

A.F.R.

Neutral Citation No. - 2025:AHC:123424

Court No. - 73

Case :- APPLICATION under Section 528 B.N.S.S. No. - 25348 of 2025

Applicant :- Kamlesh Meena And 2 Others

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Ravi Kant, Vatsala

Counsel for Opposite Party :- Dharmendra Shukla, G.A., Sunil Kumar Singh

Hon'ble Dinesh Pathak, J.

1. Heard Ms Vatsala, learned counsel for the applicants and Sri Anil Tiwari, learned Senior Advocate, assisted by Sri Dharmendra Shukla, learned counsel for the respondent no.2 and learned AGA for the State respondent no.1, and perused the record.

2. The applicants have invoked the inherent jurisdiction of this Court under Section 528 B.N.S.S. for quashing the impugned order dated 05.07.2025 passed by the learned Special Judge (S.C./ S.T. Act)/ Additional Session Judge, Agra, passed in Criminal Misc. Case No.3140 of 2025 (Criminal Misc. Application No.251 of 2025) (Veerendra Singh Vs. G.M. Amrendra Kumar & Another), under Section 173(4) of B.N.S.S., 2023, Police Station- Etmauddaulaa, District Agra, whereby SHO Etmauddaulaa, Police Commissionerate, Agra, has been directed to register an F.I.R. against the present applicants and investigate the same.

3. Learned Senior Counsel for respondent No. 2 has raised a preliminary objection with regard to maintainability of the instant application at the behest of the prospective accused, assailing the order dated 5.7.2025, whereby a simple direction has been issued

for registration of the F.I.R. and investigation of the matter. Thus, with the consent of the parties, maintainability of the instant application at the behest of the prospective accused, before issuance of process or taking of cognizance, is being heard and decided.

4. Record evinces that the respondent no. 2 (complainant) has moved an application under Section 173(4) B.N.S.S. with the prayer that Station House Officer (SHO), Police Station-Etmaauddaulaa, Agra, may be directed to investigate the matter after registering the written complaint of the applicant/complainant. In his application, the respondent no.2 came with the plea that:-

(i) He retired from the post of Manager in January 2019 after rendering 39 years of service in the Bank of India, and belongs to the Scheduled Caste community.

(ii) The opposite party, Amrendra Kumar (accused), harbours a long-standing enmity against the applicants and, in conspiracy with other opposite parties, namely, Jeevan Kamle, Kamlesh Meena and Anjani Kumar, attempted to defame and falsely implicated him in a fabricated case. To that end, a false, fabricated and forged complaint letter was sent in the name of one Ramesh Chand, bearing his forged signature, to the Chairman and Managing Director of the Bank, requesting an inquiry.

(iii) Additionally, the travel bills sanctioned by the Bank in favour of the applicants were sent for verification to Sri Sanjeet Kumar, Assistant General Manager, Field General Manager, and others. After verification, the travel agency owner, Jitendra Singh, was allegedly coerced by the said officers to declare the bills as forged, but Jitendra Singh stated that no forged bill had ever been prepared at his establishment.

(iv) In support of the complaint, the complainant has attached the copies of the forged and fabricated applications, affidavits of Ramesh Chandra and Jitendra Singh and other relevant documents.

5. The learned Special Judge (S.C./S.T. Act)/Additional Session Judge, Agra, after perusal of the documents and the statement of witnesses, came to the conclusion that the complainant is a member of the Scheduled caste community and had retired from the post of Bank Manager in the year 2019 after 39 years of service. The opposite parties (applicant herein), who are also officers and employees of the bank, conspired to humiliate the complainant and falsely implicated him in criminal cases by fabricating and filing a false and forged complaint under the name of one Ramesh Chand, whose identity could not be verified. Regarding the alleged fake bills, it is clear that such complaints could only have been made by bank authorities themselves, as the documents in question were in the custody of the bank. Thus, learned court concerned has finally concluded that, in such a situation, it is evident that a criminal conspiracy was committed by the opposite parties/accused with the intention to cheat, forge documents, to use forged documents as genuine, defame the complainant, and commit offences under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act.

6. In this backdrop of the facts, the learned court concerned was of the view that these offences are of a serious and cognizable nature; therefore, it is deemed necessary that an investigation into the allegations against the opposite parties be conducted by a competent police officer. As such, the court concerned has allowed the application under Section 173 (4) of B.N.S.S.,

treating it as maintainable and issued a direction for registration of an F.I.R. at the concerned police station and to conduct a proper investigation, vide his order dated 05.07.2025, which is under challenge before this court.

