

**IN THE COURT OF JUDICIAL FIRST CLASS MAGISTRATE,
MATTANCHERRY**

Present: Sri. M.K. BALRAM, Judicial First Class Magistrate

Dated this the 21st day of January, 2026

C.M.P 1483/2025 in CMP 1280/2025

Petitioner/First accused : Muralidhara Prabhu, aged 64 years, S/o.Srinivasa Prabhu, residing at House No.4/902, North Cherlai, Mattancherry Village, Mattancherry P.O., Kochi, Pincode-682002

(By Advocate Suraj Krishna B.S.)

Respondent/Complainant : Venugopal, aged 54, S/o.V.P.Rao, residing at House No.8/974, RG Pai Road, Pandikkudy, Mattancherry Village, Mattancherry P.O., Pincode-682002

(By Advocate Leema Rosy D.)

This petition having heard on 21.01.2026, the court on the same day passed the following.

ORDER

This is an application filed u/s.175(3) of BNSS by the first accused.

2. Averments in the petition in brief are as follows:- The petitioner is the first accused in CMP 1280/2025. The complainant has been abusing the Court process and has been preferring complaints one after the other against the petitioner. The petitioner and his wife has been called to the Mattancherry Police Station on numerous occasions in connection with various complaints preferred by the complainant. Several working days have been wasted merely for attending the police station, waiting there for long hours. The complainant has been misusing the jurisdiction of this Court in vexene and harassing the petitioner. The petitioner has no contact or any acquaintance with Jolly Raveendran and Jovett. The petitioner doesn't know anything about any agreement for sale between the complainant and Jolly Raveendran. The petitioner is unnecessarily tagged to strangers with an intention to harass the petitioner.

3. Even though, a written objection is not filed, the learned Counsel for the complainant/respondent strongly objected the application stating that the accused has no right for hearing during an enquiry u/s.175(3) of BNSS. The learned Counsel for the respondent submitted that the petition is not maintainable as the accused does not have

any right to participate in the proceedings u/s.175(3) of BNSS.

4. Heard both respective sides in detail.

5. The following points arise for consideration:-

1. Whether the petition is maintainable?
2. Whether the accused is having a right to be heard during enquiry u/s.175(3) of BNSS?
3. Order?

Point No.1 & 2:-

6. For the sake of brevity, convenience and to avoid repetition of facts, both these points are considered together. The learned counsel for the petitioner submitted that the first accused has a right to be heard under the enquiry as contemplated under Section 175(3) of BNSS. The learned Counsel further submitted that, after the introduction of BNSS, there is a specific provision for hearing the accused before taking cognizance under Section 223 of BNSS and similarly there is a mentioning of enquiry under Section 175(3) BNSS as per which, the accused is also having a right to be heard even before sending the complaint to the Station House Officer for registration of FIR and investigation. The learned Counsel further submitted that the accused has a right to point out all the shortcomings and the limitations with respect to the complaint and also to aid the Court from committing any error in passing an order under Section 175(3) of BNSS. On the other hand, the learned counsel for the respondent submitted that, there is no right for the accused to participate in a proceedings under Section 175(3) BNSS, as there is no specific mentioning anywhere in the section with respect to issuing notice to the accused or hearing the accused. The learned counsel for the respondent further submitted that the enquiry mentioned under Section 175(3) of BNSS is very limited to find out, as to whether there is any requirement of sending the complaint for registration of FIR and investigation to the Station House Officer. The learned counsel for the respondent further submitted that the court has to satisfy, whether Section 173(4) of BNSS is complied and whether the complaint requires to be forwarded to the Station House Officer for the

purpose of investigation or not, and nothing more than these aspects can be looked into in an inquiry. The learned counsel further submitted that, while passing an order for considering an application under Section 175(3) of BNSS, the court is not taking cognizance. The learned Counsel further pinpointed that the proviso to Section 223 BNSS is only available in a case where the Magistrate intends to take cognizance.

7. Before getting into any further discussion, Section 175 & 223 of BNSS needs to be looked into for a clear understanding.

175. Police officer's power of 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.

223. Examination of complainant-(1) A Magistrate having jurisdiction while taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant

and the witnesses, and also by the Magistrate:

Provided that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard:

Provided further that when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses—

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 212:

Provided also that if the Magistrate makes over the case to another Magistrate under section 212 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

(2) A Magistrate shall not take cognizance on a complaint against a public servant for any offence alleged to have been committed in course of the discharge of his official functions or duties unless—

(a) such public servant is given an opportunity to make assertions as to the situation that led to the incident so alleged; and

(b) a report containing facts and circumstances of the incident from the officer superior to such public servant is received.

