

A.F.R.



IN THE HIGH COURT OF ORISSA AT CUTTACK
CRLMP No.107 of 2025

(In the matter of an application Under Articles 226 & 227
of the Constitution of India)

Prajna Prakash Nayak ***Petitioner***
-versus-
State of Odisha & others ***Opposite parties***

For Petitioner : ***Mr. H.S.Mishra, Advocate***
For Opposite : ***Mr. R.B.Mishra, Addl. PP***
Parties

CORAM:

JUSTICE G. SATAPATHY

DATE OF HEARING & JUDGMENT:05.02.2025

G. Satapathy, J.

1. The petitioner by way of this writ petition under Articles 226 & 227 of the Constitution of India prays for a direction for Crime Branch investigation in the matter and to take action against the accused persons in accordance with law post registration of FIR by Mancheswar Police Station and to initiate proceedings against all erring officials for their willful and deliberate disobedience to the Court's order.



2. The facts in gist are the petitioner and his wife claiming themselves to be the victims of fraud, forgery and cheating of Rs.6.2 crores had approached the Infocity Police Station and accordingly, Infocity FIR No. 252 of 2021 and Airfield FIR No. 265 of 2021 were registered against one Rajeev Lochan Das along with others, but it is alleged that during the pendency of investigation these two cases, the then DCP, Bhubaneswar tried to influence the petitioner and his wife by calling to the Police Station and calling over on Whatsapp call to withdraw the two cases and get into a compromise with the accused of these two cases which in fact the petitioner and his wife did not entertain and, therefore, in the process the police officials of the then Commissionerate Police, which includes Addl. DCPs, the then IIC Lingaraj PS, IIC Infocity PS and SI of Police pressurized the petitioner and his wife on different occasions to compromise in this case under the active instruction of the then DCP. The aforesaid police personnel in the process had abducted the petitioner at gun point and kept him in unlawful detention and tortured him and his wife mentally and physically by abusing, giving death threats and terrorizing them by



trespassing into their house. Due to the aforesaid incident, not only the petitioner, but also his family members suffer mentally and their minor daughter developed some Neurological disease and taken to NIMHANS, Bangalore for her treatment. On this incident, despite approaching the IIC, Mancheswar, DCP and even the CP Multiple times, the written report of the petitioner has not yet been registered as FIR and thereby the petitioner lodged two e-FIRs. Last time on 4th August, 2024, the petitioner has not only given written complaint to the IIC, Macheswar PS, but also has lodged an e-FIR and has also sent the copy of the written complaint by Speed Post to the IIC, Mancheswar PS and the DCP, Bhubaneswar and has also sent the same through e-mail to the IIC, Mancheswar PS and other senior officers, but everything was in vain. Finding no way out, the petitioner ultimately approached the learned JMFC-II, Bhubaneswar with a complaint which was registered as ICC Case No. 7679 of 2024 and the learned JMFC-II, Bhubaneswar being satisfied in the matter by way of an order passed on 09.10.2024 in ICC Case No. 7679 of 2024 sent the complaint of the petitioner to the



concerned IIC U/S. 175(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (in short, "BNSS") for registration of an FIR and investigation in the matter, but till date no FIR has yet been registered as claimed by the petitioner and thereby the petitioner has approached this Court in the present CRLMP.

3. In the course of hearing, Mr.Himanshu Sekhar Mishra, learned counsel for the petitioner by inviting attention of the Court to the order passed by the learned JMFC-II, Bhubaneswar submits that despite the order passed by the competent Court, the police has not yet registered the complaint of the petitioner as an FIR and the IIC of Mancheswar PS in utter disregard & defiance to the order of the said Court has even not turned up before it despite order for his personal attendance for not registering the FIR, but such defiance of the IIC was communicated to the DCP who was also instructed for quick registration of the complaint as FIR U/S. 175(3) of BNSS, but in vain. Mr.Mishra, however, by condemning the action of the police for defying the order of the Court has termed the action of the State Authority in the parlance of "soft state" and he prays to handover the



investigation of the case to Crime Branch after getting the complaint of the petitioner registered as an FIR since the high police officials have been involved in committing and perpetuating the crime. Further, Mr. Mishra prays to direct the personal appearance of all the officers named in the complaint for their gross indiscipline and defiance.

