

Crl.O.P.(MD)No.5686 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.03.2025

CORAM :

THE HON'BLE MR.JUSTICE P. DHANABAL

Crl.O.P.(MD) No.5686 of 2025

C. Paulpandi

... Petitioner

Vs.

1. The State of Tamil Nadu,
Represented by the Inspector of Police,
Austinpatti Police Station,
Madurai District.

2. M.Manonmanikayathri

3. M.Rajeswari

4. M.Kanchithalaivan

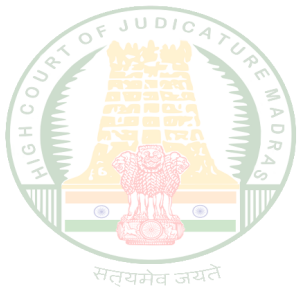
...Respondents

Prayer : Criminal Original Petition filed under Section 528 of Bharatiya
Nagarik Suraksha Sanhita, 2023, to direct the 1st respondent to comply the
order dated 10.01.2025 in Crl.M.P.No.07 of 2025 on the file of the Judicial
Magistrate Court, Thirumangalam within the time fixed by this Court.

For Petitioner : Mr.P.Banuprasath

For R1 : Mr.R.M. Anbunithi

Additional Public Prosecutor (Crl. Side)



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ORDER

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This petition has been filed by the petitioner to direct the 1st respondent to comply the order dated 10.01.2025 in Crl.M.P.No.07 of 2025 on the file of the Judicial Magistrate Court, Thirumangalam.

2. According to the petitioner, he filed a petition under Section 175(3) of Bharatiya Nagarik Suraksha Sanhita Act, 2023 and the same was forwarded to the 1st respondent, but no action was taken by the 1st respondent. Therefore, he has filed this petition.

3. The learned Government Advocate (Criminal Side) appearing for the 1st respondent would submit that based on the order passed by the learned Magistrate, they conducted enquiry and the petition was closed.

4. This Court has perused the records and on perusal of the records, it is seen that the petitioner has filed a petition under Section 175(3) of BNSS, wherein the Trial Court passed an order dated 10.01.2025 that “the respondent police is directed to conduct discrete enquiry and register a case, if any cognizable offence is made out”. Based on the said order, the 1st respondent has also conducted enquiry and closed. Though the petitioner has not challenged the order passed by the learned Magistrate, now



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approached this Court to comply the order passed by the learned Magistrate dated 10.01.2025. The order passed by the learned Magistrate is not in consonance with the provision of Section 175 (3) of BNSS. It is well settled law that the order passed by the Magistrate under Section 175(3) BNSS is a judicial order and only after applying judicial mind, the Magistrate has to pass the order. But in this case, the order passed by the Magistrate is only a two line order and the respondent police was directed to conduct discrete enquiry and register a case, if any cognizable offence is made out. Once the Magistrate has passed an order under Section 175(3) of BNSS, it is the duty of the police to register F.I.R and thereafter to conduct investigation and based on the investigation, they have to file final report either positive report or negative report. But unfortunately, in this Case, the learned Magistrate has passed the order to conduct discrete enquiry and such an order cannot be passed by the Magistrate under Section 175 (3) of BNSS. While passing an order under Section 175 (3) of BNSS, the Magistrate ought to have apply mind and after satisfying with the prima facie material available to constitute the offence, then, the Court has to forward the same to the police for registering F.I.R. Per contra, in this Case, without applying mind, directed the police to conduct discrete enquiry and register a case, if any cognizable offence made out. Therefore, the order passed by the learned Magistrate is not in consonance with the provisions of 175(3) of

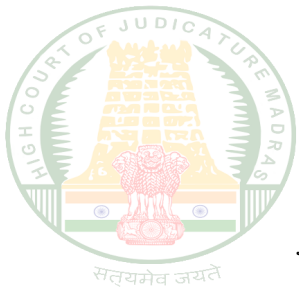


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5. Even as per Section 175(3) of Bharatiya Nagarik Suraksha Sanhita, 2023, *“Any Magistrate empowered under section 210 may, after considering the application supported by an affidavit made under sub-section (4) of section 173, and after making such inquiry as he thinks necessary and submission made in this regard by the police officer, order such an investigation as above-mentioned.”* But in this case, no such enquiry was conducted. Therefore, the order passed by the learned Magistrate is liable to be set aside.

6. At this juncture, it is relevant to refer the judgment of the Hon'ble Supreme Court in *Om Prakash Ambadkar Vs. State of Maharashtra and others* in Crl.A.No.352 of 2020 dated 16.01.2025, wherein the Hon'ble Supreme Court has observed as follows:

“35. Further, by requiring the Magistrate to consider the submissions made by the concerned police officer before proceeding to issue directions under Section 175(3), BNSS has affixed greater accountability on the police officer responsible for registering FIRs under Section 173. Mandating the Magistrate to consider the submissions of the concerned police officer also ensures that the Magistrate applies his mind



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judicially while considering both the complaint and the submissions of the police officer thereby ensuring that the requirement of passing reasoned orders is complied with in a more effective and comprehensive manner.”

7. Therefore, the order passed by the learned Magistrate in Crl.M.P.No.07 of 2025 dated 10.01.2025 on the file of the Judicial Magistrate Court, Thirumangalam is set aside and the matter is remanded back to the learned Judicial Magistrate, Thirumangalam and the learned Judicial Magistrate is directed to comply the provision of Section 175(3) of Bharatiya Nagarik Suraksha Sanhita, 2023, after applying judicial mind and pass orders in accordance with law.

8. With the above said observation and direction, this criminal original petition is allowed.

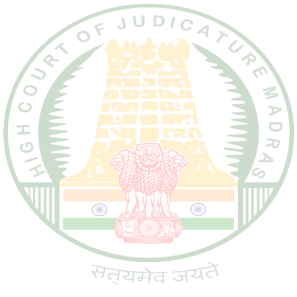
27.03.2025

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P. DHANABAL, J.

Mac

To

1. The Judicial Magistrate Court,
Thirumangalam
2. The Inspector of Police,
Austinpatti Police Station,
Madurai District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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