2026:AHC:234801

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 7460 of 2025

Manoj Kumar Paswan

.....Appellant(s)

Versus

State of U.P. and 5 others

.....Respondent(s)

Counsel for Appellant(s) : Babu Lal Ram
Counsel for Respondent(s) : G.A.

Court No. - 91

AFR
Reserved On 30.10.2026
Delivered On 17.11.2026

HON'BLE SANTOSH RAI, J.

1. Heard Sri Gyanendra Kumar, Advocate, holding brief of Sri Babu Lal Ram, learned counsel for the appellant and Sri R.K. Shukla, learned AGA for the State and perused the material on record.

2. The present appeal has been preferred by the appellant Manoj Kumar Paswan, son of Munna Pasi, resident of 83/116, Chhoti Juhi, Parm Purwa, Police Station Juhi, District Kanpur Nagar, challenging the order dated 9.7.2025 passed by the learned Special Judge (Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act), Kanpur Nagar, in Criminal Miscellaneous Case No.547 of 2025, whereby the application moved by the appellant under Section

173(4) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as 'BNSS') was directed to be registered as a complaint case and the matter was fixed for recording the statement of the complainant under Section 223 BNSS.

3. The appellant, in his application under Section 173(4) BNSS dated 9.7.2025, alleged that a false criminal case under Sections 126, 135 BNSS had been registered against him at Police Station Govind Nagar, Kanpur Nagar, on 24.2.2025, at the instance of the police personnel arrayed as opposite parties in the application. According to the appellant, the actual incident had occurred on 10.2.2025, when his wife, Rita, was filling water outside her house at about 10:00 a.m. At that time, one Shiv Kumar alias Bhediya, who was residing in the neighbourhood, was allegedly taking obscene photographs and singing songs. When the appellant's wife objected to his conduct, he tried to pull her towards himself. On her raising an alarm, her mother-in-law Rajkumari and other women came there. The appellant's wife immediately informed the police through dial 112 and also lodged a complaint on the Chief Minister's portal. She further approached Police Outpost Parm Purwa, where Shiv Kumar was allegedly detained for a few hours and thereafter released.

4. It was further alleged that, after the aforesaid incident, Shiv Kumar, in collusion with other women and relatives, namely Jaydevi and others, assaulted them and caused injuries. In this regard, the

appellant's wife submitted a written complaint, which was sent by registered post on 14.2.2025 to the concerned police authorities. However, according to the appellant, no effective action was taken on her complaint and the local police personnel were acting in collusion with Shiv Kumar.

5. The appellant further alleged that on 24.2.2025, at about 1:30 p.m., the opposite parties, namely the police personnel posted at Police Outpost Parm Purwa, came to his house and directed him to accompany them to the police station. When the appellant questioned the reason for taking him to the police station, the police personnel allegedly abused him by referring to his caste and made objectionable remarks that, being a person belonging to a lower caste, he was questioning the action of the police. When one of his relatives also objected to the action of the police, he too was threatened. Thereafter, the appellant was taken to the police outpost, where the police personnel, particularly the In-charge of the outpost, allegedly started assaulting him.

6. It was further alleged that the police personnel also assaulted his relative Vijay Bahadur by using caste-indicative words and gave him beatings. The appellant was allegedly assaulted with plastic sticks on the soles of his feet and other parts of his body by approximately 25-30 blows. According to the appellant, when a crowd started gathering at the police outpost, the police personnel, in

