2026 INSC 88

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 4629 OF 2025
[ARISING OUT OF SLP (CRIMINAL) NO. 5175 OF 2025]

XXX **... APPELLANT**

VERSUS

STATE OF KERALA & ORS **... RESPONDENTS**

J U D G M E N T

DIPANKAR DATTA, J.

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PREFACE

1. This appeal, by special leave, calls in question an order of reversal of a Division Bench of the High Court of Kerala at Ernakulam[1], whereby a writ appeal[2] of the fifth respondent[3] stood allowed and the judgment and order under challenge of a Single Judge was set aside. Important questions relating to interpretation of certain provisions of the recently enacted Bharatiya Nagarik Suraksha Sanhita, 2023[4] are involved in the appeal. Although the facts of the appeal are not too complicated and, hence, the same could have been decided by a short order, we thought it appropriate to consider the rival arguments in some depth since, by the time we reserved judgment and even thereafter, there has been no authoritative pronouncement of this Court on the interplay between sub-sections (3) and (4) of Section 175, BNSS, which creates a nuanced

[1] High Court
[2] Writ Appeal No. 712/2024
[3] R-5
[4] BNSS

framework for determining the overall scope thereof. Having regard to the same, while concluding our judgment, we also wish to indicate in brief the considerations that ought to weigh in the minds of the magistrates, empowered under Section 210, BNSS, while they are seized of applications/complaints alleging commission of an offence by a public servant in course of discharge of his official duty as well as provide a guide for due exercise of the power to direct investigation.

FACTS

2. While pursuing a complaint relating to a property dispute, the appellant was, allegedly, sexually assaulted by three police officers on separate occasions. The first incident occurred in January 2022, when R-5 visited her residence under the pretext of discussing the matter (relating to the property dispute) privately and, allegedly, proceeded to rape her. The second incident followed in quick succession, also in January 2022, when a senior officer of the rank of Deputy Superintendent of Police (not a party herein), to whom she had complained about the first incident, allegedly behaved inappropriately with her in her house. The third incident took place in August 2022, when another senior officer of the rank of Superintendent of Police (also not a party herein), to whom she had complained about the previous two incidents, under the guise of offering help, allegedly called her to an isolated location and raped her.

3. The second incident led the appellant to lodge a complaint with the office of the Superintendent of Police, in August 2022. This complaint was forwarded to the office of the Deputy Superintendent of Police which on

11th October 2022 submitted a report[5] stating that the allegations in the complaint filed by the appellant were untrue.

4. After the report in August 2022, there was not much of a development over the next two years.

5. After change of incumbency in the office of the Superintendent of Police of the district in September 2024, the appellant submitted a written complaint before Station House Officer, Ponnani PS, on 6th September; a complaint under sub-section (4) Section 173, BNSS to the District Police Chief on 8th September; and on 9th September, she filed an application[6] under "Section 210 of the Bharatiya Nagarik Suraksha Sanhita, 2023 read with Section 173(4)" before the Judicial Magistrate First Class, Ponnani[7] seeking a direction for registration of a First Information Report[8] against those police officials whom she perceived as offenders. Having regard to sub-section (4) of Section 175, BNSS[9], the JMFC *vide* order dated 11th September 2024 called for a report from the Deputy Inspector General of Police, Thrissur Range. Two days later, while the appellant's application was still pending before the JMFC, the appellant invoked the writ jurisdiction of the High Court[10] alleging unfair and unlawful investigation by the police. She sought directions for registration of an FIR and compliance with the directions made by this

[5] as will unfold, submissions have been made challenging the validity of this report
[6] C.M.P. No. 3288 of 2024
[7] JMFC, hereafter
[8] FIR
[9] a new provision in the BNSS
[10] WP (C) No. 33035 of 2024

Court in ***Lalita Kumari v. Govt. of U.P.***[11]. Lastly, she implored the writ court to declare that the acts of the police officials, in sexually assaulting her, were not in the discharge of their official duties and, thus, sub-section (4) of Section 175, BNSS was not required to be followed. The final prayer in the writ petition is reproduced below:

> "3. The Petitioner respectfully prays before this Honourable Court to declare that the immunity provided under Section 175(4) of BNSS shall not extend to crimes committed by a public servant that are unrelated to their official duties. Specifically, the Court is requested to rule that the protection afforded to public servants does not apply to acts that constitute criminal offenses committed outside the scope of their official functions. This prayer is made to ensure that public servants are held accountable for any criminal acts they commit in their personal capacity, without the shield of immunity intended for their official duties."
>
> (emphasis ours)

PROCEEDINGS BEFORE THE HIGH COURT

6. A Single Judge of the High Court allowed the writ petition *vide* order dated 18th October, 2024, holding that compliance with Section 175(4)(a), BNSS prior to registration of an FIR was not mandatory, as the alleged offence of rape could not be regarded as one committed by a public servant in the *"discharge of official duties"*. The Single Judge further observed that the use of the word *"may"* in sub-section (4) of Section 175 indicates that the provision is directory, not mandatory. Accordingly, the JMFC was directed to dispose of the appellant's application as per the law declared by the Single Judge, within ten days of receiving the order. In compliance with this direction, the Magistrate, ordered registration of an FIR *vide* order dated 24th October, 2024.

[11] (2014) 2 SCC 1

7. Aggrieved by the order of the Single Judge, R-5 preferred the writ appeal which stands allowed by the Division Bench *vide* a judgment and order dated 13th November, 2024[12]. While the Division Bench acknowledged that a substantial question of law did arise in the appeal, it declined to adjudicate upon the same as *"the main question is whether it was appropriate to intervene at this stage under Article 226 of the Constitution of India when the complaint was pending…"*. The Division Bench proceeded to set aside the order passed by the Single Judge and also the order of the JMFC dated 24th October, 2024 directing registration of an FIR against the alleged offenders on the grounds that: (i) interference by the Single Judge with the order of the JMFC dated 11th September 2024 was unwarranted, when the complaint [read: application under Section 175(3), BNSS] before the JMFC was still pending; (ii) the Single Judge should not have issued directions to the JMFC when no order of the JMFC was under challenge; and (iii) owing to pendency of the application under Section 175 (4), BNSS before the JMFC, the remedy under Article 226 could not have been invoked without exhausting the remedy under the BNSS.

