



2026:AHC:31226

A.F.R.

Reserved on:- 18.12.2025

Delivered on:- 12.02.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD**APPLICATION U/S 528 BNSS No. - 18266 of 2025**

Pradeep Kumar

.....Applicant(s)

Versus

State Of U.P. And 2 Others

.....Opposite
Party(s)

| | | |
|-------------------------------|---|------------------------------|
| Counsel for Applicant(s) | : | Ejaz Ahmad Khan, Mohd. Monis |
| Counsel for Opposite Party(s) | : | G.A., Hari Nath Chaubey |

Court No. - 71**HON'BLE RAJIV LOCHAN SHUKLA, J.**

1. Heard Sri Mohd. Monis, Learned counsel for the applicant, Sri Hari Nath Chaubey, Learned counsel for the opposite party Nos.2 & 3, Sri Shashi Dhar Pandey, Learned A.G.A. for the State and perused the material brought on the record.

2. Challenge in this application is to the impugned order dated 18.9.2024 passed by the Learned Chief Judicial Magistrate, Kanpur Dehat in Criminal Complaint Case No. 1583 of 2024 (*Pradeep Kumar Vs. Mohit Kumar and others*) arising out of proceeding under section 175(3) of B.N.S.S. Police Station Sheoli, District Kanpur Dehat.

3. The allegations made in the application under Section 175(3) of the B.N.S.S. are that the opposite parties on 29.7.2024 at about 08:30 P.M. at night, when the injured of the case Sandeep had gone to attend the call of nature, was caught hold by the opposite party Nos.2 & 3 due to previous

enmity and then his right leg was tied up with barbed wire and then tied to a motorcycle through which he was dragged for quite a distance. It has further been alleged in the application that the entire leg of the injured Sandeep was amputated after which the accused left Sandeep and run away. The applicant coming to know of the incident is said to have rush to the spot along with other family members and saw that Sandeep was lying bleeding, who was then taken to Police Station Sheoli, District- Kanpur Dehat, where no action was taken, thereafter he was taken to Hallett Hospital then to Rawat Pur Catology Hospital, where the Doctors gave up on the injured, post which he was taken to the S.G.P.G.I. Lucknow, where at the time of moving of the application he was still being treated. The applicant supposedly went to the house of the opposite party Nos.2 & 3 complaining as to why they had cut off the leg of his brother on which the opposite party Nos.2 & 3 allegedly abused him and threatened him that the applicant and his brother would both be killed. The information regarding this incident is said to have been given to the Superintendent of Police, District- Kanpur Dehat through post, however, when no action was taken, the application under Section 175(3) B.N.S.S. was moved.

4. The Learned counsel for the applicant states that his application under Section 175(3) B.N.S.S. has been treated as a complaint and notices have been issued to the opposite party Nos.2 & 3 in accordance with the provisions of Section 223 B.N.S.S. and the date has been fixed for recording of the statement of the applicant under Section 223 B.N.S.S. Learned counsel for the applicant states that the Learned Chief Judicial Magistrate, Kanpur Dehat has, in an arbitrary, manner treated the application as a complaint, while the matter required police investigation

as the same would entail a spot inspection, recovery of the weapon of assault, the motorcycle used in the commission of offence and arrest of the accused and recovery of the material above-mentioned on their pointing out. This also requires custodial interrogation. The Learned counsel for the applicant further states that the Learned Chief Judicial Magistrate Kanpur Dehat has wrongly relied upon the decision of this Court in the case of **Sukhwasi Vs. State of Uttar Pradesh** reported in **2007 (59) ACC 739**, which was with respect to Section 156(3) Cr.P.C. and wrongly treated the application of the applicant as a complaint. He contends that the same considerations are not applicable to orders passed under Section 175(3) B.N.S.S.

5. Rebutting the said submissions, Learned Counsel for the opposite party Nos.2 & 3 contends that the Learned Magistrate has passed a reasoned order, the entire material on record has been duly considered and the discretion exercised by the Learned Magistrate to treat the application as a complaint, is in accordance with the law laid down by this Court in the case of **Sukhwasi (Supra)**, which has also been followed in various recent decisions. He relies upon the judgement of this Court in the case of **Lalaram Vs. State of U.P. and Ors.** reported in **2021 (1) ADJ 145**, where this Court after considering the impact of various decisions of this Court as well as the Supreme Court has summarized the propositions of law governing exercise of registration of First Information Report under Section 154(3) Cr.P.C. and 156(3) Cr.P.C. including the powers of Learned Magistrate to direct for registration of a case and investigation or to treat the application as a complaint.

