

MHRG010000032026



Cri.Rev.App./1/2026

**Kiran Govind Shigwan**

**Vs.**

**State of Maharashtra Through  
Pen Police Station and ors 1**

**ORDER BELOW EXHIBIT 1**

This is a revision by the original complainant assailing impugned order passed by the Ld.J.M.F.C. Pen in Criminal complaint vide Criminal M.A.No.41/2025 (filed by him against Rekha Sachin Patil – Sarpanch of village Varsai, Tal.Pen, Dist. Raigad for “रेखा सचिन पाटील यांच्यावर फोर्जरीचा गुन्हा नोंद करण्याचे आदेश पेण पोलीस स्थानकाला द्यावे”) dated 27.06.2025 rejecting his prayer u/s 175(3)& (4) of the BNSS (herein referred to as “the impugned order”); and arguments by the Ld. Counsel for the complainant Mr. Vasant Bansode as mentioned in Revision Application Exh.1 herein.

02. Perused the application as well as documents filed by the complainant with list Exh.4 – especially certified copy of the original complaint as well as the Annexures 1 to 8 thereto as well as the impugned order and it is noteworthy that -

- The said incident of failure by the Sarpanch Varsai, Tal.Pen – Rekha Sachin Patil to hold mandatory Gramsabha on 26.01.2024 and prepared forged documents- proceedings, registers, signatures etc.; to show that it was so held is a serious and cognizable offence and hence police ought to

have taken cognizance thereof on the complaint of the complainant. More especially it is not a private transaction hence it is only the police machinery who can investigate and seized the forged document – official records.

- That the complainant had filed complaint before the P.I. Pen Police Station (as per Annexure -7) on 07.01.2025 but in vain.
- Hence he filed a complaint of this refusal as well as complaint against said Sarpanch Smt. Rekha Patil (for the offence of forgery) dated 22.01.2025 to the District Superintendent of Police Raigad praying for registration of F.I.R. and further investigation. However the most important feature in this case is that this complaint to the S.P. Raigad is not supported by the mandatory affidavit as per the mandate of Section 173(4) as well as Section 175(3) of the BNSS.
- Similarly while filing a complaint before the Ld. J.M.F.C. Court Exh.1 vide Criminal M.A.No.41/2015 as well; the complainant has not filed any affidavit in support of the same or any affidavit made under section 173(4) of the BNSS which is non compliance of statutory mandate and object of the BNSS.
- In the recent judgment of Hon'ble Apex Court **Om Prakash Ambadkar Vs. The State of Maharashtra 2025 INSC 139 dated 16.01.2025** is most relevant and mandatory especially as it explains the comparison of Section 175(3) BNSS and 156(3) of the Cr.P.C. and also lays down the mandatory procedure to be followed by a magistrate before ordering

investigation u/s 175(3) of the BNSS inter alia that

*“ However, unlike Section 156(3) of the Cr.P.C., any Magistrate, before ordering investigation under Section 175(3) of the BNSS, is required to:*

*a. Consider the application, supported by an affidavit, made by the complainant to the Superintendent of Police under Section 173(4) of the BNSS;*

*b. Conduct such inquiry as he thinks necessary; and*

*c. Consider the submissions made by the police officer.*

*30. Sub-section (4) of Section 175 of the BNSS is a new addition to the scheme of investigation of cognizable cases when compared with the scheme previously existing in Section 156 of the Cr.P.C. It provides an additional safeguard to a public servant against whom an accusation of committing a cognizable offence arising in the course of discharge of his official duty is made. The provision stipulates that any Magistrate who is empowered to take cognizance under Section 210 of the BNSS may order investigation against a public servant upon receiving a complaint arising in course of the discharge of his official duty, only after complying with the following procedure:*

*a. Receiving a report containing facts and circumstances of the incident from the officer superior to the accused public servant;*

*and b. Considering the assertions made by the accused public servant as regards the situation that led to the occurrence of the alleged incident.*

*31. A comparison of Section 175(3) of the BNSS with Section 156(3) of the Cr.P.C. three prominent changes that have been introduced by the enactment of BNSS as follows:*

*a. First, the requirement of making an application to the Superintendent of Police upon refusal by the officer in charge of a police station to lodge the FIR has been made mandatory, and the applicant making an application under Section 175(3) is required to furnish a copy of the application made to the Superintendent of Police under Section 173(4), supported by an affidavit, while making the application to the Magistrate under Section 175(3).*

