

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 467 of 2026

**Kaushik Panja & Ors.
Vs.
The State of West Bengal & Anr.
with
CRR 363 of 2026**

**Manoj Kumar Sharma
Vs.
The State of West Bengal & Anr.
With
CRR 4982 of 2025**

**Sri Nabakumar Das
Vs.
The State of West Bengal & Anr.**

For the Petitioners (in item no. 10) : Mr. Soumyajit Das Mahapatra
Mr. Subrata Ghosh
Ms. Madhuri Sinha
Ms. Upasana Banerjee

For the Opposite party no.2 (in item no.10) : Mr. Soumik Ganguly

For the State (in item no. 10) : Mr. Debasish Roy
Mr. Suman De

For the Petitioner (in item no. 11) : Mr. Dipanjan Dutt
Mr. Soumodip Ghosh

For the Opposite party no.2
(in item no. 11) : Mr. Sandipan Ganguly
Mr. Rohit Das
Mr. Indradip Das
Ms. Priyanka Sarkar
Ms. Anugraha Sundas

For the State
(in item no. 11) : Mr. Debasish Roy
Mr. Suman De
Ms. Trisha Rakshit

For the Petitioner
(in item no.12) : Mr. Krishnendu Bhattacharya
Mr. Amit Amit Gupta
Mr. Amaan Deep Gupta
Ms. Sneha Ghosh

For the Opposite party no.2
(in item no. 12) : Mr. Md. Amin
Mr. Gulalm Muztaba
Mr. Mahsabeen
Mr. Md. Iqbal

For the State
(in item no. 12) : Mr. Debasish Roy
Mr. Suman De
Ms. Mousumi Sarkar

Heard On : 10.02.2026

Judgment on : 17.03.2026

Dr. Ajoy Kumar Mukherjee, J.

1. A common question raised in all the three Applications is whether the concerned magistrate was justified in directing officer-in-charge of the concerned Police station to make an ‘inquiry’ and submit a report in

response to complainant's prayer made under section 175 (3) Cr.P.C, seeking direction upon police to start investigation.

2. The scope of inquiry under section 175(3) of the Bharatiya Nagarik Surakhsha Sanhita (in short BNSS), 2023 involves exercise of sound judicial discretion before a Magistrate can order a police investigation into a cognizable offence. While the legislature has introduced the said provision in place of section 156 (3) of the Cr.P.C., it provided a more structured and formalized procedural framework. The key aspects of section 175 (3) of the BNSS are :-

(a) obligatory rudiments:- the Magistrate must verify that the complainant previously approached before the police station and thereafter to superintended of police or similar officer under section 173 (4) and that the application under section 175(3) is supported by an affidavit.

(b) Judicial discretion and preliminary inquiry:- the Magistrate is empowered to make '*such inquiry as he thinks necessary*' before ordering an investigation. This inquiry determines if sufficient cause for investigation exists, which has been designed to prevent abuse of the process in connection with frivolous complaints.

(c) Compulsory retort from police:- a significant change in BNSS is the mandatory requirement for the Magistrate to consider submissions made by the police officer regarding the issue as to why the FIR was not registered.

3. In *Omprakash Ambedkar Vs. State of Maharashtra and Ors.*

reported in **AIR 2025 SC 970** Supreme Court has explained the requirements in para 31 which runs as follows:-

31.A comparison of Section 175(3) of the BNSS with Section 156(3) of the Cr.P.C. indicates three prominent changes that have been introduced by the enactment of BNSS as follows:a. First, the requirement of making an application to the Superintendent of Police upon refusal by the officer in charge of a police station to lodge the FIR has been made mandatory, and the applicant making an application under Section 175(3) is required to furnish a copy of the application made to the Superintendent of Police under Section 173(4), supported by an affidavit, while making the application to the Magistrate under Section 175(3).b. Secondly, the Magistrate has been empowered to conduct such enquiry as he deems necessary before making an order directing registration of FIR.c. Thirdly, the Magistrate is required to consider the submissions of the officer in charge of the police station as regards the refusal to register an FIR before issuing any directions under Section 175(3).

