



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**CRIMINAL WRIT PETITION NO.1026 OF 2025**

**Kishor s/o. Kashinath Patil**

Age: 41 years, Occu: Service,  
R/o. B-303, Platinum Liviano,  
Plot No.58 & 59, Sector 35,  
Navi Mumbai.

**...PETITIONER**

**VERSUS**

**1] The State of Maharashtra**

Through Superintendent of Police,  
Dhule.

**2] Police Inspector,**

Dhule City Police Station, Dhule.

**3] Anil s/o. Umrao Gote**

Age: 78 years, Occu: Social Service,  
R/o. 1321, Galli No.04, Dhule,  
Tq. & Dist. Dhule.

**...RESPONDENTS**

**WITH**

**CRIMINAL APPLICATION NO. 3033 OF 2025**

**IN**

**CRIMINAL WRIT PETITION NO.1026 OF 2025**

**Anil s/o. Umrao Gote**

Age: 78 years, Occu: Social Service,  
R/o. 1321, Galli No.04, Dhule,  
Tq. & Dist. Dhule.

**...APPLICANT**

**VERSUS**

- 1] **Kishor s/o. Kashinath Patil**  
Age: 41 years, Occu: Service,  
R/o. B-303, Platinum Liviano,  
Plot No.58 & 59, Sector 35,  
Navi Mumbai.
- 2] **The State of Maharashtra**  
Through Secretary, Home Department,  
Mantralaya Mumbai- 400 032.
- 3] **The Investigating Officer,**  
Dhule Police Station,  
Tq. & Dist. Dhule.

**...RESPONDENTS**

.....

Mr. Sanjeeva B. Deshpande, Senior Advocate i/by Mr. Pratik Bhosle,  
Advocates for the Petitioner in WP and Respondent No.1 in Criminal  
Application.

Mr. Mahesh V. Ghatge, Advocate for the Applicant in Criminal  
Application and Respondent No.3 in WP

Smt. M. N. Ghanekar, APP for Respondent-State.

**CORAM : KISHORE C. SANT, J.**  
**RESERVED ON : 6<sup>th</sup> NOVEMBER 2025.**  
**PRONOUNCED ON : 19<sup>th</sup> DECEMBER 2025.**

**ORDER :-**

1. Heard Mr. Deshpande, the learned Senior Advocate for Petitioner

in Writ Petition and Respondent No.1 in Criminal Application, Mr. Ghatge, the learned Advocate for the Applicant in Criminal Application and Respondent No.3 in Writ Petition, and Ms. Ghanekar, the learned APP for Respondent-State.

2. This Writ Petition is filed challenging Judgment and Order dated 8<sup>th</sup> July 2025, passed by the learned Additional Sessions Judge-5, Dhule, in Criminal Revision Application No. 33 of 2025, whereby the learned Additional Sessions Judge partly allowed the Revision Application and remanded the matter back to the Court of learned Chief Judicial Magistrate for fresh inquiry. Further, it is prayed that the investigation in Criminal NC No. 264 of 2025 registered with Dhule City Police Station be stayed.

3. This Court, by order dated 29<sup>th</sup> July 2025, had issued notice to the respondents and passed an interim order directing stay on investigation. Criminal Application No.3033 of 2025 is, therefore, filed by Respondent No.3 for vacating the interim relief. In view of that, Criminal Writ

Petition is taken up for final disposal at the admission stage by consent of the parties.

4. The facts, in short, giving rise to the present petition are that the State of Maharashtra filed Criminal N.C. bearing No. 264 of 2025 in the Court of learned Chief Judicial Magistrate, Dhule under Sections 174(1) (b) and 174(2)(4), of *Bharatiya Nagarik Suraksha Sanhita*, 2023 (for short "B.N.S.S."). It is prayed in the said application that the applicant happens to be informant. On the basis of his information, Police registered a non-cognizable (N.C.) offence under Section 174 of B.N.S.S. and Section 124 of the Maharashtra Police Act, 1951.