THE APPEAL

8. Thoroughly dissatisfied with the outcome of the writ appeal of R-5, the appellant has approached us challenging the impugned order of the

[12] impugned order

Division Bench for exercise of our appellate jurisdiction to set the same at naught and to restore the order of the Single Judge.

SUBMISSIONS ON BEHALF OF THE APPELLANT

9. Mr. R Basant, learned senior counsel appearing on behalf of the appellant, argued that:

9.1 The protection to a public servant under sub-section (4) of Section 175, BNSS is only available if the offence alleged *"is arising in course of the discharge of his official duties"*, otherwise not. Since acts of sexual assault and rape, by no stretch of imagination are in the discharge of official duties, the protection cannot be afforded to the alleged offenders (police officers). As sub-section (4) of Section 175 is not attracted, the proper course for a judicial magistrate is to direct registration of an FIR without calling for any report and/or giving any opportunity to the accused public servant to respond to the allegations.

9.2 Sub-section (1) of Section 218, BNSS [earlier Section 197(1), Code of Criminal Procedure, 1973[13]] requires prior sanction from the concerned government before cognizance of an offence can be taken against a public servant. However, the third proviso to Section 218(1) excludes the requirement of prior sanction where a public servant is alleged to have committed a sexual offence[14], reflecting the intent of

[13] Cr. PC

[14] "Provided also that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under Section 64, Section 65, Section 66, Section 68, Section 69, Section 70, Section 71, Section 74, Section 75, Section 76, Section

the law makers not to afford any special protection to public servants in cases of sexual offences. Consequently, it is clear that the legislature did not intend to afford public servants any special protection. While Section 175, unlike Section 218, contains no proviso, it must be read and interpreted in the light of the legislature's intent and, therefore, no protection under sub-section (4) of Section 175 can be extended in cases of sexual offences.

9.3 Another perspective on this is that a public servant cannot be afforded greater protection at the stage of investigation than what is available at the stage of cognizance. Since no protection is provided for sexual offences at the stage of cognizance, where prior sanction is not required, it cannot be claimed that such protection exists at the stage of investigation.

9.4 Resultantly, when sub-section (4) of Section 175, BNSS does not apply, the general law enshrined in sub-section (3) thereof is applicable. Thus, the JMFC should have directed registration of an FIR and having not so directed, the Single Judge was justified by his interference to set things right.

9.5 Sub-section (4) of Section 175, BNSS is not a stand-alone provision. The same must be read in continuation of / as a proviso to Section sub-section (3) of Section 175 thereof. Failing to do so would result in the anomalous position that the requirement of an "application

77, Section 78, Section 79, Section 143, Section 199 or Section 200 of the Bharatiya Nyaya Sanhita, 2023."

supported by an affidavit," explicitly provided in Section 175(3), would be deemed absent in Section 175(4). This would allow an order for investigation against a public servant to be initiated on the basis of a mere oral complaint, thereby depriving the public servant of the safeguard recognized by this Court in ***Priyanka Srivastava v. State of U.P.***[15], which held that every application under sub-section (3) of Section 156, Cr. PC must be supported by a sworn affidavit in the passage extracted hereunder:

> 30. In our considered opinion, a stage has come in this country where Section 156(3) CrPC applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.

9.6 The law laid down by this Court in ***Lalita Kumari*** (supra) is that when a complaint discloses a cognisable offence, irrespective of whether the allegations are credible or not, an FIR has to be registered. Pursuant to the complaint made by the appellant after the second incident, the office of the Deputy Superintendent of Police filed a report stating that the allegations in the complaint were untrue. This report was questioned on the ground that the same exceeds the

[15] (2015) 6 SCC 287

scope of preliminary enquiry, as discussed in ***Lalita Kumari*** (supra) according to which the objective of the enquiry is not to ascertain a *prima facie* case but only to determine whether the allegations constitute a cognizable offence. Thus, the report which came to be submitted finding the allegations to be untrue constituted a gross violation of the law declared by this Court. Not only that, but, as per paragraph 120.3 of ***Lalita Kumari*** (supra), the outcome of any preliminary enquiry must be recorded in writing and a copy supplied to the complainant – which was not done in the present case.

10. Resting on the aforesaid arguments, Mr. Basant made a prayer for setting aside the impugned order and for a direction to the police for registration of an FIR, with further direction to fairly and impartially investigate the crime alleged by the appellant.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

11. Mr. Ranjit Kumar, learned senior counsel appeared on behalf of the official respondents 1 to 4, namely the State of Kerala (R-1), the Superintendent of Police, District Malappuram (R-2), the Additional Superintendent of Police, District Malappuram (R-3) and the Station House Officer of Ponnani Police Station, District Malappuram (R-4).

11.1 At the outset, Mr. Kumar supported the course of action adopted by the JMFC in the present case [in calling for a report under sub-section (4) of Section 175, BNSS].

11.2 Questioning the *bona fide* of the appellant in filing the complaint, Mr. Kumar submitted that the allegations levelled by the appellant

against the accused police officers were stimulated by personal vengeance and arose out of a conspiracy involving the appellant herself, two of her relatives, and a television news channel. It was contended that the appellant's two relatives, who were serving police officers, had earlier been suspended from service by one of the accused officers and therefore bore animosity towards them. The news channel, it was submitted, was similarly antagonistic, as its owners had been charge-sheeted in a criminal case.

11.3 Further, Mr. Kumar pointed out that following the appellant's complaint, a preliminary enquiry was conducted, which revealed serious inconsistencies and contradictions in her version. It was found, *inter alia*, that R-5 was not present in town on the date on which he is alleged to have raped the appellant. It was also revealed, with respect to the alleged third incident, that the appellant had herself travelled to the location and was not able to name the place where the incident occurred, thereby casting serious doubt on the veracity of her version. The preliminary report, upon consideration of the materials on record, concluded that the allegations were false and motivated, and that they formed part of a conspiracy between the appellant, her suspended relatives, and the said news channel – all of whom harboured personal grievances against the accused police officers. The report further noted that the appellant was in the habit of filing complaints against public officials with the object of extorting money.

11.4 Mr. Kumar next contended that even assuming the allegations of the appellant to be true, the acts complained of were performed in the discharge of official duties by the police officers concerned. Accordingly, it was urged that they are entitled to the protection afforded under sub-section (4) of Section 175, BNSS, which seeks to protect public servants from frivolous and vexatious criminal proceedings in respect of acts performed in the course of their official functions.

