examination on 22.06.1994, as would appear from paragraph 34 of the trial court judgment. All these circumstances, taken cumulatively, seriously dent the credibility of the prosecution case qua recovery of country made pistol from the appellant at 3 a.m. in the night of 29.09.1993.

25. In the light of the analysis above, we are of the view that the prosecution has failed to prove the guilt beyond reasonable doubt. The appellant is therefore, entitled to the benefit of doubt. The appeal is allowed. The judgment and order of the trial court and the High Court are hereby set-aside. The appellant is acquitted of the charge for which he was tried. The appellant is reported to be on bail. He need not surrender. His bail bond is discharged.

26. Let a copy of this order be sent to the concerned court.

***Result*:-** Appeal allowed. Conviction set aside. Appellant acquitted.

ABC 2025(I) 489 SC
ACQUITTAL & BAIL CASES

SUPREME COURT OF INDIA

(J.B. Pardiwala, J. & R. Mahadevan, JJ.)

Criminal Appeal No. 352 of 2020
(From Bombay High Court)
Decided on : 16 January, 2025

OM PRAKASH AMBADKAR - ***Appellant(s).***

Versus

STATE OF MAHARASHTRA & ORS. - ***Respondent(s).***

Law Covered* :-** ***(A) Criminal Procedure Code – Section 156 (3) & 482 (BNSS, 2023 – Section 175 & 528) – Quashing of order of arrest – Indian Penal Code – Sections 323, 294, 500, 504, 506 (Bharatiya Nyaya Sanhita, 2023 – Sections 115(2), 296, 356(2), 352, 351 (2)/(3)) – Quashing of Criminal Proceedings – Procedural Lapses in Magistrate's Order – Magistrate directed police to register FIR under Section 156(3) CrPC (BNSS – Section 175) – Order passed without applying judicial mind to ascertain whether allegations in complaint constituted cognizable offence – High Court dismissed petition under Section 482 CrPC without examining if ingredients of offences were met – Supreme Court held that mere abusive or defamatory words do not constitute an offence under Section 294 IPC – No prima facie case for Section 504 IPC as complaint lacked

specific intentional insult provoking breach of peace – No ingredient of criminal intimidation under Section 506 IPC established – Investigation directed mechanically, without determining necessity for police intervention – Magistrate failed to scrutinize whether offence under Section 500 IPC, a non-cognizable offence, warranted police investigation – Held, continuation of proceedings amounts to abuse of process – Order of Magistrate & High Court set aside. (Paras 10-32)

(B) Criminal Procedure Code – Section 156(3) (BNSS, 2023 – Section 175) – Judicial Application of Mind – Magistrate must ascertain existence of cognizable offence before directing police investigation – Judicial discretion should not be exercised mechanically – Supreme Court reiterated necessity for Magistrates to examine whether offences are prima facie disclosed before invoking Section 156(3) CrPC – Failure to do so leads to unnecessary harassment & abuse of process. (Paras 25-30)

(C) Indian Penal Code – Section 294 (Bharatiya Nyaya Sanhita, 2023 – Section 296) – Ingredients of Obscene Acts & Songs – Obscene acts under Section 294 IPC must involve lascivious elements capable of depraving & corrupting minds – Mere abusive or humiliating words do not constitute obscenity – Supreme Court held that allegations in complaint did not meet required standard for an offence under Section 294 IPC – Held, Magistrate erred in directing police investigation without considering necessary legal ingredients. (Paras 14-18)

Facts :- *The case arose from an order passed by a Judicial Magistrate directing the police to register an FIR against the appellant under Sections 323, 294, 500, 504, & 506 IPC based on a complaint. The High Court upheld the order, rejecting the appellant's petition under Section 482 CrPC. The Supreme Court examined the essential ingredients of the alleged offences & found that the Magistrate failed to apply judicial mind before ordering police investigation. It held that mere abusive words do not constitute obscenity under Section 294 IPC & that allegations under Sections 504 & 506 IPC lacked necessary intent & effect. The Court emphasized that magistrates must scrutinize complaints before invoking Section 156(3) CrPC to prevent unnecessary harassment. Accordingly, it quashed the proceedings against the appellant.*

Law of Relief :- Mechanical application of Section 156(3) CrPC without assessing prima facie case leads to abuse of process – Proceedings quashed due to lack of essential ingredients in alleged offences.