*b. Secondly, the Magistrate has been empowered to conduct such enquiry as he deems necessary before making an order directing registration of FIR.*

*c. Thirdly, the Magistrate is required to consider the submissions of the officer in charge of the police station as regards the refusal to register an FIR before issuing any directions under Section 175(3).*

**32.** *The introduction of these changes by the legislature can be attributed to the judicial evolution of Section 156 of the Cr.P.C. undertaken by a number of decisions of this Court. In the case of Priyanka Srivastava v. State of U.P. reported in (2015) 6 SCC 287, this Court held that prior to making an application to the Magistrate under Section 156(3) of the Cr.P.C., the applicant must necessarily make applications under Sections 154(1) and 154(3). It was further observed by the Court that applications made under Section 156(3) of the Cr.P.C. must necessarily be supported by an affidavit sworn by the applicant. It was further observed that the requirement of supporting the complaint with an affidavit would ensure that the person making the application is conscious and also to see that no false affidavit is made. Once an affidavit is found to be false, the applicant would be liable for prosecution in*

*accordance with law.”*

*“31.We have already indicated that there has to be prior applications under Sections 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit is so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.” (Emphasis supplied)”*

*“35.Further, by requiring the Magistrate to consider the submissions made by the concerned police officer before proceeding to issue directions under Section 175(3), BNSS has affixed greater accountability on the police officer responsible for registering FIRs under Section 173. Mandating the Magistrate to consider the submissions of the concerned police officer also ensures that the Magistrate applies his mind judicially while considering both the complaint and the submissions of the police officer thereby ensuring that the requirement of passing reasoned orders is complied with in a more effective and comprehensive manner.”*

03. Thus, as per the mandate of Section 175(3) and above case law there should be an affidavit duly sworn by the complainant and while filing a petition u/s 175 (3) of the BNSS both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed.

04. On this mandate there is no compliance by the complainant. Although he has filed the copy of the complaint to the P.I. Pen Police Station Annexure-7 – and refusal to register F.I.R. and has assailed this to the Superintendent of Police Raigad vide Annexure-8, it is most important to note that the said Annexure-8- to the S.P. Raigad is not accompanied by sworn affidavit. Similarly even if interpreted otherwise this complaint to the Ld. J.M.F.C. vide Criminal M.A.No.41/2025 is also not supported by any sworn affidavit and most important that both these aspects – of affidavit being sworn is not spelt out in the complaint Exh.1 nor any necessary document- copy of the affidavit sworn by the complainant is at all filed before the Ld.J.M.F.C. Pen to show the mandatory compliance of Section 173(4) and 175(3) of the BNSS and mandate of the Hon'ble Supreme Court in **Om Prakash Ambadkar Vs. The State of Maharashtra 2025 INSC 139 dated 16.01.2025** para No.31 supra is not at all complied so as to empower the Ld. J.M.F.C. Pen to proceed with u/s 175 (3) of the BNSS.

05. There is no sworn affidavit whatsoever, wheresoever in support of the complaint to the S.P. Raigad or in support of the complaint Exh.1 herein. To the surprise the complaint Exh.1 herein has a mere “**verification clause**” but no sworn “**affidavit**” and it is pertinent to note the difference between these two -

An affidavit is a formal, written statement of facts sworn under oath to be true by a deponent, often requiring notarization. Verification is a specific clause, usually at the end of a document or petition, where the signatory confirms the truth of the statements based on their knowledge and belief.

**Key differences between them include:**

- **Definition & Structure:** An affidavit is a stand alone, sworn document. Verification is a component, usually appended to petitions, pleadings, or affidavits, that affirms the contents.
- **Purpose:** Affidavits provide evidence in court or legal proceedings. Verification confirms the accuracy, genuineness, and authenticity of the statements made
- **Oath Requirement:** Affidavits generally must be notarized or sworn before an authorized official. A verification clause simply requires the signer's affirmation, often confirming that nothing material has been concealed.
- **Content:** An affidavit contains detailed facts. Verification only validates that the facts in the preceding document are true to the best of the deponent's knowledge and belief.
- **Nature of Evidence :** Essentially, an affidavit *is* the testimony, while verification *validates* the testimony.