11.5 It was argued by Mr. Kumar that Sections 173 and 175 of the BNSS (Sections 154 and 156 of the Cr. PC) are not standalone provisions but must be read together. Combined, they provide the procedure for registration of an FIR and sequential remedies in case of its non-registration. Section 173, BNSS is *pari materia* with Section 154, Cr. PC, save for a significant addition.

11.5.1 Sub-section (3) of Section 173, BNSS has now introduced a statutory requirement of preliminary enquiry in cases of offences punishable with three years or more but less than seven years, to ascertain *prima facie* existence of an offence.

11.5.2 Furthermore, sub-section (4) of Section 173, BNSS is substantially similar to sub-section (3) of Section 154, Cr. PC but contains an additional and material phrase. Emphasis was laid on sub-section (4) of Section 173 and in particular the last few words, reading as follows:

> (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 68 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.
>
> (emphasis laid by Mr. Kumar)

11.5.3 It was, thus, submitted that the same makes clear the intention of the legislature for sequential escalation of a grievance arising out of non-registration of an FIR.

11.5.4 That Sections 173 and 175 of BNSS, according to Mr. Kumar, are not standalone provisions was also sought to be highlighted by submitting that sub-section (3) of Section 175 reflects a linkage to sub-section (4) of Section 173:

> 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.
>
> (emphasis laid by Mr. Kumar)

11.6 Our attention was invited to the relevant portions of the 247th Report on the Bhartiya Nagarik Suraksha Sanhita, 2023 by the Department-related Parliamentary Standing Committee on Home Affairs. The said report, 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 read as follows:

" 3.13.3 Further, Clause 175 (3) states that:

'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'."

Suggestions received by the Committee were as follows:

"SUGGESTIONS:

3.13.4 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.

3.13.5 Clause 173(4) is not explicitly divided into sub-clauses, therefore, in Clause 175(3) the reference to 'clause (b) of sub-section (4) of Section 173' is erroneous, and the reference should instead be drawn to 'sub-section (4) of Section 173'."

Having considered the suggestions, the Committee proceeded to decide as follows:

"OBSERVATIONS/RECOMMENDATIONS:-

3.13.6 The Committee is of the view that adequate safeguards 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. The Committee further recommends correcting the cross-referencing error in Clause 175(3) by replacing 'clause (b) of sub-section (4) of Section 173', with 'sub-section (4) of Section 173'."

11.7 While concluding his address, Mr. Kumar urged that the impugned order under challenge does not suffer from any infirmity and, accordingly, the appeal deserves dismissal.

12. Mr. Siddharth Dave, learned senior counsel, appeared on behalf of R-5 (police officer).

12.1 Mr. Dave submitted that the Legislature has consciously incorporated various procedural protection for public servants in the newly enacted BNSS.

12.1.1 In cases where a litigant seeks a direction from the judicial magistrate for registration of an FIR against a public servant, the BNSS, unlike the Cr. PC, provides a two-tier protection mechanism. First, at the stage of issuance of such an order under Section sub-section (4) of Section 175, the judicial magistrate must call for a report from the superior officer of the accused and also provide an opportunity of hearing to the accused. Secondly, at the stage of taking cognizance under Section 218, BNSS, prior sanction from the concerned government is required.

12.1.2 As a special provision, when a judicial magistrate is called upon to take cognizance of a complaint alleging the commission of an offence by a public servant, Section 223 provides similar safeguards, requiring a report from the superior police officer and an opportunity of hearing to be afforded to the public servant.

12.2 Next, Mr. Dave submitted that sub-section (4) of Section 175 is an independent provision covering a special case. While sub-section (3) of Section 175 is the general law, the next sub-section alone governs the field when a complaint is directed against a public servant for offence allegedly committed in the discharge of official duties. That

sub-section (4) is a standalone provision - distinct and uncontrolled by sub-section (3) - is apparent from the following: (i) sub-section (3) of Section 175 can be invoked only by an application supported by an affidavit, whereas sub-section (4) of Section 175 refers to a *"complaint"* and thus encompasses oral complaints as well [as per Section 2(1)(h), BNSS]; and (ii) sub-section (4) of Section 175 commences with the words *"Any Magistrate empowered under Section 210"* rather than "the Magistrate above" underscoring the Legislature's intention to provide an additional safeguard for public servants.

12.3 Further, the fact that sub-section (3) of Section 175 requires a complaint to be accompanied by an affidavit, whereas no such requirement exists under sub-section (4) thereof, reinforces the rationale for providing an additional layer of protection to public servants, as even oral complaints are accepted under the latter which calls for additional caution.

12.4 The introduction of this provision is a well-considered legislative response to the divergence of judicial opinion on the issue. In ***Anil Kumar v. M.K. Aiyappa***[16], this Court held that even at the stage of directing an investigation against a public servant under Section sub-section (3) of Section 156, Cr. PC, prior sanction under Section 19 of the Prevention of Corruption Act, 1988 is required. However, in

[16] (2013) 10 SCC 705

Manju Surana v. Sunil Arora[17], the Court noted a divergence of judicial opinion on this issue and referred the matter to a larger Bench. Recognizing this ambiguity, Parliament introduced sub-section (4) of Section 175 as a clarificatory and protective measure for public servants.

12.5 Relevant extracts from the decided cases referred to by Mr. Dave are reproduced below:

a. ***Anil Kumar*** (supra):

> **17.** We may now examine whether, in the abovementioned legal situation, the requirement of sanction is a precondition for ordering investigation under Section 156(3) CrPC, even at a pre-cognizance stage.
> **21.** The learned Senior Counsel appearing for the appellants raised the contention that the requirement of sanction is only procedural in nature and hence, directory or else Section 19(3) would be rendered otiose. We find it difficult to accept that contention. Sub-Section(3) of Section 19 has an object to achieve, which applies in circumstances where a Special Judge has already rendered a finding, sentence or order. In such an event, it shall not be reversed or altered by a court in appeal, confirmation or revision on the ground of absence of sanction. That does not mean that the requirement to obtain sanction is not a mandatory requirement. Once it is noticed that there was no previous sanction, as already indicated in various judgments referred to hereinabove, the Magistrate cannot order investigation against a public servant while invoking powers under Section 156(3) CrPC. The above legal position, as already indicated, has been clearly spelt out in *Paras Nath Singh* [(2009) 6 SCC 372 : (2009) 2 SCC (L&S) 200] and *Subramanian Swamy* [(2012) 3 SCC 64 : (2012) 1 SCC (Cri) 1041 : (2012) 2 SCC (L&S) 666] cases.

