HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 4131 OF 2026

BETWEEN:

1. SRI. B.N. SOMESH GOWDA,
S/O SRI. B.R. NAGAPPA GOWDA
AGED ABOUT 64 YEARS,
R/AT THUMBALLI PURA,
JENNUGADDE POST,
CHIKKAMAGALURU TALUK - 577 136.

2. SRI. B.S. MAHESH KUMAR,
S/O B.V.SHANKARAPPA,
AGED ABOUT 55 YEARS
R/AT 'NEELAKANTESHWARA NILAYA',
KOUNTHEYA HOTEL BACK SIDE,
AYANAGARA, CHIKKAMAGALURU - 577 101.

Digitally signed by SANJEEVINI J KARISHETTY
Location: High Court of Karnataka

3. SRI. K.M. ANANTHARAMU,
S/O SRI. K.S.MALLAPPAIAH
AGED ABOUT 55 YEARS,
R/AT 'GURU KRUPA', KANADAL ROAD,
KUVEMPU NAGAR, KOTE,
CHIKKAMAGALURU - 577 101.

4. SRI. SURENDRA SHETTY GUTHU
S/O SRI SHEENA SHETTY,
AGED ABOUT 59 YEARS,
R/AT "SOWRABHA" CHRISTIAN COLONY,
CHIKKAMAGALURU - 577 101.

5. SRI. K.R. JAYARAM
S/O LATE K.N.RANGAPPA,
AGED ABOUT 56 YEARS.
R/AT SRI KALASAPURA RANGANATH NILAYA,
SHANKARAPURA, LAST CROSS,
CHIKKAMAGALURU - 577 101.

6. SRI. V.LAWRENCE LASRADO,
S/O SRI. XAVIER LASRADO
AGED ABOUT 55 YEARS,
R/AT SWEEDAL FARM, NALLURU,
RAMPURA POST, CHIKKAMAGALURU - 577 101.

7. SRI. K. RAMAKRISHNA NAMBIAR,
S/O SRI. K.N. KUNAHAMBU NAMBIAR,
AGED ABOUT 64 YEARS,
R/AT BLIND CHILDREN SCHOOL ROAD,
RATHNAGIRI BORE EXTENSION,
CHIKKAMAGALURU - 577 101.

8. SRI B. ANANTH KRISHNA ALVA,
S/O SRI SANJEEV ALVA,
AGED ABOUT 65 YEARS,
R/AT SHIRGUNDA, MUGTHIHALLI POST,
CHIKKAMAGALURU TALUK AND DIST - 577 101.

9. SMT. KAMAKSHI,
AGED ABOUT 46 YEARS,
W/O LATE VISHWANATH,
R/O 'SRIDEVI NILAYA',
OPP VARTHAKARA BHAVANA,
GANDHINAGARA, CHIKKAMAGALURU - 577 101

10. SRI. GAGAN D.V,
AGED ABOUT 24 YEARS.

S/O LATE VISHWANATH,
R/O 'SRIDEVI NILAYA',
OPP VARTHAKARA BHAVANA,
GANDHINAGARA, CHIKKAMAGALURU - 577 101.

11. SRI. GOWTHAM D.V
S/O LATE VISHWANATH,
AGED ABOUT 21 YEARS,
R/O 'SRIDEVI NILAYA',
OPP VARTHAKARA BHAVANA,
GANDHINAGARA, CHIKKAMAGALURU - 577 101.

12. SMT. SULEKHA,
W/O LATE UMMER FAROOQ.
AGED ABOUT 51 YEARS,
R/O ANJANEYA TEMPLE ROAD,
VIJAYAPURA, CHIKKAMAGALURU - 577 101.

13. SMT. KAMZIL MARIFA,
D/O LATE UMMER FAROOQ,
AGED ABOUT 31 YEARS,
R/O ANJANEYA TEMPLE ROAD, VIJAYAPURA
CHIKKAMAGALURU - 577 101.

14. SRI. KOYSAN KAMIL
S/O LATE UMMER FAROOQ,
AGED ABOUT 32 YEARS,
R/O ANJANEYA TEMPLE ROAD,
VIJAYAPURA CHIKKAMAGALURU - 577 101.

