IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MMO No: 368 of 2026
Reserved on: 20.07.2026
Date of Decision: 28.07.2026

Ashish Sharma ..Petitioner

Versus

State of H.P. & Ors. ...Respondents

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] No

For the Petitioner	:	Petitioner in person.
For Respondent No.1	:	Mr Ajit Sharma, Deputy Advocate General.
For Respondents No.2 &3	:	Nemo

Rakesh Kainthla, Judge

The petitioner has filed the present petition against the order dated 22.01.2026 passed by the learned Additional Sessions, Judge, CBI Court (learned Revisional Court) vide which the order dated 30.07.2024 passed by the learned Additional Chief Judicial Magistrate, Court No. 1 Shimla (learned Trial Court) was upheld. *(The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience).*

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

2. Briefly stated the facts giving rise to the present petition are that the petitioner/complainant filed a complaint before learned Trial Court for the registration of the FIR for the commission of offences punishable under Sections 177, 181, 191, 192, 193, 195, 197, 198, 199, 200, 205, 209, 406, 408, 417, 420, 464, and 468-471 of the IPC. It was asserted that the complainant made a complaint against accused no. 1 before the HP State Human Rights Commission, Shimla, for violating the complainant's human rights. The accused no. 1 filed an affidavit through accused no. 2 asserting that the complainant had worked from 03.03.2008 till 06.12.2019. These averments are false because the complainant had worked till 07.12.2019. The accused were aware of the fact that the complainant's attendance was marked on 07.12.2019, but they filed a false affidavit before the State Human Rights Commission. The complainant made a complaint to SP Shimla and SHO Police Station, Chhota Shimla for registration of the FIR. However, no FIR was registered. Hence, a complaint was filed to take cognisance, register an FIR, grant police remand of 15 days and pay a victim compensation of ₹5,00,000/- to the complainant.

3. Learned Trial Court held that the complainant had filed a copy of the e-mail showing that a complaint was made to S.P., Shimla and SHO, PS Chhota Shimla, but no letter was posted to S.P. Shimla. There was no compliance with Section 154(3) of the Code of Criminal Procedure (CrPC) and Section 173(4) of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023. The complaint was not maintainable in the absence of compliance with Section 154(3) of the CrPC or Section 173(4) of BNSS. Hence, the complaint was dismissed.

4. Being aggrieved by the order passed by the learned Trial Court, the complainant/petitioner filed a revision which was decided by the learned Additional Sessions Judge, CBI Court, Shimla (learned Revisional Court). The learned Revisional Court held that the affidavit was submitted before the Human Rights Commission. The complainant had also filed a complaint before the Human Rights Commission, but no action was taken, and the Magistrate could not have ordered the registration of the FIR without the complaint of the Human Rights Commission. There was no infirmity in the order passed by the learned Trial Court. Hence, the revision was dismissed.

5. Being aggrieved by the judgment and order passed by the learned Courts below, the complainant/petitioner has filed the present petition, asserting that the learned Courts below erred in appreciating the material on record. The judgment of the Hon'ble Supreme Court in ***Lalita Kumar versus State of U.P.*** was not considered. The evidence produced before the learned Courts below showed the commission of a cognizable offence. The complaint was duly made to the SP and SHO, and it was wrongly held that there was non-compliance of Section 154(3) of the CrPC. The complaint was filed under Section 175(3) of the BNSS and not under Section 215 or 379 of the BNSS. The judgment was not written as per the Supreme Court guidelines. Therefore, it was prayed that the present petition be allowed, an FIR be registered against the accused and compensation of ₹5,00,000/- be awarded to the complainant.

6. I have heard the petitioner who appeared in person and Mr Ajit Sharma, learned Deputy Advocate General for respondent No.1/State.

7. The petitioner submitted that the learned Courts below erred in appreciating the materials on record. The complainant

had filed a copy of the e-mail showing that the complaint was sent to the SP Shimla and SHO. However, the learned Trial Court held that there was non-compliance of Section 154(3) of the CrPC. The accused had filed a false affidavit before the State Human Rights Commission. The affidavit was prepared outside the Commission, and it was wrongly held that the complaint by the Commission was required. Therefore, he prayed that the present petition be allowed and the order passed by learned Courts below be set aside.

8. Mr Ajit Sharma, learned Deputy Advocate General for respondent No.1/State has submitted that the dispute involves private parties and the State has nothing to say in the present matter.