***Counsel* :-** ***For Appellant(s)*:** *Mr. Lambat & Associates.*

***For Respondent(s)*:** *Mr. Aaditya Aniruddha Pande, Adv.*

***Cases Referred* :-**

1. *Bhavarabai W/o Parashramji Atal v. Sanjay Ramchandra Gundhewar – 2011 Volume 4 Mh. L.J. (Crl.) 283. (Para 5)*
2. *Narayandas S/o Hirlalji Sarda & Ors. v. State of Maharashtra – 2008 All MR (Cri) 2737. (Para 5)*
3. *Nandkumar S. Kale v. Bhaurao Chandrabhanji Tidke – 2007 All MR (Cri) 2737. (Para 5)*
4. *State of Maharashtra v. Devhari Devsingh Pawar & Ors. – 2008 All MR (Cri) 518 (SC). (Para 5)*
5. *N.S. Madhanagopal & Anr. v. K. Lalitha – (2022) 17 SCC 818. (Para 14)*
6. *Mohammad Wajid & Ors. v. State of U.P. & Ors. – Criminal Appeal No. 2340/2023, decided on August 8, 2023. (Para 18)*
7. *Ramdev Food Products Ltd. v. State of Gujarat – (2015) 6 SCC 439. (Para 23)*
8. *Priyanka Srivastava v. State of U.P. – (2015) 6 SCC 287. (Para 32)*
9. *Babu Venkatesh v. State of Karnataka – (2022) 5 SCC 639. (Para 33)*

ORDER

1. The Respondent No. 3 who is the original complainant, although served with the notice issued by this Court, has chosen not to remain present either in person or through an advocate and oppose this appeal.

2. This appeal arises from the impugned common Judgment and Order passed by the High Court of Judicature at Bombay, Nagpur Bench, Nagpur dated 16.10.2019 in Criminal Application No. 33/2012 by which the High Court rejected the application filed by the appellant herein under Section 482 of Code of the Criminal Procedure, 1973 (hereinafter, referred to as "the Cr.P.C.") and thereby affirmed the order passed by the Judicial Magistrate First Class, Digras under Section 156(3) of the Cr.P.C. directing the police authorities to register the FIR against the appellant herein for the offence punishable under Sections 323, 294, 500, 504 & 506 respectively of the Indian Penal Code (for short, "the IPC").

3. It appears from the materials on record that the original complainant preferred an application under Section 156(3) of the Cr.P.C. in the Court of Judicial Magistrate First Class, Digras praying that the police authorities be directed to register his FIR for the offences enumerated above. The averments made in the application

filed by the complainant reads thus:

"IN THE COURT OF HON'BLE JUDICIAL MAGISTRATE FIRST CLASS, DIGRAS

APPLICANT: Adv. Nitin Devidas Kubade Aged about 32 yrs. Oecu. Advocate r/o Shashtrinagar, Digras Tq.Digras Dist. Yavatmal

Versus

Non-Application:

APPLICATION UJS 156 (3) OF CR.P.C. FOR GIVING ORDER TO THE POLICE OF DIGRAS POLICE STATION TO REGISTERED THE OFFENCE AS PER THE COMPLAINT

The above named applicant begs to submits as under:

1.That, the applicant is permanent residence of above address and practicing as an advocate at Digras. On 31.12.2011 at about 11.30 to 11.40 pm. The accused who are the policemen humiliated the applicant therefore on 03.01.2012 applicant want to lodged a report to the police station, Digras but the police did not accepted the same, therefore the applicant submitted his submission and requested the Bar Association, Digras about supported the applicant after considering the factual position.

