



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO.114 OF 2025

Partha Sarathy Sarkar

Address: 20, Surana Layout, Anant-Nagar,
Nagpur – 440013.

...Petitioner

// VERSUS //

Nagpur District Court through Superintendent
of District Court, Nagpur. Nagpur District
Court Building, Nr Akashwani Square, Civil
Lines, Nagpur-440001.

... Respondent

Mr Partha Sarathy Sarkar, Petitioner-in-person.
Mr U.R. Phasate, A.P.P. for Respondent/State.

CORAM : ANIL S. KILOR, J.

DATED : 13/03/2025

ORAL JUDGMENT

1. Heard petitioner-in-person and the learned A.P.P. for the respondent.

2. **RULE.** Rule is made returnable forthwith. Heard finally by consent of the parties.

3. The present writ petition takes exception to the order below Exh.1 dated 21.01.2025, to the extent issuing notice by the learned Magistrate under the new Act i.e. Bharatiya Nagarik Suraksha Sanhita,

2023 (hereinafter referred to as “BNSS”), and not under the Code of Criminal Procedure, 1973 (hereinafter referred to as “Cr.P.C.”), as according to the petitioner in view of saving clause, i.e., Section 531 of the BNSS, the present proceeding is to be conducted as per the provisions of the Cr.P.C., and not as per the BNSS.

The brief facts of the present case are as under :-

4. The applicant filed Criminal Miscellaneous Application No.445 of 2023, before the learned Ad-hoc District Judge-4 and Additional Sessions Judge, Nagpur, under Section 340 of the Cr.P.C., alleging that, the respondents in the said proceeding, have dishonestly made false statement on oath with malice.

5. The learned Sessions Judge vide order dated 25.10.2024, allowed the said application and directed the Superintendent of District Court (Administration), Nagpur, to file complaint for the offences punishable under Sections 193, 196, 209, 108 and 120-B read with Section 34 of the Indian Penal Code (hereinafter referred to as “IPC”), against the respondents and get the same verified from the Court and institute the same before the Competent Magistrate having jurisdiction.

6. Accordingly, R.C.C. No.345 of 2025, came to be registered and vide order dated 21.01.2025, a notice was issued to the accused under the provisions of BNSS, which is impugned in the present writ petition.

7. The petitioner-in-person argues that, since the proceeding i.e. R.C.C. No.345 of 2025, is nothing but a sequel of the earlier proceeding under Section 340 of the Cr.P.C., on the date when the proceeding under Section 340 of the Cr.P.C. was filed, the new Act i.e. BNSS, was not in-force, therefore, the learned Magistrate ought not to have proceeded under BNSS.

8. On the other hand, the learned A.P.P. submits that after conclusion of the proceeding under Section 340 of the Cr.P.C., the present proceeding i.e. R.C.C. No.345 of 2025, came to be registered and since, it is a separate proceeding and the same has been registered after coming into force the new Act i.e. BNSS, the learned Magistrate has rightly proceeded under the new Act.

9. In the above referred backdrop, the only question that fell for consideration is whether the provision of BNSS or the provision of Cr.P.C., will apply to this case.

10. Before advertng to the issue involved in the present petition, it will be appropriate to refer to Section 531 of the BNSS, which read thus :-

*“531. Repeal and savings.- (1) The Code of Criminal Procedure, 1973 (2 of 1974) is hereby repealed.
(2) Notwithstanding such repeal -
(a) if, immediately before the date on which this Sanhita comes into force, there is any appeal, application, trial, inquiry or investigation pending, then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), as in force immediately before such commencement (hereinafter referred to as the said Code), as if this Sanhita had not come into force;”*

11. Thus, it is evident from the language of Sub-section 2(a) of Section 531 of the BNSS, that if any appeal, application, trial, inquiry or investigation pending, immediately before the date on which Sanhita comes into force, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of Cr.P.C.

12. In the present matter, admittedly, before the date on which the BNSS comes into force, the application moved by the petitioner under Section 340 of the Cr.P.C., was pending before the Sessions Court. At this stage, thus, it would be beneficial to refer to Section 340 of the Cr.P.C., which read thus :-

“340. Procedure in cases mentioned in Section 195. – (1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interest of justice that an inquiry should be made

into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, -

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of Section 195.

(3) A complaint made under this section shall be signed, -

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

¹[(b) in any other case, by the presiding officer of the Court or by such officer of the Court as the Court may authorise in writing in this behalf.]

(4) In this section, "Court" has the same meaning as in Section 195."

13. From the language of Sub-section (1) of Section 340 of the Cr.P.C., it is evident that, the Court has to conduct preliminary inquiry and on forming an opinion that, it is expedient in the interest of justice that inquiry should be made into any offence specified which appears to have been committed in or relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, if Court thinks it necessary :-

a) record a finding to that effect;

b) make a complaint thereof in writing;

- c) send it to a Magistrate of the first class having jurisdiction;
- d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and
- e) bind over ever any person to appear and give evidence before such Magistrate.

14. Thus, under Section 340 of the Cr.P.C., it is a preliminary inquiry and upon forming an opinion regarding commission of offence, it can be referred for conducting the inquiry by sending it to a Magistrate of first class having jurisdiction. Therefore, inquiry by the Magistrate after the matter is referred to it, is a sequel of the proceeding under Section 340 of Cr.P.C.

15. The High Court of *Himachal Pradesh* in a case of *Vikram Sharma and Ors. ..vs.. State of HP*, in *MP. (M) 489 of 1994* decided on *24.06.1994*, had an occasion to consider the scope of Sections 340 and 341 of the Cr.P.C., discussion as regards the same made are as under :-

“5. It is well settled that Section 340 of the Code lays down a complete procedure for dealing with such applications. As a matter of fact, both Sections 195 and 340 are closely connected and they should be read together. The two sections are supplement to each other. The moment a third party i.e. any person connected with the proceedings before that Court, moves an application under Section 340 of the Code for taking action in accordance with law against the alleged offender and such

application is considered by that Court favourably after holding preliminary inquiry and as a sequel thereto, a complaint under the signatures of such Court is then sent to the Magistrate 1st Class with a prayer to take action in accordance with law, such person (Kewal Krishan in the instant case) becomes functus officio inasmuch as:- ...”

16. Thus, from the above referred observations, and from the language of Sections 340 and 341 of the Cr.P.C., it is evident that, the complaint referred to the Magistrate after forming of opinion to inquire into the offence, such a complaint is a continuation of the proceeding under Section 340 of Cr.P.C. and therefore, it cannot be considered and treated as a separate proceeding.

17. In the circumstances, the present matter will fall under Sub-section 2(a) of Section 531 of the BNSS and accordingly, the proceeding namely R.C.C. No.345 of 2025 has to be conducted as per the provisions of Cr.P.C. and not as per the provisions of BNSS. Accordingly, I pass the following order :-

- i) The writ petition is **allowed**.
- ii) The order below Exh.1 dated 21.01.2025, passed in R.C.C. No.345 of 2025, is hereby quashed and set aside and the matter is remanded back to the learned Magistrate to consider the matter afresh under the provisions of Cr.P.C. Rule is made absolute in above terms.

(ANIL S. KILOR, J)