15. SMT. MOHANANGI M.K,
W/O LATE K.R. KESHAVE GOWDA,
AGED ABOUT 59 YEARS,
R/O NEAR MARIYAMMA TEMPLE ROAD,
GAVANAHALLI, CHIKKAMAGALURU - 577 101.

16. SMT. SUJINI K,
D/O LATE K.R. KESHAVE GOWDA,
AGED ABOUT 35 YEARS,
R/O NEAR MARIYAMMA TEMPLE ROAD,
GAVANAHALLI, CHIKKAMAGALURU - 577 101.

17. SRI SUNIL K,
S/O LATE K.R. KESHAVE GOWDA,
AGED ABOUT 32 YEARS.
R/O NEAR MARIYAMMA TEMPLE ROAD,
GAVANAHALLI, CHIKKAMAGALURU - 577 101.

18. SMT. VEDHA B.C
W/O LATE RAGHU,
AGED ABOUT 52 YEARS.
R/O AVATHI VILLAGE AND POST,
CHIKKAMAGALURU TALUK AND DIST - 577 101.

19. SRI. CHIRANJIVI A.R.
S/O LATE RAGHU A.S,
AGED ABOUT 28 YEARS.
R/O AVATHI VILLAGE AND POST,
CHIKKAMAGALURU TALUK AND DIST - 577 101.

20. SMT. DEVIKA R RAI,
W/O LATE K.B. RAVI RAJ RAI,
AGED ABOUT 46 YEARS,
R/O 'PARIJATHA', BEEHIND RURAL POLICE STATION,
KALYAN NAGAR, JHOTHI NAGAR POST,
CHIKKAMAGALURU - 577 101.

21. KUM. INCGARA RAI K.R,
W/O LATE K. B. RAVI RAJ RAI,
AGED ABOUT 24 YEARS
R/O 'PARIJATHA',

BEHIND RURAL POLICE STATION,
KALYAN NAGAR, JHOTHI NAGAR POST,
CHIKKAMAGALURU - 577 101.

22. KUM. ISHARA RAI K.R.,
W/O LATE K.B. RAVI RAJ RAI,
AGED ABOUT 21 YEARS,
R/O 'PARIJATHA', BEHIND RURAL POLICE STATION,
KALYAN NAGAR, JHOTHI NAGAR POST,
CHIKKAMAGALURU - 577 101.

23. MASTER THUSHER R RAI.
W/O LATE K.B. RAVI RAJ RAI,
AGED ABOUT 17 YEARS,
R/O PARIJATHA',
BEHIND RURAL POLICE STATION,
KALYAN NAGAR, JHOTHI NAGAR POST,
CHIKKAMAGALURU - 577 101
SINCE MINOR REPRESENTED
BY HIS MOTHER AND NATURAL GUARDIAN
SMT. DEVIKA R RAI.

…PETITIONERS

(BY SRI. GIRISH B. BALADARE, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA BY
CHIKKAMAGALURU TOWN POLICE STATION,
CHIKKAMAGALUR DISTRICT - 577 101
REPRESENTED BY STATE PUBLIC PROSECUTOR
HIGH COURT BUILDINGS,
BANGALORE - 560 001.

2. APPUSWAMY GOWDA,
S/O PUTTASWAMY GOWDA,
AGED ABOUT 67 YEARS,

R/AT DR. RAJKUMAR ROAD,
CHIKKAMAGALURU TOWN
CHIKKAMAGALURU.

…RESPONDENTS

(BY SMT. SOWMYA R, HCGP FOR R1)

THIS CRL.P IS FILED U/S.482(FILED U/S.528 BNSS) OF CR.P.C PRAYING TO QUASH THE ORDER DATED 02.09.2025 PASSED BY PRINCIPAL SENIOR CIVIL JUDGE AND CJM AT CHIKKAMAGALURU IN PCR NO.130/2025 BY REFERRING THE PRIVATE COMPLIANT TO SHO OF CHIKKAMAGALURU TOWN POLICE STATION, CHIKKAMAGALURU FOR INVESTIGATION FOR THE OFFENCE P/US/ 322, 320, 323, 314, 316, 61(1), 61(2) OF BNS AS PER ANNEXURE A.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: **HON'BLE MR. JUSTICE M.NAGAPRASANNA**

