

MHPU260050582024



Order below Exh. 1 in Cri. M. A. No. 460/2024

1. This is an application filed by applicant to direct Police to investigate as per provision U/s. 156(3) of Code of Criminal Procedure[under Section 175(3) of Bhartiya Nagarik Surksha Sanhita, 2023] (in short B.N.S.S.). Heard the learned Advocate for the complainant. Perused the record.

2. This case is pending for first order. Learned advocate on behalf of the complainant submitted that, the offence is committed prior to 01.07.2023. Hence while passing order below this application Code of Criminal Procedure is applicable. Hence it is not neccessary to call say of investigation officer. In support of argument the learned advocate on behalf of the complaiant relied on

i) Krishna Joshi V/s State of Rajasthan [S.B. Criminal Misc. (Pet.) 4285/2024] in which the Hon'ble Rajasthan High Court discussed issue about Section 531 of B.N.S.S. and directed the petitioner to avail other available remedies before approaching to the Court. In the present case issue arises in respect of application of Code of Criminal procedure or B.N.S.S. Hence the facts of present case and issue is different from above mentioned case. Hence with due respect the above citation is not applicable to present case.

ii) **Chowgule and Company Pvt. Ltd. Through Authorized Representative of Mr. Harsh Shah Vs. State of Goa and Others.** [Criminal Writ Petition No. 619 of 2024] in which the Hon'ble High Court of Bombay at Goa discussed about Section 531 of B.N.S.S. and held that bail application filed on 06.07.2024 will have to be considered as application under Section 482 of B.N.S.S.

3. Perused the record. It shows that as per contention of the complainant offence is committed prior to 01.07.2023. But the present application filed on 03.10.2024. In view of Section 531(2) Notwithstanding such repeal,

a) if, immediately before the date on which this Sanhita comes into force, there is any appeal, application, trial, inquiry or investigation pending, then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, as in force immediately before such commencement, as if this Sanhita had not come into force.

4. Considering the above provision it is clear that, if any appeal, application, trial or investigation is pending then only provisions of the Code of Criminal procedure applicable. But in the present case the said application is filed on 03.10.2024. It means it is filed after 01.07.2024. It is not pending prior to this Sanhita came into force. Therefore considering the above mentioned provision and

citation it is clear that provisions of Bharatiya Nagarik Surksha Sanhita is applicable to present application. Therefore in view of provision of Section 175(3) of B.N.S.S. calling say of investigation officer is necessary. Hence, the following order.

ORDER

Issue notice to I.O. in respect of this case and call say.

Vadgon Maval, Pune.

Date : 03.12.2024

(S.A.Mali)

5th Jt. Judicial Magistrate First Class

Vadgaon Maval, Pune.

CERTIFICATE

I affirm that the contents of this P.D.F file Judgment are same word for word as per original order.

Name of Stenographer : Mr. Meghraj K. Nerkar (Grade-III)

Court Name : Mrs. S. A. Mali, 5th Jt. C.J.J.D. &
J.M.F.C. Vadgaon Maval, Pune

Date of Judgment/Order : 03/12/2024

Judgment/Order signed by P.O. on : 03/12/2024

Judgment/Order uploaded on : 04/12/2024