b. ***Manju Surana*** (supra):

> **33.** The catena of judgments on the issue as to the scope and power of direction by a Magistrate under Chapters XII & XIV is well established. Thus, the question would be whether in cases of the PC Act, a different import has to be read qua the power to be exercised under Section 156(3) CrPC i.e. can it be said that on account of Section 19(1) of the PC Act, the scope of inquiry under Section 156(3) CrPC can be said to be one of taking "cognizance" thereby requiring the prior sanction in case of a public servant? It is trite to say that prior sanction to prosecute

[17] (2018) 5 SCC 557

a public servant for the offences under the PC Act is a provision contained under Chapter XIV CrPC. Thus, whether such a purport can be imported into Chapter XII CrPC while directing an investigation under Section 156(3) CrPC, merely because a public servant would be involved, would beg an answer.

35. The complete controversy referred to aforesaid and the conundrum arising in respect of the interplay of the PC Act offences read with CrPC is, thus, required to be settled by a larger Bench. The papers may be placed before the Hon'ble the Chief Justice of India for being placed before a Bench of appropriate strength.

12.6 Further, referring to the equivalence drawn by Mr. Basant between sub-section (4) of Section 175 and the third proviso to sub-section (1) of Section 218 of the BNSS, Mr. Dave submitted that such a comparison is misplaced. The two provisions operate at distinct stages of the criminal process. Sub-section (4) of Section 175 applies at the threshold stage, governing the order for investigation, whereas sub-section (1) of Section 218 comes into play at the post-investigation stage, when the Court takes cognizance upon completion of investigation. At the threshold stage, Parliament has introduced a mandatory twin safeguard under sub-section (4) of Section 175 to preserve the delicate balance between enabling genuine prosecution and preventing frivolous or motivated complaints against public servants. The legislative intent is, thus, clear: — while the requirement of prior sanction has been excluded for sexual offences at the stage of cognizance (by which time enough material is available before the Court to take a decision on cognizance), it has been consciously retained at the stage of ordering

investigation (when no material is available) to ensure fairness and protect public functionaries from vexatious proceedings.

12.7 Lastly, it was submitted that the alleged acts occurred in the *"discharge of official duties"* since, as per the appellant's own version, they were committed by the police officials while visiting her house for the purpose of investigation and, therefore, the alleged offenders are entitled to the protection under Section 175(4).

QUESTIONS

13. In relation to interpretation of Section 175 read with Section 173, BNSS, the following two questions arise for determination:

I. Whether sub-section (4) of Section 175, BNSS is a stand-alone provision or is it to be read in continuation of / as a proviso to sub-section (3) thereof?

II. What procedure should a judicial magistrate follow upon receiving a complaint against an accused, who happens to be a public servant, for his acts *"arising in course of the discharge of his official duties"*?

14. However, on facts of the present appeal, we are tasked to decide the following questions:

(A). Whether the Single Judge exceeded his jurisdiction by interpreting sub-section (4) of Section 175, BNSS while issuing consequential directions for the JMFC to pass an appropriate order on the appellant's application without any prayer in this behalf and particularly in the absence of any challenge to the order of the JMFC

dated 11th September 2024 calling for a report per sub-section (4) of Section 175?

(B). Whether the alleged acts of the public servants, in the facts and circumstances of the present case, fall within the discharge of their official duties?

ANALYSIS

15. Having heard learned senior counsel for the parties, we propose to answer the questions framed sequentially.

WHAT IS THE LAW LAID DOWN IN LALITA KUMARI?

16. Since the appellant's claim before the High Court was based on the decision in ***Lalita Kumari*** (supra), it would not be inapt to remind ourselves of what the law declared therein is before proceeding with the task of answering the above formulated questions.

17. ***Lalita Kumari*** (supra) arose out of a writ petition under Article 32 of the Constitution. Noticing divergent views, a three-Judge Bench ordered that the petition may be placed before a Constitution Bench of five Judges. The issue arising for an answer is noted in paragraph 1 of the decision authored by the Hon'ble the Chief Justice, reading as follows:

> The important issue which arises for consideration in the referred matter is whether "a police officer is bound to register a first information report (FIR) upon receiving any information relating to commission of a cognizable offence under Section 154 of the Code of Criminal Procedure, 1973 (in short 'the Code') or the police officer has the power to conduct a 'preliminary inquiry' in order to test the veracity of such information before registering the same"?

18. The observations of this Court, relevant for the purpose of this discussion, are summarised in brief as follows:

18.1 If information discloses commission of a cognizable offence, the police has no discretion to refuse registration of an FIR or to conduct a preliminary inquiry. The word *"shall"* in Section 154(1), Cr. PC is used in a mandatory sense (Paragraphs 37.6, 54, 83 and 105).

18.2 The placement of Section 154 before 156 makes clear the legislative intent: that recording of first information is the starting point of investigation. The same acts as a safeguard against arbitrary police actions (Paragraphs 38 and 39).

18.3 Although Section 166-A[18] of the Indian Penal Code, 1860 provides for penal consequences of non-registration of FIR by a public servant for only certain kinds of offences against women, the same does not mean that a public servant (police officer) has discretion to register/not register FIR for other offences (Paragraphs 40–42).

18.4 The object of early registration of FIR is to ensure transparency, avoid embellishments and maintain judicial oversight through prompt reporting to the Magistrate (Paragraphs 93–97).

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[18] 166A. Public servant disobeying direction under law.—Whoever, being a public servant,—
(a) ***
(b) ***
(c) fails to record any information given to him under sub-section (1) of section 154 of the Code of Criminal Procedure, 1973 (2 of 1974), in relation to cognizable offence punishable under section 326A, section 326B, section 354, section 354B, section 370, section 370A, section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB, section 376E or section 509,
shall be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years, and shall also be liable to fine.