9. I have given a considerable thought to the submissions made at the bar and have gone through the records carefully.

10. The present petition has been filed under Section 528 of BNSS (corresponding to Section 482 of CrPC) against an order dismissing the revision petition. It was laid down by the Hon'ble Supreme Court in ***Krishnan v. In Krishnaveni (1997) 4 SCC 241,*** the High Court can intervene under Section 482 of CrPC (corresponding to Section 528 of BNSS) when there is a grave

miscarriage of justice or abuse of the process of the Court. It was observed:

> "**10.** Ordinarily, when revision has been barred by Section 397(3) of the Code, a person — accused/complainant — cannot be allowed to take recourse to the revision to the High Court under Section 397(1) or inherent powers of the High Court under Section 482 of the Code since it may amount to circumvention of the provisions of Section 397(3) or Section 397(2) of the Code. It is seen that the High Court has *suo motu* power under Section 401 and continuous supervisory jurisdiction under Section 483 of the Code. So, when the High Court on examination of the record finds that there is a grave miscarriage of justice or abuse of the process of the courts or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is, therefore, to meet the ends of justice or to prevent abuse of the process that the High Court is endowed with inherent power and would be justified, under such circumstances, to exercise the inherent power and, in an appropriate case, even revisional power under Section 397(1) read with Section 401 of the Code. As stated earlier, it may be exercised sparingly to avoid needless multiplicity of procedure, unnecessary delay in trial and protraction of proceedings. The object of a criminal trial is to render public justice, to punish the criminal and to see that the trial is concluded expeditiously before the memory of the witness fades out. The recent trend is to delay the trial and threaten the witness or to win over the witness by promise or inducement. These malpractices need to be curbed, and public justice can be ensured only when the trial is conducted expeditiously.
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> **11.** In ***Madhu Limaye v. State of Maharashtra [(1977) 4 SCC 551: 1978 SCC (Cri) 10],*** a three-judge Bench was to consider

the scope of the power of the High Court under Section 482 and Section 397(2) of the Code. This Court held that the bar on the power of revision was put to facilitate expedient disposal of the cases, but in Section 482, it is provided that nothing in the Code, which would include Section 397(2) also, shall be deemed to limit or affect the inherent powers of the High Court. On a harmonious construction of the said two provisions on this behalf, it was held that though the High Court has no power of revision in an interlocutory order, still the inherent power will come into play when there is no provision for redressal of the grievance of the aggrieved party. In that case, when allegations of defamatory statements were published in the newspapers against the Law Minister, the State Government decided to prosecute the appellant for an offence under Section 500 IPC. After obtaining the sanction, on a complaint made by the public prosecutor, cognisance of the commission of the offence by the appellant was taken to trial in the Sessions Court. Thereafter, the appellant filed an application to dismiss the complaint on the ground that the court had no jurisdiction to entertain the complaint. The Sessions Judge rejected all the contentions and framed the charges under Section 406. The Order of the Sessions Judge was challenged in revision in the High Court. On a preliminary objection raised on maintainability, this Court held that the power of the High Court to entertain the revision was not taken away under Section 397 or inherent power under Section 482 of the Code.

12. In ***V.C. Shukla v. State through CBI [1980 Supp SCC 92: 1980 SCC (Cri) 695: (1980) 2 SCR 380]*** (SCR at p. 393), a four-judge Bench per majority had held that sub-section (3) of Section 397, however, does not limit at all the inherent powers of the High Court contained in Section 482. It merely curbs the revisional power given to the High Court or the Sessions Court under Section 397(1) of the Code. In the ***Rajan Kumar Machananda case [1990 Supp SCC 132: 1990 SCC (Cri) 537],*** the case related to the release of a truck from attachment, obviously on the filing of an interlocutory application. It was contended that there was a prohibition on the revision by operation of Section 397(2) of the Code. In that context, it was held that it was not revisable under Section 482 in the exercise of inherent powers by operation of sub-section (3) of Section 397. On the facts in that case, it was held that by the provisions contained in Section 397(3), the revision is not maintainable. In the ***Dharampal case [(1993) 1 SCC 435: 1993 SCC (Cri) 333],*** which related to the exercise of power to issue an order of attachment under Section 146 of the Code, it was held that the inherent power under Section 482 was prohibited. On the facts, in that case, it could be said that the learned Judges would be justified in holding that it was not revisable since it was a prohibitory interim order of attachment covered under Section 397(2) of the Code but the observations of the learned Judges that the High Court had no power under Section 482 of the Code were not correct in view of the ratio of this Court in ***Madhu Limaye case [(1977) 4 SCC 551: 1978 SCC (Cri) 10***] as upheld in ***V.C. Shukla case [1980 Supp SCC 92: 1980 SCC (Cri) 695 : (1980) 2 SCR 380]*** and also in view of our observations stated earlier. The ratio in the ***Deepti case [(1995) 5 SCC 751: 1995 SCC (Cri) 1020]*** is also not apposite to the facts in the present case. To the contrary, in that case, an application for discharge of the accused was filed in the Court of the Magistrate for an offence under Section 498-A IPC. The learned Magistrate and the Sessions Judge dismissed the petition. In the revision at the instance of the accused, on a wrong concession made by the counsel appearing for the State that the record did not contain allegations constituting the offence under Section 498-A, the High Court, without applying its mind, had discharged the accused. On appeal, this Court, after going through the record, noted that the concession made by the counsel was wrong. The record did contain the allegations to prove the charge under Section 498-A IPC. The High Court, since it failed to apply its mind, had committed an error of law in discharging the accused, leading to the miscarriage of justice. In that context, this Court held that the order of the Sessions Judge operated as a bar to entertain the application under Section 482 of the

Code. In view of the fact that the order of the High Court had led to the miscarriage of justice, this Court had set aside the order of the High Court and confirmed that of the Magistrate.

