2026:AHC:214563

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 9326 of 2026

Sandhya Jaisawal

…..Appellant(s)

Versus

State of U.P. and Another

…..Respondent(s)

Counsel for Appellant(s)	:	Ajay Tripathi, Surya Prakash Pandey
Counsel for Respondent(s)	:	Jai Prakash Singh, G.A.

Court No. – 91

AFR
Reserved On 30.9.2026
Delivered On 13.10.2026

HON'BLE SANTOSH RAI, J.

1. Heard Sri Ajay Tripathi, learned counsel for the appellant, Sri Raju Chaudhary, holding brief of Sri Jai Prakash Singh, learned counsel for opposite party no.2; Sri Rajesh Kumar Shukla, learned AGA for the State and perused the material on record.

2. The present criminal appeal has been filed by the appellant with a prayer to set aside the impugned order dated 2.9.2026 passed by Special Judge (SC/ST Act), Varanasi in Criminal Misc. Case No.454 of 2026 (Sushila Devi vs. S.I. Sandhya Jaisawal & Ors.), under Section 173(4) BNSS, P.S.- Cholapur, District- Varanasi.

3. An application under Section 173(4) BNSS was filed in the court of the Additional Sessions Judge/Special Judge (SC/ST Act), Varanasi by opposite party no.2 Sushila Devi wife of Bhaiyalal, resident of Village Dasnipur, Police Station Cholapur, District Varanasi. She alleged that on 22.07.2026, at about 2:00–3:00 a.m., Sub-Inspector Sandhya Jaiswal, along with two unknown police personnel, forcibly entered her house and allegedly used caste-related derogatory words against the applicant and her family members. It was further alleged that the said police personnel forcibly took away the applicant's son, Rohit Kumar Gautam, and illegally detained him at Police Station Cholapur without disclosing the grounds of arrest. The applicant alleged that the FIR against her son was subsequently registered at about 1:58 p.m., whereas his arrest was shown on 23.07.2026 at about 2:00 a.m., indicating illegal detention for more than 24 hours. The applicant further alleged that she possessed a call recording of her conversation with Sub-Inspector Sandhya Jaiswal and that CCTV footage of the police station could substantiate the alleged illegal detention. She also alleged previous enmity with Anjana Kumari, against whom her son had lodged a criminal case, and claimed that the present proceedings were initiated to falsely implicate her son. Despite approaching the local police authorities and higher police officials, no FIR was registered. Accordingly, the applicant prayed for a direction to the Station House Officer, Police Station Cholapur, District Varanasi, to register an FIR and conduct investigation in accordance with law.

4. In brief the grounds of appeal are that the application under Section 173(4) BNSS has been allowed mechanically, without proper consideration of the police report dated 25.08.2026, the appellant's version and the material available on record. It is submitted that the son of Opposite Party No.2 was an accused in Case Crime No. 300 of 2026 under Sections 115(2), 69 and 351(3) BNS, Police Station Cholapur, Varanasi, in which the appellant was the Investigating Officer, and the present proceedings were initiated against her in the backdrop of the said case. The learned Special court failed to appreciate that Rohit Kumar was apprehended on 22.07.2026 on receipt of information regarding his presence and was released on supurdginama to his mother on the same day, and therefore the allegation of illegal detention for more than 24 hours was disputed by the appellant and not supported by the contemporaneous record. It is further contended that the appellant, being a Government servant, had acted in discharge of her official duties and in good faith, but the learned Special court failed to properly consider the assertions of the public servant. Thus, the impugned order suffers from misreading and misappreciation of the material on record, non-application of judicial mind and failure to consider the relevant statutory provisions, and is consequently liable to be set aside.

