IN THE HIGH COURT AT CALCUTTA

CRIMINAL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 264 OF 2025

PRABHU NATH SINGH & ORS.

VS

THE STATE OF WEST BENGAL & ANR.

For the Appellants	**:**	**Mr. Sandipan Ganguly, Ld. Sr. Adv.**
		Mr. Avik Ghatak, Adv.
		Mr. Fahad Imam, Adv.
		Ms. Priyanka Sarkar, Adv.
For the State	**:**	**Mr. Debasish Roy, Ld. PP.**
		Mr. Saryati Datta, Adv.
		Mr. Sachit Talukdar, Adv.
For the Opposite Party	**:**	**Mr. Md. Bani Israil, Adv.**
		Mr. Sayed Md. Sayed, Adv.
		Mr. Arnya Basu, Adv.
Last heard on	**:**	**11.09.2025**
Judgement on	**:**	**17.09.2025**

CHAITALI CHATTERJEE DAS, J. :-

1. This is an application has been filed by the petitioners under Section 438/442 of BNSS, 2023 read with Section 528 of BNSS, 2023, for quashing of the proceeding in connection with G.R case number 3544 of 2024, arising out of

Hirapur Police Station case no. 356 of 2024 dated 20.12.2024, alleging the commission of offences punishable under Section (2)/119(1)/126(2)/76/304(2) of the BNS, 2023 and also the order dated 20.12.2024 passed in connection with complaint case number 1649 of 2024 by the Court of Learned Chief Judicial Magistrate, Paschim Bardhaman.

2. The genesis of the case, originated on the basis of a letter of complaint dated 17.12.2024 submitted by the petitioner no. 3, herein addressing the officer-in-charge, Hirapur Police Station over which Hirapur Police Station case number 354 of 2024 dated 17.12.2024 was initiated against 12 accused persons, including the husband of the opposite party no.2 herein with an allegation of commission of offence punishable under Section 191(2)/192(3)/190/115(2)/117(2)/109/351(3)/3(5) of the BNS, 2023. Subsequently on 20.12.2024, the opposite party no.2 preferred the application under Section 175(3) of the BNSS, 2023 before the Court of Learned Judicial Magistrate, Asansol, which was numbered as complaint case number 1649 of 2024, and was taken up on the same date by the Learned Magistrate and on the basis of an order of the same date passed by the learned court the Hirapur Police Station case number 356 of 2024 dated 20.12.2024 was initiated against the present petitioners.

3. It is submitted by the learned Senior advocate representing the petitioner that the order passed by the Learned Court to initiate a case against the present petitioner suffers from grave infirmity and is bad in law and therefore is liable to be set aside. That apart, while passing the order impugned the Learned Magistrate failed to record any reason as to why the direction was given to the officer-in-charge of Hirapur Police Station to initiate the case against the

petitioners herein and thereby mechanically proceeded to direct such investigation and has violated the settled law as laid down by the Hon'ble Supreme Court in the case of Priyanka Srivastava. It is further submitted that the Learned Magistrate did not give any direction for preliminary enquiry in order to ascertain the veracity and viability of the allegations levelled by the Opposite Party no. 2, as if such preliminary enquiry would have done, it would have been clear that the allegations levelled against the petitioner was an attempt to initiate the proceeding against the petitioners as a counter blast to the complaint lodged at their behest.

4. It is further submitted that it would cause a travesty of justice if the order dated 20.12.2024 is not set aside at an earliest. The Learned Senior Advocate has relied upon a decision reported in***, Om Prakash Ambedkar versus State of Maharashtra and others***[1]. The further decision relied upon is ***Babu Venkatesh and others versus State of Karnataka and other reported in***[2]. Another decision relied upon by the ***Learned Advocate reported in***[3] ***Mehmood Ali and others versus State of Uttar Pradesh and others*** where the situations were discussed when the prayer for quashing of the FIR can be allowed.

5. The Learned Advocate, representing the respondent no.2 vehemently raised objection against the contention of the learned advocate of the petitioner and it is submitted that the allegations are serious and the investigation is still going on and at this stage, if the F.I.R is quashed, the Opposite Party No. 2two will be highly prejudiced. It is further submitted that the complaint was lodged in

[1] 2025 SCC online SC 238
[2] 2022 SCC online SC 200
[3] (2023) 15 SCC 488

respect of an incident happened at 5 PM and repeated at 7 PM on 1.12.2024, and the present petitioners are the land mafias of the locality having many criminal antecedent and commission of cognizable offence was mentioned in the written complaint and it was intimated to the Hirapur PS and subsequently to C.P Asansol Durgapur Police commissioner, but due to inaction on their part, such complaint was lodged before the learned Magistrate and it was forwarded for investigation. Accordingly, prays for dismissal of this revisional application.