4. In view of the judicial interpretation of section 156(3) of the Cr.P.C. in various judgments passed by the Supreme Court in ***Lalita Kumari Vs. Government of UP and Ors.*** reported in **(2014) 2 SCC 1** and ***Priyanka Srivastava & another Vs. State of UP & Ors.*** reported in **(2015) 6 SCC 287**, and ***Ram Dev Food Products Private Ltd. Vs. State of Gujarat*** reported in **(2015) 6 SCC 439**, ***Babu Venkatesh & Ors. Vs. State of Karnataka & Anr. (Feb 18, 2022)*** and from some others judgments, it is clear that the changes introduced in section 175 (3) of the BNSS is an attempt to codify the procedural practices and safeguards which have been introduced by the aforesaid earlier judicial decisions, aimed at curbing the misuse of invocation of power of Magistrate by unscrupulous litigants for achieving ulterior motives and while the legislature has drafted the new legislation, they have also kept in mind the earlier decisions passed in this respect. It also appears that by incorporating the provisions that the

Magistrate is to consider the submissions made by the concerned police officer before proceeding to issue directions under section 175(3) BNSS has affixed greater accountability of the police officer's responsibility for registering FIRs under section 173.

5. Therefore the pre-conditions for exercise of discretion under section 175 (3) by a Magistrate are as follows:-

- (i)** Magistrate is empowered under section 210 BNSS
- (ii)** Magistrate has considered the application under section 173(4)
- (iii)** The application under section 175 (3) has been supported by an affidavit
- (iv)** Magistrate has made such inquiry as it thinks necessary
- (v)** Magistrate considered the submissions made in this regard by the police officer.

6. Since all the instant three applications primarily concerned with the issue of scope of inquiry to be made by the Magistrate, I will come to the others steps which are required to be followed by the Learned Magistrate, while entertaining prayer made under section 175(3) of BNSS, at a later stage but first of all let me consider the step to be taken by a Magistrate while making an inquiry in such case.

7. The term inquiry is defined under section 2 (1) (k) of the BNSS as follows:-

“(k) “inquiry” mans every inquiry, other than a trial, conducted under this Sanhita by a Magistrate or Court;”

8. Therefore parliament has brought the twin safeguards of “inquiry” and “affidavit” in section 175(3) to prevent it's misuse. The 247th report of the

BNSS, 2023 by the parliamentary standing Committee on Home Affairs after referring to the provisions of the BNSS Bill, considered the suggestions made and thereafter decided to adopt or reject the suggestion. Sub section (3) of Section 175 in the draft bill reads as follows:-

“Any Judicial Magistrate empowered under Section 210 may, after considering the application made under clause (b) of Sub-Section (4) of Section 173 and submission made in this regard by the police officer, order such an investigation as above-mentioned”.

9. Suggestions received by the committee

“Suggestion:

The words ‘affidavit’ and ‘after such enquiry as he may think necessary’ should be added in clause 175(3) at the appropriate places, to provide safeguards against any misuse of the law.”

10. After considering the suggestions, the committee proceeded to decide as follows:-

“Observations/recommendations:-

The Committee is of the view that adequate safeguard should be inbuilt in Clause 175(3) to prevent its misuse and the Clause may therefore be reframed. The application made under section 173(4), may be considered by the Judicial magistrate empowered under section 210, only if it is supported by an affidavit and after conducting such enquiry as he may think necessary. The committee therefore, recommends bringing out a suitable amendment in the said Clause, so that its misuse can be prevented.”

11. Accordingly section 175(3) BNSS has been enacted as follows:-

*“**S 175.**”(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.”*

12. While considering the purport of the term ‘inquiry’ engrafted in section 175 (3), it is to be kept in mind that an order under this section is directive to the police to initiate investigation. This section acts as a safeguard to

ensure accountability allowing victims to seek judicial intervention when the police refuses to register an FIR, while also providing a structural check to avoid frivolous litigation. Section 175(3) explicitly empowers magistrate to conduct an inquiry.

13. Needless to say that duty of a Magistrate at this stage of 175(3) and the duty of the police to register an FIR at the stage of 173(3) are not the same. At the stage of 173(1) BNSS the police are only required to record every information relating to the commission of a cognizable offence. In **Lalita Kumari Vs. State of U.P.** (supra) Supreme Court had laid down in law in this context in paragraph 120 which runs as follows:-

Conclusion/Directions

120. In view of the aforesaid discussion, we hold:

120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7 [Ed.: This correction is based on para 120.7 as corrected vide order in Lalita Kumari v. State of U.P., (2023) 9 SCC 695.] While ensuring and protecting the rights of the accused and the complainant, a preliminary

inquiry should be made time-bound and in any case it should not exceed fifteen days generally and in exceptional cases, by giving adequate reasons, six weeks' time is provided. The fact of such delay and the causes of it must be reflected in the General Diary entry.

120.8. *Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.*

14. However despite registering an FIR, the police shall not investigate the case under section 176(1) (b), if it appears to the police that *there is no sufficient ground* for entering an investigation. Section 176 (1) (b) states as follows:-

“(b) if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.”