5. The gist of impugned order dated 2.9.2026 is as under:-

> *"The Special Judge, SC/ST Act, Varanasi, observed that the police records of Police Station Cholapur contained material discrepancies. Although the fact of taking Rohit away at night was admitted, the supurdginama regarding his custody was not produced along with the police report. The video recording and other material submitted by the*

applicant, Sushila Devi, prima facie indicated that the police had taken Rohit away at night and that the accused persons had allegedly entered the applicant's house, abused and humiliated her using caste-related words. The applicant had also submitted written transcripts of the CCTV footage and conversation. Accordingly, the application under Section 173(4) BNSS was allowed, and the Station House Officer, Police Station Cholapur, was directed to register an FIR forthwith on the basis of the applicant's complaint, ensure an impartial investigation by an independent gazetted officer, and submit the investigation report to the Court within 15 days. A copy of the order was directed to be sent to the Station House Officer for compliance."

6. It would be just and proper, before examining the legality of the impugned order, to briefly notice the principles laid down by the Hon'ble Supreme Court governing the exercise of judicial power under Sections 156(1) and 156(3) Cr.P.C., particularly that such power is required to be exercised judicially, with due application of mind, and not mechanically or as a matter of course.

7. In **State of Haryana & Ors. Vs. Bhajan Lal & Ors. 1992 Supp (1) SCC 335**, the Hon'ble Supreme Court held in para 102 as under:-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we have given the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie

constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

8. In **Anil Kumar & Ors. Vs. M.K. Aiyappa & Anr. (2013) 10 SCC 705**, the Hon'ble Supreme Court held in para 11 as under:-

"11. The scope of Section 156(3) CrPC came up for consideration before this Court in several cases. This Court in Maksud Saiyed case [(2008) 5 SCC 668 : (2008) 2 SCC (Cri) 692] examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held that where jurisdiction is exercised on a complaint filed in terms of Section 156(3) or

Section 200 CrPC, the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) CrPC, should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation."

9. In **Priyanka Srivastava & Anr. Vs. State of U.P. & Ors. (2015) 6 SCC 287**, the Hon'ble Supreme Court laid down following principles in para 20 and 27 to 31:-

"20. The learned Magistrate, as we find, while exercising the power under Section 156(3) CrPC has narrated the allegations and, thereafter, without any application of mind, has passed an order to register an FIR for the offences mentioned in the application. The duty cast on the learned Magistrate, while exercising power under Section 156(3) CrPC, cannot be marginalised. To understand the real purport of the same, we think it apt to reproduce the said provision:-

"156.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 XIII.

(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 190 may order such an investigation as abovementioned.

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) CrPC 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) CrPC 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) CrPC 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."

10. In **Ramdev Food Products Private Limited Vs. State of Gujarat (2015) 6 SCC 439**, the Hon'ble Supreme Court held in para 20, 38 as under:-

"20. It has been held, for the same reasons, that direction by the Magistrate for investigation under Section 156(3) cannot be given mechanically. In Anil Kumar v. M.K. Aiyappa [(2013) 10 SCC 705 : (2014) 1 SCC (Cri) 35] , it was observed : (SCC p. 711, para 11)

> *11. "The scope of Section 156(3) CrPC came up for consideration before this Court in several cases. This Court in Maksud Saiyed case [Maksud Saiyed v. State of Gujarat, (2008) 5 SCC 668 : (2008) 2 SCC (Cri) 692] examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held that where jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 CrPC, the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) CrPC, should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation."*

The above observations apply to category of cases mentioned in para 120.6 in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524]."

38. In Devarapalli Lakshminarayana Reddy v. V. Narayana Reddy [(1976) 3 SCC 252 : 1976 SCC (Cri) 380] , National Bank of Oman v. Barakara Abdul Aziz [(2013) 2 SCC 488 :

(2013) 2 SCC (Cri) 731] , Madhao v. State of Maharashtra [(2013) 5 SCC 615 : (2013) 4 SCC (Cri) 141] , Rameshbhai Pandurao Hedau v. State of Gujarat [(2010) 4 SCC 185 : (2010) 2 SCC (Cri) 801] , the scheme of Sections 156(3) and 202 has been discussed. It was observed that power under Section 156(3) can be invoked by the Magistrate before taking cognizance and was in the nature of pre-emptory reminder or intimation to the police to exercise its plenary power of investigation beginning with Section 156 and ending with report or charge-sheet under Section 173. On the other hand, Section 202 applies at post-cognizance stage and the direction for investigation was for the purpose of deciding whether there was sufficient ground to proceed.

