



CRL.A(MD).No. 986 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved on : 18.11.2025

Delivered on : 03.12.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.A(MD).No. 986 of 2025

in

CrI.M.P(MDNo.12964 of 2025

P.Parthiban,
S/o.S.P.Panneerselvam,
Former Inspector of Police,
Central Crime Branch, Madurai.

: Appellant

Vs.

1.State of Tamil Nadu rep.by
The Assistant Commissioner of Police,
Central Crime Branch, Madurai.

2.S.Ramya

: Respondents

Prayer : This Criminal Appeal is filed under Section 14A(2) of SC/ST (PoA) Act 1989, to call for the entire records pertaining to the order passed by the learned III Additional District and Sessions Judge (PCR) (FAC) Madurai in CrI.M.P.No.125 of 2025, vide order, dated 02.08.2025 and set aside the same.



CRL.A(MD).No. 986 of 2025

For Appellant : Mr.R.Anand,

For Respondents : Mr.B.Thanga Aravindh,
Government Advocate (Criminal Side)
for R1.

: No Appearance, for R2.

JUDGMENT

This Criminal Appeal is directed against the order made in Crl.M.P.No.125 of 2025, dated 02.08.2025 on the file of the II nd Additional District Court (PCR) Cases, Madurai.

2.The second respondent filed a private complaint under Section 223 of BNSS, against the appellant/Inspector of Police, Central Crime Branch, Madurai and against Tmt.Annalakshmi, Sub Inspector of Police, Central Crime Branch, Madurai, alleging that they have neglected to conduct proper investigation into the complaint given by the defacto complainant and acted in favour of the other side, as the complainant belongs to Schedule Caste Community.

3.The learned Sessions Judge, upon receiving the private complaint under Section 223 of BNSS, passed the impugned order, dated 02.08.2025 and is extracted hereunder for better appreciation :



CRL.A(MD).No. 986 of 2025

WEB COPY

“Sworn Statement of complainant and Documents P1 to P4 perused. Affidavit also filed. On perusal of complaint and the documents, prima facie case made for the alleged offences mentioned in the complaint. Hence, it is forwarded to DSP CCB, Madurai to register the FIR and investigate the matter and file the final report before this court.”

Challenging the impugned order, the present appeal came to be filed.

4. The learned counsel for the appellant attacked the impugned order on the four grounds namely,

a) The learned Sessions, Judge without calling for and considering the submissions made by the concerned police, failed to comply with the requirement under Section 175(3) of BNSS;

b) that the appellant being a public servant and allegations were levelled arising in the course of discharge of his duties, the learned Sessions Judge should have received a report from the officer Superior to the appellant;

c) that the learned Sessions Judge failed to hear the proposed accused including the appellant and that therefore, the learned Sessions Judge has



CRL.A(MD).No. 986 of 2025

violated the mandatory requirements contemplated under Section 175(4) of BNSS;

d) that the learned Sessions Judge, after recording that a *prima facie* case made out for the offences shown in the complaint, should not have forwarded the complaint to the DSP/CCB for registering FIR and for investigation and that since none of the ingredients for making out the offence under the provisions of SC/ST (PoA) Act are found available for the private complaint, the learned Sessions Judge ought not to have directed the first respondent to register the FIR against the appellant.

5. During arguments, the learned counsel for the appellant raised another ground that since there has been no recommendation on the administrative side for a positive finding with regard to the negligence as required under Section 4(2) of SC/ST (PoA) Act, the impugned order is unsustainable.

6. It is pertinent to note that the learned Sessions Judge, upon receipt of the private complaint filed under Section 223 of BNSS, (200 Cr.P.C) proceeded to record the sworn statement of the complainant and marked the documents produced by the complainant and upon perusing the complaint,



CRL.A(MD).No. 986 of 2025

affidavit, sworn statement and the documents (P 1 to P 4), the learned Sessions Judge has recorded his satisfaction that a prima facie was made out for the offence shown in the complaint. Considering the above, it is very much clear that the learned Magistrate had taken cognizance of the case, but even thereafter, proceeded to forward the complaint to the DSP/CCB for registration of FIR and for investigation. Since the learned Sessions Judge had taken cognizance, he was not having any jurisdiction to forward the complaint, allegedly under Section 175(3) of BNSS (156 (3) of Cr.P.C.) Considering the above, the impugned order forwarding the complaint for registration of FIR and for investigation, after the learned Sessions Judge himself has taken cognizance, cannot legally be sustained.

7. It is necessary to refer Section 175 (3) of BNSS :

“(3) 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.”

