

MHKO070020902024

CRI. M.A. No.91/2024.



ORDER BELOW EXH.5

Vimal Jambu Patil Vs Yogesh Kumar

Kognole

Perused the complaint and documents on record. This application is filed by the complainant under Section 175(3) of the BNSS. The Jaysingpur Police Station has filed its say at Exh. 6.

2] The ld. advocate for the complainant has argued that the present complaint has been filed for the offences punishable under Sections 316 and 318 of the BNS. It is the contention of the complainant that she sold her land bearing Block No. 2015 to the proposed accused on 31/01/2019. Towards the consideration of the said sale deed, the proposed accused issued a cheque of Rs. 5,20,000/-, which came to be dishonoured on 02/02/2019.

3] It is further alleged that the proposed accused cheated the complainant. Thereafter, the proposed accused paid some amount to the complainant, however, the remaining amount has not been paid. The complainant is constrained to file the present complaint and the application under Section 175(3) of the BNSS. It is alleged that the proposed accused has committed offences punishable under Sections 316 and 318 of the BNS.

4] It is worth mentioning here that under Section 175(3) of the BNSS (earlier Section 156(3) of the Cr.P.C.), the Magistrate may

issue directions to the police to investigate a cognizable offence. However, before invoking Section 156(3), compliance with Section 154 of the Cr.P.C./Section 173 of the BNSS is mandatory. In this regard, it is relevant to rely upon the judgment of the Hon'ble Apex Court in **Priyanka Shrivastava vs. State of U.P., AIR 2015 SC 1758**. In the said judgment, the Hon'ble Apex Court held that the power under Section 156(3) of the Cr.P.C. can be invoked only when compliance with Section 154 is shown. It was further held that every application under Section 156(3) must be supported by an affidavit affirming such compliance.

5] The alleged offences under Sections 316 and 318 of the IPC are cognizable. The present application is supported by an affidavit. The complainant appears to have submitted a complaint to the Police Inspector, Jaysingpur, on 12/04/2023, however, there is no endorsement of the police station showing that it was received. On this point, the ld. Advocate for the complainant submitted that the police refused to accept the complaint, therefore, the complainant sent the complaint to the Superintendent of Police on 09/12/2023 by registered post i.e. after the 8 months and relied upon **Anurag Bhatnagar & Anr. vs. State (NCT of Delhi) & Anr., 2025 LiveLaw (SC) 742**. In the said judgment, the Hon'ble Apex Court observed in paragraph 27 as under:

“In the instant case, a bare perusal of the application filed under Section 156(3) of the CrPC dated 01.07.2005 would reveal that the informant therein had simply stated that offences under Sections 420, 120-B and 34 of the IPC have been committed

and that the informant had approached the 'police officials' several times but in vain. However, the application is completely silent as to when the informant approached the police or the Superintendent of Police. The application nowhere states that the informant had ever approached the officer-in-charge of the police station for lodging the FIR in accordance with Section 154 of the CrPC or that, upon refusal, he availed the remedy of approaching the Superintendent of Police concerned. Mere bald allegations without any details or proof thereof that the police authorities were approached several times are not acceptable.

6] In view of the ratio laid down in the above case, upon perusal of the complaint, it appears that in paragraph No. 4, the complainant has stated that she filed a complaint at Jaysingpur Police Station on 12/04/2023, but the police did not register it, therefore, she sent the complaint to the Superintendent of Police, Kolhapur, on 09/12/2023. Thus, prima-facie compliance with Section 173 of the BNSS is reflected. However, whether the complainant actually approached the Jaysingpur Police Station is not clearly borne out from the record.

7] Even if compliance under Section 173 of the BNSS appears to have been made, upon perusal of the complaint, it is evident that the allegations and the entire narrative have been elaborately set out by the complainant in the complaint itself.

8] It is necessary to refer to the observations in *M/s. Skipper Beverages Pvt. Ltd. vs. State*, 2001 SCC Online Delhi, wherein the Hon'ble Delhi High Court observed:

“It is true that Section 156(3) of the Code empowers a Magistrate to direct the police to register a case and initiate investigation, but this power has to be exercised judiciously on proper grounds and not mechanically. In cases where the allegations are not very serious and the complainant is in possession of evidence to prove his allegations, there is no need to pass orders under Section 156(3). The discretion is to be exercised after proper application of mind and only where the nature of allegations is such that the complainant may not be able to collect evidence himself. Police assistance can also be taken under Section 202(1) of the Code after taking cognizance, as held by the Apex Court in *Suresh Chand Jain vs. State of Madhya Pradesh*, 2001(1) Supreme 129.”

9] In the present case, as discussed above, the allegations have already been elaborately explained by the complainant. The transaction between the parties pertains to the period from 2019 to 2021, whereas the present complaint has been filed on 29/08/2024. The complainant appears to be in a position to adduce sufficient evidence in support of her case. The allegations are not of such a nature as to necessitate immediate police investigation.

10] Therefore, I am not inclined to direct a police investigation under Section 175(3) of the BNSS. Moreover, police assistance under Section 225(1) of the BNSS may be availed of, after taking cognizance, if required, for bringing the relevant material on record. Hence, no useful purpose would be served by issuing directions under Section 175(3) of the BNSS.

11] However, in prayer clause No. 5 of the complaint, the complainant has prayed that this Court take cognizance of the alleged offences and take appropriate action. Therefore, the present complaint shall proceed as a private complaint. Hence, the following order is passed :-

ORDER

1. The application at Exh. 5 i.e. prayer for direction under Section 175(3) of the B.N.S.S., is rejected.
2. The applicant/complainant is at liberty to proceed with the present application as a complaint under Chapter XVI of the B.N.S.S. Hence, complaint keep for verification.

(M.S.Patil)

Date:- 04/04/2026

Judicial Magistrate First Class
Jaysingpur.