

60. Consequently, the petition is **dismissed** and costs are made easy.

(2025) 5 ILRA 626
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 02.05.2025

BEFORE

THE HON'BLE MRS. MANJU RANI
CHAUHAN, J.

Application U/S 528 BNSS No. 5944 of 2025

Smt. Raveena Meena **...Applicant**
Versus
State of U.P. & Ors. **...Opposite Parties**

Counsel for the Applicant:
Vinay Kumar

Counsel for the Opposite Parties:
G.A.

Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 173 (4)-Application U/S 173(4) BNSS moved- impugned order-directed to proceed with the application as a complaint case-Cases where Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet to determine "existence of sufficient ground to proceed- on a prima facie reading of the complaint -clearly indicate the need for police investigation-the discretion granted in Section 156(3) can only be read as it being the Magistrate's duty to order the police to investigate-if investigation in the matter is not required then in that eventuality, the Magistrate/Court of competent of jurisdiction can treat the application under Section 173(4) BNSS as a 'complaint case'-no interference in impugned order.

Application dismissed. (E-9)

List of Cases cited:

1. All Institute of Medical Sciences Employees Union Vs U.O.I. 1996 (4) Crimes 189 (Supreme Court)

2. Hari Singh Vs St. of U.P 2006 Criminal Law Journal 3283

3. Lalita Kumari Vs Government of U.P. & ors., 2014 (2) SCC 1

4. Anil Kumar Vs Vs M.K. Aiyappa (2013) 10 SCC 705

5. Vishwanath Vs St. of U.P. & ors., (2020) ILR 2 All 889

(Delivered by Hon'ble Mrs. Manju Rani Chauhan, J.)

1. Heard Mr. Vinay Kumar, learned counsel for the applicant, Mr. Amit Singh Chauhan, learned A.G.A. for the State and perused the record.

2. This application U/S 528 BNSS has been filed by the applicant to quash the impugned order dated 15.01.2025 passed by Chief Judicial Magistrate, Firozabad in Misc. Case No. 3148 of 2024 (Smt. Raveena Meena Vs. Murarilal Meena and another), under Section 173 (4) of BNSS, 2023, Police Station Tundla, District Firozabad, pending in the court of Chief Judicial Magistrate, Firozabad, by which the application under Section 173(4) BNSS filed by the applicant has been treated as complaint case.

3. Brief facts of the case are that on 06.12.2024 at about 4 p.m., the applicant was going to the market for some work, when Murarilal Meena and Subah Singh Meena met her in the market, made obscene gestures to her and passed dirty comments towards her. The applicant came home, told the whole incident to her husband and other family members. When her husband went to complain to the accused persons, those people abused him and assaulted him. Murarilal caught hold of the applicant from behind and did obscene

acts with her. Hearing their screams, some passersby came and saved them. The accused people threatened her that they will falsely implicate her husband in a false case and also threatened them to kill. Applicant's husband complained about the incident to the higher officials of his department but nothing has been done. On 07.12.2024, the applicant also went to the police station to complain about the incident but no action was taken.

4. Learned counsel for the applicant submits that an application was filed by the applicant with the allegation that on 06.12.2024 at about 4 P.M. while she was going to the Market, Murarilal Meena and Subah Singh Meena have made dirty gestures and flirted with her. The applicant told the incident to her husband. When her husband asked Murarilal Meena and Subah Singh Meena about the incident, they abused and assaulted him. Therefore, an application was given to the police authorities on 07.12.2024 for lodging of the F.I.R. However, when nothing was done, the present application U/S 173(4) BNSS was moved. He further submits that a perusal of the application filed by the applicant clearly discloses the commission of a cognizable offence. He, therefore, submits that once the application filed by the applicant under Section 156(3) BNSS disclosed the commission of a cognizable offence, the Magistrate has erred in law in directing to proceed with the application as a complaint case. The Learned counsel for the applicant has contended with vehemence that the learned Magistrate has passed the impugned order in a mechanical manner without application of judicial mind.

