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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.REV.P. 426/2025, CRL.M.A. 32058/2025

SD WINDLESH

.....Petitioner

Through: Appearance not given.

versus

GOVT OF NCT OF DELHI & ORS.

.....Respondents

Through: Mr. Satinder Singh Bawa, APP for
State with SI Akash Kumar, PS-
Bhajanpura.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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31.10.2025

1. The present revision petition under Section 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023¹ is directed against order dated 25th July, 2025, passed by JMFC-01, North East District, Karkardooma Court, Delhi in CT. Case No. 617/2024 titled *S.D Windlesh v. Raj Kumar Gupta & Ors.*, whereby the Trial Court dismissed the Complainant/Petitioner's application under Section 156(3) of the Code of Criminal Procedure, 1973² (corresponding to Section 175 BNSS), declining to direct registration of an FIR and investigation by the police.

2. The case of the complainant, in brief, is that the concerned Tree Officer(s) and other officials have been indiscriminately granting

¹ "BNSS"

² "CrPC"



permissions for the felling of trees to facilitate residential construction in Yamuna Vihar. It is alleged that large branches of two fully grown trees (more than 40 years old), situated at eastern side of Plot No. C-4/168, Yamuna Vihar, were cut by Raj Kumar Gupta (Proposed Accused No. 1) while carrying out illegal construction of his residential building. It is further alleged that he obtained permission for such cutting from Proposed Accused Nos. 2 and 3 (Deputy Director of Horticulture and Deputy Conservator of Forest) on false and fabricated grounds. On 16th October, 2023, Proposed Accused No. 1 is stated to have removed the remaining trunk and roots of the trees, following which a PCR call was made. According to the complainant, the trees were healthy and not dead, and the permission to cut them down was unlawful. Despite representations made to higher authorities, no action was taken by the police or the concerned department.

3. Since no action was taken by the State, the Complainant/Petitioner filed a complaint under Section 200 CrPC along with the application under Section 156(3) CrPC/Section 175 BNSS before the Trial Court. The Trial Court called for a status report and, upon consideration thereof, concluded that since the entire evidence was within the complainant's reach, there was no necessity for police investigation, and consequently declined to issue directions under Section 156(3) CrPC.

4. Aggrieved by the denial of such direction, the Petitioner has preferred the present revision petition. Counsel for the Petitioner contends that the permission granted by the Tree Officer was contrary to law, issued without following due process or complying with judicial directions regulating the felling of trees. It is argued that the allegations disclose a cognizable offence involving collusion between private persons and public officials, warranting



police investigation. Hence, it is contended that the Trial Court erred in declining to exercise its power under Section 156(3) CrPC.

Analysis

5. The relevant extraction of the impugned order reads:

“(3) I have heard the submissions made by the Ld. Counsel for the complainant. It is settled proposition of law that the power of the Magistrate to give directions u/s 156 (3) Cr.P.C is discretionary and the same has to be exercised only when there is requirement of investigation/custodial interrogation by the police. If the evidence is within the reach of complainant, usually the directions u/s 156 (3) Cr.P.C/175 BNSS are not given. The word used in the section 156 (3) Cr.P.C/175 BNSS is "may", whereas the word used in section 154 Cr.P.C/175 BNSS is "shall". The wording of these section clearly implies that the police is bound to register an FIR when an information regarding cognizable offence is given to the police, whereas the Magistrate is not bound to give directions u/s 156 (3) Cr.P.C/175 BNSS, even though the complaint discloses the commission of a cognizable offence as the Magistrate has to see whether the investigation by the police is required or not in the given case.

(4) In the judgment of Hon'ble Delhi High Court titled as Subharkaran Luharka v. State DoD 9-7-2010 delivered in Crl. 6122/23/05, it has been held by the Hon'ble High Court that if the evidence is within the reach of the complainant and no investigation by the police is required, the Magistrate should ask the complainant to lead the evidence rather than giving directions to the police for registration of FIR u/s 156 (3) Cr.P.C.

(5) In the another judgment titled as M/s. Skipper Beverages Pvt. Ltd. v. State, 2001 IV AD (Delhi) the Hon'ble High Court of Delhi has observed as under:

“It is true that Section 156 (3) Cr.P.C. of the Code empowers to Magistrate to direct the police to register a case and initiate investigations but this power has to be exercised judiciously on proper grounds and not in a mechanical manner. In those cases where the allegations are not very serious and the complainant himself is in possession of evidence to prove his allegations there should be no need to pass orders under Section 156 (3) of the Code. This discretion ought to be exercised after application of mind and only in those cases where the Magistrate is of the view that the nature of the allegations is such that the complainant himself may not be in a position to collect and produce evidence before the court and the interest of justice demand that the police should step in the help of complainant.”

(6) Also in Suresh Chand Jain Vs. State of MP 2001 (1) AD (Crl.) SC. 34 Hon'ble Apex Court stated that "there are pre-requisites to the followed by the complainant before approaching the Magistrate U/s 156 (3) of the



code which is discretionary remedy as the provision proceeds with the word "May". The magistrate is required to exercise his mind while doing so. He should pass orders only if he is satisfied that the information reveals commission of cognizable offences and also about necessity of police investigation for digging out of evidence neither in possession of the complainant nor can be procured without the assistance of the police. It is thus not necessary that in every case where a complaint has been filed under section 200 of the code the Magistrate should direct the police to investigate the crime merely because an application has also been filed under section 156 (3) if the code even though the evidence to be led by the complainant is in his possession or can be produced by summoning witnesses, may be with the assistance of the court or otherwise. This issue of jurisdiction also becomes important at that stage and cannot be ignored".

(7) In the present case, the complainant is aware about the name and address of the proposed accused person. From the material on record, the entire evidence is within the reach of the complainant and no field investigation by the police is required at this stage. Needless to say that if required later on, the investigation may be directed u/s 202 Cr.P.C/225 BNSS. In view of the aforesaid reasons, the application u/s 156 (3) Cr.P.C/175 BNSS is hereby dismissed. The complainant is directed to provide clarifications on the aspect of sanction in the present case since accused no. 2 to 4 are the government officials.

Be put up on 14.01.2026 for further proceedings."

6. In the opinion of this Court, the view adopted by the Trial Court is well-founded and consistent with the settled legal position governing the exercise of discretion under Section 156(3) CrPC/Section 175 BNSS. The Trial Court has rightly observed that the said provision is not to be invoked mechanically and that the Magistrate must first ascertain whether the assistance of police investigation is necessary to collect evidence that the complainant cannot procure on his own. In the present case, the Complainant/Petitioner has personal knowledge of the incident, is aware of the identities of the proposed accused, and relies upon documentary material already within his possession. The allegations essentially pertain to the alleged illegality in the grant of administrative permission, which can be established through documents and witness testimony without requiring



police intervention. Moreover, the learned Trial Court has preserved the complainant's right to seek recourse under Section 202 CrPC/Section 225 BNSS at a subsequent stage, should circumstances so require. This approach ensures that the Complainant is not left remediless while preventing unnecessary police investigation at the preliminary stage. No illegality, perversity, or jurisdictional error is found in the impugned order warranting interference under Section 442 BNSS.

7. In view of the above, the petition is dismissed along with the pending application.

SANJEEV NARULA, J

OCTOBER 31, 2025

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