13. The ratio of the ***Simrikhia case [(1990) 2 SCC 437: 1990 SCC (Cri) 327]*** has no application to the facts in this case. Therein, on a private complaint filed under Sections 452 and 323 IPC, the Judicial Magistrate, First Class had taken cognisance of the offence. He transferred the case for inquiry under Section 202 of the Code to the Second-Class Magistrate, who, after examining the witnesses, issued a process to the accused. The High Court, exercising the power under Section 482, dismissed the revision. But subsequently, on an application filed under Section 482 of the Code, the High Court corrected it. The question was whether the High Court was right in reviewing its order. In that factual backdrop, this Court held that the High Court could not exercise inherent power for the second time. The ratio therein, as stated above, has no application to the facts in this case.

14. In view of the above discussion, we hold that though the revision before the High Court under sub-section (1) of Section 397 is prohibited by sub-section (3) thereof, inherent power of the High Court is still available under Section 482 of the Code and as it is paramount power of continuous superintendence of the High Court under Section 483, the High Court is justified in interfering with the order leading to miscarriage of justice and in setting aside the order of the courts below. It remitted the case to the Magistrate for a decision on the merits after consideration of the evidence. We make it clear that we have not gone into the merits of the case. Since the High Court has left the matter to be considered by the Magistrate, it would be inappropriate at this stage to go into that question. We have only considered the issue of power and jurisdiction of the High Court in the context of the revisional power under Section 397(1) read with Section

397(3) and the inherent powers. We do not find any justification warranting interference in the appeal."

11. This position was reiterated in ***Rajinder Prasad v. Bashir, (2001) 8 SCC 522***, wherein it was held:

> "...though the power of the High Court under Section 482 of the Code is very wide, the same must be exercised sparingly and cautiously, particularly in a case where the petitioner is shown to have already invoked the revisional jurisdiction under Section 397 of the Code. Only in cases where the High Court finds that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order was not correct, the High Court may, in its discretion, prevent the abuse of the process or miscarriage of justice by exercise of jurisdiction under Section 482 of the Code. It was further held, "Ordinarily, when revision has been barred by Section 397(3) of the Code, a person - accused/complainant - cannot be allowed to take recourse to the revision to the High Court under Section 397(1) or inherent powers of the High Court under Section 482 of the Code since it may amount to circumvention of provisions of Section 397(3) or Section 397(2) of the Code."

12. A similar view was taken in ***Kailash Verma v. Punjab State Civil Supplies Corporation, (2005) 2 SCC 571***, and it was held:

> "5. It may also be noticed that this Court in ***Rajathi v. C. Ganesan** [(1999) 6 SCC 326: 1999 SCC (Cri) 1118]* said that the power under Section 482 of the Criminal Procedure Code has to be exercised sparingly and such power shall not be utilised as a substitute for second revision. Ordinarily, when a revision has been barred under Section 397(3) of the Code, the complainant or the accused cannot be allowed to take recourse to revision before the High Court under Section 397(1) of the Criminal Procedure Code, as it is prohibited under Section 397(3) thereof. However, the High Court can

entertain a petition under Section 482 of the Criminal Procedure Code when there is a serious miscarriage of justice and abuse of the process of the court or when mandatory provisions of the law are not complied with and when the High Court feels that the inherent jurisdiction is to be exercised to correct the mistake committed by the revisional court."

13. This position was reiterated in ***Shakuntala Devi v. Chamru Mahto*, *(2009) 3 SCC 310: (2009) 2 SCC (Cri) 8: 2009 SCC OnLine SC 292*,** wherein it was observed: -

"**24.** It is well settled that the object of the introduction of sub-section (3) in Section 397 was to prevent a second revision to avoid frivolous litigation, but, at the same time, the doors to the High Court to a litigant who had lost before the Sessions Judge were not completely closed, and in special cases, the bar under Section 397(3) could be lifted. In other words, the power of the High Court to entertain a petition under Section 482 was not subject to the prohibition under sub-section (3) of Section 397 of the Code and was capable of being invoked in appropriate cases. Mr Sanyal's contention that there was a complete bar under Section 397(3) of the Code debarring the High Court from entertaining an application under Section 482 thereof does not, therefore, commend itself to us.

25. On the factual aspect, the Magistrate came to a finding that the appellants were entitled to possession of the disputed plot. It is true that while making such a declaration under Section 145(4) of the Code, the Magistrate could have also directed that the appellants be put in possession of the same.