15. Thus, in order to investigate, the operative factor is ‘sufficient ground’. Therefore though the police is bound to register the information of commission of cognizable offence but he will go for investigation only if there is sufficient ground for entering an investigation. On the other hand section 175(3) empowered any magistrate to order for an investigation on satisfaction and after following the steps mentioned therein. Therefore, when the magistrate passes a direction under section 175 (3) he is not only directs the recording of FIR, which is in terms of section 173(1) but also directs investigation which must satisfy the test of section 176 (1) i.e. “sufficient ground”. Accordingly while a magistrate is allowing an application under section 175(3) it must satisfy the twin tests of (i) the existence of information of a cognizable offence (ii) sufficiency of grounds to investigate

16. If the aforesaid twin conditions do not met, then the magistrate is authorized to reject the applications in terms of section 173(4) BNSS,

invoking of his power under section 175 (3) of BNSS. This is also because when a Magistrate orders for any investigation the police cannot cite proviso (b) of section 176(1) for not to investigate on account of there being no sufficient ground for entering on an investigation, though the police officer after investigating the matter, can file a final report under section 193 BNSS, seeking closure of the matter and discharge the accused persons. Therefore, the Magistrate when ordering an investigation is additionally required to 'inquire' and satisfy himself after considering the submission of the police about the existence of sufficient ground to investigate.

17. In this context I may profitably refer the observation of the Apex Court in **Lalita Kumari's Case** (supra) laid down in in paragraph 111.

111. Besides, the Code gives power to the police to close a matter both before and after investigation. A police officer can foreclose an FIR before an investigation under Section 157 of the Code, if it appears to him that there is no sufficient ground to investigate the same. The section itself states that a police officer can start investigation when he has "reason to suspect the commission of an offence". Therefore, the requirements of launching an investigation under Section 157 of the Code are higher than the requirement under Section 154 of the Code. The police officer can also, in a given case, investigate the matter and then file a final report under Section 173 of the Code seeking closure of the matter. Therefore, the police is not liable to launch an investigation in every FIR which is mandatorily registered on receiving information relating to commission of a cognizable offence.

18. Therefore, registration of FIR does not automatically gives authority to police to start investigation but the investigation is to be done only on presence of 'sufficient ground' as contained in section 176. Now the distinction between the duty of the police to register an FIR and the exercise of the discretion by a Magistrate to direct an investigation has been clearly spelt out in the case of **Priyanka Srivastava** (Supra).

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.

19. If the magistrate during inquiry omits to consider the requirement of 'sufficient ground' for investigation as stated in section 176 to start an investigation on the basis of registration of FIR, the unintended consequence will be the nullification of section 176(1) (b) of BNSS. The statute in section 173(3) of BNSS prescribes a preliminary enquiry by the police at the time of registration of an FIR involving offences punishable with sentence between 3 to 7 years. However, section 175(3) of BNSS requires 'inquiry' by the magistrate in all cases and not just for offences punishable with sentence between 3 to 7 years. The same is consistent with the principle that the inquiry by the magistrate is to find sufficient ground for investigation and therefore, no exception has been made to the requirement for 'inquiry' on the score of length of sentence.

20. It is true that in ***Priyanka Srivastava's Case*** (Supra) the supreme Court in para 30 held that in case of adjudication of a case under erstwhile unamended section 156 (3) application, the magistrate may verify the truth also the veracity of the allegations but in paragraph 31, court indicated the nature of the cases where a verification of the veracity of the allegations is required to be undertaken. Para 31 runs as follows:-

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.

21. In *Ram Dev Food Products Private limited Vs. State of Gujarat*

(supra) Supreme Court held in paragraph 32 as follows:-

32. *We now come to the last question whether in the present case the Magistrate ought to have proceeded under Section 156(3) instead of Section 202. Our answer is in the negative. The Magistrate has given reasons, which have been upheld by the High Court. The case has been held to be primarily of civil nature. The accused is alleged to have forged partnership. Whether such forgery actually took place, whether it caused any loss to the complainant and whether there is the requisite mens rea are the questions which are yet to be determined. The Magistrate has not found clear material to proceed against the accused. Even a case for summoning has not yet been found. While a transaction giving rise to cause of action for a civil action may also involve a crime in which case resort to criminal proceedings may be justified, there is judicially acknowledged tendency in the commercial world to give colour of a criminal case to a purely commercial transaction. This Court has cautioned against such abuse.*

22. Therefore, what culled out from the aforesaid discussion is that if Magistrate is in favour of allowing an application under section 175(3), then he himself must conduct an exercise by way of an inquiry and not through a police officer to satisfy himself about the essential conditions:-

(a) On information of about cognizable ground

(b) Of the presence of sufficient ground.