order to conceal their illegal acts, created a false incident outside the police outpost by showing a quarrel between the appellant and Shiv Kumar. Thereafter, photographs were allegedly taken and the appellant was sent for medical examination. The appellant further alleged that a false medical report was prepared, in which his internal injuries were not properly recorded. He claimed that he possessed material showing that he had been taken from his house and illegally detained at the police outpost. The appellant also stated that his wife had submitted a complaint dated 14.2.2025 along with the registered postal receipt. She had further sent a complaint to the Police Commissioner, Kanpur Nagar, through registered post on 25.2.2025 and had also approached dial 112 and the Chief Minister's portal. Similarly, the appellant's father had submitted a complaint before the Public Grievance Redressal Cell (Jan Sunwai) on 24.2.2025, while the appellant himself had submitted a complaint to the Deputy Commissioner of Police, Saket Nagar, on 25.2.2025. However, according to the appellant, no action was taken by the higher police authorities on the aforesaid complaints. It was also mentioned that, according to the police report obtained from the concerned police station, no criminal case had been registered on the basis of his allegations. The police version was that a quarrel had taken place between the appellant and Shiv Kumar and that the police had taken action under Sections 170, 126 and 135 BNSS.

7. The learned Special Judge, after hearing the learned counsel for the appellant and examining the material available on record, observed that the allegations made by the appellant related to an incident of assault and caste-based abuses allegedly committed by the police personnel. However, no injury report of any injured person had been filed along with the application. The learned Special Judge further referred to the judgment of this Court in *Naresh Kumar Balmiki v. State of Uttar Pradesh, Criminal Miscellaneous Application under Section 482 Cr.P.C. No.14443 of 2022, decided on 17.10.2022, as well as the decision in Sukhwasi v. State of Uttar Pradesh, reported in 2008 Cri LJ 472*, and observed that, in view of the principles laid down therein, the application under Section 173(4) BNSS deserved to be registered as a complaint case rather than being forwarded for registration of an FIR. Accordingly, by the impugned order dated 9.7.2025, the learned Special Judge directed that the application moved by the appellant under Section 173(4) BNSS be registered as a complaint case and further directed that the statement of the complainant be recorded under Section 223 BNSS on 3.9.2025.

8. In brief, the grounds of appeal are that the impugned judgment and order dated 9.7.2025 passed by the learned Special Judge (SC/ST Act), Kanpur Nagar, is partly illegal, unjustified and contrary to law, as the learned court below ought to have allowed the application moved by the appellant under Section 173(4) BNSS and directed the

concerned police authorities to register an FIR against opposite party nos. 2 to 6, instead of treating the matter as a complaint case. It is further submitted that opposite party nos. 2 to 6, who are police personnel, allegedly assaulted and abused the appellant and committed obscene acts with his wife, and the allegations disclose cognizable offences requiring proper police investigation to bring the true facts to light. The learned trial court has failed to properly appreciate the allegations and documentary evidence placed on record by the appellant and has passed the impugned order without considering the material facts and circumstances of the case. Hence, the impugned order is liable to be set aside.

9. It is pertinent to mention relevant provision of law in this regard.

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."

10. Section 175(3) & 175(4) B.N.S.S. provides as under:-

*"**175. Police officer's power to investigate cognizable case**.-*

(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."

11. The impugned order passed by the learned Special Judge, SC/ST Act, also suffers from non-consideration of the mandatory procedural requirements contemplated under Sections 175(3) and 175(4) of the BNSS. The learned Special Judge, while proceeding on the application moved by the complainant, has not examined whether the statutory conditions prescribed under the aforesaid provisions were duly complied with. Section 175(3) of BNSS requires the Magistrate to apply judicial mind to the application, supported by an affidavit, and to consider the submissions made by the concerned police officer before passing an order for investigation. Further, where the allegations relate to a public servant and arise in the course

of discharge of official duties, the special procedure prescribed under Section 175(4) of BNSS is required to be followed, including obtaining the report of the superior officer and considering the explanation of the public servant concerned regarding the circumstances leading to the alleged incident. These provisions are not empty formalities but are statutory safeguards intended to prevent arbitrary or mechanically initiated criminal proceedings. The learned Special Judge was, therefore, under a legal obligation to examine the applicability and compliance of these provisions before proceeding further. The failure to consider the aforesaid statutory safeguards reflects non-application of judicial mind.