6. The Learned Advocate representing the State respondent no.1 would submit that the investigation is going on and the victim has suffered fractured injuries and therefore it is at premature stage when the application to quash the F.I.R has been filed which should not be entertained by this Court.

7. On the basis of the above rival contentions this court is to assess how far the inherent power of this court can be exercised . It is a settled law that the court while exercising the power under Section 438/442 of BNSS, 2023 and 528 of BNSS, 2023 need not enter into every details by way of appreciation of the statements recorded in respect of the various witnesses in course of investigation, but certainly the Court is empowered to take into account the overall circumstance. The written complaint was filed under Section 175(3) of BNSS, 2023 disclosing that due to previous grudge and enmity in business all of a sudden on 1/12/2024 at about 5 P.M., the accused no.1 Prabhu Nath Singh, accompanied with his sons, accused no. 2 & 3 daughter-in-law, accused no. 4 , staffs of his business and the rest of the accused persons along with his 20–30 bouncer tried to raise illegal and forceful construction over the de-facto Complainant's husband's landed property which is adjacent

to their house. On getting the news of such forceful illegal construction, the husband of the complainant and the driver Niki Paswan reached at the complainant plot and asked the accused person to stop the construction, but the persons who were present there with their bouncer were adamant to cause harm to the husband of this complainant and abused the witness no.2 in filthy languages and also started assaulting. The husband of the complainant and the driver both were severely injured with bleeding injuries, and after such certain attack, they returned back at home and took medical aid. On the same day at about 7 P.M., all the accused persons in a pre-planned manner and in order to cause grievous hurt and to kill the husband of the complainant and father-in-law came to her house and forcibly trespassed into her house having deadly weapon with in their hand, along with 20-30 unknown unidentified bouncers.

8. Apart from that the accused named in the written complaint started attacking the husband of this complainant, the as a result, the driver Niki Paswan, who raised objection was also assaulted and the witnesses to the incident sustained severe fractured injury and as the complainant tried to rescue them, Swati Singh and Aarti Paswan got hold her hair and assaulted her badly and also the three accused persons tried to outrage her modesty by disrobing her in presence of public who lastly rescued them. After the incident, the complainant visited the local P.S and tried to lodge the complaint which was not accepted initially, and then she narrated the police personnel of Hirapur Police Station, but due to their non-cooperation and non-response lodged the complaint before OC Hirapur PS and C.P Asansol Durgapur Police

commissioner on 18.12.2024 at night, but due to enormous threatening had to take shelter by filing the written complaint before Learned Court.

9. The point raised by the learned Senior advocate representing the petitioner that the written complaint was not maintainable itself as it is clear from the contents of the complaint that after the alleged incident, they went to lodge the complaint before the police station on the same day which was initially refused as alleged but subsequently lodged the complaint and due to inaction on their part lodged the said complaint with C.P Asansol Durgapur Police commissioner on 18.12.24, and the complaint filed under 173 (3) BNSS was lodged on 20th day of December 2024, so the complainant tried all the forum without following the procedure as enumerated in BNSS.

10. Section 173(1) BNSS relates to information in cognizable cases which reads as follows;

> i) every information relating to the commission of a cognizable offence, irrespective of the area where the offence is committed, may be given, or by electronic communication to an officer in charge of a police station, and if given -i) Orally , it shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it;
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> ii) by electronic communication, it shall be taken on record by him on being signed within three days by the person, giving it, and the substance thereof shall be entered in a book to be kept by such officer in search form as the state government may by rules prescribe in this behalf;

Provided that if the information is given by the woman against whom an offence under Section 64, Section 65, Section 66, Section 67, Section 68, Section 69, Section 70, Section 71, Section 74, Section 75, Section 76, Section 77, Section 78, Section 79 or Section 124 of the BNS, 2023 is alleged to have been committed or attempted, then such information shall be recorded, by a woman, police officer or any woman officer ; Provided further that- a)…… is temporary or permanently, mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case, maybe;……

Section 173 (3) of BNSS further provides that without prejudice to the provisions contained in 175, on receipt of information relating to the commission of any cognizable offence, which is made punishable for three years or more, but less than seven years, the officer-in-charge of the Police Station may with the prior permission from an Officer, not below the rank of Deputy Superintendent of police, considering the nature and gravity of the offence.-

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

ii) proceed with investigation when there exists a prima facie case. Sub section 4) provides; any person aggrieved by a refusal on the part of an officer in charge of police station to record the information referred to in subsection(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 and 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.

Therefore, in case of not taking action by the police authority, the appropriate step is to inform the superintendent of police concerned in writing and by post. From the content of the F.I.R. lodged it can be found that though such steps were stated to have been taken by the de-facto complainant however the case of inaction compelled to the written complaint.