2.That, it is submitted that as per the resolution of the Bar council of Digras, applicant alongwith the other members of Bar association submitted the grievance before learned Superintendent of Police Yavatmal and submitted a report to him but though the applicant submitted the report to the superintendent of Police Yavatmal then also as the accused are policeman, the police are avoiding to registered the offence, against the accused.

3.That, it is submitted that the applicant is filing the copy of report for kind perusal of this Hon'ble Court from which it reveals that the accused has committed an offence u/sec. 323, 294, 504, 506, 500 of I.P.C. and therefore it is the boundant duty of the police to registered the offence but the police are avoiding the same therefore the applicant is filing this application before this Hon'ble Court to direct the police to registered the offence against the accused as per the report lodged before the Superintendent of Police Yavatmal.

4.That, it is submitted that from simple perusal of report there is prima-facie allegations against the accused, but the police hectically avoiding to registered the offence, in such circumstances it is necessary in the interest of justice to use the power as laid down u/sec.156 (3) of Cr.P.C. whereby the Hon'ble Court has a power to direct the police to registered the offence. The copy of the report is annexed for kind perusal of this

Hon'ble Court.

Prayer:- It is therefore most humbly prays that,

(a) The Hon'ble Court may be pleased to direct the incharge Police officer of Digras Police Station to registered offence as per the report submitted before the Superintendant Police of Yavatmal.

(b) Any other suitable relief be given to the application in the circumstances if required.

Place: Digras *Signature*

Date: 06.01.2012"

4. The Magistrate looked into the application filed by the complainant seeking police investigation and vide order dated 09.01.2012 passed an order directing the police authorities to register an FIR and undertake the necessary investigation.

5. The order passed by the Magistrate referred to above reads thus:

"1. Heard counsel for the applicant, perused the application, report and affidavit.

In short the story of the application is as under:

That, the applicant is a practicing advocate and on 31.12.2011 at about 11.30 to 11.40 p.m. the policeman (appellant) humiliated the applicant. Therefore, the applicant went to Police Station on 3/1/12 to lodged a report at Police Station, Digras. But police did not accept the same. Therefore, he submitted one application to the Bar Association Digras on 3/1/12 and thereafter, the Bar Association supported the applicant and thereafter, the grievances were raised before the Superintendent of Police at Yavatmal but the police authorities were avoiding to register the offence, though the offences are cognizable. Hence, he filed this application on 06.01.2012.

3.Heard counsel for applicant Shri TM. Malnas at length., perused application, report and affidavit, after going through the submissions and case paper, it appears that the complaint discloses the commission of offence under section 294 of IPC which is a cognizable offence. The Learned counsel for the applicant relied on the ruling of Honourable Bombay High Court in 1) Bhavarabai W /o Parashramji Atal v. Sanjay Ramchandra Gundhewar, reported in 2011 Volume 4 Mh. L.J. (Crl.) Page No.283; and 2) Narayandas S/o Hirlalji Sarda and Ors v. State of Maharashtra reported in 2008 All MR (Cri). 2737. The learned counsel for the applicant submitted that the cognizable offence is made out from the allegations levelled by the applicant and therefore he submitted that the ratio laid down in the ruling is applicable.

Considering the submissions and after going through the contents of the complaint, I agree that the ratio laid down in the above ruling is applicable as the offence under Section 294 IPC is cognizable and it appears from the complaint that the applicant has tried to lodged the report at PS Digas on 3.1.2012 but police has not registered the offence. The counsel for applicant further submitted that, there is no bar to register the offence against the police as under Section 197 of Cr.P.C. as the act of the policeman was not in discharge of his official duties. So he relied upon the ruling of Honourable Bombay High court 1) Nandkumar S. Kale v. Bhaurao Chandrabhanji Tidke, reported in 2007 All MR (Cri), 2737, the ruling of Honourable Supreme Court 2) State of Maharashtra Vs. Devhari Devsingh Pawar and others, reported in 2008 All MR (Cri) 518 (Supreme Court). After going through the allegations made by the applicant in the complaint it appears that, the police has abused him and threatened to kill him and also humiliated the complainant. With due respect to the ratio laid down in the above decisions, I am of the view that the alleged act of the police are not in discharge of official duty. Hence the previous sanction under Section 197 CrPC is not necessary.