6. Learned Counsel for the opposite party Nos.2 & 3 further submits that

the provisions of Section 175(3) B.N.S.S. are in *pari materia* to the provisions of Section 156(3) Cr.P.C. and the propositions of law governing the exercise of powers under Section 156(3) Cr.P.C, as summarized by this Court in the judgement of **Lala Ram (Supra)**, are squarely applicable to this case. He submits that tested on the anvil of the law summarized by this Court in **Lala Ram (Supra)**, the impugned order does not suffer from any legal or factual error, which may require interference by this Court in exercise of its extraordinary jurisdiction under Section 528 B.N.S.S.

7. The Learned Additional Government Advocate, Shri Shashi Dhar Pandey has also supported the impugned order and stated that specific reasons for treating the application as a complaint have been given and this Court may not substitute its own reasoning to that of the Learned Magistrate and satisfaction of the Learned Magistrate cannot be substituted in exercise of powers of judicial review/superintendence, as saved under Section 528 B.N.S.S. and the duty cast upon the High Court under Section 529 B.N.S.S.

8. I have heard the Learned Counsels for the parties and perused the material brought on the record.

9. To support the contentions made in the application under Section 175(3) B.N.S.S., the applicant appears to have filed certain medical reports, which have been annexed as Annexure No.3 to this application and also a letter dated 9.8.2024 addressed to the Superintendent of Police, District Kanpur Dehat to justify not invoking the powers of the Learned Magistrate for directing registration of a case and a police investigation. This Court is not considering the merits of the contentions raised in the

application under section 175(3) B.N.S.S. The only legal issue that has been raised before this Court is whether the Chief Judicial Magistrate Kanpur Dehat in the present case, rightly passed an order treating the application under Section 175(3) B.N.S.S. as a complaint. A perusal of the impugned order would indicate that the Learned Magistrate has given a few reasons for treating the application as a complaint. The reasons mentioned in the impugned order are being reproduced here in below:-

"प्रार्थना पत्र के कथनो के परिशीलन से विदित है कि प्रार्थी को घटना के तथ्यों एवं परिस्थितियों की पूर्ण जानकारी है। प्रार्थना पत्र में ऐसा कोई कथन वर्णित नहीं किया गया है जिससे कि कोई ऐसा साक्ष्य संकलित किया जाना हो, जो कि विवेचना कराए जाने के उपरान्त ही संकलित किया जा सकता हो। प्रार्थना पत्र में कोई तकनीकी तथ्य निहित नहीं है। प्रार्थी अपना समस्त साध्य न्यायालय में प्रस्तुत कर सकता है। उल्लेखनीय है कि माननीय इलाहाबाद उच्च न्यायालय द्वारा सुखवासी बनाम उ०प्र०राज्य [2007 (6) ALJ 424 (DB)] के मामले में अवधारित किया गया है कि धारा 156 (3) द०प्र०सं० के प्रार्थना पत्र का निस्तारण करते समय न्यायालय को विवेक शक्ति प्राप्त है और मजिस्ट्रेट प्रत्येक प्रार्थना पत्र पर प्रथम सूचना रिपोर्ट दर्ज कराने के लिए बाध्य नहीं ही है। "

10. The Learned Magistrate has relied upon the decisions of a Division Bench of this Court in the case of **Sukhwasi (Supra)**. The judgement of **Sukhwasi (Supra)** was on a reference made to the larger Bench of this Court for deciding the following question:-

"Whether the Magistrate is bound to pass an order on each and every application under Section 156 (3) Cr.P.C. containing allegations of commission of a cognizable offence for registration of the F.I.R. and its investigation by the police even if those allegations, prima-facie, do not appear to be genuine and do not appeal to reason, or he can exercise judicial discretion in the matter and can pass order for treating it as 'complaint' or to reject it in suitable cases"?

