HC-KAR

NC: 2026:KHC:59483
CRL.P No. 4866 of 2025

CNR: KAHC010224062025

®

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

CRIMINAL PETITION NO. 4866 OF 2025 (482(Cr.PC) / 528(BNSS)-)

BETWEEN:

1. MANJUNATH
   S/O BASAVARAJU
   AGED ABOUT 26 YEARS

2. BASAVARAJU
   S/O MADAIAH.
   AGED ABOUT 56 YEARS

3. JYOTHI
   W/O BASAVARAJU
   AGED ABOUT 49 YEARS

   ALL ARE RESIDING AT
   THIMMANAKOPPALU VILLAGE
   PANDAVAPURA TALUK
   MANDYA DISTRICT
   PIN 571434

...PETITIONERS

(BY SRI. SHARATH J M.,ADVOCATE)

AND:

1. STATE BY KENGERI POLICE STATION
   REP BY. STATE PUBLIC PROSECUTOR,
   HIGH COURT BULDING,
   BENGALURU-560 001.

2. LEELAVATHI
   W/O SATHISH K.S
   AGED ABOUT 30 YEARS

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R/AT NO.597, 6TH MAIN ROAD
2ND CROSS, BHUVANSESHWARINAGAR
NAGADEVANAHALLI, KENGERI
BENGALURU-560056

…RESPONDENTS

(BY SMT. RASHMI PATEL., HCGP FOR R1;
SRI. VIJAY SHETTY., ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 CR.PC (FILED U/S 528 BNNS) PRAYING TO CALL FOR RELEVANT RECORDS AND QUASH THE FIR IN CRIME NO.128/2025 BY KENGERI POLICE STATION FOR THE O/P/U/S 506, 504, 120B, 406, 420 OF IPC NOW PENDING ON THE FILE OF VI ACMM BENGALURU IN RESPECT OF PETITIONERS/ACCUSED NO.1 TO 3 AND ETC.

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

CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

ORAL ORDER

1. The petitioners are before this Court seeking for the following reliefs;

> *a. Call for relevant records and quash the FIR in Crime No.128/2025 by Kengeri Police Station for the o/p/u/s 506, 504, 120B, 406, 420 of IPC now pending on the file of VI ACMM Bengaluru in respect of petitioners/accused no.1 to 3;*
>
> *b. Grant such other relief or reliefs as this Hon'ble Court deems fit in the facts and circumstances of the case, in the interest of justice and equity.*

2. A complaint having been filed by the respondent before the jurisdictional police, no action having been taken by the Kengeri Police Station, the same was escalated to the Commissioner of Police. When no

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action was taken by the Commissioner of Police, a private complaint came to be filed under Section 223 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter for brevity referred to as BNSS).

3. The learned Magistrate, on considering the complaint by way of his order dated 3.3.2025, referred the matter to the Kengeri Police Station for investigation under Section 175 (3) of the BNSS. It is challenging the same, the petitioner is before this Court.

4. Sri.Sharath J.M., learned counsel for the petitioners, would submit that in terms of Section 175 (3) of the BNSS, it is required that the Magistrate would have to hear the concerned Police Officer as to why the Police Officer had refused for registration of the FIR and only thereafter refer the matter for investigation after application of his judicial mind. He refers to Section 175 of BNSS, which is reproduced hereunder for easy reference:

> ***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:*

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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.

5. His submission is that subsection (3) of Section 175 of BNSS is a departure from Section 156 of the CrPC and in terms thereof, there is a particular requirement that the submission made in this regard by the Police Officer is heard by the Magistrate before ordering an investigation. He relies upon the decision of the Hon'ble Apex Court in the case of ***Om Prakash Ambadkar vs. The State of Maharashtra & ors.,*** [Criminal Appeal No.352/2020], more particularly Paras 31, 35 and 37

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thereof which are reproduced hereunder for easy reference:

> ***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).*
>
> ***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.*
>
> ***37.*** *The impugned order passed by the High Court is set aside. The order passed by the Magistrate directing police investigation under Section 156(3) of the Cr.P.C. is also set aside.*

6. By relying on ***Om Prakash Ambadkar***, his submission is that the Hon'ble Apex Court compared Section 175 (3) of the BNSS with Section 156(3) of

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the Cr.P.C. and determined the prominent changes that have occurred.

7. One of them being that the Magistrate is required to consider the submission of the officer in charge of the police station as regards the refusal to register a FIR before issuing any directions under Section 175 (3) of BNSS. He therefore submits that where the police officer had not been heard before referring the matter for investigation, the Hon'ble Apex Court set aside the order passed by the Magistrate directing police for investigation under Section 156(3) of the CrPC. On all the above basis, he submits that a perusal of the impugned order does not indicate that the jurisdictional police were heard in the matter in terms of Section 175 (3) of the BNSS requiring the order to be set aside.

8. Sri. Vijay Shetty, learned counsel for respondent no.2 does not dispute the situation but however submits that if the order were to be set aside, the matter may be remanded to the learned Magistrate for fresh consideration by considering the submissions to be made by the jurisdictional police.

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9. Heard Sri. Sharath J.M., learned counsel for the petitioner, Sri. B. Vijay Shetty, learned counsel for respondent no.2, Ms.Rashmi Patel, learned HCGP for respondent no.1. Perused papers.

The short question that would arise for determination is whether a Magistrate can refer any private complaint for investigation under subsection (3) of Section 175 of BNSS without hearing the submission of the jurisdictional police as to why the complaint filed before the police was not in the first place registered?

10. The above issue is no longer res integra. The Hon'ble Apex Court, by a detailed judgment in ***Om Prakash Ambadkar*** has considered the difference between the earlier Section 156 (3) of Cr.P.C. and Section 175 (3) of BNSS and held that one of the changes is a specific requirement for consideration and submission of the officer in charge of the police station as regards the refusal to register a FIR before issuing any direction under Section 175(3) of BNSS.

11. Hence, post the coming into force of the BNSS, if a private complaint were to be filed before the Magistrate on account of the criminal complaint filed

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before the jurisdictional police not having been acted upon, it is mandatory for the Magistrate to hear the submission of the jurisdictional police officer as to why the registration of the FIR was refused in the first place and thereafter apply his mind and consider whether the matter is required to be referred to investigation or not. In that view of the matter, this Court passes the following:

ORDER

i) Criminal petition is ***allowed***.

ii) The order dated 3.3.2025 passed by 6th ACJM, Bengaluru is set aside. The matter is remanded to the 6th ACJM, Bengaluru, for fresh consideration in compliance with the direction issued by the Hon'ble Apex Court in ***Om Prakash Ambadkar's*** case and pass necessary orders thereon.

iii) The Registrar General is directed to forward a copy of the order in the case of ***Om Prakash Ambadkar vs. The State of Maharashtra & ors.,*** [Criminal Appeal No.352/2020] to all the Magistrates dealing with private complaints to apply the ruling laid down in that matter so as

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to avoid a wrong reference to investigation as that done in the present matter.

iv) It is made clear that this Court has not made any observation on the merits of the matter.

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(SURAJ GOVINDARAJ)
JUDGE

PRS
List No.: 1 Sl No.: 5