Hence the verification of this complaint Exh.1 cannot be said as an supporting affidavit either to the complaint Exh.1 itself or complaint to the S.P. Raigad (filed vide Annexure-8) as mandated by Section 173(4) & 175(3) of the BNSS. Hence also the mandate of law is not followed and not mentioned in the reasoning of the impugned order.

06. Be it so, even apart, the another two sin-qua-non ingredients are as per the same case of **Om Prakash Ambadkar Vs. The State of Maharashtra 2025 INSC 139 dated 16.01.2025**; supra

making of such inquiry as he thinks necessary is also to be satisfied and so also the another requirement is that the Magistrate must consider the submissions made by the concerned police officer before proceeding to issue directions u/s 175 (3) or rejecting the same- which is not done here by the concerned Ld. J.M.F.C. Pen.

07. Even further Section 175(3) of the BNSS is a genus while as Section 175 (4) of the BNSS is a species which provides – specifically that on receiving of a complaint against a public servant arising in the Course of discharge of his official duties and provides that -

*“175 (4) BNSS- 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 to alleged.”*

08. Thus in the case of complaint against such public servants, arising in the course of discharge of his official duties the complaint has to be received from – report of the incident from the officer superior to him – which is not so received in the present case.

09. Similarly Section 175(4)(b) also mandates that the assertions made by the public servants as to the situation that led to the incident so alleged shall also be considered by the Ld.

J.M.F.C.

10. Also the submissions of the concerned police officer before issuing directions u/s 175 (3) of the BNSS is mandatory as it also insures that the Magistrate applies his mind judicially while considering both the complaint and the submissions of the police officer, thereby ensuring that the requirement of passing reasoned order is complied with in a more effective and comprehensive manner.

11. To sum up, the sworn affidavit of the complainant, letter to the S.P Raigad about refusal to register the F.I.R. should be averred in the complaint before the Magistrate and the documents – the sworn affidavit of the complainant should be filed and thereafter the submissions of the police officer as well as that of the public servant shall also be considered and it is only thereafter – that applying judicial mind and passing a reasoned order the prayer of granting investigation u/s 175(3) or 175(3) r/w. 175(4) of the BNSS is to be passed.

12. But all these statutory mandates of law and of the Hon'ble Apex Court are given go by; by the Ld.J.M.F.C. Pen; as they figure no where in the impugned order dated 17.10.2025 and hence is not just proper and legal but contrary to law and above authority; making out no application of mind judicially and rejecting the prayer of police investigation u/s 175(3) of the BNSS contrary to law and settled principles and hence surely calls for interference – for which this revision deserves to be allowed. The ld.J.M.F.C. Pen shall proceed with the complaint Exh.1 of Cri.M.A.No.41/2025; afresh; as per law as per the mandate of Section 173(4) r/w 175(3) & (4) of the BNSS as such on its own

merits. More especially in view of the Maharashtra Government Gazette of Gramvikas Vibhag व्हीपीएम-२०१३/प्र.क्र.१३७/पंरा-३ दिनांक ०९.०१.२०१४ r/w. व्हीपीएम-२०१३/प्र.क्र.१३७/पंरा-३ दिनांक १२.०६.२०१३. Hence order infra -

**ORDER**

1.	This Criminal Revision Application No.1/2026 is hereby allowed.
2.	The Impugned Order passed by the Ld.J.M.F.C. Pen below Exh.1 in Criminal M.A.No.41/2025 dated 17.10.2025 is hereby set aside.
3.	The ld.J.M.F.C. Pen; shall proceed with the complaint Exh.1 of Cri.M.A.No.41/2025; afresh; as per law and as per the mandate of Section 173(4) r/w 175(3) & (4) of the BNSS as such; independently on its own merits.
4.	Parties to appear before the Ld.J.M.F.C. Pen; on 02.04.2026 without fail.
5.	Copy of this order be sent to the Ld. J.M.F.C. Pen; for information and compliance, as per law.
6.	This Criminal Revision proceeding stands disposed off. Stamps be punched. Papers be filed. Record be consigned to the record room, after the challenge period is over.

Alibag,  
Dt.: 16/03/2026.

(Smt. Sunita Tiwari.)  
Additional Sessions Judge,  
Alibag-Raigad.