11. In view of the provision of Section 175 (3) of BNSS 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 enquiry as he thinks necessary and submission made in this regard by the police officer, order such an investigation as above mentioned. The provision under Section 175 of BNSS has been incorporated to the police officer to investigate any cognizable case without any order of a Magistrate, which a Court having jurisdiction over the local area within the limits of such station would have power to enquire into or try under the provision of chapter XIV. In this case, it can be seen from the order of the learned Magistrate dated 20.12.2024, referring the matter before the OC Hirapur Police Station for investigation after treating the petition of complaint as FIR with the observation, “that the allegation needs to be investigated”. The question falls for consideration whether the Learned Court of Magistrate without making any enquiry and assigning any reasons and without obtaining any preliminary report can mechanically send the petition of complain for investigation to the officer-in-charge or not.

12. The Hon'ble Supreme Court in the case of Priyanka Srivastava (supra) dealt with the issue of exercise of power under 156 (3) CRPC, it was observed that "exercise of power there under requires application of judicial mind.-. Learned Magistrate exercising, such power must remain vigilant with regard to nature of allegations made in the application and not to issue directions without proper application of mind and in an appropriate case, Magistrate can verify truth and veracity of allegation made, having regard to nature thereof. The Hon'ble Apex Court further observed that the duty cast on the Learned Magistrate, while exercising power under Section 156. (3) CIPC, cannot be marginalised. The Hon'ble Supreme Court took note of the decision of ***Anil Kumar versus M.K Aiyappa***[4] where it was observed *"….. 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 is, 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) CIPC, should be reflected in the order, though a detailed expression of his views is neither required nor warranted".*

13. In the decision of ***Lalitha Kumari versus State of U.P***[5] in paragraph 49, it was observed as taken note of by the Hon'ble Supreme Court in Priyanka Srivastava's case is reproduced as follows:-

> "49. Consequently, the condition that is sine qua non for recording and FIR under Section 154 of the Code is that there must be information and that information must disclose a cognizable offence. If any information disclosing Police Station, satisfying the requirement of Section 154 (1), the Said Police Officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information. The provision of Section 154 of the Code is mandatory and the Officer concerned is duty bound to register the case on the basis of information

[4] (2013) 10 SCC 705
[5] (2014) 2 SCC 1

> disclosing a cognizable offence. Thus, the plain words of section 154 (1) of the code have to be given their literal meaning.
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> 72. It is the unequivocally clear that registration of FIR is mandatory and also that it is to be recorded in the FIR book by giving a unique annual number to each FIR to enable strict tracking of each and every registered FIR by the superior officer as well as by the competent Court to reach copies of each FIR are required to be sent".

The Hon'ble Supreme Court further held that issuing a direction stating' as per the application' to lodge, F.I.R creates a very unhealthy situation in society and also reflects the erroneous approach of the Learned Magistrate. Further observation made that prior application applications under Section 154(1) and 154 (3) while filing a petition under Section 156 (3) must be there and both the aspects should be clearly mentioned in the application and necessary documents must be filed to that effect. The warrant for giving a direction that an application Section 156 (3) be supported by an affidavit is so that the person making the application should be conscious and also endeavour to see that no false affidavit is made.

14. In the case of Om Prakash Ambedkar, the application was filed for quashing under Section 482 of CRPC, which was rejected by the High Court of judicature at Bombay, Nagpur Bench, and the matter, went up to Hon'ble Supreme Court and it was held after discussing the relevant provision as enumerated under Section 156 (3) CRPC and the power of the police officer to investigate cognizable case that ordinarily this provision is invoked by the complainant when the police authorities decline to register the first information report. In

such circumstances, a private complaint may be made in the Court of Judicial Magistrate with the prayer for police investigation, but it is the description of the concerned magistrate to order police investigation under Section 156 (3) of CPC or to take cognizance upon the complaint and issue process or dismiss the complaint under section 203 of CRPC.

In paragraph 11, it was held ;

> However, what is important to observe is that whenever any application is filed by the complainant before the Court of Judicial Magistrate, seeking police investigation under Section 156(3) of the CRPC, it is the duty of the concerned magistrate to apply his mind for the purpose of ascertaining, whether the allegations levelled in the complaint constitute any cognizable offence or not. In other words, the magistrate may not undertake the exercise to ascertain whether the complaint is false or otherwise, however, the magistrate is obliged before he proceeds to pass an order for police investigation to closely consider whether the necessary ingredients to constitute the alleged offence are borne out on plain reading of the complaint".

