(2024) 10 KL CK 0096

High Court Of Kerala

Case No: Writ Petition (C) No. 33035 Of 2024

XXXX — APPELLANT

Vs

State Of Kerala — RESPONDENT

Date of Decision: Oct. 18, 2024

Acts Referred:

- Constitution of India, 1950 - Article 226
- Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 173(1), 173(4), 175, 175(4), 175(4)(a), 175(4)(b), 210
- Code of Criminal Procedure, 1973 - Section 154, 156(3), 173, 200, 202, 227, 228, 239, 240

Hon'ble Judges: A. Badharudeen, J

Bench: Single Bench

Advocate: Muhammed Firdouz A.V., M.P.Shameem Ahamed, Libin Varghese, Akhil Philip Manithottiyil, A.H.Sincey, P.Narayanan

Final Decision: Disposed Of

Judgement

A. Badharudeen, J

1. This petition has been filed under Section 173(4) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, 'the BNSS' hereinafter), and the

prayers are hereunder:

1. It is prayed to issue a writ of mandamus or such other Writ or direction to the Respondent No.4 to Register an FIR on the information received which contained

cognizable offense as Exhibit P3 Document and conduct Investigation.

2. The Petitioner No.2 respectfully prays that the Honorable Court directs the Respondents No.1&3 to comply with the Supreme Court's directions regarding the

procedure for recording statements and registering an FIR. Specifically, prayed to order the respondents to:

a. Register an FIR immediately upon receiving a complaint related to a cognizable offense, in accordance with the law and the guidelines established by the

Supreme Court.

b.Â Summon the witness for statement collection only after the FIR is registered and not before, ensuring due process and preventing any harassment of the

witnesses.

3. The Petitioner respectfully prays before this Honorable Court to declare that the immunity provided under Section 175(4) of BNSS shall not extend to crimes

committed by a public servant that are unrelated to their official duties. Specifically, the Court is requested to rule that the protection afforded to public servants

does not apply to acts thatÂ constituteÂ criminalÂ offenses committedÂ outsideÂ theÂ scopeÂ of their official functions. This prayer isÂ madeÂ toÂ ensureÂ

thatÂ public servants are held accountable for any criminal acts they commit in theirÂ personalÂ capacity,Â without the shield of immunity intended for their

official duties.

4. To grant such other relief as this court deems fit in the facts and circumstances of the case.

2. Heard the learned counsel for the petitioners and the learned Special Public Prosecutor. Perused the relevant records.

3. The case of the petitioners is that, the petitioner No.1 filed a complaint before the Station House Officer, respondent No.4, under Section 173(1) of

the BNSS, on 7.9.2024, alleging that she was raped by certain police officers. Despite having filed a petition disclosing a cognizable offence

warranting registration of FIR, respondent No.4 did not register any crime so far. Thereafter, petitioner No.1 submitted a follow-up compliant via

email on 8.9.2024 to respondent No.2, requesting investigation. Respondent No.2 started to proceed with the complaint contrary to the legal

procedures and started to collect evidence without registering FIR. As part of the same, respondent No.3, along with a group of police officers and a

videographer arrived at the victim's house at 6.00 p.m. on 9.9.2024 without informing her and began to record her statements about the incident.

Female police officers then transcribed the same into a formal statement of the complainant without registering an FIR. Later, respondent No.3 called

to record the statement of petitioner No.2 and petitioner No.2 refused to give statement in connection with an investigation without registering an FIR.

Thereafter, a notice was issued to secure her presence on the premise of preliminary investigation, and to give statement in connection with the same,

petitioner No.2 was directed to appear at 10.00 a.m. on 12.9.2024. Later, petitioner No.1 approached the District Police Chief, Malappuram and

repeated her demand to register a crime, but the same also was not heeded. Then, petitioner No.1 filed a private complaint before the Judicial First

Class Magistrate Court, Ponnani, Malappuram and the learned Magistrate also not ordered any investigation.

4. It is pointed out by the learned counsel for the petitioners that, as per the ratio of the decision of the Honâ€™ble Apex Court in Lalita Kumari v.