5. It is stated that the present petitioner is working as Section Officer in Vidhimandal in Secretariat and deputed as Secretary of one Arjun Khotkar, Chairperson of the Estimates Committee of the Maharashtra Legislative Assembly. The said Committee was to hold meetings and was on scheduled tour to Dhule and Nandurbar districts from 21<sup>st</sup> May 2025 to 23<sup>rd</sup> May 2025. The petitioner had, therefore, come to Dhule on 15<sup>th</sup>

May 2025 for making pre-arrangements. Though his appointment was not approved by the Speaker of the Assembly, he worked as Personal Assistant to the Chairperson of the Committee. He reserved a VIP suite for himself in the Rest House at Dhule. The accused No.2 was staying in an adjoining building of the said Rest House. The present Respondent No.3, on telephone, informed on 20<sup>th</sup> May 2025 that the petitioner used to visit the office of Residential Deputy Collector since 15<sup>th</sup> May 2025. From there, he made several calls to various departments, held meetings, and tried to collect the amount towards bribe. He even gave threats to such officers. The amount so collected around Rs.5 to 5.30 crore was kept in to Room No. 102 of the Rest House. It was thus stated that the said amount is collected by extortion. On 21<sup>st</sup> May 2025 at 05:00 p.m., journalists/correspondents were called to the office of Respondent No.3, opposite the Guest House. They went to the Gulmohor Rest House at 06:00 p.m. to 06:15 p.m. Since the key was with the applicant, all the persons waited in front of Room No.102. This was informed even to the Superintendent of Police. The Superintendent of

Police told that he would come there within few minutes; however, he did not come. On contacting the Collector also did not respond. At around 11:20 in the night, police personnel came with one lady Inspector. They came with a note counting machine and electric steel cutter. Since lock to Room No. 102 was a private lock, it was broken open with the help of cutter. On search of the suite an amount of Rs.1,84,84,200/- was found in the room. Panchnama was accordingly drawn. Few empty bags also were found. One bag marked as 'M-90' contained Rs.89,58,500/-. The said amount was seized and sealed with signature of Narendra Pardeshi. A copy of the same panchnama is not given to respondent No.3. It however is further alleged that, on getting the information about this episode, this petitioner had already moved some amount from two other suites from the Guest House. It is alleged that inspite of information from Respondent No.3 for 4 to 5 hours, no one paid any attention. For 9 days, no offence was registered. It is only after 9 days i.e. on 31<sup>st</sup> May 2025, a non-cognizable complaint was registered. Since no cognizable offence was registered, this petitioner is

not arrested.

6. It is alleged that the police are acting in a biased manner. On that, the application was filed under Section 175(3) by the Respondent No.3 in the Court of learned C.J.M., Dhule. First prayer was to submit a report of the inquiry by the police. The second prayer was to register an offence under Section 308 of *Bharatiya Nyaya Sanhita* (for short “BNS”), under Sections 13, 7, 7(A), 8 and 9 of the Prevention Corruption Act, Sections 3 and 4 of the Money Laundering Act and under Sections 318, 316(1), 316(2), 316(5), 318(1), 318(2), 318(3), 318(4) of the of the B.N.S. and to pass necessary orders for investigation. Alongwith the said, affidavit of respondent No.3 was filed.

7. On receipt of this, application was filed on 20<sup>th</sup> June 2025 by Respondent No.3. The learned Magistrate found *prima facie* that there is substance in the application and concluded that detailed investigation is required. The learned Magistrate directed the In-charge of Dhule City Police Station under Section 175(3) of B.N.S. to register crime against

accused persons and investigate the matter thoroughly. The complaint with documents was sent to City Police Station Dhule by order dated 26<sup>th</sup> June 2025.

8. Being aggrieved, this Petitioner filed Revision Application in the Court of learned Sessions Judge, Dhule on various grounds, praying that the order dated 26<sup>th</sup> June 2025 be quashed and set aside. On that, the learned Sessions Judge passed the impugned order.

9. The learned Sessions Judge vide order dated 8<sup>th</sup> July 2025, partly allowed the revision application. The order dated 26<sup>th</sup> May 2025 by the learned Magistrate came to be set aside and the matter came to be remanded back for fresh decision in view of observations made in the order. The learned Chief Judicial Magistrate was directed to give option to the original applicant either to register the crime under Prevention of Corruption Act (for short "P.C. Act") and Prevention of Money Laundering Act (for short "PML Act"). If he has desire to register and investigate the offence under the P.C. Act and PML Act, the learned Chief

Judicial Magistrate was directed to return the application/complaint to the original applicant for presentation to the proper Court having jurisdiction and if the prayer for registering the offence under P. C. Act and P.M.L. Act is to be withdrawn, then the learned Chief Judicial Magistrate to decide the application afresh under Section 175(3) of B.N.S.S. Parties were directed to appear before the learned CJM on 10<sup>th</sup> July 2025.