3.1. On the contrary, Mr. R.B. Mishra, learned Additional Public Prosecutor, however, prays for some time to obtain instruction in the matter.

4. After having considered the rival submissions upon perusal of record, since there is procedural error, which goes to the root of the maintainability of the order passed by the learned JMFC-II, Bhubaneswar directing for registration of FIR and investigation, this Court considers it proper to address the issue first inasmuch as such procedural errors are in contravention to the provisions of law and, therefore, the same is required to be rectified. True it is that the learned JMFC-II, Bhubaneswar has passed an order directing for an investigation U/S.175(3) of BNSS, which is *pari materia* to the provisions of Section 156(3) of CrPC with little change. This Court,



therefore, considers it appropriate to extract the provisions of Section 175 of the BNS:-

"175. Police officer's power to investigate cognizable case-

(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIV:

Provided that considering the nature and gravity of the offence, the Superintendent of Police may require the Deputy Superintendent of Police to investigate the case.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this Section to investigate.

(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.

(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.”

On careful perusal of aforesaid provisions of law makes it ample clear in Section 175(1) of the BNSS that any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIV; but the proviso appended to aforesaid Section grants discretion to the Superintendent of Police to ask the Deputy Superintendent of Police to investigate the case by considering the nature and gravity of the offence, which is the small change brought in the new Section. However, the most important provision is the Sub-Section(3) of Section 175 which confers wide jurisdiction to Magistrate to order for an investigation, but before ordering such an investigation, the Magistrate is required to consider the application supported by an affidavit made under Sub-Section(4) of Section 173, and after making such an



inquiry as he thinks necessary and submission made in this regard by the police officer may order for such an investigation.

5. In Sub-Section(4) to Section 175 of BNSS provides that Magistrate may upon receiving a complaint against a public servant arising in course of discharge of his official duties, order an 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.

The new provision in Sub-Section(4) to Section 175 of the BNSS is an additional safeguard provided for the public servant against whom an accusation of committing cognizable offence arising in course of discharge of his official duty has been made and, therefore, any Magistrate who is empowered to take cognizance U/S.210 of BNSS may order an investigation against a public servant upon receiving a complaint arising in course of discharge of his official



duty, only after complying with the procedure prescribed in Section 175(4)(a)(b) of the BNSS. In the aforesaid context, this Court considers it useful to refer to the very recent decision in ***Om Prakash Ambadkar Vrs. State of Maharashtra and others; 2025 Live Law (SC) 139***, wherein the Apex Court after taking note of a comparative analysis of Section 175(3) of BNSS and Section 156(3) of CrPC have outlined the prominent changes as introduced by the enactment of BNSS in paragraph-31 of the said decision, which reads as under:-

"31.(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)."

6. In **Om Prakash Ambadkar(supra)** at paragraphs-34 and 35, the Apex Court has held thus:-

"34. In light of the judicial interpretation and evolution of Section 156(3) of the Cr.P.C. by various decisions of this Court as discussed above, 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 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.

35. Further, by requiring the Magistrate to consider the submissions made by the concerned police officer 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 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 reasoned orders is complied with in a more effective and comprehensive manner."

On applying the facts of the present case on the touchstone of the aforesaid new provision as



brought in Sec.175 of BNSS and the law laid down by the Apex Court in ***Om Prakash Ambadkar (supra)***, the learned Magistrate in this case while ordering for an investigation vide his order dated 09.10.2024 has neither sought for any report containing the facts and circumstance of the incident from the officer superior to the police officials arrayed as accused persons in the complaint nor has considered the assertion made by the public servant as to the situation that led to the incident so alleged. It is also not known from the aforesaid order directing for registration of the FIR that the complainant has in fact produced the affidavit as required under Sub-Section(4) of Section 173 in case of refusal on the part of an officer in charge of a police station to record the information referred to in Sub-Section (1) of Section 173 of the BNSS and sending of substance of such information in writing and by post to the Superintendent of Police concerned, which cannot be termed as empty formality inasmuch as if the Superintendent of Police is satisfied that such information discloses the commission of a cognizable



offence, he shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided. It is also not found from the aforesaid order that what inquiry the learned Magistrate has made before ordering for registration of the FIR and investigation, but certainly neither he has called for any submissions from the concerned police officials nor did she provide any opportunity to the concerned police officials to make submissions which is a mandatory requirement as held by the Apex Court in ***Om Prakash Ambadkar (supra)***.