7. Learned counsel for the applicants submits that the procedure as enunciated under Sections 173 and 175 of B.N.S.S. has not properly been followed by the learned court below before issuing a direction to lodge an F.I.R. and investigate the same; therefore, the instant application under Section 528 of B.N.S.S. is maintainable. It is further submitted that departmental proceedings are going on against the respondent No. 2 for the alleged embezzlement committed by him during his service period, and the application under Section 173(4) of B.N.S.S. has been moved to impede the departmental proceedings. Therefore, in the light of the facts that no cognizable offence is made out against the present applicants for issuing a direction to register an F.I.R. and investigate the matter, there is no legal sanctity in moving the application under Section 173(4) B.N.S.S. In support of her submission, learned counsel for the applicants has placed reliance upon the case of **Om Prakash Ambadkar v. The State of Maharashtra & Ors. (Criminal Appeal No.352 of 2020)** decided by the Hon'ble Supreme Court on January 16, 2025, the case of **Imran Pratapgadhi v. State of Gujarat and another, Criminal Appeal No. 1545 of 2025**, decided by the Hon'ble Supreme Court on March 28, 2025, reported in 2025 SCC Online SC 678, the case of **Anil Kumar and others Vs. M. K. Aiyappa, and others**, decided by Hon'ble Supreme Court reported in **(2013) 10 SCC 705**, and case of Hon. Delhi High Court, decided by Single Bench, vide order dated January 24, 2023 in W.P. (CRL) 209/2023, CRLMA 1951 of 2023 in **Ravinder Lal AIRI Vs. S.**

Shalu Construction PVT. LTD and others and the Matters under Article 227 No. 2138 of 2025 (**Inspector Kamlesh Kumar Misra and another Vs. State of U.P. and 9 others**), decided by the Hon'ble coordinate bench of this court, vide order dated 12.3.2025.

8. Per contra, learned Senior Counsel for the respondent no. 2 has vehemently opposed the submissions advanced by learned counsel for the applicant and contended that in view of the ratio decided by the full bench of this court in the matter of **Father Thomas v. State of U.P. and another**, reported in **2011 (1) ADJ 333 (FB)** instant application under Section 528 B.N.S.S. is not maintainable against the direction of the court concerned for lodging an F.I.R. and conducting an investigation. It is next submitted that at this juncture, nothing has been decided finally against the present applicants who are the prospective accused; therefore, they have no right to impede the investigation as per the direction of the court concerned. It is further submitted that on the face of the complaint moved by the respondent no. 2, a cognizable offence is made out against the present applicants. Thus, the learned court concerned has rightly acknowledged the same and issued a direction for lodging an F.I.R. and conducting an investigation. Present applicants still have an opportunity to cooperate with the investigation and put up their defence. Mere a direction for lodging of an F.I.R. does not confer any legal right in favour of the present applicants to invoke the inherent jurisdiction of this Court. There is no abuse of the process of court or apparent illegality in the order passed by the court concerned to entertain the instant application in exercise of powers under Section 528 B.N.S.S. He has tried to distinguish the case laws, as mentioned above, cited on behalf of the applicants.

9. Having considered the rival submissions advanced by learned counsel for the parties and upon the perusal of record it is manifest that having been aggrieved with the false, fabricated and forged complaint moved against the respondent no. 2 to the higher bank authorities under the name of one Ramesh Chandra, he has approached to the police officer in charge of the concerned police station to lodge an F.I.R. However, while the police report has not been lodged, he has made the complaint dated 7.2.2025 to the Commissioner of Police at Agra. When the respondent no.2 has not received any response from the higher police authority, he has moved an application under Section 173(4) of B.N.S.S. Having found that a cognizable offence is made out against the prospective accused (applicants herein), learned Special Judge, S.C./S.T. Act/Additional Sessions Judge, Agra has issued a direction for registration of the F.I.R. and investigation of the case. Based on the submissions advanced by learned counsel for the parties, question involved in the instant application lies in a narrow compass as to whether the prospective accused, the person, who is suspected of having committed the crime is entitled to an opportunity of being heard against the order of lodging an F.I.R. and investigation of the matter passed by learned Magistrate in deciding the application under Section 173 (4) of B.N.S.S. Needless to say, that in the previous law, i.e. Criminal Procedure Code (hereinafter referred to as 'Cr.P.C.'), the duty was entrusted upon the police authorities to lodge an F.I.R. under Section 154 Cr.P.C. In the case of **Lalita Kumari vs. Government of Uttar Pradesh, (2014) 2 SCC 1**, the Hon'ble Supreme Court has elucidated the scope of Section 154 Cr.P.C. in detail, pointing out the solemn duty of the police authorities. Paragraph 119 of the aforesaid judgment is quoted hereinbelow:

