



Crl.R.C.(MD)No.46 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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Reserved on : 26.02.2025

Pronounced on : 14.03.2025

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.46 of 2025

and

Crl.M.P.(MD)No.598 of 2025

1.Karthick

2.Mariyaseena

3.Maria Johnson

... Petitioners

Vs.

1.Jaikumar Christhuran

2.The Inspector of Police,
Manavalakurichi Police Station,
Kanniyakumari District.

... Respondents

Prayer : This Criminal Revision Petition filed under Sections 438 r/w 442 B.N.S.S., to set aside the judgment dated 20.12.2024 made in Crl.M.P.No. 1941 of 2024 on the file of the learned Judicial Magistrate, Eraniel by allowing the above criminal revision petition.



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For Petitioners : Mr.S.Deenadayalan
for Mr.M.Viji

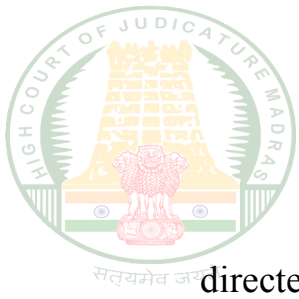
For R1 : Mr.Ka.Ramakrishnan

For R2 : Mrs.M.Aasha
Government Advocate (Crl. Side)

ORDER

The Criminal Revision is directed against the order passed in Crl.M.P.No.1941 of 2024 dated 20.12.2024 under Section 175(3) BNSS on the file of the Court of the Judicial Magistrate, Eraniel.

2. The first respondent/complainant has filed a petition under Section 175(3) BNSS seeking direction to the Inspector of Police, Vellichanthai Police Station to register a case and for investigation. The learned Judicial Magistrate, taking into the petition filed under Section 175(3) BNSS on file in Crl.M.P.No.1941 of 2024 and upon perusing the petition and the first respondent's affidavit and on hearing the first respondent's side, has passed the impugned order dated 20.12.2024 directing the second respondent police to proceed in accordance with the Chapter XIII of BNSS 2023 and file the final report within the time prescribed by the law. To put it in other way, the learned Magistrate has



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directed the second respondent police to register a case, to proceed with the investigation and file a final report within the time prescribed by the law. Challenging the above order, the proposed accused have preferred the present revision.

3. The learned counsel appearing for the first respondent would raise the maintainability issue that the order passed under Section 156(3) Cr.P.C. or 175(3) BNSS directing registration of the case cannot be challenged and relied on a decision of the Hon'ble Supreme Court in ***HDFC Securities Ltd. and others Vs. State of Maharashtra and another*** reported in ***2016 (4) Crimes 395 (SC)***,

“24.It appears to us that the appellants approached the High Court even before the stage of issuance of process. In particular, the appellants challenged the order dated 04.01.2011 passed by the learned Magistrate under Section 156(3) of Cr.P.C. The learned counsel appearing on behalf of the appellants after summarizing their arguments in the matter have emphasized also in the context of the fundamental rights of the appellants under the Constitution, that the order impugned has caused grave inequities to the appellants. In the circumstances, it was submitted that the order is illegal and is an abuse of



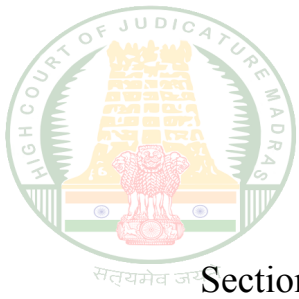
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the process of law. However, it appears to us that this order under Section 156(3) of Cr.P.C. requiring investigation by the police, cannot be said to have caused an injury of irreparable nature which, at this stage, requires quashing of the investigation. We must keep in our mind that the stage of cognizance would arise only after the investigation report is filed before the Magistrate. Therefore, in our opinion, at this stage the High Court has correctly assessed the facts and the law in this situation and held that filing of the petitions under Article 227 of the Constitution of India or under Section 482 of Cr.P.C., at this stage are nothing but premature. Further, in our opinion, the High Court correctly came to the conclusion that the inherent powers of the Court under Section 482 of Cr.P.C. should be sparingly used. In these circumstances, we do not find that there is any flaw in the impugned order or any illegality has been committed by the High Court in dismissing the petitions filed by the appellants before the High Court. Accordingly, we affirm the order so passed by the High Court dismissing the writ petitions. The appeal is dismissed.”