11. In **Babu Venkatesh & Ors. Vs. State of Karnataka & Anr. (2022) 5 SCC 639**, the Hon'ble Supreme Court held in para 25 as under:-

"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)CrPC are filed in a routine manner without taking any responsibility only to harass certain persons."

12. Accordingly, an application merely described or treated as an application under Section 173(4) BNSS cannot, by that nomenclature, confer upon the Special Court the power to order registration of an FIR. If the substance of the prayer is for a direction to the police to register a criminal case and investigate, the judicial authority must examine whether the application satisfies the requirements of Section 175(3) BNSS and whether the conditions precedent for exercise of that jurisdiction exist. The distinction is material because Section 175(3) BNSS involves a judicial direction for investigation, and such power is required to be exercised upon proper application of mind to the allegations, the material placed by the applicant, the prior approach to the police authorities and the necessity for investigation by the police. Therefore, an

order allowing an application under Section 173(4) BNSS, without considering the statutory requirements of Section 175(3) & (4) BNSS, cannot be sustained merely on the ground that the applicant had invoked Section 173(4) BNSS.

13. The impugned order passed by the Special Judge (SC/ST Act), Varanasi, in Criminal Misc. Case No.454 of 2026, Sushila Devi v. S.I. Sandhya Jaiswal and Others, under Section 173(4) BNSS, suffers from a manifest illegality and non-compliance with the mandatory statutory procedure. The allegations being directed against police personnel in respect of acts allegedly committed in the course of their official duties, the Special Court was required to consider and follow the specific safeguards engrafted in Sections 175(3) and 175(4) BNSS, including the prescribed procedure applicable to a complaint against a public servant. The impugned order directs registration of the FIR and investigation by another officer without recording any finding demonstrating compliance with the aforesaid statutory requirements. Such directions, passed without adverting to the mandatory procedure and the material circumstances of the case, cannot be sustained in law.

14. It would, therefore, be just and proper to briefly notice the statutory scheme under Section 173(4), Section 175(3) & (4) of the BNSS, read with the principles recently enunciated by the Hon'ble Supreme Court in *Om Prakash Ambadkar Vs. State of Maharashtra & Ors. (2026) 2 SCC 622 and XXX Vs. State of Kerala & Ors. (2026) 6 SCC 770* cases which govern the manner in which such

applications are required to be considered and the judicial duty of the Court while exercising the said jurisdiction.

15. **Section 173 B.N.S.S.:** ***Information in cognizable cases***:-

> *"(1)……*
>
> *(2)……..*
>
> *(3)…….*
>
> *(4) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1), may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Sanhita, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence failing which such aggrieved person may make an application to the Magistrate."*

16. Section 175 B.N.S.S. provides as under:-

> *"**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."

17. In **Om Prakash Ambadkar Vs. State of Maharashtra & Ors. (2026) 2 SCC 622**, the Hon'ble Supreme Court held in para 31 to 36 as under:-

"31. Section 175 BNSS corresponds to Section 156CrPC. Sub-section (1) of Section 175 BNSS is in pari materia with Section 156(1)CrPC 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 BNSS is identical to Section 156(2)CrPC. Section 175(3) 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)CrPC.

32. However, unlike Section 156(3)CrPC, any Magistrate, before ordering investigation under Section 175(3) 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) BNSS;

(b) Conduct such inquiry as he thinks necessary; and

(c) Consider the submissions made by the police officer.

33. Sub-section (4) of Section 175 BNSS is a new addition to the scheme of investigation of cognizable cases when compared with the scheme previously existing in Section 156CrPC. 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 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.

34. A comparison of Section 175(3) BNSS with Section 156(3)CrPC 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. The introduction of these changes by the legislature can be attributed to the judicial evolution of Section 156CrPC undertaken by a number of decisions of this Court. In Priyanka Srivastava v. State of U.P. [Priyanka Srivastava v. State of U.P., (2015) 6 SCC 287 : (2015) 3 SCC (Civ) 294 : (2015) 4 SCC (Cri) 153] , this Court held that prior to making an application to the Magistrate under Section 156(3)CrPC, 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)CrPC 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)CrPC 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.