“Therefore, in view of various counterclaims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an F.I.R. is mandatory. However, if no cognizable offence is made out in the information given, then the F.I.R. need not be registered immediately, and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an F.I.R. forthwith. Other considerations are not relevant at the stage of registration of F.I.R., such as whether the information is falsely given, whether the information is genuine, whether the information is credible etc. These are the issues that have to be verified during the investigation of the F.I.R. At the stage of registration of F.I.R., what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false F.I.R.”

10. Under the new law i.e. Bharatiya Nagrik Suraksha Sanhita, 2023 (in brevity, ‘B.N.S.S.’), the corresponding provisions of the aforesaid Section 154 Cr.P.C. are enunciated under Section 173 of B.N.S.S. Likewise, previous provisions under Section 156(3) of Cr.P.C., in relation to entertaining the complaint by the learned Magistrate, are enunciated under Section 175(3) of B.N.S.S. While comparing both sections i.e. 156 Cr.P.C. and 175 B.N.S.S., Hon'ble Supreme Court in the case of **Om Prakash Ambadkar (supra)** has expounded the provisions of Section 175 B.N.S.S. which corresponds to Section 156 Cr.P.C. Relevant paragraph Nos. 29 and 30 of the aforesaid judgment are quoted herein below:

“29. Section 175 of the B.N.S.S. corresponds to Section 156 of the Cr.P.C. Sub-section (1) of Section 175 of the B.N.S.S. is in pari materia with sub-section 156(1) of the Cr.P.C. except for the proviso which empowers the Superintendent of Police to direct the Deputy Superintendent of Police to investigate a case if the nature or gravity of the case so requires. Sub-section (2) of Section 175 the B.N.S.S. is identical to Section 156(2) of the Cr.P.C. Section 175(3) of

the B.N.S.S. empowers any Magistrate who is empowered to take cognizance u/s210 to order investigation in accordance with Section 175(1) and to this extent is in pari materia with Section 156(3) of Cr.P.C. However, unlike Section 156(3) of the Cr.P.C., any Magistrate, before ordering investigation u/s175(3) of the B.N.S.S., is required to:

a. Consider the application, supported by an affidavit, made by the complainant to the Superintendent of Police under Section 173(4) of the B.N.S.S.;

b. Conduct such inquiry as he thinks necessary; and

c. Consider the submissions made by the police officer.

30. Sub-section (4) of Section 175 of the B.N.S.S. is a new addition to the scheme of investigation of cognizable cases when compared with the scheme previously existing in Section 156 of the Cr.P.C. It provides an additional safeguard to a public servant against whom an accusation of committing a cognizable offence arising in the course of discharge of his official duty is made. The provision stipulates that any Magistrate who is empowered to take cognizance under section 210 of the B.N.S.S. may order investigation against a public servant upon receiving a complaint arising in course of the discharge of his official duty, only after complying with the following procedure:

a. Receiving a report containing facts and circumstances of the incident from the officer superior to the accused public servant; and

b. Considering the assertions made by the accused public servant as regards the situation that led to the occurrence of the alleged incident.”

11. However, in paragraph No. 31 of the case of **Om Prakash Ambadkar (supra)**, Hon'ble Supreme Court, while comparing section 175(3) of BNSS with Section 156(3) Cr.P.C., has pointed out three prominent changes that have been introduced by the enactment of the B.N.S.S., which is quoted hereinbelow:

“31. A comparison of Section 175(3) of the B.N.S.S. with Section 156(3) of the Cr.P.C. indicates three prominent changes that have been introduced by the enactment of B.N.S.S. 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 F.I.R. has been made mandatory, and the applicant making an application u/s 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 u/s 175(3).

b. Secondly, the Magistrate has been empowered to conduct such enquiry as he deems necessary before making an order directing registration of F.I.R.
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 F.I.R. before issuing any directions u/s 175(3).”