26. The question which is now required to be considered is whether the High Court was right in quashing the order passed by the Magistrate, which was confirmed by the Sessions Judge, on the ground that the application made by the appellants under Section 145(6) of the Code was barred firstly by limitation under Article 137 of the Limitation Act and also by virtue of Section 6 of the Specific Relief Act, 1963.

14. Delhi High Court also took a similar view in ***Surender Kumar Jain v. State, ILR (2012) 3 Del 99*** and held: —

> "5. The issue regarding the filing of a petition before the High Court after having availed the first revision petition before the Court of Sessions has come up before the Supreme Court and this Court repeatedly. While laying that section 397(3) Cr. P.C. laid the statutory bar of the second revision petition, the courts have held that the High Court did enjoy inherent power under section 82 (sic) Cr. P.C. as well to entertain petitions even in those cases. But that power was to be exercised sparingly and with great caution, particularly when the person approaching the High Court has already availed the remedy of first revision in the Sessions Court. This was not that in every case the person aggrieved by the order of the first revision court would have the right to be heard by the High Court to assail the same order which was the subject matter of the revision before the Sessions Court. It all depends not only on the facts and circumstances of each case but also on whether the impugned order brought about a situation that is an abuse of the process of the court, there was a serious miscarriage of justice or the mandatory provisions of law were not complied with. The power could also be exercised by this Court if there was an apparent mistake committed by the revisional court. Reference in this regard can be made to the judgments of the Supreme Court in ***Madhu Limave v. State of Maharashtra (1977) 4 SCC 551, State of Orissa v. Ram Chander Aggarwal, (1979) 2 SCC 305: AIR 1979 SC 87, Rai Kapoor v. State (Delhi Administration) 1980 Cri LJ 202, Krishnan v. Krishnaveni*** *and* ***Kailash Verma v. Punjab State Civil Supplies Corporation (2005) 2 SCC 571.***"

15. It is apparent from the judgments that the High Court has a limited jurisdiction and it can rectify a serious miscarriage of justice or non-compliance with a mandatory provision of law while exercising its jurisdiction under Section 528 of BNS (482 of the CrPC).

16. It was specifically asserted by the petitioner/complainant that a false affidavit was filed before the Human Rights Commission. Section 13 (5) of the Protection of Human Rights Act makes every proceeding before the Commission a judicial proceeding. It reads as under:

> "Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code, and the Commission shall be deemed to be a civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973."

17. Chapter XXVI of the Code of Criminal Procedure deals with the offences affecting the administration of justice. Section 195 (1) (b) (i) of the CrPC provides that no Court shall take cognizance of the commission of any offence punishable under sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court except

upon the complaint in writing of that Court. Section 195 (1) b (ii) provides that no Court shall take cognizance of any offence of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said IPC, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court except upon a complaint made in writing of that Court.

18. In the present case, the application was filed for registration of the FIR for the commission of offences punishable under Sections 177, 181, 191, 192, 193, 195, 197, 198, 199, 200, 205, 209, 406, 408, 417, 420, 464, 468-471 of the IPC in relation to an affidavit filed before the State Human Rights Commission, therefore, the provisions of Section 195(1)(b) (i) and Section 195 (1) (b) (ii) would be attracted to the present case and it would be impermissible to take cognizance of the commission of the aforesaid offences except upon a complaint made in writing by the Human Rights Commission.

19. In ***Arvind Kumar Adukia v. State of NCT of Delhi*, *2010 SCC OnLine Del 3389: (2010) 173 DLT 738***, the complainant filed a petition under Section 156 (3) of CrPC regarding theft and forgery

of documents filed during the execution proceedings. This petition was allowed, and the FIR was registered on the direction of the magistrate. It was held that no such direction could have been given because of the bar under section 195 of the CrPC. It was observed on page 739:

> "**4.** It is not disputed that all acts allegedly committed by the respondent/accused, including the Bailiff, were the acts committed during the course of an execution proceeding carried out under the directions of the Court. Thus, if any offence was committed, it was during the proceedings of the execution of the decree being carried out by an official of the Court at the directions of the Court. Section 195 of Cr. P.C. prohibits taking cognisance of any offence in the following words:
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> 195. *Prosecution for contempt of the lawful authority of public servants, for offences against public justice and offences relating to documents given in evidence*—
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> (1) No Court shall take cognisance—
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> (a) (i) If any offence punishable under Sections 172 to 188 (both inclusive) of the Penal Code, 1860, or
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> (ii) Of any abetment of, attempt to commit, such offence, or
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> (iii) Of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;
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> (b) (i) Of any offence punishable under any of the following sections of the Penal Code, 1860, namely, Sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when

such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) Of any offence described in Section 463, or punishable under Section 471, Section 475 or Section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) Of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in Sub-clause (i) or Sub-clause (ii), except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

(2) Where a complaint has been made by a public servant under Clause (a) of Sub-section (1), any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In Clause (b) of Sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, provincial or State Act if declared by that Act to be a Court for the purposes of this Section.