36. It was further observed in Priyanka Srivastava [Priyanka Srivastava v. State of U.P., (2015) 6 SCC 287 : (2015) 3 SCC (Civ) 294 : (2015) 4 SCC (Cri) 153] 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).”

18. In **XXX Vs. State of Kerala & Ors. (2026) 6 SCC 770**, the Hon’ble Supreme Court held in para 27, 28, 32 to 35, 46 to 48, 61 to 67 as under:-

“27. A bare reading of Section 175 BNSS reveals the marginal note as “police officer's power to investigate cognizable case”. While sub-section (1) confers power on any officer in charge of a police station to investigate a cognizable case and sub-section (2) provides the effect of investigation by a police officer not empowered under sub-section (1), sub-sections (3) and (4) relate to the power of a Magistrate, empowered under Section 210 BNSS to order investigation as “above-mentioned” i.e. an investigation that a police officer is required to undertake as in sub-section (1) of Section 175. Reference to Section 210 in sub-sections (3) and (4) is for the purpose of drawing guidance as to the class of Magistrate empowered to take cognizance of an offence.

28. We are minded to hold that by the very nature of its contents, sub-sections (3) and (4) of Section 175 could have formed a different section of BNSS altogether. Suffice it to record at the outset that BNSS being a statute of recent origin, which has been enacted after exactly half a century of its precursor (CrPC) governing the field of criminal procedure, one would have expected the legislative drafting thereof to be of the highest order with clear expression of the will of the people. Sadly, Section 175 BNSS is somewhat confusing and requires ironing out the creases in the legislation without altering the material of which it is woven.

32. Sub-section (4) of Section 175 BNSS is a provision that was absent in CrPC. It reads as follows:

"175. (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."

33. Sub-section (4) prescribes a special procedure to be followed before an order for investigation is made in cases involving offences committed by a public servant "in course of the discharge of his official duties". Having regard to the modal verb "may", appearing in sub-section (4), a Judicial Magistrate has the discretion to order an investigation upon: (i) calling for a report regarding the incident from an officer superior to the accused public servant; and (ii) considering the version of the public servant concerning the incident. It is "subject to" these conditions, that "(A)ny Magistrate …, may, …", if satisfied of sufficient grounds existing, pass an order for investigation against the accused public servant.

34. The legislative intention behind insertion of sub-section (4) of Section 175 is clear: Parliament intended it as an additional safeguard for public servants when a complaint is made against them. Cognizant of practical realities and to prevent false or frivolous allegations, it appears to us that the mandate is to obtain a report from the accused public servant's superior officer and to extend to such public servant an opportunity to explain his side of the story. While society's interest is served by prosecuting offenders, it is equally vital, if not more, to ensure that prosecution is not launched against individuals, including public servants, to settle a score or wreak vengeance or put them in such an awkward position that it becomes difficult for them to act in a similar future occasion. The responsibility, nay duty, after all, is not just to pursue the actual culprit, but also to protect the innocent from being falsely implicated, wrongly accused and unnecessarily victimised.

35. Having analysed sub-section (4) of Section 175, its scope, and the object it seeks to achieve, the question that now arises for consideration is the manner in which such provision has to be interpreted—whether sub-section (4) stands alone or serves as an adjunct to sub-section (3) or is it to be read as a proviso to sub-section (3)?

Construction of Section 175(4)

46. Having held that sub-section (4) of Section 175 is neither an independent/a standalone provision nor a proviso to sub-section (3) thereof, the next question that arises is in relation to the manner in which it ought to be construed.

47. On a plain and contextual reading of the scheme of Section 175, we find that sub-section (3) vests the Judicial Magistrate (empowered under Section 210) with the power to order investigation, while sub-section (4) while conferring similar power additionally prescribes a special procedural safeguard to be observed by the Judicial Magistrate (empowered under Section 210) where the proposed direction could concern a public servant. While the authority to direct investigation flows from sub-section (3) as well as from sub-section (4), the latter provides a qualifying procedural layer.

