) of Bhartiya Nyaya Sanhita, 2023 (hereinafter "BNS" for short). The provisions of Section 66 of the Act of 1961 and Section 2(28) of the BNSS operate in different spheres. Resultantly, the protection available under Section 175(4) of the BNSS is not available to the present petitioner.

10. It is further submitted that the Industrial Development Corporation is a State instrumentality within the meaning of Article 12 of the Constitution of India. However, that by itself, an employee of MIDC does not automatically become a public servant. In order to support the contentions, the learned counsel for the respondent No. 2 has placed reliance on the judgment of the Court in case of **State of Maharashtra Vs. Lalit Tejshi Shah and Ors. [1994(1) Mh. L. J. 452]**. Further reliance is placed on the judgment of Hon'ble Apex Court in case of **Punjab State Warehousing Corporation Vs. Bhushan**

Chander And Anr. [(2016)13 SCC 44] to contend that the employees of the corporation do not get the protection under Section 197 of Code of Criminal Procedure (hereinafter "CrPC" for short). Accordingly, the petitioner being employee of the Corporation, would not be categorised as 'public servant' as defined under Section 2(29) of the BNS.

11. The learned APP for respondent No. 1 – State Ms. Ghanekar has adopted the submissions advanced on behalf of respondent No. 2 – informant, submitting that the complaint discloses the cognizable offence. Accordingly, the learned Magistrate was justified in invoking the provisions of Section 175(3) of the BNSS and the stage of sanction arises only at the time of taking cognizance and not at the stage of ordering the investigation.

12. It is also submitted by the learned APP that this Court ordinarily may not entertain the petition where already the crime is registered. As such, prayed for dismissal of the petition.

13. Having heard the litigating sides, perused the record, it is apparent that the issue of allotment is of the year 2011 whereas the complaint is presented on 29.04.2025 against the

present petitioner, an Officer of the Maharashtra Industrial Development Corporation established under the State Enactment. Perusal of Section 66 of the Act of 1961 makes it manifestly clear that all members, officers and servants of the Corporation shall, when acting or purporting to act in pursuance of any of the provisions of this Act, shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code, 1861 (hereinafter "IPC" for short) (now BNS).

14. Nevertheless, Section 2(29)(k) of the BNS, corresponds to Section 21 of the IPC is rather comprehensive and inclusive. As such, the expression 'public servant' within the meaning of BNSS is inclusive and comprehensive. Section 2(29) (k) of BNS is reproduced here under :-

*"Section 2(29)(k) of BNS :-
(k) every person -*

(i) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;

*(ii) in the service or pay of a local authority as defined in clause (31) of section 3 of the General Clauses Act, 1987, **a corporation established by or under a Central or State Act** or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013."*

15. Therefore, it essentially includes the petitioner, an

employee of MIDC, a corporation established under State Enactment for the purpose of BNSS.

16. Apart from the aforesaid aspect, the provision of Section 175 of BNSS provides a detail procedure for Police Officer's and Magistrate power to investigate cognizable offences and reading sub-section (3) unequivocally obligates the Magistrate empowered under Section 210 of BNSS, may, after considering the application supported by the affidavit made under sub-section (4) of Section 175 of BNSS, after making such inquiry as thinks necessary and submissions made in this regard by the Police Officer, order an investigation, to be carried out.

17. The procedural safeguard in case of public servant discharging the official duties is rather consciously incorporated to confer the shield upon the public servants discharging their official duties. As such, the order of investigation can be issued after receiving a report containing the facts and circumstances of the incident alleged from the Superior Officer, of an individual against whom the complaint is received. This clause mandates the report containing the facts and circumstances of the incident from the Superior Officer to confer the protection to the public

servant. Thus, the aforesaid statutory mandate is not an empty formality.

18. When the statute mandates a particular thing to be done in particular manner, the same has to be done in that manner, as has been held by the Hon'ble Apex Court in case of **Ramchandra Keshav Adke Vs. Govind Chavare (AIR 1957 (1) SC 559)**, wherein a power is vested to do a certain thing in certain way, the thing must be done in that way or not at all and that other method of performance are necessarily forbidden. The whole aim and object of the legislature would be defeated, if the command to do a particular thing in particular manner, did not imply a prohibition to it.