5. Learned A.G.A. on the other hand has supported the impugned orders and pointed

out that the grievance of the applicant has not gone unattended by the court below. The Magistrate after taking into consideration the entire gamut of the facts and circumstances of the case has rightly concluded to treat the application filed by the applicant under Section 173 (4) BNSS as a complaint case. The applicant shall still have an opportunity to prove his case before the court below.

6. Considered the rival submissions made by the learned counsel for the parties and gone through the records of the present application.

7. Section 173(4) BNSS reads as follows:-

"173 (4) BNSS 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."

8. In the case of ***All Institute of Medical Sciences Employees Union Vs. Union of India*** reported in ***1996 (4) Crimes 189 (Supreme Court)***, the Apex Court has held Para 4:-

"4. When the information is laid with the police but no action in that behalf was taken, the complainant is given power

under Section 190 Cr.P.C. read with Section 200 of the Cr.P.C. to lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to inquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the concerned police to investigate into the offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that the complaint/ evidence recorded prima facie discloses offence, he is empowered to take cognizance of the offence and would issue process to the accused."

9. Similarly, the Apex Court has again in the case of ***Hari Singh Vs. State of U.P*** reported in **2006 Criminal Law Journal 3283** held that para 4:-

"4. When the information is laid with the police, but no action in that behalf is taken, the complainant can under Section 190 read with Section 200 of the Code lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of

the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and would issue process to the accused. These aspects have been highlighted by this Court in All India Institute of Medical Sciences Employees' Union (Reg) through its President v. Union of India and Ors. MANU/SC/1769/1996 : (1996)115CC582 . It was specifically observed that a writ petition in such cases is not to be entertained. The above position was again highlighted recently in Gangadhar Janardan Mhatre v. State of Maharashtra MANU/SC/0830/2004 : 2004CriLJ4623 and in Minu Kumari and Ant v. State of Bihar and Ors. MANU/SC/8098/2006: 2006CriLJ2468."

10. in ***Lalita Kumari Vs. Government of U.P. and others*** reported in **2014 (2) SCC 1**, specifically in paragraph 111, the Apex Court has observed as follows:-

"111) In view of the aforesaid discussion, we hold:

"i) 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.

ii) 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.

iii) 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.

iv) 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

v) 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.

vi) 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.

vii) 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 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

viii) 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."

11. It is clear that the direction under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone the issuance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice it is considered appropriate to straightaway direct investigation, such a direction is issued.

12. The cases where Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet to determine "existence of sufficient ground to proceed". Category of cases falling under para 120.6 in *Lalita Kumari v. State of U.P., (2014) 2 SCC 1* may fall under Section 202.

13. Subject to these broad guidelines available from the scheme of the Code, exercise of discretion by the Magistrate is guided by interest of justice from case to case.

14. In *Anil Kumar Vs. Vs. M.K. Aiyappa* reported in (2013) 10 SCC 705 It has been held that direction of Magistrate for investigation under Section 156(3) Cr.P.C. cannot be given mechanically. In the aforesaid case, it has been observed as follows:-

"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."

15. After considering the relevant provisions of Cr.P.C. and various

pronouncement, this Court in the case of *Vishwanath Vs. State of U.P. and 4 Ors, reported in (2020) ILR 2 All 889* has held as follows:-

"55. Thus, in the whole scheme of the Code of Criminal Procedure as clarified in the pronouncements of the Apex Court ranging from 1951 to 2019, it is evident that if a person has a grievance that his F.I.R. has not been registered by the police, his first remedy is to approach the Superintendent of Police under Section 154(3), Cr.P.C. or other police officer referred to in Section 36, Cr.P.C. If his grievances still persist, then he can approach a Magistrate under Section 156(3), Cr.P.C. He has a further remedy of filing a criminal complaint under Section 200, Cr.P.C. On receipt of the complaint, however, several courses are open to the Magistrate:

(i) He may take cognizance of the offence at once and proceed to record statements of the complaints and the witnesses present under Section 200, and proceed under Chapter XV and Chapter XVI, accordingly.

(ii) If, he thinks fit, he may postpone the issue of process and either inquire into the case himself or direct an investigation to be made by the police officer or such other process as he may think fit, for the purpose of deciding whether or not there is sufficient ground for proceeding. He may then issue process if in his opinion there is sufficient ground of proceeding; or dismiss the complaint if there is no sufficient ground for proceeding.