ORAL ORDER

The petitioners - accused Nos.1 to 23 are before this Court, seeking the following prayer:

> "a) Quash the Order dated 02.09.2025 passed by Prl. Senior Civil Judge and CJM at Chikkamagaluru in PCR 130/2025 by referring the private compliant to SHO of Chikkamagaluru Town Police Station, Chikkamagaluru registered in FIR Cr.No.170/2025 for the offence punishable under Section 322, 320, 323, 314, 316, 61(1), 61(2) of BNS registered by Chikkamagalur Town Police at Annexure-C.
>
> b) Gant such other relief's as this Hon'ble Court deems fit in the facts and circumstances of the case in the interest of justice and equity."

2. Heard Sri. Girish B. Baladare, learned counsel appearing for the petitioners, Smt. Sowmya R., learned HCGP appearing for respondent No.1 and have perused the material on record.

3. *Qua* the co-accused, this Court in Crl.P.No.2947/2026 dated 25.03.2026, on a procedural aberration, has quashed the proceedings and remitted the matter back to the hands of the concerned Court. This Court in Crl.P.No.2947/2026 has held as follows:

> "Heard Sri. Gagan Deep E, learned counsel and Sri. Shreerama Shreedhara Hegde, learned counsel appearing for the petitioners and Sri. B.N. Jagadeesha, learned Additional Special Public Prosecutor appearing for respondent No.1.
>
> 2. The petitioners are accused Nos.24 and 25. Respondent No.2 is the complainant. A private complaint comes to be registered invoking Section 23 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('the BNSS' for short), which comes to be referred for investigation by the concerned Court to the jurisdictional Police through order dated 02-09-2025, which becomes a crime in Crime No.170 of 2025. The complaint is registered on 06.10.2025. The petitioner is now knocking at the doors of this Court challenging the proceedings before the concerned Court.
>
> 3. The order dated 02-09-2025 reads as follows:
>
> "**ORDER**
>
> This Complaint is filed by the Complainant against the accused persons under Section 223 of BNSS., for the

offences punishable under Sections 322, 320, 323, 314, 316 and 61(1) and (2) of B.N.S 2023.

The brief facts stated in the Complaint is that:

The Complainant is the member of the Timber merchants Welfare Organization and Trust, Chikkamagaluru District, which is the registered body and the Memorandum of Association is registered in the Office of Sub Registrar, Chikkamagaluru. The Trust did not possess any movable or immovable properties at the time of registration, but as per the Memorandum of Association, the income and the property of the Organization has to be applied solely towards the promotion of the objects of the association. The Memorandum of Association of the Timber merchants and Trust, Welfare Organization Chikkamagaluru District has purchased the immovable property to an extent of 16,820 Sq. feet through a registered Sale deed. The said property was purchased on behalf of the District Timber Merchants Association. The Complainant is the member of the said Timber Merchants Welfare Organization and Trust. But, the accused No.1 to 23 have sold and conveyed the said suit property in favour of Accused No.24 and 25 vide Sale deed dtd: 18.12.2024 for total consideration of a Rs.2,52,00,000/-. Though the Complainant is the member of the Timber Merchants Welfare Organization and Trust, he is not a party to the said Sale deed nor he has given consent to the said Sale deed. The accused persons have not paid any amount to him as mentioned in the Sale deed. The accused persons have sold property without obtaining any permission and without going for a public auction. Thereafter, he lodged the complaint before a Town Police Station, but the Police did not take any action by stating that the matter is civil in nature. Hence, he has filed the present complaint before this Court with a prayer to refer the matter to the Town Police Station for investigation and to take action against the accused persons.

The Complainant has produced Xerox copies of Memorandum of Association, Sale deed dtd: 04.06.2013, Sale deed dtd: 18.12.2024, Police Complaint lodged before Town Police Station, Endorsement given by the Town Police Station, Chikkamagaluru and Complaint given to the Superintendent of Police, Chikkamagaluru. Upon going through the materials available on record, prima facie the Complainant has made out grounds to refer the matter to the Town Police Station for investigation. Therefore at this juncture, it is essential to refer the matter to the SHO of Town Police Station for investigation.

