



Crl.OP(MD)No.10129 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 26.08.2025

DELIVERED ON : 14.10.2025

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

Crl.OP(MD)No.10129 of 2025

R.Somasundaram

: Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by the Commissioner of Police,
Madurai City, Madurai.

2.The Inspector of Police,
D1 – Thallakulam Police Station,
Madurai.

: Respondents

PRAYER: Petition filed under Section 482 CrPC / 528 BNSS seeking a direction to the first respondent to take action based on the petitioner's representation dated 23.05.2025.

For Petitioner : Mr.S.Sivasubramanian

For Respondents: Mr.T.Senthilkumar,
Additional Public Prosecutor



ORDER

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The petitioner has approached this Court by filing the present petition seeking a direction to the first respondent to consider his representation dated 23.05.2025, wherein he had requested the conduct of a preliminary enquiry on his complaint and to take appropriate action in accordance with law.

2.The petitioner is a mason by occupation. He had purchased a residential plot from one L.Karuppiah under Document No.1877/2010 dated 30.06.2009 on the file of the Sub-Registrar, Thallakulam. In the year 2012, the petitioner had borrowed a sum of Rs.3,00,000/- from one N.Arumugam. As collateral security for the said loan, the petitioner executed a mortgage deed in Document No.1780/2012 dated 17.05.2012 in favour of the said Arumugam. The original sale deed in Document No. 1877/2010 was also handed over to him with a promise that the same would be returned upon repayment of the loan amount.

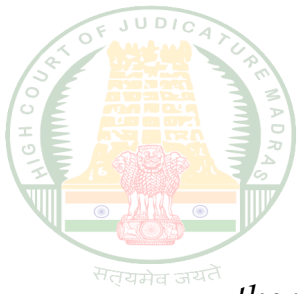


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3.The petitioner asserts that he had thereafter paid nearly Rs.6,00,000/- towards principal and interest. Despite such payment, Arumugam has refused to return the original deed and has instead demanded exorbitant interest. Left with no other option, the petitioner gave a representation dated 21.05.2025 to the respondent Police seeking to conduct a preliminary enquiry. No effective action was taken on his complaint. Hence, the present writ petition has been filed.

4.When the matter came up for hearing, this Court expressed its concern about the scope of “preliminary enquiry” and the practice that is being followed by the police in this regard.

5.This Court first noted the position under the Code of Criminal Procedure, 1973 (CrPC). The concept of “preliminary enquiry” does not find place in the Code. It was judicially evolved in *Lalita Kumari v. Government of U.P.* [AIR 2014 SC 187], where the Hon’ble Supreme Court has held as follows:-



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"110. ... What is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. ... Other considerations such as genuineness or credibility are matters for investigation, not for registration of FIR."

The Hon'ble Supreme Court further observed that preliminary enquiry may be undertaken only in exceptional categories like matrimonial disputes, commercial offences, or cases involving abnormal delay.

6.This Court also recalled the dictum in *State of Haryana v. Bhajan Lal* [1992 Supp (1) SCC 335], wherein it was laid down as follows:-

"33.It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of Section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information."

The Hon'ble Supreme Court has further cautioned that embarking upon a roving enquiry at the pre-FIR stage would be contrary to the statutory mandate.



WEB COPY 7.Later, in *Pradeep Nirankarnath Sharma v. State of Gujarat* [2025

SCC OnLine SC 559], the Hon'ble Supreme Court reiterated as under:-

"12.The scope of a preliminary inquiry, as clarified in Lalita Kumari, is limited to situations where the information received does not prima facie disclose a cognizable offence but requires verification. However, in cases where the information clearly discloses a cognizable offence, the police have no discretion to conduct a preliminary inquiry before registering an FIR. ..."

8.However, with the coming into force of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), a new statutory provision has been introduced in Section 173(3), which provides:

"173. ... on receipt of information relating to the commission of any cognizable offence, which is made punishable for three years or more but less than seven years, the officer in charge of the police station may with the prior permission from an officer not below the rank of Deputy Superintendent of Police, considering the nature and gravity of the offence, proceed to conduct preliminary enquiry ... within a period of fourteen days; or proceed with investigation when there exists a prima facie case."



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9. In this backdrop, this Court posed a specific query to the State as to the precise scope of preliminary enquiry under both the CrPC jurisprudence and the BNSS, and the procedure being followed by the police.