48. Ordinarily, sub-sections of a section of an Act usually deal with related, parallel aspects with one sub-section dealing with a general principle and the other providing for a specific aspect, on its own terms. Viewed in this light, sub-section (3) lays down the general principle whereas sub-section (4) dives into specifics of public servants in the given situation, introducing an additional procedural requirement before the power to order investigation is exercised. Consequently, the exercise of power to order investigation must be preceded by satisfaction of not only the conditions expressly stated in sub-section (4) but also those implicit and traceable to sub-section (3).

Summary of the discussion

61. Sub-section (3) and sub-section (4) of Section 175 are not isolated silos but must be read in harmony with sub-section (4) forming an extension of sub-section (3).

62. The power to order investigation is conferred upon a Judicial Magistrate by sub-section (3) of Section 175. Sub-section (4) of Section 175 too confers such power but prescribes a special procedure to be followed in case of a complaint against a public servant alleging commission of offences in the discharge of official duties.

63. The expression "complaint" in sub-section (4) of Section 175 does not encompass oral complaints. Having regard to the text of the provision and the context in which it is set, and in light of our conclusion that sub-section (4) is not a provision which stands alone or is a proviso to sub-section (3), the term must derive its meaning in sync with allegations of cognizable offence levelled in an application of the nature referred to in sub-section (3) of Section 175 i.e. an application supported by affidavit.

When must Section 175(4) be invoked—a guide for Judicial Magistrates

64. Having clarified the symbiotic relationship between sub-sections (3) and (4) of Section 175, it is indispensable to indicate the circumstances in which the procedure under sub-section (4) could get activated. Significantly, sub-section (4) of Section 175 uses the modal verb "may" and not "shall". In the context where it finds place and the object that is sought to be achieved, "may" has to be read as "may", bearing an element of discretion, and not "shall". The principles, discussed in the following paragraphs, are intended to guide Judicial Magistrates at the stage of considering applications under Section 175.

65. Upon receiving a complaint under sub-section (4) of Section 175 BNSS alleging commission of an offence by a public servant arising in course of the discharge of his official duties, the Magistrate may do either of the following:

65.1. Reading the complaint, if the Judicial Magistrate is prima facie satisfied that commission of the alleged act giving rise to an offence arose in course of discharge of official duties by the public servant, such Magistrate may not have any option other than following the procedure prescribed under sub-section (4) of Section 175 of calling for reports from the superior officer and the accused public servant.

65.2. Or, on a consideration of the complaint, where the Judicial Magistrate entertains a prima facie doubt depending upon the circumstances as to whether the offence alleged to have been committed by the public servant arose in course of discharge of his official duties, such Magistrate might err on the side of caution and proceed to follow the procedure prescribed in sub-section (4) of Section 175.

65.3. Or, where the Judicial Magistrate is satisfied that the alleged act of offence was not committed in the discharge of official duties and/or it bears no reasonable nexus thereto, and also that the rigours of sub-section (4) of Section 175 are not attracted, the complaint may be dealt with in accordance with the general procedure prescribed under sub-section (3) of Section 175.

66. It is hereby clarified that the Judicial Magistrate would continue to retain the authority to reject an application under sub-section (3) of Section 175, lodged against a public servant, where such Magistrate finds that the allegations made therein are wholly untenable, manifestly absurd, or so inherently improbable that no reasonable person could conclude that any offence is

> *disclosed. However, it is needless to observe, such an order of rejection ought not to be based on whims and fancy but must have the support of valid reasons.*
>
> *67. A situation may arise where, in an appropriate case, the Judicial Magistrate has called for a report from the superior officer concerned under clause (a) of sub-section (4) of Section 175, but such officer fails to comply with the direction or does not submit the report within a reasonable period of time. What is the course open to the Magistrate in such a situation? In the unlikely event of such a situation, we hold, the Judicial Magistrate is not obliged to wait indefinitely for compliance and may proceed further in accordance with sub-section (3) of Section 175 after considering the version of the accused public servant under clause (b) of sub-section (4) of Section 175, if on record. What would constitute "reasonable time" cannot be determined in rigid or inflexible terms and must necessarily depend upon the facts and circumstances of each case before the Judicial Magistrate who has to take the call."*