Accordingly, I proceed to pass the following:

ORDER

Register the case in PC register.
The matter is referred to the SHO of Town Police Station for investigations.

Await Report.
Call on 15/01/2026.

Sd/-
Prl. Sr. Civil Judge & CJM.,
Chikkamagaluru."

The concerned Court while referring the matter for investigation to the jurisdictional police appears to be oblivious to the procedure that is stipulated under Section 175 of the BNSS with regard to reference to the jurisdictional Police for investigation and the procedure to be followed prior to the reference. Section 175 of the BNSS and the procedure to be followed under the said section has borne interpretation at the hands of this Court in the case of **C.N. GOVINDARAJU V. STATE OF KARNATAKA**[1]. This court, in the aforesaid case observes as follows:

"……. ……. …….

11. But, what has merited consideration is the subsequent development after filing of the petition which is the judgment of the Apex Court in the case *Om Prakash* (supra). The private complaint against the petitioners comes to be registered invoking Section 223 of BNSS on 11-09-2024. The prayer sought in the private complaint is as follows:

> **"WHEREFORE, we most humbly pray that this Hon'ble Court be pleased to refer the above complaint to the jurisdictional police i.e., Bellandur Police for investigation under Section 175(3) of Bharatiya Nagarika Suraksha Sanhita, 2023 and to submit report before this Hon'ble Court, in the interest of justice."**
>
> (Emphasis added)

Investigation was sought from the hands of the jurisdictional police under Section 175(3) of the BNSS,

[1] **2025 SCC OnLine Kar 9959**

rightly so as by then BNSS was in place with effect from 01-07-2024. Since the complaint itself is registered after 01-07-2024, the procedure under BNSS ought to have been followed by the concerned Court in terms of Section 175(3) of BNSS. Section 175 of BNSS reads as follows:

> **"175. Police officer's power to investigate cognizable case.—(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIV:**
>
> Provided that considering the nature and gravity of the offence, the Superintendent of Police may require the Deputy Superintendent of Police to investigate the case.
>
> (2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.
>
> **(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.**
>
> (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."
>
> (Emphasis supplied)

Section 175 deals with Police Officer's power to investigate a cognizable offence. Sub-section (3) thereof mandates that any Magistrate empowered under Section 210 of the BNSS may, after considering the application supported by an affidavit 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 an investigation which would mean that prior to directing investigation to be ordered, the Police Officer of the jurisdictional police must be heard.

12. In the case at hand, the order of reference for investigation does not indicate following of any of the procedure as necessary in law. Whether this would vitiate the order of reference or otherwise, need not detain this Court for long or delve deep into the matter. The Apex Court in the case of *Om Prakash* (supra) considered this issue and held as follows:

"……

28. However, before we part with the matter, we deem it necessary to discuss the changes brought to the scheme of Section 156 of the Cr. P.C. by the enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, "the BNSS").

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 *parimateria* 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 *parimateria* 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).

32. The introduction of these changes by the legislature can be attributed to the judicial evolution of Section 156 of the Cr. P.C. undertaken by a number of decisions of this Court. In the case of *Priyanka Srivastava* v. *State of U.P.*, (2015) 6 SCC 287, **this Court held that prior to making an application to the Magistrate under Section 156(3) of the Cr. P.C., the applicant must necessarily make applications under Sections 154(1) and 154(3). It was further observed by the Court that applications made under Section 156(3) of the Cr. P.C. must necessarily be supported by an affidavit sworn by the applicant. The reason given by the Court for introducing such a requirement was that applications under Section 156(3) of the Cr. P.C. were being made in a routine manner and in a number of cases only with a view to cause harassment to the accused by**

registration of FIR. It was further observed that the requirement of supporting the complaint with an affidavit would ensure that the person making the application is conscious and also to see that no false affidavit is made. Once an affidavit is found to be false, the applicant would be liable for prosecution in accordance with law. This would deter him from casually invoking the authority of the Magistrate under Section 156(3). The relevant observations made by the Court are reproduced hereinbelow:

> ***"27.*** *Regard being had to the aforesaid enunciation of law, it needs to be reiterated that the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind. He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order. The present is a case where the accused persons are serving in high positions in the Bank. We are absolutely conscious that the position does not matter, for nobody is above the law. But, the learned Magistrate should take note of the allegations in entirety, the date of incident and whether any cognizable case is remotely made out. It is also to be noted that when a borrower of the financial institution covered under the Sarfaesi Act, invokes the jurisdiction under Section 156(3) Cr. P.C. and also there is a separate procedure under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, an attitude of more care, caution and circumspection has to be adhered to.*
>
> ***28.*** *Issuing a direction stating "as per the application" to lodge an FIR creates a very unhealthy situation in society and also reflects the erroneous approach of the learned Magistrate. It also encourages unscrupulous and unprincipled litigants, like Respondent 3, namely, Prakash Kumar Bajaj, to take adventurous steps with courts to bring the financial institutions on their knees. As the factual exposition would reveal, Respondent 3 had prosecuted the earlier authorities and after the matter is dealt with by the High Court in a writ petition recording a settlement, he does not withdraw the criminal case and waits for some kind of situation where he can take vengeance as if he is the emperor of all he surveys. It is interesting to note that during the tenure of Appellant 1, who is presently occupying the position of Vice-President, neither was the loan taken, nor was the default made, nor was any action under the SARFAESI Act taken. However, the action under the SARFAESI Act was taken on the second time at the instance of the present Appellant 1. We are only stating about the devilish design of Respondent 3 to harass the appellants with the sole intent to avoid the payment of loan. When a citizen avails a loan from a financial institution, it is his obligation to pay back and not play truant or for that matter play possum. As we have noticed, he has been able to do such adventurous acts as he has the embedded conviction that he will not be taken to task because an application under Section 156(3) Cr. P.C. is a simple application to the court for issue of a direction to the investigating agency. We have been apprised that a carbon copy of a document is filed to show*

the compliance with Section 154(3), indicating it has been sent to the Superintendent of Police concerned.

29. *At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the Code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellow citizens, efforts are to be made to scuttle and curb the same.*

30. *In our considered opinion, a stage has come in this country where Section 156(3) Cr. P.C. applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.*

31. *We have already indicated that there has to be prior applications under Sections 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit is so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in* Lalita Kumari, [(2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] *are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR."*

(Emphasis supplied)

33. In a recent pronouncement of this Court in the case of *Babu Venkatesh* v. *The State of Karnataka*, (2022) 5 SCC 639, the observations made in *Priyanka*

Srivastava (supra) were referred to and it was held as follows:

> *"24. This Court has clearly held that, a stage has come where applications under Section 156(3) Cr. P.C. are to be supported by an affidavit duly sworn by the complainant who seeks the invocation of the jurisdiction of the Magistrate.*
>
> *25. This Court further held that, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also verify the veracity of the allegations. The Court has noted that, applications under Section 156(3) Cr. P.C. are filed in a routine manner without taking any responsibility only to harass certain persons.*
>
> *26. This Court has further held that, prior to the filing of a petition under Section 156(3) Cr. P.C., there have to be applications under Sections 154(1) and 154(3) Cr. P.C. This Court emphasises the necessity to file an affidavit so that the persons making the application should be conscious and not make false affidavit. With such a requirement, the persons would be deterred from causally invoking authority of the Magistrate, under Section 156(3) Cr. P.C. Inasmuch as if the affidavit is found to be false, the person would be liable for prosecution in accordance with law."*

(Emphasis supplied)

34. In light of the judicial interpretation and evolution of Section 156(3) of the Cr. P.C. by various decisions of this Court as discussed above, it becomes clear that the changes introduced by Section 175(3) of the BNSS to the existing scheme of Section 156(3) merely codify the procedural practices and safeguards which have been introduced by judicial decisions aimed at curbing the misuse of invocation of powers of a Magistrate by unscrupulous litigants for achieving ulterior motives.

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 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."

(Emphasis supplied)

In the light of the issue already considered by the Apex Court, the order of reference is rendered unsustainable for it being in violation of sub-section (3) of Section 175 of BNSS, inasmuch as the Police Officer was not heard prior to order of reference for

investigation to the jurisdictional Police. In that light, the petition deserves to succeed, *albeit* in part and the matter requires to be remitted back to the hands of the learned Magistrate to redo the exercise of reference.