10. Pursuant to the said query, a status report was filed by the Assistant Inspector General of Police, High Court Cases Monitoring Cell, stating as follows:-

- A Committee headed by the ADGP, SCRB, Chennai was constituted, consisting of senior police officers and a Senior Law Officer from the Office of the State Public Prosecutor, to deliberate upon the scope of preliminary enquiry.
- Based on the recommendations, the DGP issued Circular in C.No. 1810/SCRB/2025-5 dated 14.06.2025 regarding the conduct of preliminary enquiry under the BNSS.
- It has been directed that whenever preliminary enquiry is proposed under Section 173(3) BNSS, a CSR shall be issued recording that the



petition is under enquiry.

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- Summons/notice, if at all, must be traceable only to Section 173(3) BNSS and not to Sections 179 or 35(3) BNSS.

11.Having considered the materials placed, this Court finds that:

- Under the CrPC, preliminary enquiry was a judicial innovation (*Lalita Kumari's* case supra), and not a statutory mandate.
- Under the BNSS, however, Section 173(3) specifically provides for preliminary enquiry in respect of cognizable offences punishable between 3 and 7 years, with prior approval of a Deputy Superintendent of Police, to be concluded within 14 days.

12.In Re *Imran Pratapgadhi v. State of Gujarat* [Crl.A.No.1545 of 2025, dated 28.03.2025], the Hon'ble Supreme Court has explained the scope of preliminary enquiry under the BNSS as under:-

“42.Following is the summary of our conclusions:

(i) Sub-Section (3) of Section 173 of the BNSS makes a significant departure from Section 154 of CrPC. It provides that when information relating to the commission of a cognizable offence which is made



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punishable for 3 years or more but less than 7 years is received by an officer-in-charge of a police station, with the prior permission of a superior officer as mentioned therein, the police officer is empowered to conduct a preliminary inquiry to ascertain whether there exists a prima facie case for proceeding in the matter. However, under Section 154 of the CrPC, as held in the case of Lalita Kumari, only a limited preliminary inquiry is permissible to ascertain whether the information received discloses a cognizable offence. Moreover, a preliminary inquiry can be made under the CrPC only if the information does not disclose the commission of a cognizable offence but indicates the necessity for an inquiry. Sub-Section (3) of Section 173 of the BNSS is an exception to sub-Section (1) of Section 173. In the category of cases covered by sub-Section (3), a police officer is empowered to make a preliminary inquiry to ascertain whether a prima facie case is made out for proceeding in the matter even if the information received discloses commission of any cognizable offence.

(ii) Under sub-Section (3) of Section 173 of the BNSS, after holding a preliminary inquiry, if the officer comes to a conclusion that a prima facie case exists to proceed, he should immediately register an FIR and proceed to investigate. But, if he is of the view that a prima facie case is not made out to proceed, he should immediately inform the first informant/complainant so that he can avail a remedy under sub-Section (4) of Section 173."



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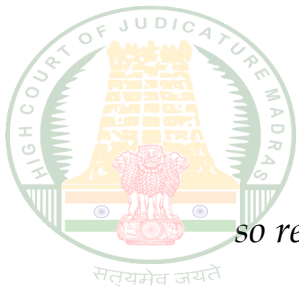
13. At the same time, the caution expressed in *Bhajan Lal's* case (supra) and *Lalita Kumari's* case (supra) continues to hold relevance. A preliminary enquiry cannot be expanded into a mini-trial or fact-finding process to test the veracity of allegations; its purpose is only to ascertain whether the case falls within the statutory parameters for FIR registration.

14. The next issue is whether summons/notice can be issued at the preliminary enquiry stage.

15. It is trite that issuance of summons to witnesses is governed by Section 179 BNSS (Section 160 CrPC), which is applicable only during the course of investigation. Section 179 BNSS reads as under:-

"179. Police officer's power to require attendance of witnesses. –

(1) Any police officer making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the facts and circumstances of the case; and such person shall attend as



so required."

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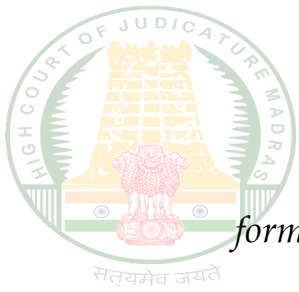
16.The above provision makes it clear that the summoning of witnesses can be done by the police officer only during the process of investigation and investigation, as defined under Section 2(l) BNSS, commences only after registration of an FIR.