19. Thus, without expressing any final opinion on the truth or otherwise of the allegations levelled by the applicants, this Court finds that the learned Special Judge was required to undertake an objective and legally informed examination of the material before directing further criminal process. The contemporaneous police action, the arrest of person in connection with a cognizable offence, the official status of the appellant, the police report and the statutory scheme under Sections 173 and 175 BNSS were all relevant considerations. Their omission from consideration, coupled with an apparent acceptance of the allegations as substantially true and reliable, renders the impugned order vulnerable on the ground of non-application of judicial mind.

20. The requirement of Section 175(4) BNSS is substantive and cannot be reduced to an empty formality. Where the allegations arise out of an incident occurring in the course of official police action, the Court is required to

take into consideration the report of the officer superior to the concerned public servant as well as the assertions of the public servant explaining the circumstances which led to the incident. The purpose of such consideration is to enable the Court to distinguish between an act having a reasonable nexus with official duty and an act which is wholly extraneous to such duty. In the present case, the contemporaneous police report and surrounding circumstances were therefore directly relevant to the statutory inquiry contemplated by Section 175(4) BNSS.

21. The omission is particularly material because Section 175(4) BNSS requires the Magistrate, before ordering an investigation into a complaint against a public servant arising in the discharge of official duties, to obtain the report of the officer superior to the public servant and consider the public servant's assertions concerning the circumstances of the incident. The impugned order does not disclose compliance with either of these statutory conditions. Consequently, the order suffers from a jurisdictional and procedural infirmity warranting interference by this Court.

22. The power under Section 175(3) BNSS to order an investigation cannot be exercised in isolation from the specific statutory requirement contained in Section 175(4) BNSS where the complaint is against a public servant arising in the course of discharge of official duties. Section 175(3) BNSS contemplates consideration of the application supported by affidavit, such inquiry as the Magistrate considers necessary and the submission made by the police officer, whereas Section 175(4) BNSS introduces an additional safeguard in cases concerning public servants

and official duty. Therefore, once the material before the Court disclosed that the appellant and others were police officials and that the alleged incident arose in the backdrop of contemporaneous police action, the learned Special Judge was required to satisfy himself that the requirements of Section 175(4) BNSS had been addressed before proceeding further.

23. A significant and material aspect which has been completely overlooked by the learned Special Judge is the express language employed by the Legislature in Section 175(3) of the BNSS. The provision does not merely state that the Magistrate may order an investigation after considering the application under Section 173(4) BNSS. It specifically provides under Section 175(3) BNSS that the Magistrate may do so "**.....and after making such inquiry as he thinks necessary and submission made in this regard by the police officer.....**" The expression so employed by the Legislature is a deliberate departure from the comparatively simple language of Section 156(3) Cr.P.C., which merely empowered the Magistrate to order such investigation. The additional requirements introduced by Section 175(3) BNSS are therefore substantive procedural safeguards and cannot be treated as an empty formality. The Supreme Court in *Om Prakash Ambadkar (supra)*, has specifically noticed that, unlike Section 156(3) Cr.P.C., Section 175(3) BNSS requires the Magistrate to consider the application supported by an affidavit, make such inquiry as he thinks necessary and consider the submissions made by the police officer before directing investigation.

24. The expression "*such inquiry as he thinks necessary*" undoubtedly confers judicial discretion upon the Magistrate regarding the nature, extent and manner of the inquiry warranted by the facts of the particular case. However, such discretion cannot be construed as conferring a power to completely ignore the statutory requirement of applying his mind to whether an inquiry is necessary. In other words, the discretion relates to what inquiry is necessary, and not to whether the statutory requirement itself may be disregarded. Where the material placed before the Court discloses circumstances requiring verification or explanation, particularly where the proposed criminal proceedings are directed against public servants and the police version or contemporaneous official record is available, the Magistrate is under a legal obligation to consider that material and determine whether an inquiry is necessary before issuing a direction for investigation.