4.After going through the submissions and application, report, affidavit and the ruling cited by the applicant, it is a fit case to call the report of police under Section 156(3) of Cr.P.C. Hence, application is allowed and police Station office, Police Station, Digras is directed to register the offence and submit his report under Section 156(3) of CrPC within stipulated period."

6. We take notice of the fact that the complainant claims to be an advocate whereas the appellant herein is a police officer.

7. We have heard Ms. Kashmira Lambat, the learned counsel appearing for the appellant and Mr. D. Kumanan, the learned counsel appearing for the respondent, that is, the State of Maharashtra.

8. Section 156(3) of the Cr.P.C. reads thus:

"156. Police Officer's power to investigate cognizable case.

(1) Any officer-in-charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order

such an investigation as above mentioned."

9. As we see it, the words are plain and the meaning is clear. It empowers any officer in-charge of a Police Station to investigate any cognizable offence without the order of a Magistrate.

10. Ordinarily, Section 156(3) of the Cr.P.C. is invoked by the complainant when the police authorities decline to register a First Information Report. In such circumstances, a private complaint may be made in the court of the Judicial Magistrate and the complainant may pray that police investigation be ordered under Section 156(3) of the Cr.P.C. However, it is the discretion of the concerned Magistrate whether to order police investigation under Section 156(3) of Cr.P.C. or take cognizance upon the complaint and issue process or dismiss the complaint under Section 203 of Cr.P.C. Over a period of time and in view of many decisions of this Court, if the officer in-charge of the concerned Police Station for some reasons declines to register the FIR, then the law has left it open for the complainant to file an appropriate application before the Magistrate and pray for police investigation. Once an order is passed for police investigation under Section 156(3) of the Cr.P.C., then it becomes a police case. At the end of the investigation the police may either file a charge-sheet or file an appropriate closure report.

11. However, what is important to observe is that whenever any application is filed by the complainant before the Court of Judicial Magistrate seeking police investigation under Section 156(3) of the Cr.P.C., it is the duty of the concerned Magistrate to apply his mind for the purpose of ascertaining whether the allegations levelled in the complaint constitute any cognizable offence or not. In other words, the Magistrate may not undertake the exercise to ascertain whether the complaint is false or otherwise, however, the Magistrate is obliged before he proceeds to pass an order for police investigation to closely consider whether the necessary ingredients to constitute the alleged offence are borne out on plain reading of the complaint.

12. In the case on hand, it appears that the Magistrate passed an order directing police investigation mechanically and without ascertaining whether the allegations levelled disclose commission of any offence or not.

13. It is the case of the complainant that the appellant herein committed offence punishable under Section 294 of the IPC. The Magistrate very promptly accepted this contention without ascertaining if the necessary ingredients required to constitute the

offence were disclosed in the complaint or not. In our view, even if all the allegations as levelled in the complaint are believed to be true, none of the ingredients to constitute the offence punishable under Section 294 of the IPC could be said to be borne out.

14. In so far as Section 294 of the IPC is concerned, this Court in N.S. Madhanagopal and Another v. K. Lalitha reported in (2022) 17 SCC 818 has explained the true purport and scope of Section 294. We quote the relevant observations as under:

"6. Section 294(b) IPC talks about the obscene acts and songs. Section 294 IPC as a whole reads thus:

"294. Obscene acts and songs.—Whoever, to the annoyance of others—

(a) does any obscene act in any public place, or

(b) sings, recites or utters any obscene songs, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both."