10. After remand of the matter, the learned Chief Judicial Magistrate directed the Dhule City Police Station to register a crime for offences under Sections 308, 61(2), 233, 238, 239, 240, 241 and 249 of the BNS against the accused and investigate the matter thoroughly.

11. On the basis of this order, now the FIR bearing FIR No.0226/2025 is registered by the Dhule City Police Station on 12<sup>th</sup> July 2025. The informant is shown to be Mr. P. B. Mohite, Police Sub-Inspector, Dhule City Police Station. The present petitioner has challenged the order passed by the learned Sessions Judge remanding the case to learned

JMFC before this Court.

12. The learned Senior Advocate Shri. Deshpande, vehemently argued that the order passed by the learned Sessions Judge is wholly erroneous and illegal. He submits that, Section 176 of BNSS gives power of investigation in cognizable offences. In the present case, power under Section 174(2) is not available in non-cognizable offence. The learned Magistrate could have considered the application only by original informant and not by Respondent No.3. The prayers were combined under Sections 175(3) and 174 of BNSS. Thus, the learned Chief Judicial Magistrate ought to have seen as to who is the original informant. The present respondent No.3 could have made independent application. It is the matter of record that the informant is the police officer. The application filed by respondent No.3 could not have been entertained by the learned Chief Judicial Magistrate. The Sub-Divisional Police Officer had filed a report on nine points. The learned Chief Judicial Magistrate assumed the power under Section 175(3), which is available under Section 173(4) i.e. only in cognizable cases. Both the

relevant sections cannot be clubbed together. The report does not make out any cognizable offence, and thus the learned Magistrate has no jurisdiction to pass any order directing to register an offence under different Acts. The revisional Court failed to appreciate the grounds about the *locus standi* of the respondent No.3 and passed erroneous order.

13. On one hand, he submits, the revisional Court has come to a conclusion that the order impugned therein is illegal, on the other hand remanded matter with directions. Only course open to learned Revisional Court was to set aside the impugned order. By remanding the matter, he exceeded jurisdiction as no such direction could have been issued in the revision. Though now the FIR is registered, the same is registered on the basis of erroneous order and if that erroneous order itself is set aside, the very foundation of the proceeding would collapse. He further argued that the petitioner happens to be a public servant. In view of Maharashtra Amendment Act, he could not be sued without prior permission of the Government. There is no permission obtained

from the Superior of the accused. The learned Magistrate passed the order without hearing the accused. This ground though specifically taken, was not considered by the learned Sessions Court. He submits that in view of this position, the compliance is not done by both the Courts. The application was not supported by affidavit and documents to show compliance under Section 175 of BNSS. The officer in-charge was also required to be added.

14. Learned Senior Advocate points out paragraph Nos. 92 and 93 from judgment in the case of ***Arun P. Gidh*** (supra), he submits that in the said judgment it is held that the only power under Section 156(3) of the IPC is to direct investigation and not to pass any other order. The said power is available only in cases of cognizable offences whereas the present case is of non-cognizable offence. Respondent No.3 has unnecessarily created complications. The Court cannot treat Respondent No.3 as informant. When the jurisdictional error is pointed out, there is no option but to set aside such order. In the present case, the learned Sessions Judge has exceeded the power and committed jurisdictional

error. The investigation shows that there is considerable progress in the investigation by the police on the basis of earlier information.