13. The Apex Court elucidates the reason behind the change and observes that the hearing of the concerned police officer before proceeding to issue direction for reference under Section 175(3) of the BNSS, fixes a greater accountability on the police officer responsible for registering a FIR under Section 175(3) of the BNSS. It further mandates that the concerned Court to consider the submissions of the concerned police officer and ensures that the Magistrate would apply his mind while referring the matter for investigation on consideration of the complaint and submissions of the police officer.

14. This Court is coming across plethora of cases where the concerned Courts do not follow the conditions stipulated in Section 175 or Section 223 of the BNSS. The concerned Courts should mandatorily follow the procedure stipulated in Section 175(3) while referring the matter to investigation by the jurisdictional police. The marked difference of Section 175(3) of the BNSS and Section 156(3) of the IPC, the earlier regime is that, the opinion of the police officer to whom the matter was to be referred for investigation is a prerequisite for reference. It was not even a requisite. Section 175(3) has brought about a change. The change is, prior to referring the matter for investigation under Section 175(3) of the BNSS, the police officer is required to be heard. Therefore, this procedure under Section 175(3) of the BNSS should be mandatorily followed by every Court, be it the Magistrate or the Court of Sessions of particular jurisdiction, so that it would avoid mushrooming of litigations before this Court alleging that particular procedural aberration.

15. For the aforesaid reasons, the following:

ORDER

(i) Writ Petition is allowed in part.

(ii) The order of reference dated 26-10-2024 and the subsequent registration of FIR pursuant to the order of reference stand quashed.

(iii) The matter is remitted back to the hands of the concerned Court to redo the exercise in terms of sub-section (3) of Section 175 of BNSS as is held by

the Apex Court bearing in mind the observations made in the course of the order. The said exercise shall be concluded within 4 weeks from the date of receipt of a copy of this order.

(iv) The Registry is directed to circulate this order to all the concerned Courts for strict adherence of the procedure stipulated under section 175(3) of the BNSS to all the complaints that at registered post 01.07.2024."

(Emphasis supplied)

The order passed by the concerned Court referring the matter for investigation though is reasoned and lengthy, it suffers from procedural aberration, but not non-application of mind.

4. In the light of the aforesaid judgment of this Court and the procedures as stipulated under Section 175 of the BNSS not being followed, I deem it appropriate to obliterate the order and remit the matter back to the hands of the concerned Court for consideration afresh, bearing in mind the observations made in the course of the order.

5. For the aforesaid reasons, the following:

ORDER

(i) The criminal petition is **allowed in part**.

(ii) The order dated 02-09-2025 passed by the Principal Senior Civil Judge and CJM, Chikkamagaluru in P.C.R.No.130/2025 stands quashed *qua* the petitioners.

(iii) The matter is remitted back to the hands of the concerned Court to pass necessary orders strictly in consonance with sub-section (3) of Section 175 of the BNSS bearing in mind the observations made in the course of this order. The said exercise shall be concluded within 4 weeks from the date of receipt of the copy of this order.

Ordered accordingly."

4. In the light of the aforesaid judgment of this Court and the procedures as stipulated under Section 175 of the BNSS not being followed, I deem it appropriate to obliterate the

order and remit the matter back to the hands of the concerned Court for consideration afresh, bearing in mind the observations made in the course of the order.

5. For the aforesaid reasons, the following:

ORDER

(iv) The criminal petition is **allowed in-part**.

(v) The order dated 02-09-2025 passed by the Principal Senior Civil Judge and CJM, Chikkamagaluru in P.C.R.No.130/2025 stands quashed *qua* these petitioners.

(vi) The matter is remitted back to the hands of the concerned Court to pass necessary orders strictly in consonance with sub-section (3) of Section 175 of the BNSS bearing in mind the observations made in the course of this order. The said exercise shall be concluded within 4 weeks from the date of receipt of the copy of this order.

Ordered accordingly.

Sd/-
(M.NAGAPRASANNA)
JUDGE

GJM
List No.: 1 Sl No.: 42