12. I am sceptical of the submissions advanced by the learned counsel for the applicants that proper procedure as enunciated under Section 173 of B.N.S.S. has not been followed, and the learned Magistrate, while passing the order for registration of the F.I.R. and investigation of the matter, has not applied his judicial mind. It is evident from the record that before moving an application under Section 173(4) B.N.S.S., the respondent no. 2 had approached the police station concerned and subsequently to the Commissioner of Police, Commissionerate Agra. Having failed to get any relief, ultimately, he has moved the application under Section 173(4) B.N.S.S., supported with an affidavit narrating the details of his plight.

13. The learned Magistrate, in exercise of his discretionary power under Section 175(3) of B.N.S.S. (old provision 156(3) Cr.P.C.), has conducted an inquiry. He has called for a report from the concerned police station. In response to the query made by learned magistrate, a report has been submitted by the concerned police station that no F.I.R. has been lodged with respect to the occurrence of offence as mentioned in the application under Section 173(4) B.N.S.S. Notice has been issued to the Chief General Manager of the bank as well, in pursuance of Section 175(4) of B.N.S.S., to submit his report with regard to the incident as mentioned in the complaint moved by the respondent no. 2. However, in place of the Chief General Manager, the General Manager of the bank, namely, Amrendra Kumar, who

was arrayed as opposite party no. 1 in the complaint, has submitted a detailed reply in the form of a report and denied all the allegations as made in the complaint. Learned Magistrate has discussed in detail the objection/reply submitted by the General Manager, Amrendra Kumar (opposite party no. 1 in complaint) and came to the conclusion that investigation, if conducted by the police, would not affect the official duty of the opposite parties arrayed in the complaint. Prima facie, all the essential conditions, as required to entertain the application under Section 173(4) read with Section 175(3) B.N.S.S., have been fulfilled; therefore, the learned Magistrate has not committed any illegality in entertaining said application.

14. Learned counsel for the applicants has emphasized on the judgment of **Om Prakash Ambadkar (supra)** and submits that Hon'ble Apex Court has set aside the order passed by the Magistrate concerned directing the police investigation under Section 156(3) of Cr.P.C.; thus, order passed under Section 173 (4) to register an F.I.R. and for investigation is open to be assailed at the behest of the person who is suspected of having committed the crime. In the cited case, the application moved under Section 156(3) Cr.P.C. has been allowed with a direction for registration of the F.I.R. and investigation of the matter under Sections 323, 294, 500, 504 and 506 IPC. Aforesaid order was affirmed by Hon'ble High Court in application under Section 482 Cr.P.C. Hon'ble Supreme Court, having considered the entire case in detail, came to the conclusion that learned Magistrate has not properly applied his judicial mind in allowing the application under Section 156(3) Cr.P.C., and has succinctly observed that no cognizable offence is made out in the facts and circumstances of the case as averred by the applicant in his application under

Section 156(3) Cr.P.C. Thus, in this backdrop of the case, Hon'ble Supreme Court has set aside the order passed by the learned Magistrate as well as the order passed by the Hon'ble High Court.

15. It is apposite to mention that *locus standi* of the prospective accused to assail the order for registration of the F.I.R. and investigation of the matter under section 156(3) Cr.P.C. (new section 175(3) B.N.S.S.), before cognizance and issuance of process, was neither in question nor discussed by the Hon'ble Apex Court in the case of **Om Prakash Ambadkar (supra)**. The full Bench of this Court in the case of **Father Thomas v. State of UP and another, 2011(1) ADJ 33 (FB)**, while replying the question No. 1, came to the conclusion that the prospective accused have no locus to challenge the order passed under Section 156(3) Cr.P.C. before cognizance or issuance of process against him. Paragraph No. 32 of the aforesaid judgment is quoted hereinbelow:

“32. In the light of the aforesaid discussion, it is abundantly clear that the prospective accused has no locus standi to challenge a direction for investigation of a cognizable case under Section 156(3) Cr.P.C before cognizance or issuance of process against the accused. The first question is answered accordingly.”