7. It is to be noted that the test of obscenity under Section 294 (b)IPC is whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences. The following passage from the judgment authored by K.K. Mathew, J. (as his Lordship then was) reported in P.T. Chacko v. Nainan Chacko [P.T. Chacko v. Nainan Chacko, 1967 SCC OnLine Ker 125 : 1967 KLT 799] explains as follows : (SCC OnLine Ker paras 5-6)

"5. The only point argued was that the 1st accused has not committed an offence punishable under Section 294(b)IPC, by uttering the words above-mentioned. The courts below have held that the words uttered were obscene and the utterance caused annoyance to the public. I am not inclined to take this view. In R. v. Hicklin [R. v. Hicklin, (1868) LR 3 QB 360], QB at p. 371 Cockburn, C.J. Laid down the test of "obscenity" in these words : (QB p. 371) "… the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences…"

6.This test has been uniformly followed in India. The Supreme Court has accepted the correctness of the test in Ranjit D. Udeshi v. State of Maharashtra [Ranjit D. Udeshi v. State of Maharashtra, 1964 SCC OnLine SC 52 : AIR 1965 SC 881]. In Roth v. United States [Roth v. United States, 1957 SCC OnLine US SC 106 : I L Ed 2d 1498 : 354 US 476 (1957)], Chief Justice Warren said that the test of "obscenity" is the 'substantial tendency to

corrupt by arousing lustful desires'. Mr Justice Harlan observed that in order to be "obscene" the matter must "tend to sexually impure thoughts". I do not think that the words uttered in this case have such a tendency. It may be that the words are defamatory of the complainant, but I do not think that the words are "obscene" and the utterance would constitute an offence punishable under Section 294 (b)IPC."

8. It has to be noted that in the instance case, the absence of words which will involve some lascivious elements arousing sexual thoughts or feelings or words cannot attract the offence under Section 294(b). None of the records disclose the alleged words used by the accused. It may not be the requirement of law to reproduce in all cases the entire obscene words if it is lengthy, but in the instant case, there is hardly anything on record. Mere abusive, humiliating or defamative words by itself cannot attract an offence under Section 294(b) IPC.

9. To prove the offence under Section 294IPC mere utterance of obscene words are not sufficient but there must be a further proof to establish that it was to the annoyance of others, which is lacking in the case. No one has spoken about the obscene words, they felt annoyed and in the absence of legal evidence to show that the words uttered by the appellant-accused annoyed others, it cannot be said that the ingredients of the offence under Section 294(b)IPC is made out."

15. We fail to understand how the act of a police officer assaulting the complainant within public view or public as alleged would amount to an obscene act. Obscene act for the purpose of Section 294 has a particular meaning. Mere abusive, humiliating or defamatory words by themselves are not sufficient to attract the offence under Section 294 of the IPC.

16. Thus, in so far as Section 294 of the IPC is concerned, we are of the view that no case is made out to put the appellant/accused to trial.

17. We shall now deal with Sections 504 and 506 of the IPC respectively.

18. A two-Judge Bench of this Court, speaking through one of us, J.B. Pardiwala, Justice, in its decision in ***Mohammad Wajid & Am. v. State of U.P. & Ors.*** (Criminal Appeal No. 2340/2023 decided on August 8, 2023) explained what constitutes an offence of criminal intimidation. We quote the relevant paragraphs from the said decision as under:

"23. Chapter XXII of the IPC relates to Criminal Intimidation,

Insult and Annoyance.

Section 503 reads thus:

"Section 503. Criminal intimidation. – Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation.– A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.

Illustration

A, for the purpose of inducing B to resist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation."

Section 504 reads thus:

"Section 504. Intentional insult with intent to provoke breach of the peace.–Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

Section 506 reads thus:

"Section 506. Punishment for criminal intimidation.– Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

If threat be to cause death or grievous hurt, etc.– And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

24. An offence under Section 503 has following essentials:

Threatening a person with any injury;

(i) to his person, reputation or property; or

(ii) to the person, or reputation of any one in whom that person is interested.

The threat must be with intent;

(i) to cause alarm to that person; or

(ii) to cause that person to do any act which he is not legally bound to do as the means of avoiding the execution of such threat; or

(iii) to cause that person to omit to do any act which that person is legally entitled to do as the means of avoiding the execution of such threat.