23. It is to be made clear in this context that the term “.....and after making such inquiry as he thinks necessary” must not include any enquiry by police officer. The aforesaid inquiry must have to be done by the Magistrate himself as clearly manifested from the intention of the legislature, who stressed the words ‘such inquiry as he thinks necessary’. It would be a fallacious thinking that the legislative intention incorporating said words, was to entrust the same police agency to make

enquiry/investigation who has once refused to start investigation for their own reasoning that the same exists lack of “sufficient ground”. Therefore, it would be paradoxical to ask the same agency to report whether the allegations justifies for initiation of investigation or not. However at this stage magistrate is not expected to make roving inquiry. The argument that the inquiry envisaged in section 175(3) also includes investigation by police is not only contradictory but also if it is accepted, there is every likelihood that it would lead to rampant corruption, when the same agency would be asked to submit a report. It also can never be the intention of legislature that Magistrate should ask police to make an inquiry and simultaneously to ask the same police to answer why they have refused to start investigation. Above all from the definition of ‘inquiry’ under section 2(1) (k) as quoted above the ‘inquiry’ must have been conducted by a magistrate or a court. If the legislature would have any other intention to explain the term they would have used the term investigation in place of inquiry as used in section 225 of BNSS or would have made an explanation that for the purpose of that section, inquiry includes investigation. In the absence of such wording, the direction by the Magistrate to make inquiry by police to ascertain the sufficiency of making direction for investigation is clearly abuse of process of law.

24. However, what should be the manner or procedure for inquiry to be adopted by Magistrate/Court to satisfy himself about existence of ‘cognizable offence’ and also existence of ‘sufficient ground to investigate’ shall be laid down by magistrate himself which may vary from case to case,

since the legislature has clearly framed the law stating '*as he thinks necessary*' and no straight jacket formula can be laid down about the procedure to be adopted by magistrate himself to conduct such inquiry, while dealing with an application under section 175(3), but one thing is certain that such inquiry must be conducted by the magistrate himself.

25. While considering the other step to be taken by magistrate/court regarding consideration of submission made by a police officer is clear from using the word '*in this regard*' which signifies that consideration of submissions made by police to be confined only about the cause of refusal to start investigation. Since there had been two rejections from two different layers of police officials, the learned magistrate must ask an explanation from the officer-in-charge, for the reason as to why the written complaint made in earlier two occasions have not been acted. At this juncture the similarities and or dissimilarities in between the complaints made under section 173(1) and 173(4) and 175(3) of the BNSS should also be required to be taken into consideration as there is a chance of embellishment/exaggeration with the passage of time. The officer-in-charge should give his explanation for his inaction via video conference on the same day at a time fixed by the learned Magistrate preferably within 3 days and physical presence of officer-in-charge should not be insisted upon in all cases and it should be only in exceptional cases, in order to avoid the delay in proceeding. The order of registration and/or refusal of section 175(3) should reflect judicial satisfaction of all the aforesaid steps. In case of such inquiry by the magistrate through video conference pre requisite of Calcutta High Court Video Conference, rules should be adhered to

26. In this context it also needs to be mentioned that in **XXX Vs. State of Kerala and Ors.** reported in **2026 SCC Online, SC 114** the Supreme Court has laid down the procedure to be followed and when must section 175(4) be invoked which is in the form of a guideline for the judicial Magistrate and needs to be scrupulously followed while entertaining an application under section 175(4) of BNSS, where it has been clearly laid down that 175(4) is not an independent provision and 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). The relevant portion may be quoted below.

“WHEN MUST SECTION 175 (4) BE INVOKED - A GUIDE FOR JUDICIAL MAGISTRATES

45. *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.*

46. *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:*

46.1 *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.*

46.2 *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.*

46.3 *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.*

47. *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.

48. *A situation may arise where, in an appropriate case, the judicial magistrate has called for a report from the concerned superior officer 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.*

27. I may further add that for a proper exercise of this obligation the Magistrate is also required to see that 173(4) application is the same as the 173 (1) information. If however, the 173(4) application contains additions to the 173(1) information then calling upon the police and to consider the submissions of the police as regards the refusal to register an FIR would be misconceived. Thus in case the 173(4) application contains addition to the 173(1) information, the 173 (4) application cannot be entertained under the statute as power under section 175(3) can only be exercised after considering submission of police and police in such circumstances cannot make any meaningful submission as 173(4) application contains additions not found in section 173(1) information.