12. Section 223(1) & 223(2) B.N.S.S. provides as under:-

> *"223. 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."

13. It is further evident from the impugned order that the learned Special Judge, SC/ST Act, has failed to consider the mandatory procedural requirements prescribed under the BNSS. Even assuming that the learned Special Judge was inclined to treat the application moved under Section 173(4) of BNSS as a complaint case, he was legally bound to follow the procedure prescribed under the first proviso to Section 223(1) and Section 223(2) of BNSS. In the present case, opposite party nos.2 to 6 are admittedly police personnel and public servants and they have initiated proceeding under Sections 170/126/135 of BNSS against the appellant. Therefore, before proceeding with the complaint, the learned Special Judge was required to ensure compliance with the special statutory safeguards applicable to complaints against public servants, including affording an opportunity of hearing to the public servant concerned in terms of the first proviso to Section 223(1) and following the requirements of

Section 223(2) of BNSS. However, the order impugned does not disclose that any such opportunity of hearing was afforded to the concerned public servants or that the statutory requirements were otherwise complied with. Thus, whether the application was to be considered under Sections 175(3) and 175(4) BNSS as an application seeking investigation or was to be treated as a complaint case, the learned Special Judge was required to follow the procedure prescribed by law. The court could not have bypassed these mandatory safeguards by simply treating the application as a complaint.

14. It is an admitted position emerging from the material available on record that the police personnel concerned were performing their official duty of maintaining law and order and, in that connection, initiated preventive proceedings against the appellant Manoj Kumar Paswan on 24.2.2025 under Sections 170, 126, 135 of the BNSS. It is also not disputed that a confrontation had taken place between the appellant and his neighbour Shiv Kumar on 10.2.2025. Thus, the presence and intervention of the police personnel in connection with the aforesaid dispute cannot, by itself, be treated as an act of misconduct or an abuse of their official position. The initiation of preventive proceedings, on the admitted facts, indicates that the police had intervened in connection with an existing dispute with a view to maintaining peace and public order. However, the legality of

the subsequent conduct of the police personnel and the specific allegations of caste-based abuse and physical assault are matters which are required to be examined independently on the basis of the material placed on record.

15. It is further evident from the material placed on record that the appellant has not submitted any reliable medical evidence in support of his specific allegation, made in paragraph 5 of the application under Section 173(4) BNSS, that he was assaulted by 25–30 blows of danda or other hard and blunt objects by the police personnel. No dependable medical document has been brought on record to substantiate the nature and extent of the injuries allegedly sustained by him in the aforesaid incident. In the absence of such supporting material, the aforesaid allegation, particularly regarding the number and manner of blows allegedly inflicted, remains uncorroborated. Similarly, the apprehension expressed by the appellant in paragraph 6 of his application that the police personnel might falsely implicate him in some serious criminal offence does not appear to be founded upon any specific or reliable material available on record. Such an apprehension, in the absence of supporting facts or circumstances, appears to be based merely upon a hypothetical possibility rather than any concrete and demonstrable threat. However, these circumstances are relevant only for assessing the material placed in support of the

application and cannot, by themselves, be treated as conclusive proof that no offence was committed.

16. In view of the aforesaid facts and circumstances, this Court is of the considered opinion that the learned Special Judge has not properly appreciated the distinction between the facts of the present case and the legal principles laid down in *Sukhwasi v. State of Uttar Pradesh, 2008 Cri LJ 472, and Naresh Kumar Balmiki v. State of Uttar Pradesh, decided on 17.10.2022*, which have been relied upon in the impugned order. The aforesaid decisions cannot be treated as laying down an inflexible rule that every application moved under Section 173(4) BNSS must necessarily be registered as a complaint case. The question whether such an application should be treated as a complaint or dealt with in accordance with the procedure prescribed under the BNSS has to be determined on the basis of the nature of allegations, the material available on record and the statutory provisions applicable to the facts of each case. In the present case, the admitted confrontation between the appellant and his neighbour Shiv Kumar, the preventive proceedings initiated by the police on 24.2.2025 under Sections 170, 126, 135 BNSS, and the absence of reliable medical material supporting the specific allegation of repeated blows by hard and blunt objects are relevant circumstances which required due consideration by the learned Special Judge. Therefore, mere reliance upon the aforesaid judgments,(much before

the BNSS came in to existence) without examining the factual and mandatory statutory requirements governing the application, was not sufficient to justify the course adopted by the learned Special Judge.