Government of Uttar Pradesh reported in [(2014) 2 SCC 1], registration of FIR under Section 154 of the Code of Criminal Procedure (for short, 'the

Cr.P.C' hereinafter) is mandatory, if the information discloses commission of a cognizable offence and no preliminary enquiry is permissible in such a

situation. The sum and substance of the ratio in Lalita Kumari's case (supra), as observed in paragraph No.119 reads as under:

â€œ119. 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 FIR is mandatory. However, if no cognizable offence is made out in the

information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited

purpose of ascertaining as to 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 FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, 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 FIR. At the stage of registration of FIR, 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 FIR.â€

In the decision of the Honâ€™ble Apex Court in XYZ v.State of Madhya Pradesh and Ors. reported in [AIR 2022 SC 3957] MANU/SC/0990/2022,

in paragraph Nos.15, 16, 17, 18, 25 and 30, the Honâ€™ble Apex Court held as under:

â€œ16. We cannot help but note that the policeâ€™s inaction in this case is most unfortunate. It is every police officerâ€™s bounden duty to carry out his or her

functions in a public-spirited manner. The police must be cognizant of the fact that they are usually the first point of contact for a victim of a crime or a

complainant. They must abide by the law and enable the smooth registration of an FIR. Needless to say, they must treat all members of the public in a fair and

impartial manner. This is all the more essential in cases of sexual harassment or violence, where victims (who are usually women) face great societal stigma when

they attempt to file a complaint. It is no secret that womenâ€™s families often do not approve of initiating criminal proceedings in cases of sexual harassment.

Various quarters of society attempt to persuade the survivor not to register a complaint or initiate other formal proceedings, and they often succeed. Finally,

visiting the police station and interacting with police officers can be an intimidating experience for many. This discomfort is often compounded if the reason for

visiting the police station is to complain of a sexual offence.

17. This being the case, the police ought not to create yet another obstacle by declining to register an FIR despite receiving a complaint regarding sexual

harassment. Rather, they should put the complainant at ease and try to create an atmosphere free from fear. They ought to be sensitive to her mental state and the

fact that she may have recently been subjected to a traumatic experience.

18. Whether or not the offence complained of is made out is to be determined at the stage of investigation and / or trial. If, after conducting the investigation, the

police find that no offence is made out, they may file a B Report under Section 173 Code of Criminal Procedure. However, it is not open to them to decline to

register an FIR. The law in this regard is clear - police officers cannot exercise any discretion when they receive a complaint which discloses the commission of a

cognizable offence.â€

Â

In the same decision, the Honâ€™ble Apex Court considered another issue as to whether any discretion granted to a Magistrate vis-a-vis the exercise

of powers under Section 156(3) of the Cr.P.C.. On this issue, the High Court has held that the JMFC was not under an obligation to direct the police

to register the FIR and the use of the expression â€œmayâ€ in Section 156(3) Cr.P.C. indicated that the JMFC had the discretion to direct the

complainant to examine witnesses under Sections 200 and 202 Cr.P.C., instead of directing an investigation under Section 156(3) Cr.P.C.. While

answering this query, the Honâ€™ble Apex Court considered the earlier decision in Sakiri Vasu v.

State of U.P. reported in [MANU/SC/8179/2007 : (2008) 2 SCC 409], wherein, in paragraph No.11 held as under:

â€œ11. In this connection we would like to state that if a person has a grievance that the police station is not registering his FIR under Section 154 Code of

Criminal Procedure, then he can approach the Superintendent of Police under Section 154(3) Code of Criminal Procedure by an application in writing. Even if

that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is

open to the aggrieved person to file an application under Section 156(3) Code of Criminal Procedure before the learned Magistrate concerned. If such an

application under Section 156(3) is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to

be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the

investigation to ensure a proper investigation.â€

Finally, while answering the query, in paragraph Nos.24 and 25 of XYZâ€™s case (supra) the Honâ€™ble Apex Court held as under:

â€œ24. Therefore, in such cases, where not only does the Magistrate find the commission of a cognizable offence alleged on a prima facie reading of the complaint

but also such facts are brought to the Magistrateâ€™s notice which clearly indicate the need for police investigation, the discretion granted in Section 156(3)

can only be read as it being the Magistrateâ€™s duty to order the police to investigate. In cases such as the present, wherein, there is alleged to be documentary

or other evidence in the physical possession of the Accused or other individuals which the police would be best placed to investigate and retrieve using its powers

under the Code of Criminal Procedure, the matter ought to be sent to the police for investigation.