18.5 While mandatory registration of an FIR is the rule, the Constitution Bench recognised a limited need for preliminary inquiry in exceptional categories of cases. Such exceptions include cases of medical negligence, corruption cases involving public servants, situations where the information received does not, on its face, disclose a cognizable offence. Even in such cases, the scope of preliminary inquiry is limited only to determine whether a cognizable offence is disclosed. If the information, *ex facie* discloses such an offence, the police is bound to register the FIR forthwith, and any inquiry into falsity or credibility must follow only during investigation (Paragraphs 115-119).

18.6 In brief, this Court held the registration of FIR to be mandatory in all cognizable offences, while permitting preliminary inquiry only in limited, exceptional situations.

18.7 The "Conclusion/Directions" in ***Lalita Kumari*** (supra) read 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. 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.

19. In the present case, the appellant, however, having approached the JMFC with the application under Section 210 read with sub-section (4) of Section 173, BNSS upon the omission/neglect of the Station House Officer to register an FIR based on her complaint, it is obvious that the JMFC was required to follow the mandate of the law as in sub-sections (3) and (4) of Section 175, to the extent relevant and applicable. The advisability or otherwise of any preliminary inquiry before registration of

an FIR, as explained in ***Lalita Kumari*** (supra) would, therefore, *stricto sensu* not arise in the present case.

QUESTIONS I & II: SECTION 175(4), BNSS – WHETHER STANDALONE OR NOT, AND THE PROCEDURE TO BE FOLLOWED BY A JUDICIAL MAGISTRATE?

20. The present appeal could have been disposed of on the basis of our finding on issue (A) (discussed in the later part of the judgment); however, having heard erudite submissions from learned senior counsel on either side and cognizant of the fact that Section 175, which necessarily would also include sub-sections (3) and (4) thereof, read with Section 173 and certain other provisions of the BNSS fall for a meaningful construction, which is of labyrinthine significance, we are inclined to observe how the law ought to be read upon undertaking an intrusive study of the relevant provisions.

21. Since the BNSS has been newly enacted and contains certain provisions which have been included to keep pace with time and are otherwise not to be found in the Cr. PC, obviously there is a dearth of rulings in regard thereto. However, we consider it appropriate to take note of the first decision of this Court which has a brief discussion on Section 175, BNSS before taking the discussion further.

22. In ***Om Prakash Ambadkar v. State of Maharashtra***[19], this Court pointed out the difference between Section 156, Cr. PC and Section 175, BNSS, referred to what is the ordainment of sub-section (4) of Section

[19] 2025 SCC OnLine SC 238

175 and thereafter noted that the changes therein can be attributed to the judicial evolution of Section 156, Cr. PC through numerous decisions of the Court including ***Priyanka Srivastava*** (supra). It was observed thus:

> **28.** However, before we part with the matter, we deem it necessary to discuss the changes brought to the scheme of Section 156 of the Cr. P.C. by the enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, "the BNSS").
>
> **29.** Section 175 of the BNSS corresponds to Section 156 of the Cr. P.C. Sub-Section (1) of Section 175 of the BNSS is in *pari materia* with sub-Section 156(1) of the Cr. P.C. except for the proviso which empowers the Superintendent of Police to direct the Deputy Superintendent of Police to investigate a case if the nature or gravity of the case so requires. Sub-Section (2) of Section 175 of the BNSS is identical to Section 156(2) of the Cr. P.C. Section 175(3) of the BNSS empowers any Magistrate who is empowered to take cognizance under Section 210 to order investigation in accordance with Section 175(1) and to this extent is in *pari materia* with Section 156(3) of Cr. P.C. However, unlike Section 156(3) of the Cr. P.C., any Magistrate, before ordering investigation under Section 175(3) of the 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) of the BNSS;
>
> b. Conduct such inquiry as he thinks necessary; and
>
> c. Consider the submissions made by the police officer.
>
> **30.** Sub-section (4) of Section 175 of the BNSS is a new addition to the scheme of investigation of cognizable cases when compared with the scheme previously existing in Section 156 of the Cr. P.C. 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 of the 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.

> **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).
>
> **32.** The introduction of these changes by the legislature can be attributed to the judicial evolution of Section 156 of the Cr. P.C. undertaken by a number of decisions of this Court. In the case of Priyanka Srivastava v. State of U.P., (2015) 6 SCC 287, this Court held that prior to making an application to the Magistrate under Section 156(3) of the Cr. P.C., the applicant must necessarily make applications under Sections 154(1) and 154(3). ……

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

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

25. As noticed, elaborate arguments have been advanced canvassing the different ways in which Section 175 and in particular sub-section (4) thereof should be/can be interpreted. One contention is that sub-section (4) must be read in continuity with sub-section (3). Per this interpretation, sub-section (4) is not an independent provision but operates subject to the procedural safeguards that sub-section (3) embodies, including the requirement that the application be supported by an affidavit. It was argued that any other reading would result in the affidavit requirement being rendered nugatory in cases under sub-section (4), thereby weakening an important safeguard against possible frivolous or *mala fide* proceedings. In contrast, the contention is that sub-section (4) has to be viewed as a distinct and self-contained provision, not controlled by sub-section (3), starting with the words *"Any Magistrate ..."* and not 'Such Magistrate as referred to above ...'. Also,

the term "complaint" in sub-section (4) must be understood in light of clause (h) of sub-section (1) of Section 2, BNSS, which defines complaint as including an oral complaint as well. Concerns regarding abuse of process through oral complaints (without the support of affidavit) were countered by the submission that sub-section (4) itself contains adequate additional safeguards (report from superior officer and opportunity of hearing to the accused public servant), making the requirement of an affidavit unnecessary and unwarranted.

26. After a careful and considered examination of the arguments advanced, we find ourselves in respectful disagreement with the latter view [according to which sub-section (4) of Section 175, BNSS is a standalone provision].

OBJECT OF SECTION 175 (4)

27. Sub-section (4) of Section 175 of the BNSS is a provision that was absent in the Cr. PC. It reads as follows:

> (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.

28. Sub-section (4) prescribes a special procedure to be followed before an order for investigation is made in cases involving offences committed by a public servant *"in course of the discharge of his official duties"*. Having regard to the modal verb "may", appearing in sub-section (4), a judicial

magistrate has the discretion to order an investigation upon (i) calling for a report regarding the incident from an officer superior to the accused public servant; and (ii) considering the version of the public servant concerning the incident. It is *"subject to"* these conditions, that "(*A)ny Magistrate ..., may, ... "*, if satisfied of sufficient grounds existing, pass an order for investigation against the accused public servant.

