

04.06.2026

Present: Complainant is absent.
Sh. Pushpender Kaushik, Ld. LAC for complainant.

The matter is listed for clarifications, if any/ order on application u/S 175(3) BNSS.

ORDER

1. Vide this order, the Court shall dispose of the application moved by complainant under section 175(3) of Bharatiya Nagarik Suraksha Sanhita as 'BNSS'.
2. Succinctly put, it is averred in the application that applicant/complainant is a widow lady and that there is an ancestral immovable property in the area of Lal Dora Abadi, Village Malikpur, Delhi and it was owned by deceased husband of complainant and accused in equal proportion. That accused has illegally and forcefully encroached his share of 200 sq. yards and that he has also encroached the common passage and installed a big iron gate. That in the year 2023 the complainant and her deceased husband opposed the said acts and the accused abused and criminally intimidated them. That thereafter on 05.04.2023, the complainant was manhandled by accused which caused her grave injuries and she was also medically examined in RTRM hospital. That the accused had also extended death threats to the complainant and he wants to usurp the share of complainant. That complaint was made to police but no action was taken. Hence, the present application.
3. The Action Taken Report was called from SHO concerned, wherein the Enquiry Officer submitted that the matter pertains to a property dispute between the parties and regarding which a case is also pending in Dwarka Courts and proceedings u/S 126/169 BNSS were also

initiated against the parties. It is also mentioned therein that the matter is civil in nature and is related to division of property.

4. Heard the parties. Perused the record.
5. Before delving into merits of application, it is apposite to discuss the scope of Section 156(3) Cr.P.C as has been held in ***M/s Skipper Beverages Pvt. Ltd. Vs. State 2001 IVAD (Del) 625:-***

“7. It is true that Section 156(3) of the Code empowers a Magistrate to direct the police to register a case and initiate investigations but this power has to be exercised judiciously on proper grounds and not in a mechanical manner. In those cases where the allegations are not very serious and the complainant himself is in possession of evidence to prove his allegations there should be no need to pass orders under Section 156(3) of the Code. The discretion ought to be exercised after proper application of mind and only in those cases where the Magistrate is of the view that the nature of the allegations is such that the complainant himself may not be in a position to collect and produce evidence before the Court and interests of justice demand that the police should step in to help the complainant. The police assistance can be taken by a Magistrate even Under Section 202(1) of the Code after taking cognizance and proceeding with the complaint under Chapter XV of the Code as held by Apex Court in 20001 (1) Supreme Page 129 titled " Suresh Chand Jain Vs. State of Madhya Pradesh & Ors."

6. Thus, in cases where the identity of accused may be unknown, or where all incriminating facts and evidences may not be within the reach of complainant necessitating the intervention of police aid or where the custodial interrogation of accused is warranted for effective collection of evidences, the provision of Section 175(3) BNSS can be justifiably invoked by the complainant. The use of word ‘may’ in the provision empowers the Magistrate to exercise discretion while ordering the registration of FIR. It is held by Hon’ble Supreme Court in ***Priyanka Srivastava & Anr. Vs State of U.P & Ors. (2015) 6 SCC 287*** that:-

“At this stage it is seemly to state that power under Section 156(3) warrants application of 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 fellows citizens, efforts are to be made to scuttle and curb the same.”

7. In the present matter, the complainant is well acquainted with the identity and whereabouts of the accused. No new facts are to be unearthed and all incriminating facts are within the knowledge of complainant and no field investigation by police is required. Thus, the evidence is well within the reach of complainant and can be adduced by her without the assistance of police investigation and if any need so arises, recourse under Section 225 BNSS can be taken.
8. In the light of facts and circumstances of present case, this court is of the opinion that this is not the fit case where discretion under section 175(3) BNSS ought to be invoked. Resultantly, the application under Section 175 (3) BNSS is hereby **dismissed**.

The complainant is, however, granted liberty to lead PSE qua her complaint under section 223 BNSS.

Put up for PSE on **31.08.2026**.

(Pankaj Rai)
JMFC-09/South West District
Dwarka Courts/ New Delhi/04.06.2026