25. Section 504 of the IPC contemplates intentionally insulting a person and thereby provoking such person insulted to breach the peace or intentionally insulting a person knowing it to be likely that the person insulted may be provoked so as to cause a breach of the public peace or to commit any other offence. Mere abuse may not come within the purview of the section. But, the words of abuse in a particular case might amount to an intentional insult provoking the person insulted to commit a breach of the public peace or to commit any other offence. If abusive language is used intentionally and is of such a nature as would in the ordinary course of events lead the person insulted to break the peace or to commit an offence under the law, the case is not taken away from the purview of the Section merely because the insulted person did not actually break the peace or commit any offence having exercised self control or having been subjected to abject terror by the offender. In judging whether particular abusive language is attracted by Section 504, IPC, the court has to find out what, in the ordinary circumstances, would be the effect of the abusive language used and not what the complainant actually did as a result of his peculiar idiosyncrasy or cool temperament or sense of discipline. It is the ordinary general nature of the abusive language that is the test for considering whether the abusive language is an intentional insult likely to provoke the person insulted to commit a breach of the peace and not the particular conduct or temperament of the complainant.

Mere abuse, discourtesy, rudeness or insolence, may not amount to an intentional insult within the meaning of Section 504, IPC if it does not have the necessary element of being likely to incite the person insulted to commit a breach of the peace of an offence and the other element of the accused intending to provoke the person insulted to commit a breach of the peace or knowing that the person insulted is likely to commit a breach of the peace. Each case of abusive language shall have to be decided in the light of the facts and circumstances of

that case and there cannot be a general proposition that no one commits an offence under Section 504, IPC if he merely uses abusive language against the complainant. In King Emperor v. Chunnibhai Dayabhai, (1902) 4 Bom LR 78, a Division Bench of the Bombay High Court pointed out that:-

> *"To constitute an offence under Section 504, I.P.C. it is sufficient if the insult is of a kind calculated to cause the other party to lose his temper and say or do something violent. Public peace can be broken by angry words as well as deeds."*

27. A bare perusal of Section 506 of the IPC makes it clear that a part of it relates to criminal intimidation. Before an offence of criminal intimidation is made out, it must be established that the accused had an intention to cause alarm to the complainant.

28. In the facts and circumstances of the case and more particularly, considering the nature of the allegations levelled in the FIR, a prima facie case to constitute the offence punishable under Section 506 of the IPC may probably could be said to have been disclosed but not under Section 504 of the IPC. The allegations with respect to the offence punishable under Section 504 of the IPC can also be looked at from a different perspective. In the FIR, all that the first informant has stated is that abusive language was used by the accused persons. What exactly was uttered in the form of abuses is not stated in the FIR. One of the essential elements, as discussed above, constituting an offence under Section 504 of the IPC is that there should have been an act or conduct amounting to intentional insult. Where that act is the use of the abusive words, it is necessary to know what those words were in order to decide whether the use of those words amounted to intentional insult. In the absence of these words, it is not possible to decide whether the ingredient of intentional insult is present."

19. Applying the principles as explained aforesaid, we are of the view that none of the ingredients to constitute the offence punishable under Sections 504 and 506 of the IPC respectively are borne out.

20. We fail to understand how the Magistrate could have directed the police to investigate into the offence of defamation punishable under Section 500 of the IPC. We are at a loss to understand as to why this aspect was not looked into even by the High Court.

21. The aforesaid reflects the mechanical manner in which the order came to be passed for police investigation under Section 156(3)

of the Cr.P.C. It was expected of the High Court to look into all these relevant aspects before rejecting the petition filed by the appellant herein under Section 482 of the Cr.P.C.