7. Further, in ***Om Prakash Ambadkar (supra)*** at paragraphs 24 & 25, the Apex Court has held as under:-

"24. xx xx xx It is thus not necessary that in every case where a complaint has been filed U/S. 200 of CrPC, the Magistrate should direct the police to investigate the crime merely because an application has been filed U/S. 156(3) of the CrPC 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.



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 circumstance 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 straight away proceed to conduct the trial, the Magistrate is expected to record evidence and proceed further in the matter, instead of passing buck to the police under U/S. 156(3) of the CrPC. Of course, if the allegations made in the complaint require 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."**

Quoting the above principles as laid down by Apex Court is only meant for the guidance of the empowered Magistrate while directing for an investigation inasmuch as it is made obligatory for such Magistrate not to order for an investigation casually without reference to the facts of the case and



ingredients of the offence and requirement for police investigation and only in appropriate cases, the Magistrate may direct for an investigation by the police. In this case, on a studied scrutiny of the order directing an investigation as passed by the learned JMFC-II, Bhubaneswar, it appears that neither the Magistrate has discussed the requirement of investigation by police nor has referred to any foundational facts to direct for an investigation by the police. Further, the higher police officials have been arrayed as accused persons, but the learned Magistrate has directed to IIC of the Police Station to register an FIR against his authority and conduct investigation which in the circumstance might be the cause for inaction of the IIC, however, the Magistrate by looking at the nature of evidence possessed by the complainant could have passed an order for proceeding directly by herself, which of course subject to the nature of evidence in possession of the complainant or with any other person or institution, but the Magistrate has to justify reason as to why police investigation is required in this case in terms of the



principles as culled out by the Apex Court in the decisions referred to above.

8. Reverting back to the facts of the case, it appears that the allegations depicted in the complaint reveal serious allegation against the public officials which is unacceptable for a civilized society, no matter such allegation flows from the year 2021, however, a question may also come in mind as to whether such allegation can be covered within the meaning of discharge of official duty, but fact remains that two criminal cases were initiated by the complainant and in the course of investigation of such criminal cases, the excesses committed by the public officials have been alleged by the petitioner in the present complaint and, therefore, the same being a question of fact can be covered by the provision of Sub-Section (4) of Section 175 of the BNSS. In the context, it is considered apposite to refer to the law laid down in the decision in ***Matajog Dobey Vrs. H.C. Bihari; AIR 1956 SC 44***, where in a Constitutional Bench of five Judges of the Apex Court has held thus:-



"17. *Slightly differing tests have been laid down in the decided cases to ascertain the scope and the meaning of the relevant words occurring in Section 197 of the Code; "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty." But the difference is only in language and not in substance. The offence alleged to have been committed must have something to do, or must be related in some manner with the discharge of official duty. No question of sanction can arise under Section 197, unless the act complained of is an offence; the only point to determine is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. **It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty,** as this question will arise only at a later stage when trial proceeds on the merits. What we must find out is whether the act and the official duty are so interrelated that one can postulate reasonably that **it was done by the accused in the performance of the official duty, though possibly in excess of the needs and requirements of the situation."***

9. The answer to the question as to whether the excesses committed by the public officials can be covered within the meaning of discharge of official duty as contemplated in Sec.175(4) of the BNSS, lies in the following discussions made in ***D. Devaraja Vrs. Owais Sabeer Hussain; (2020) 79 OCR (SC) 146***, wherein



the Apex Court at Paragraph-71 to 74, 77 and 78 has held as under:-

"71. *If in doing an official duty a policeman has acted in excess of duty, but there is a reasonable connection between the act and the performance of the official duty, the fact that **the act alleged is in excess of duty will not be ground enough to deprive the policeman of the protection of Government sanction for initiation of criminal action against him.***