15. In support of his submissions, he relied upon the following judgments.

- (i) Ranjit Singh Bath and Anr. Vs. Union Territory of Chandigarh and Anr.<sup>1</sup>*
- (ii) Om Prakash Ambadkar Vs. State of Maharashtra<sup>2</sup>;*
- (iii) Mr. Gajendra Tayade Vs. State of Maharashtra<sup>3</sup>.*

16. As against this, the learned Advocate Mr. Ghatge, vehemently argued that so far as the ground of public servant is concerned, out of three accused, only one happens to be a public servant. The prayer made in the petition is only to set aside the order passed by the learned Sessions Judge. There is no prayer made in the application challenging an order passed by the learned Chief Judicial Magistrate after remand. The offence is now already registered. He relied upon the judgment in

1 2025 SCC Online SC 1479

2 2025 SCC Online SC 238

3 2013 ALL MR Cri. 1963

the case of *Arun P Gidh Vs. Chandraprakash Singh & Ors.*<sup>4</sup> This Court now cannot go behind registration of FIR. On merits, he submits that the Estimates Committee is formed by the State of Maharashtra. The applicant is Personal Assistant to the Chairman of the said Committee. Non-cognizable offence was registered in the presence of respondent No.3 on 21<sup>st</sup> May 2025 and Special Investigation Team was also constituted. Till 21<sup>st</sup> May 2025, the MCR was not recorded. About locus to respondent No.3, he submits that, in the complaint, there is reference of his name. Though informant is shown to be one Shriram Pawar, a Police Officer, in his statement, there is nothing to show as to how he got the knowledge. It is only because of the present respondent No.3, he got the knowledge and therefore, it is Respondent No.3 who needs to be treated original informant. Presence of the present respondent is also noted in the information. Though the offence was cognizable, it took 10 days to register in MCR. The preliminary inquiry shows that there is an extortion which happens to be a cognizable offence. Since the complaint was registered as MCR, the respondent had to approach the learned

4 2024 ALL MR (Cri.) 2012 (F.B.)

Magistrate.

17. He invites attention to Section 178 of BNSS giving power to the Magistrate to direct preliminary enquiry. He submits that Section 175(4) is not available, as there is no challenge to the order passed by the learned Magistrate dated 10<sup>th</sup> July 2025 directing to register the FIR. The present complaint under Section 210 already non-cognizable offence is registered. The learned Magistrate has the power to pass such order independently or *suo moto*.

18. He further submits that when a public servant is involved in an offence when is not acting in the discharge of his official duties, no protection is available to him. However, he further submits that, if at all, bar is attracted, it is with respect to taking cognizance and not for investigation. He relied upon the Section 506 of BNSS. He submits that order is passed in good faith with the aid of Section 507. He ultimately submits that the fair investigation is necessary and prays for dismissal of the writ petition.

19. In support of his submissions, he relied upon the following judgments.

- (i) *E. Shivakumar Vs. Union of India and Ors.*<sup>5</sup>;
- (ii) *Manohar Lal Vs. Vinesh Anand*<sup>6</sup>
- (iii) *Lalita Kumari Vs. Government of Uttar Pradesh and Ors.*<sup>7</sup>;
- (iv) *Inspector of Police and Anr. Vs. Battenapatla Venkata Ratnam and Anr.*<sup>8</sup>
- (v) *Shivjee Singh Vs. Nagendra Tiwary and Ors.*<sup>9</sup>
- (vi) *Neharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and Ors.*<sup>10</sup>

20. Learned APP submits that the present petition is not maintainable in view of judgment in the case of *Arun P. Gidh* (supra). She further submits that now FIR is registered and thus now the present writ petition is not maintainable. It is open for the petitioner to challenge the FIR.

5 2018 AIR (SCW) 2486

6 2001 AIR (SCW) 1590

7 2013 AIR (SCW) 6386

8 2015 AIR (SC) 2403

9 2010 AIR (SC) 2261

10 AIR (SCW) 1918

21. In the case of ***Ranjit Singh Bath and Ors.*** (supra), it has been held that mere telephonic instruction or a phone call cannot be taken to be an application under Section 173(4) of the BNSS. There is no dispute about the said proposition.

22. In the case of ***Om Prakash Ambadkar*** (sura), the Hon'ble Supreme Court held it to be mandatory that sanction from a superior officer is required for lodging the FIR. If the order directing to register an offence is without prior sanction of the superior authority, it is held that the order is *non-est*, and no investigation can be done on the basis of such order.

23. In the case of ***Gajendra Tayade*** (supra), complainant had sought to frame an additional charge under the provisions of Section 3 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act before filing of the final report. It is held that till such final report/charge-sheet is filed, the Magistrate has no role to play pending investigation. The complainant has an opportunity to submit his say

after filing of the report under Section 173 of Cr.P.C. Till that period, no relief can be granted to the complainant.