16. More so, on the flip side, while the rejection of the application under Section 156(3) Cr.P.C. is assailed by the applicant/complainant, the prospective accused has full right to contest the case at the higher stage, as per ratio decided by Hon'ble Full Bench of this Court in the matter of **Jagannath Verma and others vs. State of UP and another, AIR 2014 Allahabad 214 (FB)**.

17. In the case of **Kailash Vijayvargiya Vs. Rajlakshmi Chaudhuri and Others**, decided on May 4, 2023, in **Criminal Appeal No. 1581 of 2021**, reported in **2023 SCC Online SC 569**, the Hon'ble Supreme Court has elucidated the pre-cognizance stage and post-cognizance stage. It has been observed that if the Magistrate finds that the allegation made before him discloses the commission of cognizable offence, he can forward the complaint to the police for investigation under Section 156(3) Cr.P.C. and, thereby, save valuable time of the Magistrate from being wasted in inquiry as it is preliminary duty of the police to investigate. In paragraph No. 84 of the aforesaid judgment, the Hon'ble Supreme Court has unequivocally observed that the accused does not have any right to appear before the Magistrate before summons are issued. Relevant paragraph Nos. 69, 73, 74, 75, 80, 81 and 84 of the aforesaid judgment are quoted herein below:

"69. In Ramdev Food Products Private Limited (supra), examining whether discretion of the Magistrate to call for a report u/s202 instead of directing investigation under Section 156(3) is controlled by any defined parameters, it was held thus:

"22. Thus, we answer the F.I.R.st question by holding that:

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

22.2. The cases where Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet to determine "existence of sufficient ground to proceed". Category of cases falling under para 120.6 in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] may fall u/s202.

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

73. As to the scope of power of the Magistrate to direct an FIR under Section 156(3), this court in Mohd. Yusuf v. Afaq Jahan (Smt), (2006) 1 SCC 627 opined that:

"11. The clear position therefore is that any Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the Police to start investigation it is open to the Magistrate to direct the Police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the Police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer in charge of the Police station to register the FIR regarding the cognizable offence disclosed by the complainant because that Police officer could take further steps contemplated in Chapter XII of the Code only thereafter."

74. In Anju Chaudhary (supra), this court analysing the power of the Magistrate under Section 156(3) observed:

"41. Thus, the Magistrate exercises a very limited power under Section 156(3) and so is its discretion. It does not travel into the arena of merit of the case if such case was fit to proceed further. This distinction has to be kept in mind by the court in different kinds of cases...."

75. In HDFC Securities Ltd. v. State of Maharashtra, (2017) 1 SCC 640, this court while interpreting the words "may take cognizance" and Section 156(3), held:

"24. Per contra, the learned counsel for Respondent 2 submitted that the complaint has disclosed the commission of an offence which is cognizable in nature and in the light of Lalita

Kumari case [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524], registration of F.I.R. becomes mandatory. We observe that it is clear from the use of the words "may take cognizance" in the context in which they occur, that the same cannot be equated with "must take cognizance". The word "may" give discretion to the Magistrate in the matter. If on a reading of the complaint he finds that the allegations therein disclose a cognizable offence and that the forwarding of the complaint to the police for investigation under Section 156(3) will be conducive to justice and save the valuable time of the Magistrate from being wasted in enquiring into a matter, which was primarily the duty of the police to investigate, he will be justified in adopting that course as an alternative to taking cognizance of the offence, himself. It is settled that when a Magistrate receives a complaint, he is not bound to take cognizance if the facts alleged in the complaint, do not disclose the commission of an offence."

80. *The State of West Bengal has drawn our attention to the judgment of this Court in Gopal Das Sindhi v. State of Assam, AIR 1961 SC 986 to the effect that even when a private complaint is filed, the Magistrate is not bound to take cognizance u/s190 as the word used therein is 'may', which should not be construed as 'must' for obvious reasons. The Magistrate may well exercise discretion in sending such complaint under Section 156(3) to the police for investigation. However, when a Magistrate chooses not to proceed under Section 156(3), he cannot simply dismiss the complaint if he finds that resorting to Section 156(3) is not advisable. Reference in this regard can also be made to Suresh Chand Jain v. State of M.P., (2001) 2 SCC 628 which distinguishes between the power of the police to investigate u/s156, the direction of the Magistrate for investigation under Section 156(3) and post-summoning inquiry and investigation after cognizance u/s190 and Section 202 of the Code. When a Magistrate orders investigation under Section 156(3), he does so before cognizance of the offence. If he takes cognizance, he needs to follow the procedure envisaged in Chapter XV (see Afaq Jahan (supra).*