17. 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."*

18. In **Om Prakash Ambadkar Vs. State of Maharashtra & Ors. (2026) 2 SCC 622**, the Hon'ble Supreme Court held in para 27, 32, 33 as under:-

> *"27. In fact, the Magistrate ought to direct investigation by the police only where the assistance of the investigating agency is necessary and the court feels that the cause of justice is likely to suffer in the absence of investigation by the police. The Magistrate is not expected to mechanically direct investigation by the police without first examining whether in the facts and circumstances of the case, investigation by the State machinery is actually required or not. If the allegations made in the complaint are simple, where the court can straightaway proceed to conduct the trial, the Magistrate is expected to record evidence and proceed further in the matter, instead of passing the buck to the police under Section 156(3)CrPC. Of course, if the allegations made in the complaint require complex and complicated investigation which cannot be undertaken without active assistance and expertise of the State machinery, it would only be appropriate for the Magistrate to direct investigation by the police authorities. The Magistrate is, therefore, not supposed to act merely as a post*

office and needs to adopt a judicial approach while considering an application seeking investigation by the police.

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."

19. In **Kushal Kumar Agarwal Vs. Directorate of Enforcement 2025 SCC OnLine SC 1221**, the Hon'ble Supreme Court held in para 6 as under:-

"6. The proviso to sub-section (1) of Section 223 puts an embargo on the power of the Court to take cognizance by providing that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard."

20. In **Parvinder Singh Vs. Directorate of Enforcement 2026 SCC OnLine SC 903**, the Hon'ble Supreme Court held in para 26, 27 as under:-

> *"26. Section 223 of the BNSS deals with the examination of a complainant. The first proviso to Section 223(1) of the BNSS prohibits the Magistrate from taking cognizance of an offence, unless the accused is given an opportunity of being heard.*
>
> *27. Though Chapter XVI of the BNSS lays down the procedural law dealing with complaints made to a Magistrate, we hold that the aforesaid proviso is substantive in nature, as it does not merely regulate the manner in which the proceedings are to be conducted, rather it confers a right upon the accused to be heard before taking cognizance which forms a part of the right of an accused to a fair trial enshrined under Article 21 of the Constitution of India. We further hold that the word "shall" occurring in the said proviso has to be construed to be mandatory in nature, which enures to the benefit of an accused. Resultantly, cognizance of an offence taken by a Court without due compliance of the aforestated proviso* ***would be void ab initio****."*

21. In the present case, all the opposite parties arrayed in the application are police personnel. The allegations against them relate to an incident which allegedly occurred when they intervened in a dispute between the appellant and his neighbour and initiated preventive proceedings under Sections 170, 126, 135 BNSS. Therefore, before passing any order concerning the allegations against the said police personnel, the learned Special Judge was required to examine the applicability of Section 223 BNSS. if the application was to be treated as a complaint, the mandatory procedure prescribed under the first proviso to Section 223(1) and Section

223(2) BNSS, wherever applicable, was required to be followed. The impugned order does not reflect due consideration of these statutory requirements and the principles laid down by the Hon'ble Supreme Court in the aforesaid decisions.

22. 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."