11. This Court in the case of **Sukhwasi (Supra)** taking into account the various decisions of the Supreme Court and also an earlier Full Bench of

this Court in the case of **Ram Babu Gupta Vs. State of U.P.** reported in **(2001) ACC 201** held as under:-

"20. The Full bench decision of Ram Babu Gupta's case ' Supra' also lays down that the Magistrate can treat an application under Section 156 (3) Cr.P.C. as a complaint.

This will appear from the following observations :-

" Coming to the second question noted above, it is to be at once stated that a provision empowering a Court to Act in a particular manner and a provision creating a right for an aggrieved person to approach a Court or authority, must be understood distinctively and should not be mixed up. While sections 154, 155 sub-section (1) and (2) of 156, Cr.P.C. confer right on an aggrieved person to reach the police, 156 (3) empowers a Magistrate to act in a particular manner in a given situation. Therefore, it is not possible to hold that where a bare application is moved before Court only praying for exercise of powers under Section 156 (3) Cr.P.C., it will remain an application only and would not be in the nature of a complaint. It has been noted above that the Magistrate has to always apply his mind on the allegations in the complaint where he may use his powers under Section 156 (3) Cr.P.C. In this connection, it may be immediately added that where in an application, a complainant states facts which constitute cognizable offence but makes a defective prayer, such an application will not cease to be a complaint nor can the Magistrate refuse to treat it as a complaint even though there be no prayer seeking trial of the known or unknown accused. The Magistrate has to deal with such facts as constitute cognizable offence and for all practical purposes even such an application would be a complaint. This court can do no better than refer to the following observations in Suresh Chand Jain (Supra):-

" The position is thus clear. Any judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Codecould take

further steps contemplated in Chapter XII of the Code only thereafter.

21. Hon'ble Mr. Justice Amar Saran in Criminal Misc Application No. 7484 of 2004 Mohan Shukla and others Vs. State of U.P., Hon'ble Mr. Justice Alok Singh in Criminal Misc Application No. 671 of 2007 Ram Sabad Vs. Sessions Judge, Bahraich and others have also held that the Magistrate is empowered under Section 156(3) Cr.P.C. to treat an application as a 'Complaint'.

22. Applications under Section 156(3) Cr. P.C. are now coming in torrents. Provisions under Section 156(3) Cr.P.C. should be used sparingly. They should not be used unless there is something unusual and extra ordinary like miscarriage of justice , which warrants a direction to the Police to register a case. Such applications should not be allowed because the law provides them with an alternative remedy of filing a complaint, therefore, recourse should not normally be permitted for availing the provisions of Section 156(3) Cr.P.C.

23. The reference is, therefore, answered in the manner that it is not incumbent upon a Magistrate to allow an application under Section 156(3) Cr.P.C. and there is no such legal mandate. He may or may not allow the application in his discretion. The second leg of the reference is also answered in the manner that the Magistrate has a discretion to treat an application under Section 156 (3) Cr.P.C. as a complaint."

12. It is to be taken note of that provisions of Section 175(3) & 175(4) B.N.S.S. are not exactly the same as those under Section 156(3) Cr.P.C. For the sake of convenience, the provisions of Section 175(3) & 175(4) B.N.S.S. and 156(3) Cr.P.C. are being reproduced hereinbelow:-

"Section 175(3) of Bharatiya Nagarik Suraksha Sanhita, 2023

(3)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.

Section 175(4) of Bharatiya Nagarik Suraksha Sanhita, 2023

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 so alleged

Section 156 (3) of The Code of Criminal Procedure, 1973

156. Police officer's power to investigate cognizable case.

(1)...

(2)...

(3) Any Magistrate empowered under section 190 may order such an investigation as above mentioned."

13. A comparison of both the provisions referred to above, would indicate that provisions of Section 175(3) B.N.S.S. have expanded the scope of the exercise of powers by the Learned Magistrate and has given the Learned Magistrate the discretion of making such inquiry as he thinks necessary and also take into account the submissions made by the police officer, order for such an investigation. Section 175(4) of the B.N.S.S. introduces a new provision that did not exist under the Cr.P.C. It mandates that, where a complaint is made against a public servant in respect of acts purportedly arising out of or in the course of the discharge of official