72. *The language and tenor of section 197 of the Code of Criminal Procedure and Section 170 of the Karnataka Police Act makes it absolutely clear that sanction is required not only for acts done in discharge of official duty, it is also required for an act purported to be done in discharge of official duty **and/or act done under colour of or in excess of such duty or authority.***

73. *To decide whether sanction is necessary, the test is whether the act is totally unconnected with official duty or whether there is a reasonable connection with the official duty. In the case of an act of policeman or any other public servant unconnected with the official duty there can be no question of sanction. However, **if the act alleged against a policeman is reasonably connected with discharge of his official duty, it does not matter if the policeman has exceeded the scope of his powers and/or acted beyond the four corners of law.***

74. *If the **act alleged in a complaint purported to be filed against the policeman is reasonably connected to discharge of some official duty,***



cognizance thereof cannot be taken unless requisite sanction of the appropriate Government is obtained under Section 197 of the Code of Criminal Procedure and/or Section 170 of the Karnataka Police Act.

77. It is well settled that an application U/S. 482 of the Criminal Procedure Code is maintainable to quash proceedings which are ex-facie bad for want of sanction, frivolous or in abuse of process of the Court. If, on the face of the complaint, the act alleged appears to have a reasonable relationship with official duty, where the criminal proceeding is apparently prompted by mala fides and instituted with ulterior motive, power under Section 482 of the Criminal Procedure Code would have to be exercised to quash the proceedings, to prevent abuse of process of Court.

78. There is also no reason to support that sanction will be withheld in case of prosecution, where there is substance in a complaint and in any case if, in such a case, sanction is refused, the aggrieved complaint can take recourse to law. At the cost of repetition it is reiterated that the records of the instant case clearly reveal that the complaint alleged of police excesses while the respondent was in custody, in the course of investigation in connection with Crime No.12/2012. Patently the complaint pertains to an act under colour of duty."

10. In view of the aforesaid discussion of facts and the law laid down by the Apex Court, since the learned JMFC-II, Bhubaneswar has not followed up the



provisions of BNSS in letter and spirit, but he was supposed to follow the same in terms of the provision of Section 175 of the BNSS and keeping in view the law laid down by the Apex Court in ***Om Prakash Ambadkar (supra)***, although such order directing an investigation having not been challenged, but the same being not stood to the judicial scrutiny in terms of the mandatory law, the procedural error which may subsequently give rise to jurisdictional error cannot be allowed to be perpetuated once it is noticed by this Court involving the rights, liabilities and liberty of the parties. At the same time, this Court cannot and shall not appreciate/countenance the conduct of the police officials in defying of the order of the learned JMFC-II, Bhubaneswar who has passed the order which has not been set aside or varied, but defying a valid order without any reason is not acceptable to a civilized society and, thereby, the learned JMFC-II, Bhubaneswar is at liberty to deal the matter of defiance of the order passed by the Court of learned JMFC-II, Bhubaneswar in accordance with law. As a necessary



corollary, the order dated 09.10.2024 directing for an investigation in ICC Case No. 7679 of 2024 by the learned JMFC-II, Bhubaneswar is hereby set aside and the matter is remitted back for passing of appropriate order on the complaint of the petitioner in the light of discussions made hereinabove and following the procedure prescribed under the relevant provisions of BNSS, since the complaint is admittedly filed on 09.10.2024 which is after coming into force of BNSS.

11. In the result, the CRLMP stands disposed of accordingly and the petitioner-complainant is, hereby, instructed to appear before the learned JMFC-II, Bhubaneswar for taking appropriate instruction.

A copy of this order be immediately sent to the Court concerned for information and necessary action.

(G. Satapathy)
Judge

Signature Not Verified

Digitally Signed
Signed by: KISHORE KUMAR SAHOO
Designation: Secretary
Reason: Authentication
Location: High Court of Orissa
Date: 10-Feb-2025 14:15:58

*Orissa High Court, Cuttack,
Dated the 5th February, 2025/Kishore*