(4) For the purposes of Clause (b) of Sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from appeal able decrees or sentences of such former Court, or in the case of a civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such civil Court is situated:

Provided that—

(a) Where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed subordinate;

(b) Where appeals lie to a Civil and to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.

5. It is apparent that in order to take cognisance of an offence as enumerated under Section 195(1)(a) and (b) of the Cr. P.C., a complaint in writing of that Court or by such officer of the Court as the Court may authorise was necessary. A complaint could also be made by a superior Court, but the cognisance of the offence cannot be taken without a complaint by the Court. In order to file a complaint in respect of the offence committed during pendency of the Court proceedings, it is necessary that either the Court should file a complaint under Section 340, Cr. P.C. for trial of the offender for the offences before the appropriate Court and if Court does not file a complaint, then the aggrieved person can also file an application under Section 340, Cr. P.C. asking for filing a complaint. However, filing a complaint under Section 340, Cr. P.C. by the Court was a necessary pre-condition for prosecution of the accused for offences committed under Section 195, Cr. P.C. Section 195, Cr. P.C. and 340, Cr. P.C. are to be read together and the bar under Section 195(1)(3), Cr. P.C. can be removed only in accordance with Section 340, Cr. P.C. For taking cognizance under Section 195, Cr. P.C. of the offence, the Court has to consider all the circumstances and then come to a finding whether those circumstances warrant and make it expeditious, in the interest of justice an inquiry by a Magistrate in regular proceedings. It is only upon such a finding that a complaint can be made against such a person. Thus, the Court, which was seized with the proceedings, must, *prima facie*, be satisfied that the offence, as alleged,

> has been committed by the respondents and the proceedings must be initiated against them. *If the Court does not make an order under Section 340, Cr. P.C., a private party cannot lodge an FIR for the offence committed during Court proceedings*." (Emphasis supplied)

20. It was laid down by the Hon'ble Supreme Court in ***Om Prakash Ambadkar v. State of Maharashtra, 2025 SCC OnLine SC 238*** that the magistrate has to apply his mind to determine whether any cognizable offence is disclosed before ordering an investigation. It was observed:

> "**11.** 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 Cr. P.C., 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.
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> **Xxxxxx**
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> **24.** Thus, there are prerequisites to be followed by the complainant before approaching the Magistrate under Section 156(3) of the Cr. P.C., which is a discretionary remedy as the provision proceeds with the word 'may'. The Magistrate is required to exercise his mind while doing so. He should pass orders only if he is satisfied that the information reveals commission of cognizable offences and also about the necessity of police investigation for digging out evidence, neither in possession of the complainant nor

can be procured without the assistance of the police. It is, thus, not necessary that in every case where a complaint has been filed under Section 200 of the Cr. P.C., the Magistrate should direct the Police to investigate the crime merely because an application has also been filed under Section 156(3) of the Cr. P.C., even though the evidence to be led by the complainant is in his possession or can be produced by summoning witnesses, with the assistance of the court or otherwise. The issue of jurisdiction also becomes important at that stage and cannot be ignored.

25. In fact, the Magistrate ought to direct investigation by the police only where the assistance of the Investigating Agency is necessary, and the Court feels that the cause of justice is likely to suffer in the absence of investigation by the police. The Magistrate is not expected to mechanically direct investigation by the police without first examining whether, in the facts and circumstances of the case, investigation by the State machinery is actually required or not. If the allegations made in the complaint are simple, where the Court can straightaway proceed to conduct the trial, the Magistrate is expected to record evidence and proceed further in the matter, instead of passing the buck to the Police under Section 156(3) of the Cr. P.C. Of course, if the allegations made in the complaint require a complex and complicated investigation which cannot be undertaken without active assistance and expertise of the State machinery, it would only be appropriate for the Magistrate to direct investigation by the police authorities. The Magistrate is, therefore, not supposed to act merely as a Post Office and needs to adopt a judicial approach while considering an application seeking investigation by the Police."

21. Therefore, no FIR could have been registered by taking recourse to Section 175(3) of BNSS (corresponding to Section 156

(3) of CrPC), and the learned Trial Court had rightly declined to exercise the jurisdiction under Section 175 (3) of BNSS.

22. The offences punishable under Sections 176, 181, 193, 195, 197, 198, 199, 200, 205 and 209 of the IPC are shown to be non-cognisable in the First Schedule of the CrPC, and the Magistrate could not have ordered the registration of the FIR when the application disclosed non-cognisable offences. It was held in ***Om Prakash Ambadkar*** (supra) that it is impermissible to order the registration of the FIR for the commission of an offence punishable under Section 500 of IPC (which is a non-cognizable offence). It was observed:

> "**20.** We fail to understand how the Magistrate could have directed the police to investigate the offence of defamation punishable under Section 500 of the IPC. We are at a loss to understand as to why this aspect was not looked into even by the High Court."