24. In the case of ***E. Shivakumar*** (supra), the Hon'ble Supreme Court held that the accused has no right to be heard at the stage of investigation. He cannot seek an opportunity of hearing as a matter of course. He cannot pray for any relief as regards investigation.

25. In the case of ***Manohar Lal*** (supra), the Hon'ble Apex Court considered that the doctrine of *locus-standi* is totally foreign to criminal jurisprudence. This judgment is relied upon by the learned Advocate for respondent No.3 to show that he need not show *locus standi* to file an application before the learned JMFC and revision before the learned Sessions Judge. There is no dispute about this proposition as well.

26. In the case of ***Lalita Kumari*** (supra), the Five Judges Bench of the Hon'ble Supreme Court considered the issues (i) as to whether the immediate non-registration of FIR leads to scope for manipulation by the police which affects the right of the victim/complainant to have a

complaint immediately investigated upon allegations being made; and  
(ii) whether in cases where the complaint/information does not clearly disclose the commission of a cognizable offence in clear terms, and the FIR is compulsorily registered, it would infringe the rights of an accused.

27. It is held that the information should disclose cognizable offence. If the information satisfied the requirement of Section 154(1) of the Cr.PC., the police has no other option but to enter the substance thereof in the prescribed format and register the case on the basis of such information. Section 154 of the Code is held to be mandatory, requiring the concerned officer to register the case. The Hon'ble Apex Court held that the legislature has consciously used the expression "information" in Section 154(1) of the code as against the expression used in Section 41(1)(a) and (g); the information need not be "credible information" or "reasonable complaint". The prefix "reasonable" with "information" distinguished the requirement under Section 41(1)(a) and (g) and Section 154(1) of the Code. It is sufficient that the information disclosing the cognizable offence is received. It must necessarily mean

that the officer need not go into the aspect of credibility of such information. It is not necessary to conduct a preliminary inquiry when the police officer has doubt about the veracity of the accusation. The Court ultimately held that registration of of FIR is mandatory under Section 154 of the Code on receipt of information making out a case of commission of an cognizable offence. The Hon'ble Court recorded the following conclusions:

- (i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.
- (ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.
- (iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.
- (iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.
- (v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.
- (vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:
  - (a) Matrimonial disputes/family disputes

- (b) Commercial offences
- (c) Medical negligence cases
- (d) Corruption cases
- (e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

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

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

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

28. In the case of *Inspector of Police and Anr.* (supra), the question was whether sanction is required in the cases for registering the offence or for issuing direction to register an offence against a public servant. The Court considered the wording “while acting or purporting to act in discharge of official duty”. The Court considered the judgment in the case of *Shambhoo Nath Misra Vs. State of Uttar Pradesh*<sup>11</sup>.

29. In the case of *Shambhoo Nath Misra* (supra), it is a case of allegation of fabrication of record and misappropriation of public fund by

11 1997 SCC (5) 326

the public servant. It was held that the said act cannot be said to be an act committed in the discharge of official duty and therefore sanction is not necessary. The acceptance of the sanction was held to be clearly illegal and unsustainable. The Hon'ble Supreme Court in that case held that no sanction was required. In the case of ***Neeharika Infrastructure Pvt. Ltd.*** (supra), The Full Bench of the Hon'ble Supreme Court was dealing with the matter of quashing of proceeding. After considering various judgments, the conclusions recorded are as below:

- (i) *Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;*
- (ii) *Courts would not thwart any investigation into the cognizable offences;*
- (iii) *It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;*
- (iv) *The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).*
- (v) *While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;*
- (vi) *Criminal proceedings ought not to be scuttled at the initial stage;*
- (vii) *Quashing of a complaint/FIR should be an exception rather than an ordinary rule;*
- (viii) *Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;*
- (ix) *The functions of the judiciary and the police are complementary, not*

*overlapping;*

*(x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;*

*(xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;*

*(xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;*

*(xiii) The power under Section 482 Cr.PC. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;*

*(xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;*

*(xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.PC., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;*

*(xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.PC. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or “no coercive steps to be adopted” and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.PC. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or “no coercive steps” either during the investigation or till the investigation is*

*completed and/or till the final report/charge-sheet is filed under Section 173 Cr.PC., while dismissing/disposing of the quashing petition under Section 482 Cr.PC. and/or under Article 226 of the Constitution of India.*

*(xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.PC. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.*

*(xviii) Whenever an interim order is passed by the High Court of “no coercive steps to be adopted” within the aforesaid parameters, the High Court must clarify what does it mean by “no coercive steps to be adopted” as the term “no coercive steps to be adopted” can be said to be too vague and/or broad which can be misunderstood and/or misapplied.*

30. By recording these conclusions, the interim order/direction issued by the High Court that no coercive measure be adopted, was held to be deficient. It is observed that while directing not to take coercive action, it was necessary for the Court to specifically record as to what coercive steps the High Court was excluding by the order.