28. Therefore, to sum up, the course of action to be adopted in such cases may be stated below:-

- (1) Every information relating to the commission of a cognizable offence, irrespective of the area where the offence is committed, may be given orally or by electronic communication to an officer in charge of a police station, and if given—
 - (i) The information must relate to a cognizable offence.

(ii) If given orally, it shall be reduced in writing by officer-in-charge or under his direction and be read over to the informant and signed by the informant.

(iii) If given by electronic communication, the same shall be taken on record by him on being signed within three days by the communicator of such information.

(iv) The substance of the information shall be entered in a book to be kept by the officer-in-charge in such form as the State Government may by rules prescribe.

(2) A copy of the information shall be given forthwith, free of cost, to the informant or the victim.

(3) On receipt of information relating to the commission of any cognizable offence, which is made punishable for three years or more but less than seven years, the officer-in charge of the police station may:

(i) proceed to conduct preliminary enquiry, terminable within a period of 14 days, to ascertain whether there exists a prima facie case for proceeding in the matter; or

(ii) proceed with the investigation when there exists a prima facie case;

(4) A person aggrieved by a refusal on the part of an officer-in-charge of a police station to record the information, may send the substance of such information, in writing and by post, to the Superintendent of Police concerned.

(5) The concerned Superintendent of Police, if satisfied that such information discloses commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by a police officer subordinate to him.

If such direction is passed for investigation to be made by any police officer subordinate to Superintendent of Police, the

said police officer shall have all the powers of an officer-in-charge of the concerned police station in relation to that offence.

(6) if Superintendent of Police concerned does not take any action as contemplated under section 173(4) BNSS, the aggrieved person/ complainant may make an application to the Magistrate empowered under section 210 by way of affidavit in terms of Section 175(3) BNSS.

(7) The Magistrate, while considering the application in terms of 173(4) BNSS is required to call for a report from the police officer, i.e., the officer-in-charge of the concerned police station who failed to discharge his statutory duties in terms of section 173(1) BNSS.

8) After the response is received from the police officer, the Learned Magistrate needs to conduct the proceeding in the following manner:-

(a) Consider the application made under Sub-section (4) of Section 173 BNSS

(b) Make such enquiry as he thinks necessary but the Learned Magistrate cannot sub-delegate such power of enquiry beyond the definition clause

(c) Consider the submission made in this regard by the officer-in-charge of the concerned police station

If the Learned Magistrate thereafter, is satisfied that the officer-in-charge of the concerned Police Station should have acted in terms of Section 173(1) BNSS, the Learned Magistrate would order an investigation in terms of Section 175(1)BNSS.

10. where a Magistrate receives a complaint under Section 173(4) BNSS against a public servant in respect of acts alleged

to have been committed in the discharge of official duties, the Magistrate may order investigation only subject to the law laid down by the Apex Court in the case of **XXX Vs/ State of Kerala & Ors.**, (supra) as quoted above.

A. Section 175(4) BNSS must be read with section 175(3)

:The Court held the provision is not stand alone and must be read in harmony with section 175(3), meaning complaints triggering Section 175(4) must satisfy all procedural requirements of section 175(3), including written application and affidavit support.

B. Affidavit Requirement is Mandatory: A complaint under section 175(4) must be in writing and supported by an affidavit, as an additional procedural safeguard, and cannot dispense with the requirement under section 175(3)

C. Judicial Magistrate's Role: Section 175(4) prescribes additional safeguards for complaints against public servants, including calling for a superior officers' report and giving the accused an opportunity to respond, but does not override or substitute the basic procedural mandates of section 175(3).

D. Scope of "Discharge of official Duty: The court clarified that whether alleged acts occurred in the course of official duties must be assessed in context; such a nexus does not pre-judge guilt but determines the applicability of procedural safeguards mentioned in section 175(4).

29. Since in the above mentioned three applications, the "inquiry" had not been done by Magistrate and there is non-compliance of the steps contemplated in section 175(3) BNSS as discussed above, the order directing the police to start investigation by the concerned magistrates in all the three cases are hereby set aside. Hence I remit all the three matters to the

concerned magistrate for passing fresh orders under the guideline as laid down above and in compliance with section 175(3) BNSS and to pass order afresh preferably within a period of 30 days from the date of this order. However, it is made clear that I have not gone into the merits of the complaint and the Magistrate shall be free to take decision, uninfluenced by any observation made by this High Court.

30. CRR 467 of 2026, CRR 363 of 2026 and CRR 4982 of 2025 are accordingly disposed of.

31. Registrar General shall circulate one copy of this order to all the District Judges, who in turn shall circulate the order to concerned Magistrates of the District.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)