22. The allegations as regards simple hurt also do not inspire any confidence.

23. This Court in a plethora of its decisions, more particularly in the case of ***Ramdev Food Products § Ltd. v. State of Gujarat reported in (2015) 6 SCC 439,*** has laid emphasis on the fact that the directions under Section 156(3) should be issued only after application of mind by the Magistrate. Paragraph 22 of the said decision reads thus:

> *"22. Thus, we answer the first question by holding that the direction Under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone issuance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice it is considered appropriate to straightaway direct investigation, such a direction is issued. Cases where Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet to determine "existence of sufficient ground to proceed". Category of cases falling under Para 120.6 in Lalita Kamari (supra) may fall Under Section 202 Subject to these broad guidelines available from the scheme of the Code, exercise of discretion by the Magistrate is guided by interest of justice from case to case."*

24. Thus, there are prerequisites to be followed by the complainant before approaching the Magistrate under Section 156(3) of the Cr.P.C. which is a discretionary remedy as the provision proceeds with the word 'may'. The Magistrate is required to exercise his mind while doing so. He should pass orders only if he is satisfied that the information reveals commission of cognizable offences and also about the necessity of police investigation for digging out of evidence neither in possession of the complainant nor can be procured without the assistance of the police. It is, thus, not necessary that in every case where a complaint has been filed under Section 200 of the Cr.P.C. the Magistrate should direct the Police to investigate the crime merely because an application has also been filed under Section 156(3) of the Cr.P.C. even though the evidence to be led by the complainant is in his possession or can be produced by summoning

witnesses, with the assistance of the court or otherwise. The issue of jurisdiction also becomes important at that stage and cannot be ignored.

25. In fact, the Magistrate ought to direct investigation by the police only where the assistance of the Investigating Agency is necessary and the Court feels that the cause of justice is likely to suffer in the absence of investigation by the police. The Magistrate is not expected to mechanically direct investigation by the police without first examining whether in the facts and circumstances of the case, investigation by the State machinery is actually required or not. If the allegations made in the complaint are simple, where the Court can straightaway proceed to conduct the trial, the Magistrate is expected to record evidence and proceed further in the matter, instead of passing the buck to the Police under Section 156(3) of the Cr.P.C. Ofcourse, if the allegations made in the complaint require complex and complicated investigation which cannot be undertaken without active assistance and expertise of the State machinery, it would only be appropriate for the Magistrate to direct investigation by the police authorities. The Magistrate is, therefore, not supposed to act merely as a Post Office and needs to adopt a judicial approach while considering an application seeking investigation by the Police.

26. The incident is of the year 2012. This Court while admitting this appeal had stayed the investigation.

27. In the overall view of the matter, we are convinced that no case is made out to put the appellant/accused to trial for the alleged offence. Continuance of the investigation by the police will be nothing short of abuse of the process of law.

28. However, before we part with the matter, we deem it necessary to discuss the changes brought to the scheme of Section 156 of the Cr.P.C. by the enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, "the BNSS").

29. Section 175 of the BNSS corresponds to Section 156 of the Cr.P.C. Sub-section (1) of Section 175 of the BNSS is in pari materia with sub-section 156(1) of the Cr.P.C. except for the proviso which empowers the Superintendent of Police to direct the Deputy Superintendent of Police to investigate a case if the nature or gravity of the case so requires. Sub-section (2) of Section 175 the BNSS is identical to Section 156(2) of the Cr.P.C. Section 175(3) of the BNSS empowers any Magistrate who is empowered to take cognizance

under Section 210 to order investigation in accordance with Section 175(1) and to this extent is in pari materia with Section 156(3) of Cr.P.C. 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. indicates 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. The reason given by the Court for introducing such a requirement was that applications under Section 156(3) of the Cr.P.C. were being made in a routine manner and in a number of cases only with a view to cause harassment to the accused by registration of FIR. 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. This would deter him from casually invoking the authority of the Magistrate under Section 156 (3). The relevant observations made by the Court are reproduced hereinbelow:

"27. Regard being had to the aforesaid enunciation of law, it needs to be reiterated that the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind. He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order. The present is a case where the accused persons are serving in high positions in the Bank. We are absolutely conscious that the position does not matter, for nobody is above the law. But, the learned Magistrate should take note of the allegations in entirety, the date of incident and whether any cognizable case is remotely made out. It is also to be noted that when a borrower of the financial institution covered under the Sarfaesi Act, invokes the jurisdiction under Section 156(3) Cr.P.C. and also there is a separate procedure under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, an attitude of more care, caution and circumspection has to be adhered to.