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

30. Having analysed sub-section (4) of Section 175, its scope, and the object it seeks to achieve, the question that now arises for consideration is the manner in which such provision has to be interpreted – whether sub-

section (4) stands alone or serves as an adjunct to sub-section (3) or is it to be read as a proviso to sub-section (3)?

SECTION 175 (4) IS NOT AN INDEPENDENT PROVISION - REASONS

31. Upon examination of the provision vis-à-vis consideration of the arguments advanced, we find that construing sub-section (4) as a standalone provision is susceptible of giving rise to certain difficulties which compels us to reject such a construction.

31.1 As per the statutory scheme ordained by the BNSS, a person aggrieved by omission/neglect of a police officer having authority to register an FIR, at the first instance, is required to approach the Superintendent of Police under sub-section (4) of Section 173. If recourse thereto does not yield the desired result, the aggrieved person may approach the judicial magistrate under sub-section (3) of Section 175. Resort to the remedy before the Superintendent of Police is a mandatory precondition to invoke the jurisdiction of the judicial magistrate, as held by this Court in ***Ranjit Singh Bath v. Union Territory Chandigarh***[20] following earlier decisions.

31.2 However, if sub-section (4) of Section 175 were to be read in isolation or as a standalone provision, it would be open to a complainant to directly approach the judicial magistrate under the said provision while skipping to avail of the remedy provided by sub-section (4) of Section 173 before the Superintendent of Police. This would give rise

[20] 2025 SCC OnLine SC 1479

to anomalous results because sub-section (3) of Section 175 expressly refers to *"an application supported by an affidavit made under sub-section (4) of Section 173"* which, in effect, mandates that the remedy before the concerned Superintendent of Police be pursued, whereas sub-section (4) thereof contains no such reference. Permitting a complainant to circumvent the statutory hierarchy in cases involving public servants by such an interpretation is likely to produce an outcome which, in our considered view, would run contrary to the legislative intent.

31.3 Further, the requirement of an application supported by an affidavit, which is expressly stipulated in sub-section (3) of Section 175, is conspicuously absent in sub-section (4) thereof. If sub-section (4) of Section 175 is construed in isolation, on its plain reading, such a requirement is entirely absent. We find no discernible reason for the Parliament to prescribe this procedural safeguard in sub-section (3) while omitting it in sub-section (4), thereby undermining the safeguard which ***Priyanka Srivastava*** (supra) propounded. Had sub-section (4) of Section 175 been intended to operate as an independent provision, it would be reasonable to expect an express exclusion of all the attendant procedural safeguards (the requirement of an affidavit and prior recourse to the Superintendent of Police).

31.4 In addition to the above, the placement of sub-section (4) immediately after sub-section (3) and not as an independent section

also persuades us to not read sub-section (4) as a provision that is independent or stands alone.

IS SUB-SECTION (4) TO BE READ AS A PROVISO TO SUB-SECTION (3) OF SECTION 175?

32. A proviso is an internal aid to construction. It is appended to a section of an enactment or any sub-section of a section.

33. In ***Ram Narain Sons Ltd. v. Asstt. CST***[21]***,*** this Court held that it is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other.

34. In ***State of Rajasthan v. Vinod Kumar***[22], a coordinate Bench noted several precedents and held as follows:

> **22.** The natural presumption in law is that but for the proviso, the enacting part of the section would have included the subject-matter of the proviso; the enacting part should be generally given such a construction which would make the exceptions carved out by the proviso necessary and a construction which would make the exceptions unnecessary and redundant should be avoided. Proviso is used to remove special cases from the general enactment and provide for them separately. Proviso may change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable. (Vide *S. Sundaram Pillai* v. *V.R. Pattabiraman, (1985) 1 SCC 591*, *Union of India* v. *Wood Papers Ltd., (1990) 4 SCC 256*, *Grasim Industries Ltd.* v. *State of M.P., (1999) 8 SCC 547*, *Laxminarayan R. Bhattad* v. *State of Maharashtra (2003) 5 SCC 413*, *IRDP* v. *P.D. Chacko, 2010 6 SCC 637,* and *CCE* v. *Hari Chand Shri Gopa (2011) 1 SCC 236*.)

[21] (1955) 2 SCR 483
[22] (2012) 6 SCC 770

35. In our considered opinion, sub-section (4) of Section 175 cannot be considered a proviso for the following reasons:

a. Generally, a proviso is drafted in language such as *"Provided that"*. Plainly, we are not faced with a provision starting with similar words.

b. As formulated in "*Craies on Statute Law*", 6th Edn., p. 217, and further expounded in ***Kedarnath Jute Mfg. Co. Ltd. v. CTO***[23], the normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. In the instant case, as we shall hold hereafter, this is not the purport of the concerned sub-section. It, in fact, creates an additional important safeguard for public servants not present either in the erstwhile Cr. PC or in sub-section (3) of Section 175.

c. Placement of the sub-section is also strongly indicative of the intent of the legislature. The Courts must presume that the legislature intended the provision to be not a proviso when placing the provision as a sub-section rather than a proviso.

d. A test one may apply to determine whether a provision is a proviso rather than a separate provision is to ask whether if the "main" provision is removed, would the concerned provision still be capable of being applied. If yes, then the provision

[23] AIR 1966 SC 12

cannot normally be considered a proviso. One may make a reference to the decisions in ***S. Sundaram Pillai v. V.R. Pattabiraman***[24], ***Hiralal Rattanlal v. State of U.P.***[25], and ***Union of India v. VKC Footsteps (India) (P) Ltd.***[26] for the formulation of this test. In the instant case, it is but obvious that sub-section (4) can very well be applied if sub-section (3) of Section 175 is erased from the statute book.

36. We are, thus, not inclined to hold that sub-section (4) has to be read as a proviso to sub-section (3) of Section 175.

CONSTRUCTION OF SECTION 175(4)

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

37.1 On a plain and contextual reading of the scheme of Section 175, we find that sub-section (3) vests the judicial magistrate (empowered under Section 210) with the power to order investigation, while sub-section (4) while conferring similar power additionally prescribes a special procedural safeguard to be observed by the judicial magistrate (empowered under Section 210) where the proposed direction could concern a public servant. While the authority to direct

[24] (1985) 1 SCC 591
[25] (1973) 1 SCC 216
[26] (2022) 2 SCC 603

investigation flows from sub-section (3) as well as from sub-section (4), the latter provides a qualifying procedural layer.