8. Section 175(3) comes within Chapter XIII of BNSS which deals with information to the police and their powers to investigate. Section 175(3) of BNSS contemplates with respect to the information in cognizable cases. In a situation where the Station House Officer does not register a case upon an information given to him with respect to a cognizable offence, a remedy is given to the complainant to send the substance of such information in writing and by post to the Superintendent of Police concerned and even thereafter if the Police does not take any action, then a remedy is provided to the complainant to approach the Judicial First Class Magistrate with an application supported by an affidavit along with the necessary documents. Section 175(3) of BNSS contemplates that any Magistrate empowered under Section 210 of BNSS may after considering the application supported by an affidavit made under subsection 4 of Section 173 of BNSS and after making such an enquiry as he thinks necessary and submission

made in this regard by the police officer, order an investigation.

9. Subsection 4 to Section 175 of BNSS contemplates that 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 clause

(a), receiving a report and 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 allegedly.

10. Upon a complete consideration of Section 175(3) of BNSS, it can be seen that there is no mention anywhere in the section to issue a notice to an accused unless such accused is a public servant. A protection is seen given to a public servant under subsection 4 to Section 175 BNSS against whom a complaint is raised with respect to an issue arising in course of the discharge of his duty, that before passing an order under Section 175(3) BNSS the Magistrate needs to issue a notice to such public servant as well as his superior Officer and obtain a report from the superior officer with respect to the facts and circumstances of the incident. Also, the Magistrate needs to consider the assertions made by such public servant as to the situation that led to the incident so alleged. It is clearly evident from the provision that notice needs to be issued only to an accused who is a public servant and only in such cases which arises in course of discharge of his duty. There is no mentioning anywhere with respect to hearing any other accused while considering an application under Section 175(3) BNSS. A notice need not be issued to an accused, who is a public servant u/s.175(4) of BNSS if complaint against him is not with respect to an issue arising in course of the discharge of his duty.

11. On a clear consideration of 175(3) of BNSS, it can be seen that the application supported by an affidavit needs to be considered by the Magistrate and thereafter an enquiry has to be made as he thinks necessary and also the Magistrate needs to call for a report from the police officer and he has to consider the submission of such police officer and only thereafter an investigation can be ordered. This provision is different from

Section 223, wherein the first proviso to Section 223 contemplates that no cognizance of an offence shall be taken by the magistrate without giving the accused an opportunity of being heard. The procedure in Section 175(3) is totally different from Section 223. Section 223 comes within Chapter XVI of BNSS, which contemplates complaints to Magistrates. Section 223(2) BNSS contemplates that cognizance shall not be taken on a complaint against a public servant for any offence alleged to have been committed in case of the discharge of his official functions or duties, unless an opportunity is given to such public servant to make assertions as to the situations that led to the incident so alleged, and a report containing facts and circumstances of the incident from the officer superior to such public servant is received. Section 223(2) appears to be a safety wall with respect to a public servant against whom an offence has been alleged to have been committed in course of the discharge of his official duties. Section 223(2) BNSS appears to be similar to Section 175(4) of BNSS. The lawmakers thought fit to mention the safety valve which a public servant enjoys under Section 223(2), in Section 175(4). But no such wordings as mentioned under the first proviso to Section 223 is mentioned under Section 175(3) of BNS. This clearly indicates that the legislature thought fit not to hear the accused before forwarding the complaint for registration of FIR and investigation. Even the wordings in Section 223 is important. The wordings in Section 223 speaks about while taking cognizance of an offence, this would mean that the right of the accused to hear comes at the time while taking cognizance and not before that. But under Section 175(3), the Magistrate is not taking cognizance. But the Magistrate is looking into the complaint as well as the supporting affidavit and other materials available before him and also after hearing the police officer, and if the Magistrate thinks fit that, an investigation is necessary to bring out the actual truth of the case or if the Magistrate is of the opinion that there is a necessity for seizure of certain articles or recovery of certain articles then the Magistrate will refer such cases to the Station House Officer for registration of FIR and investigation. Even though, the word enquiry is mentioned under Section 175(3) BNSS, giving it a wider meaning by hearing the accused under such enquiry will be defeating the very section itself. The said word “enquiry” in Section 175(3) of BNSS has to be read in *elusdem generis*. If at all the legislature intended that an accused had a right

to hear, then definitely there would have been express wordings under Section 175(3) of BNSS. Considering all these aspects, it is clearly evident that the accused does not have a right to hear in an application under Section 175(3) BNSS, similar to a right which the accused enjoins under the first proviso to Section 223 of BNSS. In the result, I am of the view that this application is not maintainable and is liable to be dismissed. Point Nos. 1 and 2 are answered against the petitioner.

12. **Point No.3:** In the light of findings in point numbers 1 and 2, the petition is liable to be dismissed.

In the result, the petition is dismissed.

Dictated to the Confidential Assistant, corrected and pronounced by me in open court on this the 21st day of January, 2026.

Sd/-
Judicial I Class Magistrate,
Mattancherry