31. Both the parties have placed on record the judgment of a Full Bench of this court in the case of **Arun Gidh** (supra). It is the case of the respondent No.3 that since there is no prayer of quashing of the proceeding, even if in this petition succeeds, the FIR will still continue.

Whereas the petitioner, by relying upon certain portion para 92 and 93, submits that once the order registering FIR is quashed and set aside, consequences would naturally follow and the FIR itself also will have to be quashed and set aside. This court would come to this question at the end.

32. Whenever the learned Revisional Court has rightly passed an order or has exceeded the jurisdiction by directing the trial Court to consider the matter afresh by issuing directions by way of its order. The learned Magistrate has rightly passed an order directing registration of offence and carried out the investigation. The learned Magistrate directed to register the crime against the accused and investigate the matter thoroughly under Section 175(3) of the BNSS.

33. The learned Sessions Judge passed the order. The petitioner has objection to these clauses (3) and (4). This Court thus has to necessarily consider as to whether the Sessions Court was within its power to pass orders in clause (3) and (4).

34. So far as clause (3) is concerned, it is not clear as to under what provision complaint is to be returned. No provision like return of plaint is found in BNSS. This clause therefore needs to be set aside.

35. So far as clause No.4 is concerned, this Court finds that the said also cannot be sustained in the eyes of law. This court has to consider the question as to whether the order directing registration of FIR being set aside would result in the quashing of FIR. Whether there is substance in the submission of the learned Advocate for the respondent No.3 that even if the impugned order is quashed and set aside, since now, the registration of FIR is already registered, it is necessary for the petitioner to get the FIR quashed.

36. The judgment in the case of ***Arun P Gidh*** (supra), in view of submission of learned APP on the point of maintainability of the petition. The full Bench judgment of this court held that if the FIR is not registered on the basis of direction under Section 156(3) of the Cr.PC., the investigating agency cannot proceed to register the FIR and enter

into investigation. In other cases, if the FIR is already registered before the revisional Court passes an interim order, in such case, stage becomes relevant. In clause (d) it is held that the revisional Court must be considered to have the power to stay further proceeding pursuant to the registration of FIR if the matter is still at the stage of investigation. When investigation culminates in lodging of the charge-sheet or taking cognizance by the Court having jurisdiction, the interim order or final order passed by the revisional Court setting aside the order of the Magistrate under Section 156(3) of the Cr.P.C. will have no effect of quashing of FIR or a charge-sheet as the case may be.

37. In the present case, this court has no hesitation in coming to the conclusion that the learned revisional Court has certainly committed error by directing the complainant to exercise the option as to whether he wants to register an offence under P. C. Act or PML Act and if he exercises the option then to return the complaint. Equally, the said direction could not have been given by the revisional Court. The same is the case with the clause (4). It is not for the Sessions Court to direct

what course be adopted by the applicant/complainant. Once the order directing investigation was set aside, no further direction was needed from the Sessions Court.

38. Though while entertaining the revision, the revisional Court can go into the matter of propriety and can grant relief not prayed for by any of the parties, however, that is to be done within its power. This Court finds that by passing order in clauses (3) and (4), the revisional Court has exceeded the power. Hence, the following order:-

### **ORDER**

- (i) Criminal Writ Petition is partly allowed.
- (ii) Clause (3), (4) and (5) of the impugned order are quashed and set aside.
- (iii) However, since now the FIR is already registered and the investigation is also started, it is open for the petitioner to seek an appropriate remedy by filing appropriate proceeding as provided under law as per advice.

(iv) With this, Criminal Writ Petition stands disposed off.

(v) In view of disposal of Writ Petition, Criminal Application does not survive and is accordingly disposed off.

**[KISHORE C. SANT, J.]**