25. Especially in cases alleging sexual harassment, sexual assault or any similar criminal allegation wherein the victim has possibly already been traumatized,

the Courts should not further burden the complainant and should press upon the police to investigate. Due regard must be had to the fact that it is not possible for

the complainant to retrieve important evidence regarding her complaint. It may not be possible to arrive at the truth of the matter in the absence of such evidence.

The complainant would then be required to prove her case without being able to bring relevant evidence (which is potentially of great probative value) on

record, which would be unjust.â€

5. The learned Special Public Prosecutor placed a decision of the Honâ€™ble Apex Court in Divine Retreat Centre v. State of Kerala and Others

reported in [(2008) 3 Supreme Court Cases 542], with reference to paragraph No.51 to urge that principles of natural justice to be followed, while

directing an investigation by the High Court by invoking power under Article 226 of the Constitution of India. Reading the said decision, the

Honâ€™ble Apex Court considered the question, can the High Court set the law in motion against the named and unnamed individuals based

on the information received by it without recording the reasons that information received by it prima facie disclosed the commission of a

cognizable offence? While answering this query, the Honâ€™ble Apex Court held that 'setting criminal law in motion is fraught with serious

consequences, which cannot lightly be undertaken by the High Court even in exercise of its jurisdiction under Article 226 of the

Constitution of India. In our view, the High Court in exercise of its whatsoever jurisdiction cannot direct investigation by constituting a

special investigation team on the strength of anonymous petitions. The High Courts cannot be converted into station houses.'

In paragraph No.51 of the said decision, the Honâ€™ble Apex Court held as under:

â€œPrinciples of natural justice: whether the appellant has no locus?

51. The order directing the investigation on the basis of such vague and indefinite allegations undoubtedly is in the teeth of principles of natural justice. It was,

however, submitted that the accused gets a right of hearing only after submission of the charge-sheet, before a charge is framed or the accused is discharged vide

Sections 227 and 228 and 239 and 240 Cr.P.C. The appellant is not an accused and, therefore, it was not entitled for any notice from the High Court before

passing of the impugned order. We are concerned with the question as to whether the High Court could have passed a judicial order directing investigation

against the appellant and its activities without providing an opportunity of being heard to it. The case on hand is a case where the criminal law is directed to be

set in motion on the basis of the allegations made in anonymous petition filed in the High Court. No judicial order can ever be passed by any court without

providing a reasonable opportunity of being heard to the person likely to be affected by such order and particularly when such order results in drastic

consequences of affecting one's own reputation. In our view, the impugned order of the High Court directing enquiry and investigation into allegations in respect

of which not even any complaint/information has been lodged with the police is violative of principles of natural justice.â€

6. Thus, in Divine Retreat Centre's case (supra), the Honâ€™ble Apex Court considered the question as above, and while answering the query, it was

observed that the order directing investigation on the basis of vague and indefinite allegations undoubtedly is in the teeth of principles of natural justice

and no judicial order can ever be passed by any court without providing a reasonable opportunity of being heard to the person likely to be affected by

such order and particularly when such order results in drastic consequences of affecting one's own reputation.

7. On reading the decision, it is emphatically clear that the ratio has no application in the present case where petitioner No.1 alleges sexual molestation

at the hands of the police officials specifying the date and other details and the allegations are not vague or indefinite.

8. Coming to the facts of this case, as per Exp.P3, as on 6.9.2024, petitioner No.1 lodged a complaint before the Station House Officer, Ponnani,

stating that, she was subjected to rape by Sri.Vinod, C.I.of Police, Ponnani, Sri.Benny, Dy.S.P.Thirur and Sri.Sujith Das, S.P., Thirur. The specific

allegation in Ext.P3 complaint is that, there was dispute regarding right upon the house, where the petitioner No.1(victim) has been residing and she

reached to lodge a complaint in this connection, during 2022. When she met C.I. Vinod and disclosed her complaint, he assured that he would reach

the house and look into the issue. At 10.00 p.m. on the same day, C.I. Vinod called her through telephone and reached her house. At the time when

the C.I. arrived, petitioner No.2, her 6 year old child, and the younger son of petitioner No.1, were there. He entered into the house and discussed

about the complaint. Later, petitioner No.1 was taken inside the bedroom stating that he had to disclose a secret information, then, he hugged her and

she tried to escape. Then, the C.I. informed that, if she would co-operate, he would ensure the title deed of the house in her name and accordingly,

she was subjected to rape. Soon he informed petitioner No.1 that this occurrence should not be disclosed to anybody outside the house. When the C.I.