8. The learned counsel for the appellant would rely on a decision of the Hon'ble Supreme Court in ***Om Prakash Vs. Ambadkar Vs. State of***



Maharashtra and others reported in **2025 SCC Online SC 238** and the relevant passage is extracted hereunder :

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 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).



CRL.A(MD).No. 986 of 2025

WEB COPY

9. In the case on hand, admittedly the learned Sessions Judge has not called for any report from the jurisdictional police nor heard them before passing the impugned order.

Section 175 (4) BNSS reads as follows :

“ (4) Any Magistrate empowered under Section 210, may, upon receiving a complaint against a public servant arising in course of the discharge of his official duties, order investigation, subject to-

(a) receiving a report containing facts and circumstances of the incident from the officer superior to him; and

(b) after consideration of the assertions made by the public servant as to the situation that led to the incident so alleged.

10. It is necessary to refer Para No.30 of ***Om Prakash's*** case referred above, relied on by the learned counsel for the appellant.

“ 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



CRL.A(MD).No. 986 of 2025

WEB COPY

against whom an accusation of committing a cognizable offence arising in the course of discharge of his official duty is made. The provision 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.

11. Section 175(4) of BNSS empowers a Magistrate to order an investigation into a complaint against a public servant regarding their official duties, but before ordering an investigation, the Magistrate must receive a report from the superior officer, provide a hearing to the public servant, and be satisfied that a *prima facie* case exists, ensuring accountability, while preventing frivolous complaints.



CRL.A(MD).No. 986 of 2025

WEB COPY

12. This section specifically applies when a complaint is filed against a public servant for an act that occurred during the discharge of their official duty. The process can only begin after the Magistrate receives a report detailing the facts and circumstances of the incident from the public servant's superior officer. The Magistrate must give the public servant an opportunity to be heard and present their side and after considering all the information, the Magistrate has to decide whether a prima facie case has been made out and an investigation can be ordered, if the Magistrate is satisfied that the complaint is not frivolous and that the incident is not related to the official duty of the public servant.

13. These new provisions are designed to protect public servants from being harassed by false or malicious complaints, while ensuring that genuine cases of misconduct can be investigated. In the case on hand, as already pointed out, the Magistrate has neither obtained any report from the appellant's superior officer nor the appellant was given an opportunity of being heard.



CRL.A(MD).No. 986 of 2025

WEB COPY

14. Considering the above, this Court has no hesitation to hold that the learned Sessions Judge, violating the requirements contemplated under subsections 3 and 4 of Section 174 of BNSS, passed the impugned order.

15. Section 4 of SC/ST (PoA) Act deals with punishment for neglect of duties by public servants, making it a punishable offence for non Schedule Caste/Schedule Tribe public servants, who wilfully fail in their duties under the Act.

16. No doubt, the duty referred in Section 4 will include duties such as registering an FIR, investigating a case and preparing charge sheets and documents. The proviso to sub-section 2 of Section 4 contemplates that for a Court to take *prima facie* case of wilful neglect of duty, the competent Court must receive a recommendation of an administrative enquiry. This means that penal proceedings against the official for neglect of duty generally required an official administrative finding of fault.

17. The learned counsel for the appellant would rely on a decision of this Court in ***Crl.O.P.(MD)No.24853 and 24866 of 2025 (Lokeshwaran***



CRL.A(MD).No. 986 of 2025

Ravi Vs. State of Tamil Nadu rep.by the Inspector of Police, Walajabad

Police, Kanchipuram District, dated 09.09.2025), wherein the learned Judge of this Court, referring to the judgment of Hon'ble Apex Court in ***State of GNCT of Delhi and others vs. Praveen Kumar alias Prashanth*** reported in (2024) SCC Online SC 1591, has held that in other words, to set in motion the penal proceedings or even to take cognizance under Section 4 of SC/ST Act, the recommendation of the administrative enquiry is a *sine qua non* and the relevant passages are extracted hereunder :

“11.The manner in which the impugned orders are passed prima facie would probabalise the allegations made in the affidavits filed in support of these petitions. Be that as it may. While taking any action or cognizance as against a public servant under Section 4 of the SC/ST Act, unless there is a definite recommendation on the administrative side or a positive finding with regard to the negligent act under the SC/ST Act, the proceedings cannot be automatically initiated as a matter of right. In this regard, the Apex Court in State of GNCT of Delhi and others v. Praveen Kumar alias Prashanth reported in (2024) SCC Online SC 1591, has held as follows :

