

Crl.M.C-Bail/5/2026

Sikkim Mulniwasi Suraksha Sang Vs. Chief Secretary

CNR Number: SKGT010003902026

05.08.2026 Present:

Complainant present through Ld. Counsel Ms. Abhipsa Mohany, Shri Mukkum Hang Limboo and Ms. Anuradha Tamang and Shri

Respondent no. 1 present through Ld. Government Advocate Ms. Nimkit Lepcha.

Respondent nos. 2, 3 and 4 present through Ld. Government Advocate Shri Willam Tamang and Ms. Kesang Choden Tamang.

Respondent no. 5 present through Ld. Counsel Shri Tenzing Thinlay Lepcha.

Respondent no. 6, 7 and 8 present through Ld. Senior Counsel Shri Karma Thinlay assisted by Ld. Counsel Shri Zamyang N. Bhutia.

Mr. Satish Agarwal appears for Respondent no. 9.

None present for General Public, Respondent no. 10.

Heard the Ld. Counsel for the complainant.

Perused the complaint and annexed documents.

Learned Counsel for the complainant submitted that the respondents, while serving in the Department of Information Technology, Government of Sikkim, committed financial misappropriation in the purchase of computer items, internet services and vehicle, Sikkim government portal as detailed at Serial Nos. 3.I to 3.V of the complaint. It was further submitted that, despite written complaints lodged before the SHO, Sadar Police Station, Gangtok, and the Superintendent of Police, Gangtok, no FIR has been registered. Consequently, the complainant has approached this Court by filing the present complaint under Section 175(3) read with Section 174 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), seeking a direction for registration of an FIR and investigation into the alleged cognizable offences.

Learned Counsel for respondent No. 2 submitted that approval of the State Government, as required under Section 17A of the Prevention of Corruption Act, 1988 (PC Act), is a prerequisite for registration of an FIR and investigation under the PC Act.

Learned Senior Counsel appearing for respondent Nos. 6, 7 and 8 questioned the maintainability of the complaint, placing reliance on the decision of the Hon'ble Supreme Court in *Priyanka Srivastava & Anr. v. State of U.P. & Ors.*, (2015) 6 SCC 287, particularly paragraphs 29 to 31. It was submitted that, as admitted in paragraph 5 of the complaint, the matter is pending before respondent No. 2 and the proposal for approval under Section 17A of the Prevention of Corruption Act is under consideration by the State Government. In the absence of such approval, the statutory bar under Section 17A operates, rendering the complaint premature and not maintainable.

Heard the Learned Counsels for the parties. Perused the complaint and the documents annexed thereto.

The present complaint has been filed by Sikkim Mulniwashii Suraksha Sang alleging misappropriation of Government funds by the respondents, which, according to the complainant, constitutes offences punishable under Sections 7 and 13 of the Prevention of Corruption Act, 1988, as well as Sections 316, 318(3) and 61 of the Bharatiya Nyaya Sanhita, 2023 (BNS).

The principal allegations are directed against respondent nos. 6, 7 and 8, who are alleged to have committed the acts in question while discharging their duties as public servants. It is undisputed that no approval under Section 17A of the Prevention of Corruption Act has yet been accorded by the State Government. In the absence of such approval, any inquiry, enquiry or investigation into offences under the PC Act is barred. Consequently, a private complaint seeking a direction to the police to register an FIR and investigate offences under the PC Act is not maintainable.

Insofar as the allegations relating to offences under the Bharatiya Nyaya Sanhita, 2023 are concerned, this Court cannot, in the facts of the present case, exercise jurisdiction of Magistrate/Judicial Magistrate to direct registration of an FIR and investigation under Section 175(4) of the BNSS. The relief sought is, therefore, beyond the jurisdiction of this Court.

Accordingly, the complaint is held to be not maintainable and is dismissed for want of jurisdiction, without prejudice to the complainant's liberty to pursue any other remedy available in law before the competent forum or authority.

In view of the above, Criminal Misc. Case No. 5 of 2026 stands dismissed.

(N.G Sherpa)
Sessions Judge, Gangtok