came out, petitioner No.2 stated that she understood everything.

9. Later, when petitioner No.1 tried to contact the C.I., he did not attend her call and when she directly met the C.I. at the police station, he stated that

the matter was informed to the Dy.S.P. and petitioner No.1 would be called by the Dy.S.P.Sri.Benny. But, the Dy.S.P. did not call her and she met

the Dy.S.P. after two weeks and made complaint regarding the occurrence at the instance of the C.I. Then, the Dy.S.P. made an unpleasant

comment and received the complaint lodged by her without giving any receipt. Later, after getting the details of the place of residence of petitioner

No.1, the Dy.S.P. reached her house in a private car, not in uniform and discussed about the complaint and caught hold of her hand and instructed her

to sit near by him, then, he caught hold of her breast and kissed her. Since she made noise, nothing further happened. Thereafter, she, along with her

friend Rafeek and the driver, met Sri.Sujith Das, S.P., to complain about the allegations against C.I. and Dy.S.P., and made a complaint to Sri.Sujith

Das. S.P. received her complaint and sent back petitioner No.1 stating that he would call her. He also informed petitioner No.1 that when coming next

time, she should come alone. Again, petitioner No.1 met Sri.Sujith Das along with her son. Later, the S.P. called petitioner No.1 through whatsapp and

asked her to meet him to resolve the complaint and she was directed to alight at Changuvetty. When she called him from Changuvetty, she was

directed to alight at Passport Office by another bus. When she reached there, a third party called her and after introducing himself as the person

authorised by the S.P., she was taken to an Autorickshaw and then to a nearby house, on stating that the S.P. was in the Autorickshaw behind him.

Thereafter, she was taken inside the house and she was subjected to rape. Thereafter also, she was subjected to rape as well as oral sex by the S.P.

and also she was forced to have sexual intercourse with a friend of the S.P., who accompanied him. Although she resisted, she was forced to

succumb before the friend of the S.P. Then, S.P. given Rs.500/- to her, but she returned the same. She failed to disclose the occurrence at the

instance of the S.P., since the police officials including the S.P. threatened her that they would do away her and her children, if the occurrences are

disclosed.

10. Ext.P5 is the complaint lodged by petitioner No.1 before the Judicial First Class Magistrate Court, Ponnani, Malappuram, vide

C.M.P.No.3288/2024, on 10.9.2024. It is strange to note that, on receipt of the complaint, the learned Magistrate passed an order, as Ext.P6. The

same reads as under:

â€œThe complainant filed the complaint under section 210 of BNSS to forward it to the SHO, Ponnani to register the crime and initiate the investigation. The

accused persons herein are the public servants. Since the complaint is against public servants arising in the course of the discharge of official duty, compliance

with Section 175(4)(a) and (b) is mandatory. Since DIG, Thrissur Range is the superior officer to all these accused persons, the court is of the view that a report

from DIG, Thrissur Range is necessary. Call for a report from DIG, Thrissur.â€

11. When this Court, as per order dated 13.9.2024, called for a report from the learned Judicial First Class Magistrate, Ponnani regarding the

proceedings in C.M.P.No.3288/2024, the learned Magistrate reported as under:

â€œMrs.XXX filed a complaint before this court under section 210 of BNSS on 09-09-2024. The petition could not be verified on 09-09-2024 due to technical

issues. So, the complaint was considered the next day. Upon verification, it was found that there were defects in the complaint. So, the said complaint was

returned to the complainant to cure the defects on 10-09-2024. Though the learned counsel for the complainant re-submitted the complaint before this court on

the same day, it was found that the defects were not cured properly. Hence, the court was forced to return the complaint again to the complainant to re-submit the

same after curing the defects. On 11-09-2024, the counsel re-submitted the petition after curing the defects. On perusal of records, it was found that the allegations

were made against public servants, and the offences were alleged to have arisen in the course of the discharge of their official duties. The offences alleged in the

above crime were s.376, 376 (2) (a) (i), 377, 354 A, 354 B, 354 D, 506, 446, and 450 read with 34 IPC. Hence, I bonafide believe that an investigation should be

ordered in the above case in view of the decision reported in XYZ v. State of Madhya Pradesh and Others (2022 (5) KHC 403) . Since compliance with section

175 (4) (a) and (b) of BNSS is mandatory before considering the allegations in the complaint and taking a decision, this court has called for a report in this

regard from the Deputy Inspector General of Police, Thrissur. At present, the complaint has been posted to 27-09-2024 for a report of DIG, Thrissur.â€

12. Going by the report of the learned Magistrate, the learned Magistrate reported that, after referring XYZ 's case (supra) that, an investigation

should be ordered in the case. But, as per Section 175(4) (a) and (b) of the BNSS, compliance of the same is mandatory before considering the

allegations in the complaint and take a decision and therefore, she called for a report from the Deputy Inspector General of Police, Thrissur and the

case stands posted on 27.9.2024, for report of the D.I.G.

13. The decision relied on by the learned Magistrate has been discussed in extenso in the foregoing paragraphs. Adverting to the report of the learned

Magistrate stating that, compliance of Section 175(4)(a) and (b) of the BNSS is mandatory, I have gone through Section 175(4)(a) and (b) of the

BNSS and the same is extracted as under:

175. Police officer's power to investigate cognizable case

(1) xxxx

(2) xxxx

(3) xxxx

(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 toâ€

(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.

14. Section 175 of the BNSS is corresponding to Section 156 of the Cr.P.C. In Section 156 of the Cr.P.C., no provisions analogous to sub-sections (4)

(a) and (b) of Section 175 of the BNSS was there and sub-sections (4)(a) andÂ (b)Â ofÂ SectionÂ 175Â ofÂ theÂ BNSS,Â areÂ new

introduction in the BNSS.

15. As per Section 175(4) of the BNSS, any Magistrate 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.

Reading provisions, the requirement to opt for the procedure provided under Section 175(4)(a) and (b) of the BNSS, is on receipt of a complaint

against a public servant arising in course of the discharge of his official duties, and not otherwise.

16. In this context, it is worthwhile to refer Section 197 of the Cr.P.C. corresponding to Section 218 of the BNSS. This Court considered the necessity

of sanction under Section 197(1) of the Cr.P.C., where public servants are involved and after referring various decisions of the Honâ€™ble Apex

Court discussed in paragraph Nos.12 to 17 in the decision in Anoop v. Baby Joseph reported in [2023 KLT OnLine 1747] and summarised the legal

position in paragraph No.18, as under:

18. When answering the legal question, posed herein, it has to be held that, when a question arose as to whether an act or omission which constitutes an offence

in law has been done in discharge of official functions by a public servant, for which sanction under Section 197 of Cr.P.C is mandatory, the said question to be

considered based on the facts of the case and overall analysis of the materials available would decide the question and the decision must be on a case to case

basis. The principles governing necessity of sanction can be summarized as under:

1. Protection of sanction is an assurance to an honest and sincere officer to perform his duty honestly and to the best of his ability to further public duty. However,

authority cannot be camouflaged to commit crime.

2. Once act or omission has been found to have been committed by public servant in discharging his duty it must be given liberal and wide construction so far its

official nature is concerned. Public servant is not entitled to indulge in criminal activities. To that extent S.197, Cr.P.C. has to be construed narrowly and in a

restricted manner.

3. Even in facts of a case when public servant has exceeded in his duty, if there is reasonable connection it will not deprive him of protection under S.197, Cr.P.C.

There cannot be a universal rule to determine whether there is reasonable nexus between the act done and official duty nor is it possible to lay down such rule.

