

MHKO180009482023 	<u>Criminal Misc. Application No.36/2025</u> Rohit Raosaheb Patil <i>Verses</i> Mahesh Chandrakant Lavate
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ORDER PASSED BELOW EXH.1.

By the present application, applicant has sought police investigation under Section 175(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS for brevity) for the offences punishable under sections 303 of the Bharatiya Nyay Sanhita, (hereinafter referred as the BNS)

02. According to applicant, accused owned Ashok Leyland Transport Truck No.MH-10-DT-6478 Model 2022 Chasis No.MB1NGCHDONPJR9732 and Enginer No.NJPZ114145 which he intended to sell for his financial needs and applicant was desirous to purchase that one. Therefore, applicant approached the accused. On 06/09/2023, applicant and accused entered in to an Notarized Agreement in that respect. Since then, the vehicle was in the custody of applicant who was paying its equated monthly installments (EMI). In the month of January, 2025 applicant handed over the remaining outstanding loan amount against said vehicle to accused for repayment of loan. Thus, applicant has paid entire consideration amount of said truck to the accused. Despite that, accused is procrastinating to transfer said vehicle on the name of applicant. By taking disadvantage of this fact, on 05/05/2025, accused removed said vehicle from the cattleshed of applicant without his consent. When applicant contacted the accused, he told him that, "he has

moved said vehicle, he will not transfer it on his name.” Hence, applicant approached Kurundwad Police Station to filed complaint against accused but they did not register his complaint. They only assured to investigate the matter. Therefore, applicant sent a written complaint to Kurundwad Police Station. Even then, his complaint was not registered. Hence, applicant filed this application seeking order of investigation under Section 175(3) of BNSS against accused for the offence punishable under section 303 of BNS.

5. For sending the matter for Investigation by the Police under section 175(3) of the BNSS, following conditions must be fulfilled :

- i. offence must be of a cognizable in nature; and
- ii. investigation by the police machinery is required in such cognizable offence.

6. The offences under Section 303 of BNS is no doubt cognizable in nature. Merely because offences are cognizable in nature does not mean that order of investigation in every case has to be passed. It has to be ascertained from the pleading and documents whether investigation in real sense is required or not.

7. I have heard the learned counsel for the applicant and perused the application along with documents placed on record. The principal question for consideration is whether the applicant has complied with the statutory preconditions for involving the jurisdiction of this Court under Section 175(3) of BNSS.

08. It is well settled that power under section 175(3) of the BNSS is discretionary and cannot be invoked as a matter of course. Before approaching the Court, an aggrieved person is required to

exhaust the remedy available under section 173(4) of BNSS by First approaching the officer-in-charge of the police station and upon refusal or failure to register the information, by approaching Superintendent of Police.

09. In the case in hand, applicant has stated that he tried to file complaint with police station but the police did not entertain him. In such situation, he is supposed to approach the higher authority of police as per section 173(4) of BNSS which he did not. He approached the higher authority on 27/12/2025 which is much later after filing of this application on 05/08/2025 and when the court questioned about its compliance. There is also no statutory explanation for bypassing the statutory mechanism prescribed under the BNSS.

10. Thus, the mandatory procedural requirements laid down under Section 173(4) of BNSS have not been complied with. In the absence of such compliance, this Court is not inclined to exercise its discretionary jurisdiction under Section 175(3) BNSS, however considering the nature of allegations further inquiry in to the allegations can be done by taking verification of the applicant. Hence I pass following order:

ORDER

- i. Prayer of direction regarding sending the matter for investigation by the Police under section 175(3) of the BNSS, is hereby rejected.
- ii. Applicant to remain present for verification on next date.

Date: 06/07/2026.
Place: Kurundwad.

(V. R. Mane)
Judicial Magistrate F.C., Kurundwad.