(iii) Yet another course open to the Magistrate is that instead of taking

cognizance of the offence and following the procedure laid down under Section 200 or Section 202, he may order investigation to be made by the police under Section 156(3).

(iv) On receiving the police report, the Magistrate may take cognizance of the offence under Section 190(1)(b) and issue process straightway to the accused. The Magistrate may exercise his power in this behalf irrespective of the view expressed by the police in their report whether an offence has been made out or not. This is because the Magistrate is not bound by the opinion of the police officer as to whether an offence has been made out or not.

56. Thus, the above discussion pertaining to the power of the Magistrate under Section 156(3) in Chapter XII read with Section 190 in Chapter XIV of the Code leaves no room for doubt that there is nothing in the Code of Criminal Procedure, which curtails or puts any embargo on the power of the Magistrate to make an "inquiry" as defined under Section 2(g) of the Code or to order for "investigation" defined under Section 2(h) of the Code, in dealing with the application under Section 156(3), Cr.P.C. i.e., in exercise of the power conferred upon it under Chapter XII or Chapter XIV of the Code to satisfy itself about the veracity of the allegations of commission of a criminal offence made therein.

57. In its discretionary power, it is open for the Magistrate to direct the police to register a criminal case under Section 154, Cr.P.C. and conduct investigation. At the same time, it is open for the Magistrate, where the facts of the case and the ends of justice so demand, to

take cognizance of the matter by treating it as a complaint and proceed for the "inquiry" under Sections 200 and 202, Cr.P.C.

58. It cannot be said nor it could be demonstrated that in each case, without application of its independent mind, the Magistrate shall issue simply direction "to register and investigate" i.e., to lodge a first information report on an application filed under Section 156(3), Cr.P.C. The power to conduct a preliminary inquiry into the report of commission of criminal offence(s), conferred on the Magistrate within the scheme of the Code of Criminal Procedure has not been curtailed by any of the observations made by the Apex Court in the case of Lalita Kumari, MANU/SC/1166/2013MANU/SC/1166/2013 : 2014(2) SCC 1.

59. However, it is pertinent to note that while exercising its discretionary power under Section 156(3), Cr.P.C., the Magistrate like any other court of discretionary jurisdiction is to act fairly and consciously and ensure that the discretion conferred upon it is exercised within the limits of judicial discretion. The entire emphasis is to act in an unbiased and just manner, strictly in accordance with law, to find but the truth of the case which shall come before it.

60. It is a Magistrate who is the competent authority to take cognizance of an offence and it is his duty to decide whether on the basis of the record and documents produced, an offence is made out or not and if made out, what course of law should be adopted. Emphasis is laid to the statement in Vinubhai (supra), wherein it is stated that "it is the judicial conscience of the Magistrate which has to be satisfied

with reference to the record and the documents placed before him by the investigating agency, in coming to an appropriate conclusion in consonance with the principles of law." It would not be out of place to note para '17' of the report in Vinubhai, at this stage:

"17. It is clear that a fair trial must kick off only after an investigation is itself fair and just. The ultimate aim of all investigation and inquiry, whether by the police or by the Magistrate, is to ensure that those who have actually committed a crime are correctly booked, and those who have not/are not arraigned to stand trial. That this is the minimal procedural requirement that is the fundamental requirement of Article 21 of the Constitution of India cannot be doubted. It is the hovering omnipresence of Article 21 over the Cr.P.C. that must needs inform the interpretation of all the provisions of the Cr.P.C., so as to ensure that Article 21 is followed both in letter and in spirit."

(Emphasis added)

61. Applying the above legal principles, in the facts of the present case, this Court finds that the application under Section 156(3), Cr.P.C. was filed after a period of two months of the alleged incident and it was noted by the court concerned that nothing could be traced in favour of the prosecution by medical examination etc. In the circumstances before it, the court deemed it fair, just and proper to search the evidence(s) which is/are well known to the applicant and in his possession so as to find out the truth of the allegations in the application.