4. In case the assault made is intrinsically connected with or related to performance of official duties, sanction would be necessary under S.197, Cr.P.C., but such

relation to duty should not be pretended or fanciful claim. The offence must be directly and reasonably connected with official duty to require sanction. It is no

part of official duty to commit offence. In case offence was incomplete without proving, the official act, ordinarily the provisions of S.197, Cr.P.C. would apply.

5. In case sanction is necessary, it has to be decided by competent authority and sanction has to be issued on the basis of sound objective assessment. The court is

not to be a sanctioning authority.

6. Ordinarily, question of sanction should be dealt with at the stage of taking cognizance, but if the cognizance is taken erroneously and the same comes to the

notice of court at a later stage, finding to that effect is permissible and such a plea can be taken first time before the appellate court. It may arise at inception

itself. There is no requirement that the accused must wait till charges are framed.

7. Question of sanction can be raised at the time of framing of charge and it can be decided prima facie on the basis of accusation. It is open to decide it afresh in

light of evidence adduced after conclusion of trial or at other appropriate stage.

8. Question of sanction may arise at any stage of proceedings. On a police or judicial inquiry or in course of evidence during trial. Whether sanction is necessary

or not may have to be determined from stage to stage and material brought on record depending upon facts of each case. Question of sanction can be considered

at any stage of the proceedings. Necessity for sanction may reveal itself in the course of the progress of the case and it would be open to the accused to place

material during the course of trial for showing what his duty was. The accused has the right to lead evidence in support of his case on merits.

9. In some cases it may not be possible to decide the question effectively and finally without giving opportunity to the defence to adduce evidence. Question of

good faith or bad faith may be decided on conclusion of trial.

10. Whether sanction is necessary or not may have to be determined from stage to stage. The necessity may reveal itself in the course of the progress of the case.

11. While considering the question as to whether the sanction for prosecution is required, it is not necessary for the Court to confine itself to the allegation made

in the complaint, rather it can take into account all the materials available on record at the time when the said question falls for consideration.

12. It is not therefore every offence committed by a public servant that requires sanction for prosecution under S.197(1) of the Criminal Procedure Code; nor even

every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official

duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary. It is the quality of the act that is

important and if it falls within the scope and range of his official duties the protection contemplated by S.197 of the Criminal Procedure Code will be attracted.

An offence may be entirely unconnected with the official duty as such or it may be committed within the scope of the official duty. Where it is unconnected with the

official duty there can be no protection. It is only when it is either within the scope of the official duty or in excess of it that the protection is claimable.

13. The words ""any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty"" employed in S.197(1) of

the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the section will be rendered altogether sterile, for,

it is no part of an official duty to commit an offence, and never can be.

17. Assimilating the legal position as stated above, when a lady alleges sexual molestation by coitus, by a police officer or a public servant, the same

could not be held as a complaint against a public servant arising in course of the discharge of his official duties. At the same time, it has to be held that,

Section 175(4) of the BNSS used the term â€˜mayâ€™ and the legislative intent behind this provision is only discretionary and not mandatory.

Therefore, the procedure opted by the learned Magistrate to call for a report containing facts and circumstances of the incident resorting to Section

175(4) (a) of the BNSS, from the officer superior to them as well as the situation led to the incident, so alleged, are not mandatory in the instant case.

18. It is discernible from the records placed by the prosecution that, as per Ext.R3(e), as on 20.8.2022, petitioner No.1 made a specific complaint

against the C.I. of Police regarding forceful sexual intercourse. But, no action taken against the C.I., so far. Why there was failure to take action on

Ext.R3(e) for a period of 3 years, is shocking. Thereafter, petitioner No.1 raised complaint alleging sexual intercourse by the C.I., Dy.S.P. and S.P.

19. Since it is reported by the learned Magistrate that, in view of the decision in XYZ's case (supra), the learned Magistrate is of the bona fide view

that an investigation should be ordered in the complaint, I am not inclined to order investigation in this matter and I direct the learned Magistrate to

pass order therein, as per law discussed hereinabove, within a period of ten days from the date of receipt of a copy of this judgment.

This Writ Petition (Civil) stands disposed of as above.

Registry is directed to forward a copy of this judgment to the learned Magistrate today itself, through e-mail, for information and compliance.

Registry is further directed to mask the identity of the petitioners in the cause title of this judgment.