23. In **Popular Muthiah Vs. State represented by Inspector of Police, (2006) 7 SCC 296**, the Hon'ble Supreme Court held in para 27, 29, 30, 33 as under:-

"27. While exercising its appellate power, the jurisdiction of the High Court although is limited but, in our opinion, there exists a distinction but a significant one being that the High Court can exercise its revisional jurisdiction and/or inherent jurisdiction not only when an application therefor is filed but also suo motu. It is not in dispute that suo motu power can be exercised by the High Court while exercising its revisional jurisdiction. There may not, therefore, be an embargo for the High Court to exercise its extraordinary inherent jurisdiction while exercising other jurisdictions in the matter. Keeping in view the intention of Parliament, while making the new law the emphasis of Parliament being "a case before the court" in contradistinction from "a person who is arrayed as an

accused before it" when the High Court is seized with the entire case although would exercise a limited jurisdiction in terms of Section 386 of the Code of Criminal Procedure, the same, in our considered view, cannot be held to limit its other powers and in particular that of Section 482 of the Code of Criminal Procedure in relation to the matter which is not before it.

29. The High Court while, thus, exercising its revisional or appellate power, may exercise its inherent powers. Inherent power of the High Court can be exercised, it is trite, both in relation to substantive as also procedural matters.

30. In respect of the incidental or supplemental power, evidently, the High Court can exercise its inherent jurisdiction irrespective of the nature of the proceedings. It is not trammelled by procedural restrictions in that:

(i) Power can be exercised suo motu in the interest of justice. If such a power is not conceded, it may even lead to injustice to an accused.

(ii) Such a power can be exercised concurrently with the appellate or revisional jurisdiction and no formal application is required to be filed therefor.

(iii) It is, however, beyond any doubt that the power under Section 482 of the Code of Criminal Procedure is not unlimited. It can inter alia be exercised where the Code is silent, where the power of the court is not treated as exhaustive, or there is a specific provision in the Code; or the statute does not fall within the purview of the Code because it involves application of a special law. It acts ex debito justitiae. It can, thus, do real and substantial justice for which alone it exists.

33. In R.P. Kapur v. State of Punjab [(1960) 3 SCR 388 : AIR 1960 SC 866 : 1960 Cri LJ 1239] this Court summarised some of the categories of cases where inherent power should be exercised to quash a criminal proceeding against the accused, stating: (SCR p. 393)

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

The said decision has been noticed subsequently by this Court in State of Karnataka v. M. Devendrappa [(2002) 3 SCR 89 : 2002 SCC (Cri) 539] "

24. In **Ishwar Chand Sharma v. State of U.P., 2026 SCC OnLine SC 1004**, the Hon'ble Supreme Court held in para 9, 9.1, 9.2, 9.6, 9.7 as under:-

"9. In the backdrop of the facts of the present case, we wish to underline a worrying trend that has come to our attention. Parties involved in matrimonial or commercial relationships with one another are resorting to filing of frivolous and vexatious claims and allegations of a criminal nature to settle personal scores and grudges against each other and therefore turn to nefarious/oblique means to attain the said objective. We also painfully take judicial cognizance of the fact that the courts of law are being misused and overburdened by such vague and vexatious litigations between spouses as many a times, the recourse to law and police is taken, in an oblique way so as to antagonise, pressurise, hound and harass the other spouse and their family members in order to retaliate and exact revenge that is carried out due to sheer hatred and disdain for the said spouse and their family members.

9.1 While we are cognizant of the fact that there are genuine and bona fide cases in the courts wherein the aggrieved parties are genuinely looking for relief and respite from the actions and omissions of their spouses, that often require immediate care and attention of the courts of law and public authorities, such cases get frequently overshadowed and obscured by the overwhelming number of false and frivolous cases filed by spouses against one another as an 'arm-twisting' method so as to reach a more favourable outcome or settlement or more lucrative monetary settlement. The onus is on courts to be careful and cautious so as to separate the wheat from the chaff and separate the genuine cases of matrimonial oppression, rape and offences against women from the cases wherein the

legal process and procedure is being used as a tool to file false and frivolous cases out of vengeance. While doing so, care should be taken to ensure that the rights and freedoms of innocent parties are not trampled or arbitrarily taken away by unscrupulous and baseless litigation.