23. In ***P.C. Mohan v. State of Karnataka*, *2021 SCC OnLine Kar 16: 2021 Cri LJ 999,*** learned Special Judge directed the registration of the FIR for the commission of offences punishable under Sections 171-G, 177, 181, 191, 193, 199, 200 of the Penal Code. It was held that the offences were non-cognisable and no FIR could have been registered. It was observed:

> **14.** Undisputedly, all the offences alleged against the petitioner are non-cognizable offences.
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> **15.** Law is now well settled that before directing the police to investigate under sub-section (3) of Section 156CrPC, the Magistrate/court should form an opinion that the complaint discloses a cognizable offence. When the allegation made in the complaint does not disclose a cognizable offence, the Magistrate/court has no jurisdiction to order a police investigation under sub-section (3) of Section 156CrPC.
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> **16.** In the present case, the learned Special Judge, without applying his mind, has directed investigation by the police. Such an order is clearly an order without jurisdiction. Therefore, to that extent, the order passed by the Special Court directing the police to investigate under sub-section (3) of Section 156CrPC is liable to be quashed.

24. Therefore, no direction could have been issued to register the FIR in the present case.

25. The offences punishable under Sections 406, 408, 470, 420, 464, 468 and 471 are cognizable, but they are alleged to have been committed in the course of the same transaction in which the other non-cognizable offences were stated to have been committed. In ***State of Himachal Pradesh versus Hirda Ram 1998 (1) Crimes (HC) 89,*** a complaint was filed for the commission of offences punishable under Sections 181, 420 and 468 of IPC. This Court held that no cognisance for the commission of an offence punishable under Section 181 of IPC could have been taken based

on the police challan because of the prohibition contained in Section 195 of Cr.P.C. It was observed: -

> **[9]** Admittedly, the respondent was sent up for trial for the offences under Sections 181, 420 and 468 of the Indian Penal Code. Section 195, Code of Criminal Procedure, insofar as it is relevant for the purpose of the present case, reads:
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> > 1. No Court shall take cognisance (i) of any offence punishable under Sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or (ii) of any abetment of, or attempt to commit, such offence, or (iii) of any criminal conspiracy to commit such offence. Except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate.
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> The offence under Section 181 of the Indian Penal Code falls within the ambit of clause (a) (i) of sub-section (1) of Section 195, Code of Criminal Procedure, quoted above. Therefore, no court could have taken cognisance of such an offence except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate.
>
> **[10]** In the present case, admittedly, no complaint in writing has been made to the Court by the concerned public servant or by some other public servant to whom such concerned public servant is subordinate. The cognisance was taken by the Learned Chief Judicial Magistrate on the basis of the police report submitted to him under Section 173 of the Code of Criminal Procedure. Such cognisance was, therefore, bad and the entire trial of the respondent stood Vitiated."

26. It was contended that the Court could have taken cognisance of the commission of an offence punishable under

Sections 420 and 468 of the IPC, as these were cognizable. However, this submission was not accepted, and it was held that it is not permissible for the Court to split up the challan and take cognisance of the commission of a cognizable offence while leaving the non-cognizable offence. It was observed: -

> "**[11]** It was contended by the learned Assistant Advocate General that even though the learned Magistrate could not have taken cognizance of the offence under Section 181, Indian Penal Code on the basis of a police report in view of the specific bar under Section 195, Code of Criminal Procedure, the learned Magistrate was fully competent and justified in taking cognizance of the offences under Sections 420 and 468, Indian Penal Code which are not covered by the bar envisaged under Section 195 of the Code of Criminal Procedure. The contention raised by the learned Assistant Advocate General is without any merit.
>
> **[12]** In ***Jit Kumar v. The State of Punjab, 1987 SLJ 156***, a police challan for the offences under Sections 186, 353 and 379, the Indian Penal Code was put up for trial against the accused therein. It was held by the High Court of Punjab and Haryana that since the Court could not take cognizance for an offence punishable under Section 186, Indian Penal Code in view of the specific bar provided under Section 195 of the Code of Criminal Procedure, the Court could not have also entertained the challan in respect of the offences under Sections 353 and 379, Indian Penal Code as well since it was composite challan. The Hon'ble Apex Court in ***State of Karnataka v. Hemareddy and another AIR 1981 SC 1417***, also had the occasion to deal with a similar situation and it was held that in cases where in the course of the same transaction an offence for which no complaint by the court is necessary under Section 195 of the Code of Criminal Procedure and an offence for which such a complaint to the Court is necessary, are committed, it is not possible to split

up and hold the prosecution of the accused for the offences not mentioned in Section 195 of the Code of Criminal Procedure should be upheld.

[13] In the present case as well, the offences under Sections 181, 420, and 468 of the Indian Penal Code are alleged to have been committed in the course of the same transaction, and a composite challan in respect of the three offences was submitted by the police under Section 173, Code of Criminal Procedure before the learned Magistrate. Therefore, such a police challan cannot be split up, and it cannot be said that the prosecution of the respondent for the offences not mentioned in Section 195 of the Code of Criminal Procedure was valid and is to be upheld.

