

the complaint under Section 175(3) BNSS and directed the petitioner to lead his preliminary evidence. Aggrieved from the same, the petitioner is before this Court by way of filing the present petition.

3. It has been contended by the learned counsel for the petitioner that on examination of the complaint, cognizable offences are found to have been made out. However, the learned trial Court has failed to appreciate the same. He submits that in view of the law laid down in case *Lalita Kumari Vs. Govt. of U.P. & others, 2014 (2) SCC 1, Farukh Vs. State of Haryana, Law Finder Doc Id#1928420* and *Balkar Singh @ Balbir Singh Vs. State of Punjab, CRR-706-2024, decided on 10.04.2024*, it was mandatory for the learned trial Court to direct the State to register the FIR. Hence, the view taken by the Ld. Trial Court is unsustainable in the eyes of law and the same is liable to be set aside.

4. After hearing learned counsel for the petitioner and perusing the record, it is apparent that the petitioner before this Court is the complainant, who lodged the complaint. As evident, the Ld. Trial Court before passing of the impugned order, had sought the report from the respondent-State wherein it was mentioned that it was a case of civil nature and the civil suit is already pending adjudication.

5. To understand the controversy in hand, the statutory provisions of Sections 175 and 223 BNSS are necessary to be considered, which are reproduced as under:-

“Section 175 BNSS:- 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.”

“Section 223 BNSS:- Examination of complainant

(1) A Magistrate having jurisdiction while taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard:

Provided further that when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 212:

Provided also that if the Magistrate makes over the case to another Magistrate under section 212 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

(2) A Magistrate shall not take cognizance on a complaint against a public servant for any offence alleged to have been committed in course of the discharge of his official functions or duties unless-

(a) such public servant is given an opportunity to make assertions as to the situation that led to the incident so alleged; and

(b) a report containing facts and circumstances of the incident from the officer superior to such public servant is received.”

6. Hon'ble Apex Court has time and again discussed the scope of Section 156(3)Cr.P.C/175(3) BNSS. In a recent judgement of ***Om Prakash Ambadkar vs The State Of Maharashtra 2025 INSC 139***, decided on 16 January, 2025, Hon'ble Supreme Court has held as under:-

“10. Ordinarily, Section 156(3) of the Cr.P.C. is invoked by the complainant when the police authorities decline to register a First Information Report. In such circumstances, a private complaint may be made in the court of the Judicial Magistrate and the complainant may pray that police investigation be ordered under Section 156(3) of the Cr.P.C. However, it is the discretion of the concerned Magistrate whether to order police investigation under Section 156(3) of Cr.P.C. or take cognizance upon the complaint and issue process or dismiss the complaint under Section 203 of Cr.P.C. Over a period of time and in view of many decisions of this Court, if the officer in-charge of the concerned Police Station for some reasons declines to register the FIR, then the law has left it open for the complainant to file an appropriate application before the Magistrate and pray for police investigation. Once an order is passed for police investigation under Section 156(3) of the Cr.P.C., then it becomes a police case. At the end of the investigation the police may either file a charge-sheet or file an appropriate closure report.

11. However, what is important to observe is that whenever any application is filed by the complainant before the Court of Judicial Magistrate seeking police investigation under Section 156(3) of the Cr.P.C., it is the duty of the concerned Magistrate to apply his mind for the purpose of ascertaining whether the allegations levelled in the complaint constitute any cognizable offence or not. In other words, the Magistrate may not undertake the exercise to ascertain whether the complaint is false or otherwise, however, the Magistrate is obliged before he proceeds to pass an order for police investigation to closely consider whether the necessary ingredients to constitute the alleged offence are borne out on plain reading of the complaint.”

7. On perusal of the facts and circumstances and law laid down by the Hon'ble Supreme Court, it is evident that the Magistrate on receiving the complaint is well in his jurisdiction to exercise the various options available to

him and the impugned order has been passed by the learned Magistrate while exercising the jurisdiction as available to him. It is evident that the trial Court had directed the petitioner to lead his preliminary evidence. Besides this, the petitioner has an alternative remedy available to assail the order. There is no denial to the law relied upon by the petitioner, however, in the facts and circumstances of the present case, the same is distinguishable. Thus, this Court does not find any infirmity in the impugned order passed by the trial Court. Accordingly, the present petition stands dismissed, however, the petitioner would be at liberty to avail his remedies as available to him under the law.

09.07.2025

Parveen kumar

(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned :Yes/No
Whether reportable :Yes/No