9.2 We are conscious of the fact that there are many instances where women are gravely affected by matrimonial disputes and violence that they have to endure at the hands of the spouse and in-laws and other family members. Such cases deserve our utmost attention and judicial scrutiny so as to make sure that the ends of justice are met and the offenders do not go scot-free and rather get the punishment they deserve. However such a zeal to meet the ends of justice should be countenanced, by courts of law and executive authorities of the State, with a pragmatic approach bearing in mind the recent trend of criminal litigation in this country wherein the legal machinery and statutes are being used as a tool by mischievous litigants so as to create unnecessary hurdles and punish unsuspecting and often innocent citizens particularly in the sphere of matrimonial disputes. The litigating parties and their advocates should also be cognizant of the fact that such vexatious filing of false and frivolous claims and cases cast unnecessary burden on the already overburdened machinery and apparatus of the State and Judiciary. This factor also diverts the attention of courts and its resources whereas genuine cases of the parties with actual verifiable grievances are not being able to be adjudicated in time owing to the time spent in adjudicating upon phantom claims of mischievous litigators seeking to create litigation out of thin air or in the absence of a cause to do so.

9.6 While we are conscious of the fact that there are instances and a plethora of cases that are true and deserve the utmost attention and deft handling on the side of authorities and Courts and which should be pursued vigorously to reach a logical conclusion, on the other side of the spectrum, are cases invoking such serious and heinous allegations which are prima facie vague, omnibus and general in nature and thereby lacking any material backing or evidence which should be shunned at the very threshold. We say so for the reason that if a person is made an accused and forced to face a criminal trial on general and

sweeping allegations without bringing on record any specific instances of criminal conduct, it would tantamount to an abuse of the process of law and court. Hence, legal practitioners who tender advice in such cases must restrain parties from filing such false/frivolous complaints when requested to do so. Further, lawyers/advocates must also not advise filing of criminal complaints which are false/concocted so as to keep the opposite parties under a tight leash so that they could come forward for a settlement on the terms dictated by their parties or else, to face a criminal prosecution which can prolong for years. When such is the trend, on the other side, efforts are made to seek anticipatory bail by persons apprehending arrest owing to a false/frivolous complaint being lodged which sometimes reach the portals of this Court after being unsuccessful at the level of the trial court and High Court. Also, steps are taken for seeking quashing of such false/frivolous complaints before the High Court which has its own saga of uncertainties causing undue pressure, harassment, stress and tension on the so-called accused. The consequence of all this is docket explosion and burden on Courts resulting in genuine complaints and cases not being given due time and attention that they need.

9.7 Courts then owe a duty to subject the allegations levelled in the complaint to a thorough scrutiny to ascertain if a prima facie case is made out or not, and whether there is any kernel of truth in the allegations or whether the said allegations have been made only with the sole intent of spite so as to harass the opposite party with a prolonged process of criminal litigation, arrest and sometimes a conviction which later on may result in an acquittal by a higher Court or in a worse case, no relief at all being given to an innocent party. This stands more true when prosecution arises from a matrimonial dispute."

25. In the present case, the appeal has been preferred by the complainant himself, primarily seeking registration of a criminal case and investigation against the opposite parties. However, upon examination of the allegations contained in the application and the material placed before the learned Special Judge, this Court finds that

no prima facie case was disclosed either warranting a direction for investigation or justifying the conversion of the application into a complaint case. The learned Special Judge was required to examine the basic ingredients of the alleged offences and ascertain whether the allegations, even if taken at their face value, disclosed commission of any cognizable offence or any other offence for which the complaint procedure could legitimately be set into motion. The mere fact that an application had been filed by the complainant could not, by itself, confer jurisdiction upon the Court to initiate criminal proceedings against the opposite parties. The approach adopted by the learned Special Judge is, therefore, contrary to the principles laid down by the Hon'ble Supreme Court in *Bhajan Lal (supra), Popular Muthiah (supra) and Ishwar Chand Sharma (supra)*.