19. The mandatory procedure would be frustrated if the very purpose of clause (4) of Section 175 is overlooked. The intention of the legislature while mandating the receipt of a report containing the facts and circumstances of the incident from the Superior Officer is to confer protection and to prevent any unjustified initiation of criminal proceedings against a public servant while discharging official duties. Therefore, failure to comply with this mandatory provision would vitiate the order of the Magistrate while taking cognizance.

20. The failure on the part of the learned Magistrate to receive a report from the Superior Officer amounts to defying the statutory mandate. Such a departure by the Magistrate is wholly unjustified and vitiates the order dated 06.05.2025, directing the registration of crime and investigation vis-a-vis direction to file charge-sheet.

21. The learned counsel for the petitioner is justified in contending that, apart from the aforesaid manifest failure, the overreach on the part of the Magistrate while directing the filing of the charge-sheet. Admittedly, when the statutory regime under Chapter VIII is confined to the consideration of the complaint and initiation of prosecution, same cannot, *ipso facto*, denude the power of the Investigating Officer, to decide whether or not to file a charge-sheet, as contemplated under the said provisions.

22. The reliance placed by the learned counsel for petitioner in the case of **Om Prakash Ambadkar** (supra), re-affirms the position that the direction to register the FIR cannot be issued as a matter of routine. The Magistrate ought to record reasons indicating satisfaction that the complaint discloses the

cognizable offence. Non-compliance with the statutory provisions renders the order unsustainable. Applying the principles laid down by the Hon'ble Apex Court in case of **Om Prakash** (supra), restates the obligation of the Magistrate to consider the statutory framework so as to ensure that the procedural practices and safeguards introduced through various judicial decisions are strictly observed and complied, those are aimed at curbing the misuse of the Magistrate's powers by unscrupulous litigants for achieving ulterior motives.

23. Apart from the aforesaid aspect, the obligation of the Magistrate to consider the submissions of the Police Officer before issuing direction under Section 175(3) of the BNSS has reaffirmed the greater accountability on the Police Officer responsible for registering the crime. Mandating the Magistrate to consider submissions of the concerned Police Officer also ensures that the Magistrate applies his mind judicially while considering both the complaint and submission of the Police Officer ensuring requirement of reasoned order be complied with in a more effective and comprehensive manner.

24. So far as the mandate of sub-section (4) of Section 175 of the BNSS is concerned, it is incorporated within the

scheme governing investigation of cognizable offences and provides an additional safeguard to a public servant against whom an accusation of committing a cognizable offence is levelled in the course of discharge of official duties. The provision stipulates that the Magistrate empowered to take cognizance under Section 210 of the BNSS may order an investigation against such a public servant upon receiving a complaint arising from the discharge of his official duties after complying with the procedure laid down in detail by the Hon'ble Apex Court in the case of **Om Prakash Ambadkar** (supra).

25. At this juncture, it would be relevant to reproduce the paragraphs 30 and 31 of the **Om Prakash Ambadkar** (supra) :-

"30. Sub-section (4) of Section 175 of the BNSS is a new addition to the scheme of investigation of cognizable cases when compared with the scheme previously existing in Section 156 of the Code of Criminal Procedure. It provides an additional safeguard to a public servant against whom an accusation of committing a cognizable offence arising in the course of discharge of his official duty is made. The provision stipulates that any Magistrate who is empowered to take cognizance Under Section 210 of the BNSS may order investigation against a public servant upon receiving a complaint arising in course of the discharge of his official duty, only after complying with the following procedure:

(a) Receiving a report containing facts and

circumstances of the incident from the officer superior to the Accused public servant; and

(b) Considering the assertions made by the Accused public servant as regards the situation that led to the occurrence of the alleged incident.

31. A comparison of Section 175(3) of the BNSS with Section 156(3) of the Code of Criminal Procedure indicates three prominent changes that have been introduced by the enactment of BNSS as follows:

(a) First, the requirement of making an application to the Superintendent of Police upon refusal by the officer in charge of a police station to lodge the FIR has been made mandatory, and the applicant making an application Under Section 175(3) is required to furnish a copy of the application made to the Superintendent of Police Under Section 173(4), supported by an affidavit, while making the application to the Magistrate Under Section 175(3).

(b) Secondly, the Magistrate has been empowered to conduct such enquiry as he deems necessary before making an order directing registration of FIR.

(c) Thirdly, the Magistrate is required to consider the submissions of the officer in charge of the police station as regards the refusal to register an FIR before issuing any directions Under Section 175(3)."