“13.3.In other words, to set in motion the penal proceedings including taking cognizance for an offence



of commission and omission under section 4(2) of the Act of 1989, the recommendation of the administrative enquiry is a sine qua non. The proviso is an inbuilt safeguard to the public servant from initiation of prosecution by every dissatisfied complainant. On appreciation of offences covered by section 3 and the nature of offences conversely dealt with under section 4 of the Act of 1989, it is noted that a complaint under section 3 presupposes insult, accusation, victimization, etc. of a member of the Scheduled Castes and Scheduled Tribes by a non-Scheduled Caste/Tribe person. However, the commission or omission by a public servant is rendered as an offence when the public servant contravenes the duties spelt in section 4(2) of the Act of 1989 read with the Rules of 1995 and by a recommendation made to that effect. The test in an enquiry is whether the public servant willfully neglected the duties required to be performed by the public servant under the Act of 1989 or not.”

12.The above judgment would clearly indicate that, to set in motion the penal proceedings or even to take cognizance under Section 4 of the SC/ST Act, the recommendation of the administrative enquiry is a sine qua non. Therefore, merely because the Deputy Superintendent of Police or other Police officials have



CRL.A(MD).No. 986 of 2025

WEB COPY

not immediately implemented some directions issued by the learned Judge in the name of externment, it cannot be said that the Deputy Superintendent of Police or the other Police officials have committed an offence under Section 4(2) of the SC/ST Act. Considering the said aspect, the suo motu order of the learned Principal District and Sessions Judge, Kancheepuram, remanding the Deputy Superintendent of Police, is also not warranted.

18. In the present case also, the learned Sessions Judge has not obtained any recommendation of an administrative enquiry and thereby, not complied with the mandatory requirements contemplated under the proviso to sub section 2 of Section 4 of SC/ST (PoA) Act.

19. The learned counsel for the appellant would submit that originally, the second respondent sent a complaint to the Commissioner of Police, Madurai City, who in turn, forwarded the same to the first respondent, who in turn conducted an enquiry by examining the complainant and other witnesses and based on which, the first respondent has concluded that there is no substance of truth on the allegation levelled against the appellant and his immediate subordinate; that the first respondent in her report would say



CRL.A(MD).No. 986 of 2025

that the second respondent, whenever being called for enquiry with a direction to produce the documentary evidence, used to say that she would place the same only before the Court not before the enquiry officer and such of her non-cooperative behavior has also been recited in the said report, which speaks about her conduct; that the second respondent, who has not even chosen to respond to the notice of this Court in connection with the present appeal, does not deserve any relief from this Court and that the attitude of the second respondent is very clear that she wanted to harass the appellant and thereby intending to achieve her goal in her complaint, which was lodged against the private individuals.

20. The first respondent filed a copy of the report and it is evident that the complaint of the second respondent was ordered to be closed. As already pointed out by the learned counsel for the appellant, despite the receipt of Court notice, the second respondent/complainant has not turned up.

21. It is not in dispute that the second respondent filed another private complaint against the private individuals and the learned Sessions Judge forwarded the said complaint to the Assistant Commissioner of Police, Tallakulam, Madurai for investigation and report.



CRL.A(MD).No. 986 of 2025

WEB COPY

22. The learned Government Advocate (Criminal Side) would submit that in pursuance of the said direction, the learned Assistant Commissioner of Police conducted enquiry and after coming to a decision that money dispute was exaggerated and by falsely including the provision of SC/ST (PoA) Act complaint was lodged, closed the complaint.

23. The learned Government Advocate (Criminal Side) filed a report of the first respondent along with the report submitted by the Sub-Inspector of Police, CCB Madurai. Whatever it is, this Court is not inclined to go into the merits of the case and it is also not necessary for this Court to go into the complaint filed by the defacto complainant against the private individuals and the closure of the same.

24. Considering the above, this Court has no other option but to hold that the impugned order is legally unsustainable and the same is liable to be set aside.

25. In the result, the Criminal Appeal is allowed the impugned order, dated 02.08.2025 in CrI.M.P.No.125 of 2025 on the file of the learned III



CRL.A(MD).No. 986 of 2025

Additional District and Sessions Judge (PCR) (FAC) Madurai, is set aside.

Consequently, connected Miscellaneous Petition is closed.

03.12.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
das

To

- 1.The III Additional District and Sessions Court
(PCR) (FAC) Madurai.
- 2.The Assistant Commissioner of Police,
Central Crime Branch, Madurai.
- 3.The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



CRL.A(MD).No. 986 of 2025

K.MURALI SHANKAR,J.

das

Pre-delivery order made in
CRL.A(MD).No. 986 of 2025

03.12.2025