4. The learned counsel appearing for the petitioners would submit that the petitioners have not invoked Article 227 of the Constitution or



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Section 482 Cr.P.C. (Section 528 BNSS) challenging the order passed by the learned Magistrate under Section 175(3) BNSS, but on the other hand, the petitioners have invoked the revisional jurisdiction of the High Court under Section 438 r/w 442 BNSS, that three-Judge Bench of the Hon'ble Supreme Court in ***Prabhu Chawla Vs. State of Rajasthan and another*** reported in ***2016 (16) SCC 30*** has held that in addition to the revision, the party aggrieved can also invoke Article 227 or Section 482 Cr.P.C., that the Full Bench of the Bombay High Court in ***Arun P. Gidh Vs. Chandraprakash Singh and others*** reported in ***2024 (2) MLJ (Cri.) 279*** has held that revision can be filed against the order of the learned Magistrate passed under Section 156(3) Cr.P.C. directing registration of the case and that therefore, the present revision is legally maintainable.

5. As already pointed out, the petitioners have only invoked the revisional jurisdiction of the Court under Section 438 r/w 442 BNSS. In ***Prabhu Chawla's*** case referred above, the three-Judge Bench of the Hon'ble Supreme Court has confirmed the law laid down by the Hon'ble Supreme Court in ***Dhariwal Tobacco Products Ltd. Vs. State of Maharashtra*** reported in (2009) 2 SCC 370 that only because a revision



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petition is maintainable, the same by itself would not constitute a bar for entertaining an application under Section 482 of the Code and even where a revision application is barred, the remedies under Articles 226/227 of the Constitution of India would be available.

6. As rightly pointed out by the learned counsel appearing for the petitioners, the Full Bench of the Bombay High Court has specifically held that the revisional Court can interfere with an order under Section 156(3) at the stage and the extent indicated in the said order. Hence, the objection of the learned counsel appearing for the first respondent that revision itself is not maintainable, cannot be sustained.

7. The first respondent alleges that the second petitioner and the first respondent's mother are the legal heirs of the late JPR, their grandfather. Following JPR's demise, the petitioners purportedly fabricated documents to gain control of JPR Fishing Harbour Private Limited. Previous legal proceedings before the National Company Law Tribunal and the High Court reportedly found that the petitioners had indeed fabricated documents and had no legitimate connection to the harbour. After the first



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respondent's mother passed away, they visited the harbour to pay respects.

However, the petitioners allegedly incited proposed accused 4 and 5, along with 25 others, to converge on the harbour with deadly weapons. This group purportedly assembled unlawfully, trespassed into the office, damaged property, and subjected the first respondent to verbal abuse and criminal intimidation. Furthermore, they allegedly stole the first respondent's gold chain, watch, computer, and office documents. The first respondent claims to have filed a complaint with the Vellichanthai Police Station on July 28, 2024, but received no response. An online complaint was submitted on August 14, 2024, which led to the registration of CSR No.454 of 2024. However, no further action was taken. The first respondent then sent a complaint to the District Superintendent of Police on August 30, 2024, but again received no response. Consequently, the first respondent was constrained to file a petition under Section 175(3) BNSS.

8. The learned Magistrate, by referring to the judgment of the Hon'ble Supreme Court in *Lalitha Kumari's* case, has observed “it discloses a criminal petition which appears that it come across the alleged



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offences which some are cognizable offence in nature” and on that basis, directed the second respondent police to proceed in accordance with the Chapter XIII of BNSS 2023.

9. As rightly contended by the learned counsel appearing for the petitioners, the incidents alleged in the first respondent's complaint strain credulity.