26. The application moved by the complainant under Section 173(4) BNSS was treated as a complaint case and the matter was fixed for 3.9.2025 for recording the statement of the complainant under Section 223 BNSS. Such an order itself indicates that the learned Special Judge had proceeded to take cognizance of the offence on the basis of the complaint. Once the court decided to proceed under Chapter XVI of the BNSS, it was incumbent upon the learned Special Judge to satisfy himself that the allegations and materials available on record disclosed the commission of an offence and that the statutory conditions for taking cognizance were fulfilled.

The procedure of treating an application as a complaint cannot be adopted merely as a matter of course, without recording the requisite judicial satisfaction regarding the existence of a prima facie case.

27. The principle laid down by the Hon'ble Supreme Court in Popular Muthiah (supra), particularly paragraphs 27, 29, 30 and 33 requires the Court to exercise its jurisdiction within the limits prescribed by law and only after examining the existence of the necessary conditions precedent. In the present case, the learned Special Judge appears to have proceeded mechanically without recording such satisfaction.

28. It is also significant that the learned Special Judge, after converting the application under Section 173(4) BNSS into a complaint case, fixed the matter on 3.9.2025 for recording the statement of the complainant under Section 223 BNSS. Thus, the proceedings had crossed the stage of mere consideration of an application and had entered the stage of complaint proceedings following the decision to take cognizance. At that stage, the learned Special Judge was also required to examine the applicability of the first proviso to Section 223(1) and the mandatory requirements of Section 223(2) BNSS, particularly because all the opposite parties were police personnel/public servants and they have initiated the proceeding against the appellant Manoj Kumar Paswan under Sections 170, 126, 135 of BNSS. These provisions provide statutory

safeguards which cannot be dispensed with merely because the application was originally presented under Section 173(4) BNSS. The learned Special Judge, without first examining the applicability of the statutory bar under Section 218 BNSS and without complying with the safeguards prescribed under Section 223 BNSS, proceeded to initiate complaint proceedings. Such an approach amounts to a failure to follow the procedure established by law and reflects non-application of judicial mind to the mandatory provisions governing prosecution of public servants. It is nothing but a failure of justice and an abuse of process of law.

29. **General Directions for All the Judicial Officers of UP:-**

Having regard to the statutory scheme of Sections 173(4), 175(3), 175(4), 210, 223, 225, 226 and 227 of the BNSS, and the principles laid down by the Hon'ble Supreme Court, as discussed hereinabove, the following directions are issued for all the Magistrates and Special Courts dealing with criminal matters:-

(i) Every application under Section 173(4) read with Section 175(3) BNSS shall be examined on its own merits. The Court shall ensure compliance with all the statutory requirements, particularly prior approach to the Superintendent of Police and filing of a duly sworn affidavit etc. The Magistrate must apply judicial mind to the

allegations, supporting material and necessity of police investigation before passing an appropriate order.

(ii) An application seeking police investigation shall not automatically be converted into a complaint merely because the Court is not inclined to direct investigation. If the court considers it appropriate to proceed under the complaint procedure, specific reasons shall be recorded, keeping in view the nature of the allegations and the relief sought by the applicant.

(iii) Where an application is treated as a complaint, the procedure prescribed under Sections 223 to 227 BNSS shall be strictly followed. The complainant and witnesses shall be examined as per rule and procedure.

> (a) The opportunity contemplated under the first proviso to Section 223(1) BNSS is mandatory and must be afforded before taking cognizance.
>
> (b) The proposed accused *s*hall be entitled, to receive copy of complaint as well as every document annex with and relied upon by the complainant in order to effective and meaningful 'opportunity of hearing' as provided under section 223 BNSS.
>
> (c) The expression "opportunity of being heard" under first proviso of Section 223(1) BNSS is not restricted to oral hearing. It may encompass

written submissions also. Only both modes are permissible at this per-cognizance stage.