[14] Consequently, the learned Magistrate erred in taking cognisance of the offence in view of the specific bar under Section 195 of the Code of Criminal Procedure and the entire trial of the respondent stood vitiated; the acquittal of the respondent, as recorded by the learned Additional Sessions Judge, Mandi, has, therefore, to be upheld."

27. Therefore, in view of the binding precedent of this Court, it is impermissible to leave the non-cognizable offences and take cognizance of the cognizable offence when the offences are committed in the course of the same transaction; hence, the whole of the application would disclose the commission of a non-cognizable offence and the jurisdiction under Section 175(3) of BNSS could not have been exercised by learned Trial Court.

28. It was submitted that the learned Trial Court had erred in dismissing the complaint on the ground that compliance of Section 154(3) was not made out in the present case, which is

incorrect because the copy of the e-mail (PE3) was filed to show that a complaint was made to SHO Police Station Chhota Shimla and SP, Shimla. The copy of the e-mail only mentions the e-mail addresses, but there is nothing on record to show that these e-mail addresses pertained to SP Shimla or Police Station, Chhota Shimla; the burden of establishing that the complainant had made a complaint to the SHO and SP Shimla was upon him. Therefore, he was required to bring on record the material to show that the email addresses mentioned by him pertained to SHO, Police Station East, Chotta Shimla and SP Shimla. In the absence of any such evidence, the learned Trial Court cannot be faulted for holding that there was non-compliance of the provision of Section 154 (3) of the CrPC.

29. It was submitted that the judgment of ***Priyanka Srivastava versus State of U.P. (2015) 6 SCC 287*** does not apply to the present case because the complaint was filed under Bhartiya Nagrik Suraksha Sanhita (BNSS), 2023. This submission is only stated to be rejected. It was laid down by the Hon'ble Supreme Court in ***Om Prakash Ambadkar v. State of Maharashtra*, *(2026) 2 SCC 622: 2025 SCC OnLine SC 238*** that the requirements of ***Priyanka***

Srivastava (supra) have been codified under BNSS. It was observed at page 637:

> **34.** A comparison of Section 175(3) BNSS with Section 156(3) CrPC 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 an 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).
>
> **35.** The introduction of these changes by the legislature can be attributed to the judicial evolution of Section 156CrPC undertaken by a number of decisions of this Court. In ***Priyanka Srivastava v. State of U.P. [Priyanka Srivastava v. State of U.P., (2015) 6 SCC 287: (2015) 3 SCC (Civ) 294: (2015) 4 SCC (Cri) 153]***, this Court held that prior to making an application to the Magistrate under Section 156(3) CrPC, the applicant must necessarily make applications under Sections 154(1) and 154(3). It was further observed by the Court that applications made under Section 156(3) CrPC must necessarily be supported by an affidavit sworn by the applicant. The reason given by the Court for introducing such a requirement was that applications under Section 156(3) CrPC were being made in a routine manner and in a

number of cases only with a view to causing harassment to the accused by registration of FIR.

36. It was further observed in ***Priyanka Srivastava [Priyanka Srivastava v. State of U.P., (2015) 6 SCC 287: (2015) 3 SCC (Civ) 294: (2015) 4 SCC (Cri) 153]*** that the requirement of supporting the complaint with an affidavit would ensure that the person making the application is conscious and also to see that no false affidavit is made. Once an affidavit is found to be false, the applicant would be liable for prosecution in accordance with the law. This would deter him from casually invoking the authority of the Magistrate under Section 156(3).

37. The relevant observations made by the Court are reproduced hereinbelow: (***Priyanka Srivastava case [Priyanka Srivastava v. State of U.P., (2015) 6 SCC 287: (2015) 3 SCC (Civ) 294: (2015) 4 SCC (Cri) 153]***, SCC pp. 305-306, paras 27-31)

> "27. Regard being had to the aforesaid enunciation of law, it needs to be reiterated that *the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of the allegations and not to issue directions without proper application of mind. He has also to bear in mind that sending the matter would be conducive to justice, and then he may pass the requisite order*. The present is a case where the accused persons are serving in high positions in the Bank. We are absolutely conscious that the position does not matter, for nobody is above the law. But the learned Magistrate should take note of the allegations in entirety, the date of the incident and whether any cognizable case is remotely made out. It is also to be noted that when a borrower of the financial institution covered under the SARFAESI Act invokes the jurisdiction under Section 156(3) CrPC, and also there is a separate procedure under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, an attitude of more care, caution, and circumspection has to be adhered to.