10. The learned counsel appearing for the petitioners would submit that Section 175(3) of the Code of Criminal Procedure (BNSS) mandates that the Magistrate hear the respondent police before passing an order. They would argue that the impugned order, having been passed without complying with this requirement, is unsustainable. In support of this contention, they would rely on the Hon'ble Supreme Court's recent decision in ***Om Prakash Ambadkar v. State of Maharashtra (Crl.A. No. 352 of 2020), dated 16.01.2025*** and it is necessary to refer the following passages:-

“29.Section 175 of the BNSS corresponds to Section 156 of the Cr.P.C. Sub-section (1) of Section 175 of the BNSS is in pari materia with sub-section 156(1) of the



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Cr.P.C. except for the proviso which empowers the Superintendent of Police to direct the Deputy Superintendent of Police to investigate a case if the nature or gravity of the case so requires. Sub-section (2) of Section 175 the BNSS is identical to Section 156(2) of the Cr.P.C. Section 175(3) of the BNSS empowers any Magistrate who is empowered to take cognizance under Section 210 to order investigation in accordance with Section 175(1) and to this extent is in pari materia with Section 156(3) of Cr.P.C. However, unlike Section 156(3) of the Cr.P.C., any Magistrate, before ordering investigation under Section 175(3) of the BNSS, is required to:

- a. Consider the application, supported by an affidavit, made by the complainant to the Superintendent of Police under Section 173(4) of the BNSS;*
- b. Conduct such inquiry as he thinks necessary; and*
- c. Consider the submissions made by the police officer.*

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 Cr.P.C. 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



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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 Cr.P.C. 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*



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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).”

11. It is pertinent to note that additional safeguards were introduced only to curb the misuse of invocation of powers of a Magistrate by unscrupulous litigants for achieving ulterior motives. In the case on hand, in the impugned order, the learned Magistrate has not stated as to whether any report was called from the respondent police or whether the respondent police was heard prior to passing of the impugned order. The very purpose of taking report or hearing the respondent police is only to help the Court to arrive at a decision before passing any order under Section 175(3) BNSS either for registration of the case or for dismissal of the same. Moreover, as already pointed out, Section 175(3) BNSS contemplates that the Magistrate has to conduct such enquiry as deems necessary before making an order directing registration of FIR. In the case on hand, there is nothing to infer from the impugned order that the learned Magistrate has conducted any sort of enquiry before passing the impugned order directing registration of FIR.



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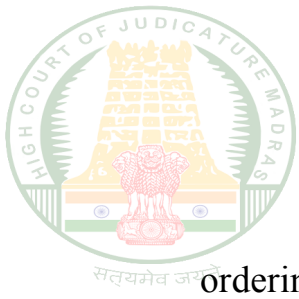
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12. Considering the above, since the learned Magistrate has not followed the requirements under Section 175(3) BNSS, the impugned order directing registration of the case cannot legally be sustained.

13. The learned Government Advocate (Criminal Side) appearing for the second respondent would submit that in pursuance of the direction of the learned Magistrate, enquiry was conducted elaborately and filed a report concluding that the first respondent has lodged a false complaint.

14. The learned counsel appearing for the first respondent would strongly contend that the second respondent in pursuance of the direction of the learned Magistrate is duty bound to register the FIR and then to investigate but now the second respondent, by violating the directions of the learned Magistrate, has conducted some sort of enquiry and allegedly filed a closure report and that therefore, the very closure report, in the absence of registration of FIR, cannot legally be sustained.

15. Although the learned Magistrate directed the second respondent police to proceed under Chapter XIII of the BNSS 2023, effectively



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ordering the registration of an FIR due to the complaint disclosing cognizable offenses, this Court has already determined that the impugned order lacks legal sustainability. Consequently, the first respondent's contention regarding the non-registration of the FIR and the filing of the closure report cannot be entertained. Nevertheless, given that the second respondent has submitted a report, the learned Magistrate is directed to treat the report filed by the police as the submission of the police under Section 175(3) B.N.S.S. and to proceed further.

16. In conclusion, the Criminal Revision Case is allowed, and the impugned order dated December 20, 2024, is set aside. The learned Judicial Magistrate, Eraniel, is directed to issue notice to the first respondent/complainant, hear the parties, and pass orders in accordance with the law. Consequently, connected Miscellaneous Petition is closed. No costs.

14.03.2025

NCC :yes/No
Index :yes/No
Internet:yes/No
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K.MURALI SHANKAR,J.

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To

1. The Judicial Magistrate,
Eraniel.
- 2.The Inspector of Police,
Manavalakurichi Police Station,
Kanniyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Pre-Delivery Order made in
Crl.R.C.(MD)No.46 of 2025
and
Crl.M.P.(MD)No.598 of 2025

Dated : 14.03.2025