(d) The proposed accused may place written submission before the court to demonstrate, specific assertions against facts mentioned in complaint, including facts regarding absence of territorial or subject-matter jurisdiction, Legal bar to prosecution, Limitation or statutory prohibition, absence of an essential ingredient of the alleged offence, that the allegations even if accepted as stated do not constitute the alleged offence etc.

(e) The court shall consider the material legal objections raised by the proposed accused and pass a reasoned judicial order.

(f) The Court is not expected to conduct a mini-trial at the pre-cognizance stage. The Court must not undertake a roving inquiry, meticulously appreciate evidence, or adjudicate disputed defence contentions.

(g) Where, after submission of the Final Report by Investigating Officer, the Court decides to reject the same and treat the matter as a complaint case, the procedure prescribed as hereinabove under (a) to (f) shall be followed.

(iv) Where a complaint is proceeded with against a public servant, the Court shall independently examine the applicability of Section 223(2) BNSS and, wherever attracted, shall comply with its requirements, including

obtaining a report from the officer superior to the concerned public servant and providing an opportunity to such public servant to make assertions before taking cognizance.

(v) Sections 175(4) and 223(2) BNSS shall not be applied mechanically merely because the proposed accused is a public servant. Their applicability shall depend upon the nature of the allegations and their reasonable connection with the discharge of official duties.

(vi) The inquiry contemplated under Section 175(3) BNSS shall not be treated as a full-fledged trial. Similarly, the inquiry under Section 225 BNSS shall remain confined to determining whether sufficient grounds exist for proceeding against the proposed accused in a complaint case.

(vii) While dealing with applications arising out of civil disputes, property disputes, financial/business transaction disputes, previous litigation, the Court shall carefully examine whether the allegations independently disclose the commission of a criminal offence or whether the criminal process has been set in motion with malafide intent.

(viii) Wherever cognizance is taken in complaint case, the order must expressly record that cognizance of the offence has been taken under Section 210(1)(a) BNSS, read with the

applicable provisions of Chapter XVI BNSS or other applicable law.

30. In view of the aforesaid facts and circumstances, this Court is of the considered opinion that the learned Special Judge was required to exercise greater caution before setting the criminal law into motion against the opposite parties. The principles laid down in cases as discussed herein above make it clear that criminal proceedings cannot be initiated merely on the basis of allegations without examining whether the essential ingredients of the alleged offences are prima facie disclosed from the material available on record. The Court is not expected to act as a mere forwarding authority of the complainant's allegations. It must independently examine the factual and legal foundation of the proposed prosecution and ensure compliance with the statutory safeguards.

31. In the present case, neither a prima facie case warranting investigation or prosecution has been demonstrated from the material considered by the learned Special Judge, nor have the mandatory procedural safeguards applicable to the prosecution of public servants been duly considered. Consequently, continuation of the proceedings arising out of the impugned order would amount to permitting criminal process to operate without adequate legal foundation and in disregard of the procedure prescribed by law.

32. The impugned order dated 9.7.2025, passed by the learned Special Judge, SC/ST (PA) Act, Kanpur Nagar, whereby the application under Section 173(4) BNSS filed by the appellant was converted into complaint case, therefore, cannot be sustained in the eyes of law and deserves to be set aside. The impugned order dated 9.7.2025 is hereby **set aside**.

33. With the above observations and directions, the present appeal is, accordingly, disposed of.

34. A copy of these directions shall be circulated to all the judicial officers of Uttar Pradesh through the Registrar General of the High Court and the Director, Judicial Training and Research Institute (JTRI), Lucknow, for appropriate dissemination and inclusion in judicial training programmes.

(Santosh Rai,J.)

November 17, 2026
RA

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