



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMP No.855 of 2025

Sitanshu Mohan Dwibedy ***Petitioner***
Mr. Asok Mohanty, Sr. Advocate

-versus-

State of Odisha and others ***Opp. Parties***
Mr. R.B. Dash, Addl. P.P.

CORAM:
THE HON'BLE MR. JUSTICE CHITTARANJAN DASH

Order No. **ORDER**
23.07.2025

01. 1. Heard learned counsel for the Petitioner and the State.
2. By means of this application, the Petitioner has sought for an intervention of this Court praying for a direction to the Court of learned J.M.F.C.-5, Cog. Taking, Bhubaneswar for exercising its jurisdiction under Section 175(3) BNSS and allow the petition filed under Section 175(3) BNSS read with Section 174(3) BNSS filed by the Petitioner on 12.05.2025 which was registered as ICC No.2913 of 2025.
3. Mr. Mohanty, learned Senior counsel, appearing on behalf of the Petitioner, *inter alia*, expressed his anxiety, regarding the manner in which the complaint has been dealt with by the learned



Court. Mr. Mohanty drew the attention of this Court to the provision in respect to the Section 175 (3) which reads as follows:

“Any Magistrate empowered under section 210 may, after considering the application supported by an affidavit made under sub-section (4) of section 173, and after making such inquiry as he thinks necessary and submission made in this regard by the police officer, order such an investigation as above-mentioned.”

As far as the provision in respect to Section 174(3) the same reads as follows:

“Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.”

4. Having regard to the aforesaid provisions vis-à-vis the action to be taken by the Magistrate in the aforesaid ICC No.2913 of 2025, it appears that the court remained oblivious of the object of the provisions above stated. The very direction of the Magistrate seeking report from the concerned police is in itself unwarranted. With respect to the respective provisions, the Magistrate ought to have taken the steps required under law to proceed for cognizance and/or to direct the concerned police for registration of the FIR and investigation. As seen from Annexure-2, the concerned IIC, Khandagiri Police Station, Bhubaneswar, UPCD has already submitted a report vide his letter dated



16.05.2025, wherein the IIC has mentioned that the allegations submitted by the Petitioner at Khandagiri Police Station by registered post and that of the complaint before the learned court registered as ICC No.2913 of 2025 are slightly different, especially some allegations mentioned in the first paragraph of the point No.4, i.e. the date, place and time of occurrence in the complaint case ICC No.2913 of 2025, are not in the written report submitted to the police station through registered post with AD. However, the case record reveals that having received the said report from the police, the learned Court did not proceed and instead kept on directing for another report vide order dated 22.05.2025, and the last order being passed on 08.07.2025, wherein the court has directed the IIC, Khandagiri P.S., to be present before the court on 31.07.2025 and make his submission with regard to the compliance to Section 173(5) BNSS.

5. The statutory framework under Sections 174(3) and 175(3) of the BNSS embodies intent that a Magistrate, once received a complaint, should not allow it to languish for want of a police report but must take active steps either to proceed to take cognizance on the materials before him or to direct investigation where necessary. This approach finds resonance in the procedural discipline prescribed in the General Rules and Circular Orders (Criminal), which require that private complaints be received during fixed hours vide Rule 18, promptly registered in the order of receipt vide Rule 23, and examined by the Magistrate himself



in a manner sufficient to ascertain the genuineness of the grievance and to prevent abuse of process vide Rule 21. The Rules also caution against the indiscriminate use of the police agency in matters where the Magistrate is bound to form an opinion on evidence recorded in his presence vide Rule 22. Read together, these provisions and rules make it clear that the judicial process cannot be held in abeyance merely awaiting a police report; rather, it places a duty on the Magistrate to move the complaint forward, ensuring both procedural fairness and expeditious disposal in accordance with law.

6. As discussed above, under the respective provisions of Section 174(3) and Section 175(3) of the BNSS, the Magistrate ought to have taken the complaint on its own for examination and proceeded to take cognizance, if any, and/or directed the concerned IIC for registration and investigation into the matter. If at all a query was made directing the concerned police to submit a report, the same ought to have been dealt with, and thereafter the court could have proceeded in the matter. A complaint case cannot be kept pending merely awaiting a report. None of the provisions, as discussed above, require the Magistrate to call for a report from the police station.

7. Be that as it may, in the event the concerned police do not appear, the learned Magistrate is directed to act in accordance with the provisions of law and proceed with the examination of



witnesses, if any, to take cognizance in connection with the complaint and/or to direct registration of the FIR and investigation, if required, without further delay.

8. The CRLMP is disposed of accordingly. It is made clear that this Court has not expressed any opinion on the merits of the case and has confined its consideration solely to the procedural aspect involved. This order be communicated to the court concerned to proceed in the manner observed herein.

(Chittaranjan Dash)
Judge

KC Bisoi

Signature Not Verified

Digitally Signed
Signed by: KRUSHNA CHANDRA BISOI
Reason: Authentication
Location: orissa high court
Date: 23-Jul-2025 17:31:46