17.In *Ashok Kumar Todi v. Kishwar Jahan* [(2011) 3 SCC 758], the Hon'ble Supreme Court has held as under:-

"48.Under the scheme of the Code, investigation commences with lodgement of information relating to the commission of an offence. ... The officer-in-charge has no escape from registering it if the offence mentioned therein is a cognizable offence."

18.In *H.N. Rishbud v. State of Delhi* [AIR 1955 SC 196], the Court explained the steps of investigation as including:

"...(1) proceeding to the spot, (2) ascertainment of facts, (3) discovery and arrest of suspected offender, (4) collection of evidence by examining persons and reducing their statements to writing, and (5)



formation of opinion and filing of chargesheet."

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19. Thus it is clear that the examination of persons and recording of their statements by the police officers is a part of investigation under the code. The process of investigation begins only after the registration of the FIR and the purpose is to collect evidence that are admissible in court, bring out the undisclosed facts and build a case which results in submission of chargesheet.

20. In fact, this Court in *Prakash Transports v. Inspector of Police* [2004 (1) CTC 130] has held that summons under Section 160 CrPC (now 179 BNSS) can be issued only when an investigation is being conducted after an FIR is registered under Section 154 CrPC and the relevant portion is extracted as under:-

"2. ... it is not understandable as to how he should issue summons, since under Section 160, Cr.P.C., summons could be issued by any police officer making an investigation under that Chapter, which means that investigation is a sine qua non for issuing summons and the investigation can be conducted only in connection with the crime



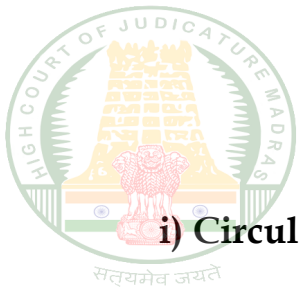
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registered in terms of Section 154 Cr.P.C. Since there is no crime registered in terms of Section 154 Cr.P.C., no summons can be issued under Section 160, Cr.P.C., summoning a person to appear before the officer."

21. Similarly, in *V.N. Pachaimuthu v. Superintendent of Police [MANU/TN/1504/2012]*, this Court has held that notice under Section 160 CrPC cannot be issued without registration of an FIR. The relevant portion is extracted as under:-

"9. ... notice under Section 160 CrPC can be issued only to witnesses in a pending FIR, but cannot be issued to a person who is an accused in a complaint or before registration of the case."

22. Even the Circular issued by the Director General of Police in No. 126303/Cr.I(1)/2008, dated 04.12.2008 and Standing Order No.58/2013 dated 27.11.2013 emphasise that during preliminary enquiry, no person shall be summoned to the police station. The relevant portions are extracted infra.



i) Circular dated 04.12.2008:-

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"3. While conducting such an enquiry, it should be borne in mind that the CrPC does not provide the Police to summon a person to the Police Station till a criminal case has been registered."

ii) Standing Order No.58/2013, dated 27.11.2013:-

"Conduct of Preliminary Enquiry before registration of a complaint and scope of such PE:-

i) Registration of FIR is mandatory u/s 154 of Cr.P.C, if the information discloses commission of a cognizable offence. 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. This will be only to ascertain whether cognizable offence is involved or not.

....

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."

23. Therefore, the practice of summoning parties during the preliminary enquiry stage cannot be sustained in law. Recognising such a



practice would encourage “kangaroo courts” or “katta panchayats” under the guise of enquiry.

24. Accordingly, this Court holds as under:

- (i) Summons/notice cannot be issued during preliminary enquiry.
- (ii) The scope of preliminary enquiry is confined to perusal of the complaint and supporting materials furnished by the complainant.
- (iii) If a cognizable offence is disclosed, the police shall register an FIR forthwith and proceed with investigation.
- (iv) Any enquiry under Section 173(3) BNSS must be completed within 14 days, after approval from a DSP, and the result communicated to the complainant.

25. In the present case, since the petitioner’s representation has already been treated as a petition enquiry in CSR No.752 of 2025, the respondent Police are directed to proceed strictly in accordance with law. If the facts reveal commission of a cognizable offence, an FIR shall be registered and further investigation shall be conducted.



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WEB COPY In fine, this petition stands disposed of with the above observations and directions.

Internet : Yes
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14.10.2025

To

- 1.The Commissioner of Police,
Madurai City, Madurai.
- 2.The Inspector of Police,
D1 – Thallakulam Police Station,
Madurai.



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B.PUGALENDHI, J.

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