26. Nevertheless, sub-section (4) of Section 175 of BNSS is rather unambiguous and clear, the same does not warrant any external aid or assistance in any manner, specially, in the wake of the authoritative pronouncement of Hon'ble Apex Court in the

case of **Om Prakash Ambadkar** (supra). Thus, the departure committed by the Magistrate, is contrary to settled legal position.

27. Therefore, while exercising authority under Section 156(3) of Cr.P.C. (now Section 175(4) of BNSS), the Magistrate must not order registration of an FIR merely by reiterating the allegations levelled by the complainant in the application.

28. The order directing registration of an FIR under Section 156(3) of Cr.P.C. (now Section 175(3) of BNSS) must demonstrate application of judicial mind. The rationale behind directing an investigation must be explicitly reflected in the order and simply stating that the Magistrate has reviewed the complaint, documents and heard the complainant, would be regarded as inadequate. While an exhaustive explanation is not required, the reasoning must be clear and dictated by objectivity.

29. As per the directions issued by the Hon'ble Supreme Court in **Priyanka Srivastava Vs. State of U.P., 2015: [(2015)6 SCC 287]** and the subsequent incorporation of the same in Section 175(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), all applications under Section 156(3) of Cr.P.C. or Section 175(3) BNSS must be supported by a sworn

affidavit. Such affidavits should confirm that the applicant has exhausted the remedies under Sections 154(1) and 154(3) Cr.P.C. (now Sections 173(1) and 173(4) of BNSS) before seeking intervention from the Magistrate. In order to support the affidavit, relevant supporting documents must also be attached therewith. The filing of such an affidavit has been made a pre-requisite to filing an application under Section 156(3) of Cr.P.C. (now Section 175(3) of BNSS), with an intention to prevent undue harassment of the accused individuals. The solitary object is to ensure that only bona fide applicants with legitimate grievances may take recourse to this provision and citizens remain safeguarded from frivolous complaints.

30. The Courts are not expected to act as passive transmitters of information, but must carefully examine whether an investigation by the State Agency is genuinely warranted. In that vein, the Magistrate must not act as a mere conduit for forwarding complaints to the police.

31. As such, it was obligatory for the Revisional Court to consider the serious breach on the part of learned Magistrate. Revisional Court has recorded the finding, on the face of it, is contrary and in ignorance with the statutory provisions vis-à-vis

the verdict of the Hon'ble Apex Court in case of **Om Prakash Ambadkar** (supra) which patently depicts the non-application of mind. Apart from the aforesaid aspect, even the issue of applicability of Section 514 of BNSS (earlier Section 468 of CrPC) ought to have been considered by the learned Magistrate in the wake of allegations those pertains to the allotment of the year 2011.

32. Admittedly, when the full Bench of this Court in case of **Arun P. Gidh** (supra) affirms that the mere registration of an FIR, by itself, does not impose any fetter on the Revisional Court in exercising its jurisdiction to quash an order of the Magistrate vitiated by an inherent defect. Therefore, revision application raising challenge to the order vitiated by an inherent defect, is maintainable. As such, Revisional Court grossly erred while endorsing the order of the learned Magistrate.

33. The expression 'public servant' is rather comprehensive and even includes the officers appointed by the Maharashtra Industrial Development Corporation established under the Act of 1961, which is a State Enactment. In the present case, to the utter shock and surprise, the learned Magistrate, without calling for a report from the Superior Officer

and directing registration of crime, is apparently unsustainable in law and is misreading and misinterpreting the statutory mandate. Furthermore, the learned Magistrate has committed overreach while directing the Investigation Officer to file the charge-sheet, which is the exclusive domain of the Investigating Officer and the Magistrate has had no occasion to issue such directions.

34. Therefore, the contentions put forth by the respondents that the petitioner does not fall within the definition of "public servant" in clause (k) of sub-section 29 of Section 2 of the BNSS read with Section 66 of the Act of 1961 does not warrant any consideration and in any case, the statutory provisions cannot be annihilated in the manner, as has been attempted by the complainant.

35. Thus, in the light of the unsustainability of the order rendered by the learned Magistrate as well as the learned Additional Sessions Judge for want of statutory compliance, prosecution must be regarded as illegal, dehors the statutory provisions and unsustainable in law. Resultantly, the impugned order directing registration of crime needs to be quashed and set aside to the extent of present petitioner.

36. Accordingly, the criminal writ petition stands **allowed** in terms of prayer Clause **(B)**.

37. Rule is made **absolute** in the above terms.

(SACHIN S. DESHMUKH, J.)

Omkar Joshi