



**CNR NO. MHSI70005142025**  
**Order passed below Exh. 1 in**  
**Cri. M.A.No. 62/2025**

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The present application has been filed by the complainant (hereinafter referred to as “the applicant”) seeking directions to register an FIR against the accused (non-applicant).

2. It is the contention of the applicant that she is the owner of a two-wheeler Activa DLS bearing registration no. MH-07-AR-8401. On 18.02.2025, in the morning, her husband, Philip Rodrigues, met the accused at the Malvan S.T. Stand, where they became acquainted. The accused represented that he was in need of accommodation and employment. The accused provided his contact details. Philip Rodrigues informed him that there were several hotels at Tarkarli and Devbag where he might find employment as a waiter.

3. It is further alleged that on the same day, i.e., 18.02.2025, the husband of the applicant at around 7.53 AM saw the accused taking away the said Activa. When he tried to stop him, the accused fled from the spot. The husband of the applicant, along with one Marvin, searched for the vehicle at Malvan, Devbag, and Tarkarli but could not locate it. They also attempted to contact the accused on the phone

number he had provided, but it was found to be unreachable. The address and other details furnished by the accused, including those on his driving licence, were found to be false.

4. Consequently, on 03.03.2025, the applicant approached the Malvan Police Station to lodge a complaint. However, instead of registering an FIR for a cognizable offence, the police registered a non-cognizable (N.C.) case against the accused. Again, on 12.03.2025, another N.C. was registered. Hence, the applicant has filed the present application seeking directions to the police to register an FIR against the accused. The learned advocate for the complainant relied upon **Suresh Chand Jain v. State of Madhya Pradesh & Anr. (2001) 2 SCC 628,**

*When a Magistrate receives a complaint disclosing a cognizable offence, he has two options — he may take cognizance under Section 190 and proceed under Chapter XV, or he may direct investigation under Section 156(3). The latter power is to be exercised at the pre-cognizance stage, and the police are bound to register and investigate the case.*

5. Say has been filed by Malvan Police Station at Exh. 26. It is stated that the accused had taken the said Activa bearing registration no. MH-07-AR-8401 from the complainant's husband for one day to use it in Malvan city but failed to return it. Thereby deceiving the complainant.

6. Heard the learned advocate for the applicant and perused the documents on record as well as the say filed by Malvan Police Station.

7. As per the applicant's version before this Court, the accused took away the vehicle without permission and thereby committed theft. However, on perusal of the two N.C. reports dated 03.03.2025 and 12.03.2025, it is seen that the complainant's case therein was that the accused had taken the said Activa for temporary use and failed to return it thereafter. Both these N.C. reports have been registered by Malvan Police Station under Section 314 of the Bharatiya Nyaya Sanhita, 2023, which pertains to dishonest misappropriation of property. Section 314 of the BNS, 2023 provides that,

*“Whoever dishonestly misappropriates or converts to his own use any movable property shall be punished with imprisonment which may extend to two years or with fine.”*

The said offence is bailable, non-cognizable, and triable by a Magistrate.

8. It is not the case of the applicant that Malvan Police Station registered a wrong section based on incorrect facts. The applicant has not disputed the contents of her previous N.C. dated 03.03.2025 " यातील तक्रारदार यांची मालकीची अॅक्टीव्हा गाडी क्र. एमएच-०७-एआर-८४०९ ही असून ती

विरोधक यास वापरण्यासाठी दिली होती ती गाडी विरोधक याने परत दिली नाही म्हणून " and N.C. dated 12.03.2025 " यातील विरोधक यांची तक्रारदार यांच्याशी भरड मालवण येथे तोंडओळख झाली होती त्यातुन दि. १८/०२/२०२५ रोजी ८.१५ वा. तक्रारदार यांच्या नावे असलेली गाडी क्र. एमएच-०७-एआर-८४०१ ही गाडी मालवणमध्ये फिरायला घेवून जातो व संध्याकाळी परत आणून देतो असे सांगून घेवून गेला, परंतु तो अद्यापपर्यंत गाडी घेवून आला नाही म्हणून ". However, the version now put forth before this Court that the accused took away the vehicle without consent on 18.02.2025 which was seen by her husband Philip Rodrigues is entirely inconsistent and contradictory to her earlier complaints made to the police. This contradiction clearly indicates that the applicant has not approached this Court with clean hands and has suppressed material facts.

9. From the facts recorded in the N.C. complaints, the offence disclosed is of dishonest misappropriation of property, and therefore, Section 314 of the Bharatiya Nyaya Sanhita, 2023, is rightly invoked. The Malvan Police Station has rightly treated the offence as non-cognizable. From the documents on record, it seems that the Malvan Police station has taken search of the said, but they have also been unsuccessful to that effect. In view of the above discussion, there is, therefore, no necessity for directing investigation by the police under Section 175(3) of the BNSS, 2023. Hence, the following order is passed.

<b>ORDER</b>	
1.	The prayer for issuing direction to investigate the matter under Section 175(3) of the BNSS, 2023, is hereby rejected.
2.	Matter be posted on the next date for verification under Section 223 of the BNSS, 2023.
(Pronounced and dictated in open Court.)	

Place : Malvan

Date : 17/10/2025

M.K.Fakih

Judicial Magistrate, F.C., Malvan.