

27.04.2026
Item no.48
Ct. No.5

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

CRR 150 of 2026

In the matter of:- Ms. Doma Tamang
.....petitioner.

Mr. Debarshi Dhar,
Ms. Taniya Bhowmik,
.....for the petitioner.

Mr. Nilay Chakraborty, Ld. APP.,
Mr. Abhijit Sarkar,
....for the State.

The present revisional application has been filed under Sections 438/442 and 528 of the BNS, corresponding to Sections 397/401 read with Section 482 of the Code of Criminal Procedure, 1973, challenging the legality and propriety of the order dated 09.04.2026 passed by the learned Additional Chief Judicial Magistrate, Siliguri, District Darjeeling, in Misc. Petition Case No. 23 of 2026. By the said order, passed on a petition under Section 175(3) of the BNSS (corresponding to Section 156(3) of the Code), the Inspector-in-Charge of Matigara Police Station was directed to conduct a preliminary enquiry into the allegations made therein and to submit a report.

Mr. Dhar, learned advocate appearing for the petitioner, submits that it is well settled that upon receipt of a complaint under Section 175(3) of the BNSS, a Court may either direct investigation into the allegations contained therein or conduct an enquiry itself; however, it cannot direct the police authorities to conduct a preliminary enquiry. He contends that, in the present case, the learned Court below has done precisely that, acting contrary to the settled principles of law, and as such, the order dated 09.04.2026 cannot be allowed to stand. In support of his submissions, he relies upon an unreported judgment of a Coordinate Bench of this Court passed in CRR 467 of 2026 (Kousik Panja vs. The State of West Bengal & Ors.), along with two other revisional applications, being CRR No. 363 of 2026 (Manoj Kumar Sharma vs. The State of West Bengal & Ors.) and CRR No. 4982 of 2025 (Sri Nabakumar Das vs. The State of West Bengal & Ors.).

Having noted the submissions advanced on behalf of the petitioner, and upon perusal of the materials on record, as well as considering that the issue raised in this revisional application is no longer *res integra*, I am of the view that no useful purpose would be served by keeping the present revisional application pending

To shed illuminating light on the issue, it would be apposite to refer to and extract the relevant portion of the decision reported in AIR 2025 SC 970 (Omprakash Ambedkar vs. State of Maharashtra & Ors.), wherein the Hon'ble Supreme

Court drew a distinction between the provisions of Section 156(3) of the Code and Section 175(3) of the BNSS, which reads as follows:

“[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 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 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 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). “

Therefore, the legislative mandate is that, upon receipt of an application under Section 175(3) of the BNSS, a Magistrate empowered to take cognizance under Section 210 shall: (i) consider the application in terms of Section 173(4); (ii) ascertain whether it is supported by an affidavit; (iii) make such inquiry as he deems necessary; and (iv) consider the submissions of the police officer with regard to the refusal to register an FIR before issuing any direction under Section 175(3).

In the decision of *Kousik Panja* (supra), a Coordinate Bench of this Court held that the word ‘inquiry’ employed in Section 175(3) of the BNSS must be construed in the light of the definition provided under Section 2(1)(k) of the BNSS, which stipulates that ‘inquiry’ means every inquiry, other than

a trial, conducted under this Sanhita by a Magistrate or a Court. It was further observed that the expression ‘after making such inquiry as he thinks necessary’ does not contemplate any inquiry by a police officer, and that such inquiry is required to be conducted by the Magistrate himself, as clearly evinced from the legislative intent.

The principles of precedent and *stare decisis* constitute cardinal features of the hierarchical structure of all common law judicial systems. The doctrine of precedent mandates that an exposition of law must be followed and applied by coordinate or co-equal Benches, and, a fortiori, by all smaller Benches and subordinate courts. A smaller or later Bench has no option but to apply the law laid down by an earlier and larger Bench. A departure therefrom is permissible only when a coordinate or co-equal Bench finds the earlier decision to be of doubtful correctness or efficacy, and its judicial conscience is so deeply troubled that it considers it inappropriate to follow the existing ratio. I find no sufficient reason to differ from the observations and the exposition of law laid down in the decision of *Kousik Panja* (supra) on this issue.

Therefore, applying the propositions laid down in the aforesaid decisions, I am of the view that the order under challenge in this revisional application cannot be sustained and is accordingly set aside. Misc. Petition No. 23 of 2026 stands revived. The learned Magistrate is directed to consider the petitioner’s application in accordance with the legislative

mandate embodied in Section 175(3) and in the light of the precedents referred to in the preceding paragraph, to make such inquiry as he deems necessary, and, if he finds sufficient grounds to proceed, to take appropriate follow-up action in accordance with law.

(Partha Sarathi Chatterjee, J.)