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

37.3 Much has been argued by Mr. Dave by referring to the opening words of both sub-sections (3) and (4), which read as "Any Magistrate empowered under section 210", to buttress his contention that if the requirements of sub-section (4) were intended to operate in addition to sub-section (3), the legislature, in sub-section (4), would have used the expression "Any such Magistrate as above ..." or the like. Having given the contention serious consideration and without being too critical of the legislative draftsman's efforts, what we infer from the expression *"Any Magistrate empowered under section 210"* is the emphasis or stress being laid on who is competent to order investigation, namely, the judicial magistrate empowered under

Section 210, both by sub-sections (3) and (4) of Section 175. However, in a case to which sub-section (4) is *prima facie* attracted, the additional requirements need also be complied with. Nothing much, therefore, turns on the similarity of the words used.

37.4 The use of the expression *"complaint"* in sub-section (4) also does not alter this position. Clause (h) of sub-section (1) of Section 2, BNSS defines *"complaint"* to mean *"any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Sanhita, that some person, whether known or unknown, has committed an offence, but does not include a police report"*. Though the definition of *"complaint"* under clause (h), as aforesaid, taken literally, includes oral complaints, the definition clause (Section 2, BNSS) (commonly known as the "dictionary clause" for understanding words and expressions used in enactments) itself qualifies every definition with the rider "*(U)nless the context otherwise requires, ..."*. In the context of sub-section (4), which operates only as a procedural adjunct to sub-section (3), the word *"complaint"* in such context clearly requires to be understood in the sense of an 'allegation' relating to commission of an offence which, for reasons we propose to discuss hereafter, must be in the form of a written complaint supported by an affidavit and may not include any allegation orally made.

37.5 One mandatory requirement of sub-section (3) is that the application seeking an order for investigation must be supported by an affidavit.

It is true that sub-section (4) does not expressly require receipt by a magistrate of a written complaint but refers to a *"complaint"* only. However, it is illogical that a magistrate would be precluded from ordering investigation against a person who is not a public servant without an affidavit supporting the allegations of cognisable offence committed by him, but may order an investigation against a public servant without needing the informant to swear to the allegations.

37.6 Since sub-section (4) of Section 175 merely provides an additional protective layer in cases involving public servants, all mandatory procedural requirements governing the exercise of power under sub-section (3) of Section 175, in our opinion, must necessarily be complied with. Any contrary interpretation would result in incorporation of the procedural safeguard taking cue from the judicial precedent in ***Priyanka Srivastava*** (supra) in sub-section (3) being robbed off much of its substance. Consequently, a complaint against a public servant, which triggers the procedure under sub-section (4) must, in our view, be also founded on an affidavit.

37.7 The reasons discussed above suffice for us to conclude that an application alleging commission of offence(s) by public servants in discharge of their official duties must also be supported by affidavit.

37.8 Looked from another angle and in addition to the reasons discussed above, there is one more reason for our conclusion. Cognizant of the increasing number of complaints against judicial officers of the trial judiciary, and to prevent harassment of such officers, the Hon'ble the

Chief Justice of India *vide* a communication addressed[27] to the Chief Justices of the High Courts emphasized the necessity to ensure that such complaints should not be entertained unless supported by affidavit. The said communication was later circulated as a circular[28] by the Government of India, Ministry of Law and Justice[29].

37.9 When the authenticity of allegations against a judicial officer is required to be supported by an affidavit, there exists equal justification to insist upon a similar requirement in the case of public servants as well. No rational basis is discernible for drawing a distinction with regard to the insistence on an affidavit. The object underlying such a requirement is common in both cases, namely, to weed out false, frivolous, or vexatious complaints and to strike a balance between bringing public servants to book and protecting them against abuse of the judicial process.

38. Accordingly, in our firm opinion, sub-sections (3) and (4) must be read harmoniously, with the latter understood as a procedural restraint upon the power conferred under both the sub-sections for ordering an investigation, and not as a substantive substitute for the former.

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[27] D.O. letter No. CJI/CC/Comp/2014/1405 dated 03rd October, 2014

[28] F.No.L-15011/50/12-Jus.

[29] "As you are aware, recently, Hon'ble the CJI, vide his D.O. No.CJI/CC/Comp/2014/1405 dt. 03.10.2014 addressed to the Chief Justice of all the High Courts has asked the High Courts and subordinate judiciary not to entertain any complaint against a judicial officer unless it is accompanied by sworn affidavits and verifiable material to substantiate the allegation. Expressing concern over the large number of complaints being filed against subordinate judiciary by people having vested interest and personal agenda, Hon'ble CJI has directed that authenticity of the complaints must be ascertained before any action is taken on it. In view of the provisions of the Article 235 of the Constitution, further action relating to the grievance/complaints against the judicial officers lies at the High Court level."

39. To give meaning, we hold that the opening words in sub-section (4) which reads "*Any Magistrate empowered under Section 210, may, upon receiving a complaint against a public servant ……*" have to be purposively read as 'Any Magistrate empowered under Section 210, may, upon receiving a complaint in writing against a public servant of commission of offence arising in course of the discharge of his official duties, supported by an affidavit, order investigation, subject to ... '.

40. So read, in the case of public servants, where the allegation is that an offence was committed in course of the discharge of official duties, the law now provides a two-tier protection. The first operates at the threshold stage, in the form of additional safeguards under sub-section (4) of Section 175 (when a prayer is made seeking an order for investigation against a public servant), and next under sub-section (1) of Section 218 (before cognizance is taken of the offence alleged). The second tier, with which we are presently not concerned, operates at the stage of taking cognizance when the "previous sanction" of the concerned Government is required.

41. We make it clear that an affidavit, such as the one referred to in sub-section (3) of Section 175, must fulfil the conditions provided in Section 333, BNSS which reads as follows:

> "**333. Authorities before whom affidavits may be sworn**.—(1) Affidavits to be used before any Court under this Sanhita may be sworn or affirmed before—
>
> (a) any Judge or Judicial or Executive Magistrate; or
>
> (b) any Commissioner of Oaths appointed by a High Court or Court of Session; or
>
> (c) any notary appointed under the Notaries Act, 1952 (53 of 1952).