In the case in hand, the Learned Magistrate did not utter a single word regarding his satisfaction about the compliance of Section 173 (1) or 173(3) of BNSS which is akin to the provision as of 154(1) and 154(3). In fact in Section 173(3) of BNSS a further power has been given to the Learned Magistrate to conduct preliminary enquiry to certain whether there exists a prime facie case for proceeding in the matter within a period of 14 days. In the case of Om Prakash Ambedkar, it was observed by the Hon'ble Supreme Court that:-

> "pursuant to the judicial interpretation and evolution of Section 156(3) of the CRPC by various decisions it

> becomes clear that the changes introduced by Section 175(3) of the BNSS to the existing scheme of Section 156(3) merely codify the procedural practises and safeguards, which have been introduced by judicial decisions, aimed at curbing the misuse of invocation of powers of a magistrate by unscrupulous litigants for achieving ulterior motives. In fact, Section 175(3), BNSS as affixed greater accountability of the police officer responsible for registering FIR under section 173. Mandating the magistrate to consider the submissions of the concerned police officer also ensures that the magistrate applies his mind judicially while considering both the complaint and the submissions of the police officer, thereby ensuring that the requirement of passing reason order is complied with in a more effective and comprehensive manner".

15. In the instant case, nothing is mentioned as to why the Magistrate did not opt for conducting such preliminary enquiry. In this case in view of the facts and circumstances as narrated in the written complaint no violation can be formed in terms of the direction passed by the Hon'ble Supreme Court in the case of ***Lalitha Kumari (supra)*** as stated by de-facto complainant but no F.I.R number or G.D Entry No. was provided in the written complaint to ascertain as to why no such action was taken by the police. In another decision, as relied upon by the learned senior advocate in ***Babu Venkatesh and others (supra)*** the Hon'ble Supreme Court reiterate ***Priyanka Srivastava's case (Supra)*** and observed in paragraph 27;

> "this Court has further held that, prior to filing of a petition under Section 156(3) of CRPC, there have to be applications under section 154(1) and 154(3) of the CRPC. This Court emphasises the necessity to file an affidavit so that the persons making the application should be conscious and not make false affidavit. With

> such requirement, the persons would be deterred from casually invoking authority of the Magistrate, under Section 156 (3) of the CRPC. In as much as if the affidavit is found to be false, the person would be liable for prosecution in accordance with law".

In the said case, Hon'ble Supreme Court found the Learned Magistrate while passing the order under Section 156(3) of the CRPC totally failed to consider the law laid down by the Supreme Court and accordingly observed that the proceeding would amount to nothing but an abuse of process of law, hence quashed the FIR".

16. The submission advanced on behalf of the state respondent as well as the respondent no. 2 in this case that the investigation is still going on and the victim sustained fractured injury and therefore at this stage, the F.I.R should not be quashed. On careful scrutiny of the petition filed before this court, it can be seen that another complaint rising out of Hirapur Police Station case No. 34 of 2024 dated 17.12.2024 was initiated by the present petitioner No. 3 against 12 persons, including the husband of the opposite party No. 2 herein in respect of an incident alleged to have been occurred on 1.12.2024 at 5 PM during the construction of a boundary wall. Prima facie , it can be seen that the dispute pertains to area and owner-ship in respect of the disputed property, where a boundary wall was being constructed and interestingly from the content of the complaint filed under 175 (3) of BNSS, it can be found that both the present petitioners who have been described there in as land mafias and the principal accused Prabhu Nath Singh who is found guilty in a murder case at Bilashpur and the husband and father-in-law of this de-facto complainant having same

nature of business and their exists and inimical relationship between the parties. Interestingly, both the parties did not take any action of lodging any criminal case against each other for a period of 16 days from the alleged date of incident. However, that fact is not the subject matter to be decided by this Court and can only be decided after the investigation is complete and the charge-sheet is submitted and the trial is commenced.

17. In the case of ***Mehmood Ali and others (supra***) the requisite parameters to invoke the power under Section 482 and Section 154 of CBC was discussed after taking note of the parameters mentioned in the case of ***state of Haryana versus Bhajan Lal***[6]**,** where in paragraph 102, the parameter are discussed

"102.. (1) where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirely do not prima facie constitute any offence or make out a case against the accused.

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

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

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a

[6] 1992 SUPP (1) SCC 335

police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

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

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

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

We are of the view that the case of the present appellants falls within parameters 1, 5 and 7, respectively, of Bhajan Lal.

18. In the given case, after giving an anxious consideration and on scrutinising the entire facts and circumstances of the case, and the law laid down in this regard, in absence of supporting documents in respect of the aspersions levelled about in action of Police Authorities despite filing a written complaint before the police station and subsequently to the Assistant Commissioner of police coupled with existing inimical relationship between the parties resulted in lodging case counter case. It is glaring that the settled proposition of law has not been followed. Hence, this Court is of the view that if this investigation is

allowed to be proceeded with it, would be nothing but clear abuse of process of law and the possibility of institution of proceeding for wreaking vengeance due to personal grudge.

19. Hence the CRR stands allowed.

20. Urgent certified copy if applied by any of the parties to be supplied subject to observance of all formalities.

(CHAITALI CHATTERJEE DAS, J.)