62. Having perused the contents of the application and the order of the court below, it cannot be said that the court

concerned has committed illegally in exercise of its discretionary jurisdiction under Section 156(3), Cr.P.C. or it has exceeded in its jurisdiction in any manner or has exercised jurisdiction not vested in it in law. It cannot be said also that any material injustice has been caused to the applicant on account of the decision of the court below to treat the application under Section 156(3), Cr.P.C. as a complaint for the purpose of deciding whether or not there is sufficient ground for proceeding, rather than directing the police to register an F.I.R. and investigate under Section 154 of the Code."

16. From all discussions, it can be said that in such cases, where not only does the Magistrate find the commission of a cognizable offence alleged on a prima facie reading of the complaint but also such facts are brought to the Magistrate's notice which clearly indicate the need for police investigation, the discretion granted in Section 156(3) can only be read as it being the Magistrate's duty to order the police to investigate. In cases such wherein, there is alleged to be documentary or other evidence in the physical possession of the accused or other individuals which the police would be best placed to investigate and retrieve using its powers under the CrPC, the matter ought to be sent to the police for investigation.

17. It is true that the use of the word "may" implies that the Magistrate has discretion in directing the police to investigate or proceeding with the case as a complaint case. But this discretion cannot be exercised arbitrarily and must be guided by judicial reasoning.

18. This Court is of the view that if investigation in the matter is not required

then in that eventuality, the Magistrate/Court of competent jurisdiction can treat the application under Section 173(4) BNSS as a 'complaint case'.

19. In light of the above facts and above proposition of law, this Court is of the view that there is no illegality or irregularity in the order impugned and after collecting the report from the police station concerned or the report otherwise the Magistrate is of the view that no investigation from the Police is required and he has rightly directed the present case to be treated as complaint case.

20. In light of above facts, this Court is of the view that no interference is required in the orders impugned. The present application lacks merit and deserves to be dismissed.

21. It is accordingly *dismissed*.

22. The Court would like to appreciate the hard work put in by Ms. Shreya Shukla, Research Associate, who has drawn attention to detail and the same shown in her work of providing legal assistance in this matter.

(2025) 5 ILRA 633
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 06.05.2025

BEFORE

THE HON'BLE ARUN KUMAR SINGH
DESHWAL, J.

Application U/S 528 BNSS No. 11862 of 2025

Imran Khan @ Ashok Ratna ...Applicant
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Applicant:
 Saiyad Iqbal Ahmed, Sharique Ahmed

Counsel for the Opposite Parties:
 Manish Kumar Tripathi, G.A.

Criminal Law - Criminal Procedure Code, 1973- Section 161 & 164 -St.ment of opposite party no.2 recorded u/s 161 and 164 Cr.P.C.- specific allegation of cruelty and also the harassment against the husband for demand of dowry-as well as committing unnatural carnal sex upon his wife against her wishes-to attract the offence u/s 498A IP- specific demand of dowry is not necessary-cruelty committed by the husband is itself sufficient to attract the ingredients of Section-498A IPC-from the perusal of the St.ments of Section 161 Cr.P.C. and 164 Cr.P.C., offence mentioned in charge sheet are made out-no ground for quashing.

Application rejected. (E-9)

List of Cases cited:

1. Shivendra Pratap Singh Thakur @ Banti Vs St. of Chhattisgarh and Others in Criminal Appeal No. 2588 of 2024
2. Manish Sahu Vs The St. of M.P. in Misc. Criminal Case No.8388 of 2023
3. Shashank Harsh Vs St. of M.P., Station House Officer in Misc. Criminal Case No.40044 of 2023
4. Navtej Singh Johar Vs U.O.I. through Secretary Ministry of Law & Justice reported in 2018 (10) SCC 1
5. St. of H.P. Vs Rajesh Kumar in Criminal Appeal No. 2097 of 2014
6. Khanu Vs Emperor 1924 SCC OnLine Sind JC 49
7. Khandu Vs Emperor reported in 1933 SCC Online Lah 601
8. Aluri Venkata Ramana Vs Aluri Thirupathi Rao & ors., SLP (Criminal) No.9243 of 2024