28.Issuing a direction stating "as per the application" to lodge an FIR creates a very unhealthy situation in society and also reflects the erroneous approach of the learned Magistrate. It also encourages unscrupulous and unprincipled litigants, like Respondent 3, namely, Prakash Kumar Bajaj, to take adventurous steps with courts to bring the financial institutions on their knees. As the factual exposition would reveal, Respondent 3 had prosecuted the earlier authorities and after the matter is dealt with by the High Court in a writ petition recording a settlement, he does not withdraw the criminal case and waits for some kind of situation where he can take vengeance as if he is the emperor of all he surveys. It is interesting to note that during the tenure of Appellant 1, who is presently occupying the position of Vice-President, neither was the loan taken, nor was the default made, nor was any action under the SARFAESI Act taken. However, the action under the SARFAESI Act was taken on the second time at the instance of the present Appellant 1. We are only stating about the devilish design of Respondent 3 to harass the appellants with the sole intent to avoid the payment of loan. When a citizen avails a loan from a financial institution, it is his obligation to pay back and not play truant or for that matter play possum. As we have noticed, he has been able to do such adventurous acts as he has the embedded conviction that he will not be taken to task because an application under Section 156(3) Cr.P.C. is a simple application to the court for issue of a direction to the investigating agency. We have been apprised that a carbon copy of a document is filed to show the compliance with Section 154(3), indicating it has been sent to the Superintendent of Police concerned.

29.At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the Code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellow citizens, efforts are to be made to scuttle and curb the same.

30.In our considered opinion, a stage has come in this country where Section 156(3) Cr.P.C. applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of

applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.

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. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari [(2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR." (Emphasis supplied)

In a recent pronouncement of this Court in the case of ***Babu Venkatesh v. The State Of Karnataka reported in (2022) 5 SCC 639,*** the observations made in Priyanka Srivastava (supra) were referred to and it was held as follows:

"24. This Court has clearly held that, a stage has come where applications under Section 156(3)Cr.P.C. are to be supported by an affidavit duly sworn by the complainant who seeks the invocation of the jurisdiction of the Magistrate.

25.This Court further held that, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also verify the veracity of the allegations. The Court has noted that, applications under Section 156(3)Cr.P.C. are filed in a routine manner without taking any responsibility only to harass certain persons.

26.This Court has further held that, prior to the filing of a

petition under Section 156(3)Cr.P.C., there have to be applications under Sections 154(1) and 154(3)Cr.P.C… This Court emphasises the necessity to file an affidavit so that the persons making the application should be conscious and not make false affidavit. With such a requirement, the persons would be deterred from causally invoking authority of the Magistrate, under Section 156(3)Cr.P.C… Inasmuch as if the affidavit is found to be false, the person would be liable for prosecution in accordance with law." (Emphasis supplied)

34. In light of the judicial interpretation and evolution of Section 156(3) of the Cr.P.C. by various decisions of this Court as discussed above, it becomes clear that the changes introduced by Section 175(3) of the BNSS to the existing scheme of Section 156(3) merely codify the procedural practices and safeguards which have been introduced by judicial decisions aimed at curbing the misuse of invocation of powers of a Magistrate by unscrupulous litigants for achieving ulterior motives.

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.

36. In the result, this appeal succeeds and is hereby allowed.

37. The impugned order passed by the High Court is set aside. The order passed by the Magistrate directing police investigation under Section 156(3) of the Cr.P.C. is also set aside.

38. Pending applications, if any, shall also stand disposed of.

***Result*:-** Appeal allowed. Proceedings quashed.