81. *The decision in Mona Panwar v. High Court of Judicature of Allahabad through its Registrar, (2011) 3 SCC 496 is rather succinct. This Court held that when a complaint is presented before a Magistrate, he has two options. One is to pass an order contemplated by Section 156(3). The second one is to direct examination of the complainant on oath and the witness present, and proceed further in the manner provided by Section 202. An order under Section 156(3) is in the nature of*

a peremptory reminder or intimation to the police to exercise its plenary power of investigation u/s156(1). However, once the Magistrate has taken cognizance u/s190 of the Code, he cannot ask for an investigation by the Police. After cognizance has been taken, if the Magistrate wants any investigation, it will be u/s202, whose purpose is to ascertain whether there is prima facie case against the person accused of the offence and to prevent issue of process in a false or vexatious complaint intended to harass the person named. Such examination is provided, therefore, to find out whether there is or not sufficient ground for proceeding further.

84. We would refrain and not comment on the allegations made as this may affect the case put up by either side. The accused do not have any right to appear before the Magistrate before summons are issued. However, the law gives them a right to appear before the revisionary court in proceedings, when the complainant challenges the order rejecting an application under Section 156(3) of the Code. The appellants, therefore, had appeared before the High Court and contested the proceedings. They have filed several papers and documents before the High Court and this Court. To be fair to them, the copies of the papers and documents filed before the High Court and this Court would also be forwarded and kept on record of the Magistrate who would, thereupon, examine and consider the matter. However, the complainant/informant would be entitled to question the genuineness and the contents of the said documents."

18. In the latter part of Section 173(4) of B.N.S.S., it is provided that "failing which such aggrieved person may make an application to the Magistrate". Aforesaid phrase used in Section 173(4) of B.N.S.S., in my opinion, clearly denotes that in case all the remedies as mentioned under sub-section 1, sub-section 3 and initial part of sub-section 4 of Section 173 B.N.S.S. are exhausted, applicant/aggrieved person has a right to move an appropriate application before the Magistrate, who, in turn, either proceed on the aforesaid application and issue a direction for police investigation after registering the F.I.R., or treat it as a complaint and proceed accordingly, or reject the same on merits. In the instant matter, learned Magistrate came to conclusion that the cognizable offence is made out against the opposite parties in the

complaint, thus, it would be justified to issue a direction for registration of an F.I.R. and investigation of the matter.

19. The view expressed by learned Single Judge of Delhi High Court in the matter of **Ravinder Lal Airi (supra)**, cited by learned counsel for the applicants, is contrary to the Full Bench decision of this Court in the matter of **Father Thomas (supra)**, therefore, in my opinion, same is not liable to be considered. Facts and circumstances of the case of **Imran Pratapgadhi (supra)**, cited by learned counsel for the applicants are quite distinguishable from the given circumstances of the present case.

20. Having considered the impugned judgment passed by the learned Magistrate, I am of the view that it would be difficult to infer that the order has been passed in a perfunctory or mechanical manner without application of mind. He has discussed the case in detail, having considered the reply submitted by General Manager of the Bank, namely, Amrendra Kumar (opposite party no.1 in the complaint), police report and other documents, and expressed his view that *prima facie* cognizable offence appears to have committed by the opposite parties and in such a case registration of an F.I.R. at the concerned police station and conducting appropriate investigation is justified. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order an investigation under 173(3) B.N.S.S., has succinctly been reflected in the order under challenge. He has assigned cogent reasons for the requirement of investigation of the matter.

21. In this conspectus, as above, I am of the considered view that the present applicants, who are the prospective accused, have no locus standi to assail the direction for investigation under

Section 173(4) read with 175 (3) B.N.S.S. before the summoning/ cognizance stage. There is neither any abuse of process of court nor any ground made out to pass an order to interfere with the complaint u/s 173(4) for securing the ends of justice, in exercise of the inherent jurisdiction of this Court under Section 528 B.N.S.S.

22. Resultantly, instant application at the behest of the prospective accused, the person who is suspected to have committed the crime, is **dismissed** as not maintainable.

Order Date:- 25.7.2025

vkg/vinay/sumit