28. Issuing a direction stating "as per the application" to lodge an FIR creates a very unhealthy situation in society and also reflects the erroneous approach of the learned Magistrate. It also encourages unscrupulous and unprincipled litigants, like Respondent 3, namely, Prakash Kumar Bajaj, to take adventurous steps with courts to bring the financial institutions to their knees. As the factual exposition would reveal, Respondent 3 had prosecuted the earlier authorities, and after the matter was dealt with by the High Court in a writ petition recording a settlement, he did not withdraw the criminal case and wait for some kind of situation where he could take vengeance as if he were the emperor of all he surveys. It is interesting to note that during the tenure of Appellant 1, who is presently occupying the position of Vice-President, neither was the loan taken nor was the default made, nor was any action under the SARFAESI Act taken. However, the action under the SARFAESI Act was taken for the second time at the instance of the present Appellant 1. We are only stating about the devilish design of Respondent 3 to harass the appellants with the sole intent to avoid the payment of the loan. When a citizen avails a loan from a financial institution, it is his obligation to pay back and not play truant or, for that matter, play possum. *As we have noticed, he has been able to do such adventurous acts as he has the embedded conviction that he will not be taken to task because an application under Section 156(3) CrPC is a simple application to the court for the issue of a direction to the investigating agency. We have been apprised that a carbon copy of a document is filed to show compliance with Section 154(3), indicating it has been sent to the Superintendent of Police concerned.*

29. At this stage, it is seemly to state that power under Section 156(3) warrants application of the judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the Code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled *and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens, but when pervert litigations takes this route to harass their fellow citizens, efforts are to be made to scuttle and curb the same.*

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 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.

31. We have already indicated that there has to be prior applications under Sections 154(1) and 154(3) while filing a petition under Section 156(3). Both aspects should be clearly spelt out in the application, and the necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit is so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with the law. This will deter him from casually invoking the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of the allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, *matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in* ***Lalita Kumari*** [***Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524***] *are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.*" (emphasis supplied)

38. In a recent pronouncement of this Court in ***Babu Venkatesh v. State of Karnataka [Babu Venkatesh v. State of Karnataka, (2022) 5 SCC 639 : (2022) 2 SCC (Cri) 455***], the observations made in ***Priyanka Srivastava [Priyanka Srivastava v. State of U.P., (2015) 6 SCC 287 : (2015) 3 SCC (Civ) 294 : (2015) 4 SCC (Cri) 153***] were referred to and it was held as follows: (***Babu Venkatesh case [Babu Venkatesh v. State of Karnataka, (2022) 5 SCC 639 : (2022) 2 SCC (Cri) 455]***, SCC p. 646, paras 24-26)

"*24. This Court has clearly held that a stage has come where applications under Section 156(3) CrPC are to be supported by an affidavit duly sworn by the complainant who seeks the invocation of the jurisdiction of the Magistrate.*

25. This Court further held that, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also verify the veracity of the allegations. The Court has noted that applications under Section 156(3) CrPC are filed in a routine manner without taking any responsibility, only to harass certain persons.

26. This Court has further held that, prior to the filing of a petition under Section 156(3) CrPC, there have to be applications under Sections 154(1) and 154(3) CrPC. This Court emphasises the necessity to file an affidavit so that the persons making the application should be conscious and not make a false affidavit. With such a requirement, the persons would be deterred from causally invoking the authority of the Magistrate, under Section 156(3) CrPC. Inasmuch as if the affidavit is found to be false, the person would be liable

> *for prosecution in accordance with the law.*" (emphasis supplied)
>
> **39.** In light of the judicial interpretation and evolution of Section 156(3)CrPC by various decisions of this Court as discussed above, it becomes clear that the changes introduced by Section 175(3) BNSS to the existing scheme of Section 156(3) merely codify the procedural practices 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.
>
> **40.** Further, by requiring the Magistrate to consider the submissions made by the police officer concerned before proceeding to issue directions under Section 175(3), BNSS has affixed greater accountability on the police officer responsible for registering FIRs under Section 173. Mandating the Magistrate to consider the submissions of the police officer concerned 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 reasoned orders is complied with in a more effective and comprehensive manner.

30. It was submitted that the judgment of ***Priyanka Srivastava*** (supra) did not apply to the present case because the complaint was not filed under Section 156 (3) of CrPC or 175 of BNSS. This submission will not help the petitioner. The complainant had made a specific prayer in the complaint, 'take cognisance of the offence to register an FIR against all defendants and others involved in an illegal act of cognisable offence', clearly showing that the intent was to get the FIR registered.

31. In view of the above, there is no infirmity in the judgment and order passed by the Courts below. Hence, the present petition cannot be allowed.

32. This is not the first instance when the petitioner has approached the Courts by filing these kinds of petitions. Therefore, it is necessary to take effective steps to prevent the petitioner from wasting the precious time of the Courts; hence, the present petition is dismissed with the cost of ₹10,000/-, which shall be deposited in the Chief Justice Disaster Relief Fund within a period of four weeks, failing which steps will be taken to recover it as per the law.

33. The present petition stands disposed of in the aforesaid terms, so also the pending applications, if any.

(Rakesh Kainthla)
Judge

28th July, 2026
(Nikita)