(2) Affidavits shall be confined to, and shall state separately, such facts as the deponent is able to prove from his own knowledge and such facts as he has reasonable ground to believe to be true, and in the latter case, the deponent shall clearly state the grounds of such belief.
(3) The Court may order any scandalous and irrelevant matter in the affidavit to be struck out or amended."

SUMMARY OF THE DISCUSSION

42. 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).

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

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

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

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.

QUESTION (A) : WHETHER THE SINGLE JUDGE EXCEEDED HIS JURISDICTION?

49. Perusing the prayers in the writ petition, we find that the appellant had sought directions for registration of an FIR, securing compliance with this Court's directions in ***Lalita Kumari*** (supra), and for a declaration that the acts of the police officials were not in the discharge of official functions and, therefore, not covered by the protection afforded under Section 175(4), BNSS.

50. Should the Single Judge have entertained the writ petition, interpreted Section 175(4) and granted relief to the appellant? We think not.

51. As rightly held by the Division Bench, the Single Judge could not have granted relief that the appellant did not pray. We may profitably refer to the decisions of this Court in ***Krishna Priya Ganguly v. University of Lucknow***[30], ***Om Prakash v. Ram Kumar***[31] and ***Bharat Amratlal Kothari v. Dosukhan Samadkhan Sindhi***[32] where this Court held that the writ court will, normally, grant relief that is prayed; and, though

[30] (1984) 1 SCC 307
[31] (1991) 1 SCC 441
[32] (2010) 1 SCC 234

discretion to grant relief under Article 226 is wide, the writ court cannot, ignoring and keeping aside the norms and principles governing grant of relief, proceed to grant a relief not even prayed by the petitioner.

52. Having prayed for directions in the writ petition to register an FIR and to secure compliance with the directions made by this Court in ***Lalita Kumari*** (supra) and that too, at a stage, when the JMFC seized of the application under Section 210 read with sub-section (4) of Section 173, BNSS had called for a report in exercise of power conferred by sub-section (4) of Section 175, there was no occasion for the Single Judge to interpret sub-section (4) and interfere with the proceedings that had been set in motion pursuant to the order of the JMFC. The Single Judge would have been justified in interpreting the law if the order of the JMFC, by which he had called for a report in accordance with sub-section (4) of Section 175, BNSS been challenged in a petition under Section 528 thereof or even under Article 227 of the Constitution – which is not the case here. The JMFC having called for a report from the superior police officer by his order, it was a judicial order passed in exercise of power conferred by sub-section (4) of Section 175. A three-Judge Bench of this Court in ***Radhe Shyam v. Chhabi Nath***[33] has held that a judicial order in a civil matter cannot be challenged in a writ petition under Article 226 of the Constitution. In ***Pradnya Pranjal Kulkarni v. State of Maharashtra***[34], the principle has been extended by this Court to judicial

[33] (2015) 5 SCC 423
[34] 2025 SCC OnLine SC 1948

orders passed in criminal matters. Notwithstanding that such a judicial order could not have been challenged in a writ petition under Article 226 of the Constitution and despite the absence of any challenge to the JMFC's order, the Single Judge directed the Magistrate to pass an order in accordance with the law that such Judge declared. This was plainly impermissible. Nevertheless, as directed by the Single Judge, the JMFC proceeded to direct registration of an FIR against the accused persons. In effect, the Single Judge directed the Magistrate to recall his own order – which again constitutes exercise of a power unknown to the law of criminal procedure.

53. We, thus, agree with the Division Bench that the facts before the Single Judge did not call for an interpretation of sub-section (4) of Section 175, BNSS.

QUESTION (B): WHETHER IN THE PRESENT CASE, THE ALLEGED ACTS OF THE PUBLIC SERVANTS WERE IN THE DISCHARGE OF THEIR OFFICIAL DUTIES?

54. The answer to this question should well be avoided having regard to the particular jurisdiction of the High Court, which the appellant had invoked, coupled with the pendency of the appellant's application before the JMFC. We, thus, refrain from so answering lest any observation prejudicially affects any party to the proceedings before the JMFC. Invocation of the writ jurisdiction under Article 226 of the Constitution by the appellant was ill-advised. Not only did the appellant approach the writ court when proceedings before the JMFC under Section 175, BNSS

were underway and thereby indulged in pursuing parallel remedies, no interference was even merited having regard to the relief claimed.

55. Be that as it may, at the insistence of the parties, we now proceed on a limited examination as to whether the appellant could at all have sought any declaratory relief of the nature claimed before the Single Judge in the writ petition.

56. Although declaratory relief can, *inter alia*, be sought before a writ court and granted by it upon establishment of a threatened breach or an apprehended breach of a legal right at the instance of a respondent, being a public authority, the nature of declaratory relief prayed by the appellant could not have been granted by the writ court without a challenge being mounted to the order of the JMFC calling for a report. Seeking a declaratory relief that the acts of offence committed by the accused public servants did not arise in the discharge of official duties by them without the order of the JMFC (calling for a report) being challenged would have necessarily required the writ court to embark on a fact-finding exercise in that behalf, as if it were a court of a magistrate. A writ court is a court exercising high prerogative writ jurisdiction; such court could not have been urged by the appellant to convert itself into a court for conducting sort of a magisterial inquiry. The Single Judge overlooked this fundamental flaw.

57. Thus, no relief could have been granted by the High Court to the appellant in exercise of writ jurisdiction.

CONCLUSION

58. As a sequel to our foregoing discussion, we uphold the impugned order of the Division Bench.

59. After the order of the Single Judge was set aside by the impugned order, the JMFC has issued notice to the accused under Section 175(4)(b), BNSS, giving them a chance to state their side of the story. We leave it open to the appellant to participate in the proceedings before the JMFC and raise such points that are available to her in law, including that the actions of the accused police officers were not in discharge of their official duties and also that without considering the report that has been called for *vide* the order dated 11th September, 2024, an FIR should be directed to be registered by the jurisdictional police station. It is also clarified that the JMFC must first satisfy himself that the application under Section 175(3), BNSS is accompanied by an affidavit sworn or affirmed in accordance with the terms of Section 333 thereof.

60. The appeal is disposed of on the aforesaid terms. Parties shall, however, bear their own costs.

.....J.
(DIPANKAR DATTA)

.....J.
(MANMOHAN)

NEW DELHI;
JANUARY 27, 2026.