25. The words "*and submission made in this regard by the police officer*" are equally significant. It has been specifically required the Magistrate to consider the submission made by the police officer before directing investigation. Thus, the statutory scheme requires the Court to consider not merely the version of the applicant but also the explanation or material placed by the police concerning the alleged refusal to register the case and the circumstances surrounding such refusal. The object is to ensure that the Magistrate exercises an informed judicial discretion after considering both sides of the relevant record and does not mechanically convert an allegation into a direction for police investigation. The Supreme Court has emphasised that this requirement enhances judicial

accountability and assists in ensuring that the order directing investigation is a reasoned one.

26. The application under Section 173(4) of the BNSS was moved by the complainant, Sushila Devi, wife of Bhaiya Lal, against appellant Sandhya Jaiswal, Sub-Inspector of Police, and other unidentified police personnel, including the senior police officers posted at Police Station Cholapur, Commissionerate Varanasi. The application itself, therefore, disclosed that the allegations were directed against public servants and police personnel in connection with the performance of their official duties. This circumstance necessitated specific consideration of the mandatory statutory safeguards prescribed under Sections 175(3) and 175(4) BNSS before passing any order directing investigation.

27. It is evident from the record that the learned Special Judge (SC/ST Act), Varanasi, had called for a report from the officer in charge of the concerned police station, and a detailed report was submitted before the Court. However, despite the availability of such material, the learned Presiding Officer failed to undertake a judicial examination of the report in the light of the allegations, the official status of the proposed accused, and the statutory requirements governing an application under Section 173(4) and 175 BNSS. The failure to consider material specifically called for by the Court itself reflects non-application of judicial mind to a matter having a direct bearing on the legality of the proposed direction for investigation.

28. Admittedly, **Case Crime No.300 of 2026** was registered under Sections 115(2), 69 and 351(3) of the

BNS, *against Rohit Kumar, son of the complainant Sushila Devi, on 22.07.2026, on the basis of the information furnished by Anjana Kumari. The first information report also refers to Bhaiya Lal and complainant Sushila Devi in connection with the said occurrence*. Thus, the existence of the criminal case against the complainant, her husband and son and the surrounding circumstances constituted relevant material requiring consideration before accepting the allegations made against the police personnel.

29. The material placed before the Special Court further disclosed that *appellant Sandhya Jaiswal was the Investigating Officer of Case Crime No. 300 of 2026*, in which Rohit Kumar was an accused and the complainant, Sushila Devi, and her husband, Bhaiya Lal, were also named in the FIR. This fact was of considerable significance in determining whether the alleged acts of the police personnel arose in the course of the discharge of their official duties and, consequently, whether the special procedure prescribed under Section 175(4) BNSS was attracted. The learned Special Judge failed to examine this material circumstance before passing the impugned order.

30. The record also contained a copy of the supurdginama dated 22.07.2026, bearing the signature and mobile number of the complainant, Sushila Devi, whereby the detained Rohit Kumar was stated to have been handed over to her. This document was a relevant piece of contemporaneous material concerning the police action against Rohit Kumar and his subsequent custody or release. If the learned Special Judge had any doubt regarding its genuineness, contents etc, the appropriate course was to seek clarification or call for the original

document, as considered necessary, rather than disregard the material and proceed mechanically.

31. The aforesaid circumstances prima facie indicate that appellant Sandhya Jaiswal and the other police personnel were dealing with Case Crime No.300 of 2026 in the course of police investigation and the exercise of their official functions. Whether every alleged act was reasonably connected with official duty was a matter requiring judicial consideration; it could neither be presumed conclusively in favour of the police personnel nor ignored altogether. The learned Special Judge was, therefore, under a legal obligation to examine the nature of the allegations and the available record and to determine the applicability of the mandatory procedure under Section 175(4) BNSS before directing investigation.

32. In the present case, the learned Special Judge has neither recorded any finding that the statutory inquiry contemplated by Section 175(3) BNSS was undertaken nor disclosed any reason why, despite the police report and the contemporaneous circumstances available on record, no further inquiry was considered necessary. There is also no meaningful consideration of the submission made by the police officer. Thus, the impugned order does not demonstrate compliance with the *three distinct statutory requirements under Section 175(3) BNSS*, namely, (i) consideration of the application supported by affidavit, (ii) making such inquiry as the Magistrate thinks necessary, and (iii) consideration of the submission made by the police officer. The omission is not a mere procedural irregularity but goes to the very exercise of jurisdiction under Section 175(3) BNSS.

33. It is evident from the material on record that appellant Sandhya Jaiswal, being the Investigating Officer of Crime No.300 of 2026, was discharging her official duties in good faith. In the absence of material indicating that the alleged acts were committed otherwise than in the discharge of official functions, the statutory protection contemplated under Section 22 of the SC/ST Act deserves due consideration, subject to fulfilment of its legal requirements.

34. Despite the aforesaid facts and the detailed police report available on record, the learned Special Judge, SC/ST Act, Varanasi allowed the application under Section 173(4) BNSS without recording any reasoned finding regarding compliance with the statutory requirements of Sections 175(3) and 175(4) BNSS. In particular, the impugned order does not demonstrate due consideration of the report of the police officer superior to the public servant concerned, the assertions of the public servant regarding the circumstances of the incident, or the necessity of an inquiry before passing an order for investigation, as contemplated by Section 175(4) BNSS.

35. The approach adopted by the learned Special Judge, SC/ST Act, Varanasi is also inconsistent with the law declared by the Supreme Court in *State of Haryana & Anr., Anil Kumar & Ors., Priyanka Srivastava & Anr., Ramdev Food Products Private Limited, Babu Venkatesh & Ors., Om Prakash Ambadkar, XXX (supra)*. Thus, in the above circumstances, the learned Special Judge, Special Court (SC/ST Act), Varanasi was not justified in proceeding merely upon the allegations contained in the application under Section 173(4) BNSS as though they constituted

conclusive material for directing criminal investigation. The Court was legally required to undertake the statutory exercise under Section 175(3) BNSS, including consideration of whether an inquiry was necessary and consideration of the submission/material furnished by the police officer. The absence of any finding on these aspects, despite the police report having been called for and despite the circumstances indicating contemporaneous police action, demonstrates that the specific statutory safeguards introduced by Section 175(3) & (4) BNSS were overlooked. The impugned order, therefore, suffers from a material non-application of mind and cannot be sustained in law.

36. The manner in which the learned Special Judge, SC/ST Act, Varanasi, has dealt with the application under Section 173(4) BNSS is a matter of serious concern. The impugned order discloses a fundamental disregard of the statutory scheme of Sections 173(4) and 175(3) and (4) BNSS and the binding principles laid down by the Hon’ble Supreme Court. Such failure to adhere to the prescribed procedure reflects a serious lapse in the exercise of judicial discretion and cannot be sustained in law.

37. In view of the foregoing discussion, this Court is of the considered opinion that the learned Special Judge, SC/ST Act, Varanasi, while passing the impugned order dated 2.9.2026, has failed to exercise the jurisdiction vested in him in accordance with the mandatory statutory provisions contained in Sections 175(3) and 175(4) BNSS. The learned Court has neither undertaken the requisite consideration as to whether an inquiry under Section 175(3) BNSS was necessary nor recorded ‘cogent reasons’ for dispensing with such inquiry. Further, in view of the

allegations against police/public servants and the material disclosing the earlier police action and criminal cases involving the complainant, the applicability and requirements of Section 175(4) BNSS were required to be specifically considered. The impugned order, being '*non-speaking and non-reasoned*' and suffering from material non-application of mind, cannot be sustained.

38. Accordingly, the present appeal is **allowed**.

39. The impugned order dated 2.9.2026, passed by the learned Special Judge, SC/ST Act, Varanasi, on the application under Section 173(4) BNSS, is hereby set aside. If any consequential proceedings arising out of the said order shall also stand quashed.

40. The Registrar (Compliance) is also directed to serve a copy of this order **within 48 hours** by FAX/e-mail to the concerned court through District & Sessions Judge, Varanasi for compliance.

(Santosh Rai,J.)

October 13, 2026
RA

Digitally signed by :-
RAZIQ ALI
High Court of Judicature at Allahabad