duties, the Learned Magistrate may order a police investigation only after obtaining a report from the superior authority of the public servant detailing the relevant facts and circumstances, and after affording the public servant an opportunity to present his assertions explaining the circumstances that led to the alleged incident. These changes that have been brought forth in the B.N.S.S. are, in the opinion of the Court, to provide the Learned Magistrates with a more robust mechanism in dealing with applications moved by people complaining apathy by the police in lodging First Information Report, but at the same time, giving ample discretion to the Magistrate to make such inquiry as they may deem fit while also giving an opportunity to the police to represent before the Learned Magistrate. Such power being granted by the statute is intended to curb false and frivolous applications, which may be made to harass an individual, especially a public servant, who is acting in discharge of his official duties. The statutory mandate of filing an affidavit in support of an application under section 175(3) B.N.S.S. also indicates the intent of the Legislature in providing the Learned Magistrate with the tools to punish a person making a false or frivolous claim before the Learned Magistrate.

14. The Supreme Court in the case of **Priyanka Srivastava and Ors. Vs. State of U.P. and Ors.** reported in **2015 (6) SCC 287**, made it mandatory for all applications under section 156(3) Cr.P.C. to be supported by an affidavit sworn by the applicant, who sought the invocation of the jurisdiction of the Learned Magistrate. The Supreme Court while taking into account the misuse of the provision under section 156(3) Cr.P.C., observed that applications were being filed in a routine manner without taking any responsibility whatsoever, only to harass certain persons. The

Supreme Court in Paragraph Nos.26 and 27 of the above-mentioned judgement has observed as under:-

"26. 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 fellows citizens, efforts are to be made to scuttle and curb the same.

27. 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 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. We have already indicated that there has to be prior applications under Section 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 the application under Section 156(3) be supported by an affidavit 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 are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR."

15. The requirement of filing an affidavit in support of an application under Section 175(3) B.N.S.S., which has now been mandated by the statute, appears to be in consonance with the observations of the Supreme Court regarding misuse of the provisions under section 156(3) Cr.P.C. by unscrupulous litigants. These changes, however, have been incorporated in the B.N.S.S. only to regulate the procedure in applications, where an aggrieved person approaches a Magistrate seeking a direction for investigation or registration of a case. The principles, however, governing the exercise of powers by a Magistrate when it comes to deciding whether to order for an investigation or treating that application as a complaint, are still the same as those under Section 156(3) Cr.P.C. This Court as well as the Supreme Court have in various decisions guided the Learned Magistrates in exercising judicial discretion in such matters and have made all attempts to prevent arbitrary exercise of powers by the Magistrates.

16. Quite recently this Court in **Lala Ram (Supra)** framed four questions,

the first three going directly to the heart of the Magistrate's exercise of jurisdiction under Section 156(3) Cr.P.C. The questions framed by this Court are being reproduced hereinunder:-

- "i) Whether in each and every case, where an application under Section 156(3) Cr.P.C. is made to the Magistrate disclosing commission of a cognizable offence, the Magistrate is legally bound to direct registration of the FIR and investigation by police or the Magistrate has also the power and jurisdiction to pass order for registration of the application as a complaint case.?*
- ii) On what considerations the Magistrate should take decision for investigation by police or to proceed with as a complaint case?*
- iii) What is the nature of an investigation by the police in pursuance of the direction of the Magistrate issued under Section 156(3) Cr.P.C. and the investigation by the police in pursuance of the direction of the Magistrate issued under Section 202(1) Cr.P.C. ?*
- iv) Whether the order passed by the Magistrate in the present case deserves to be maintained or not?"*

17. After considering the entire gamut of the law laid down in various decisions of the Supreme Court and this Court, this Court in **Lala Ram (Supra)** summarized the propositions of law, as follows:-

"(40.06). In either case, i.e. issuing direction for investigation by the police officer under Section 156(3) Cr.P.C. or taking cognizance and registering it as a complaint case, the Magistrate has to apply judicial mind. There cannot be mechanical exercise of jurisdiction or exercise in a routine manner. Mere statement in the order that he has gone through the complaint, documents and heard the complainant will not be sufficient. What weighed with the Magistrate to order investigation or to take

cognizance should be reflected in the order, although a detailed expression of his view is neither required nor warranted.

(40.07). The exercise of discretion by the Magistrate is basically guided by interest of justice, from case to case.

(40.08). However, where some investigation is required which is of a nature that is not possible for the private complainant and which can only be done by the police officer upon whom statute has conferred the powers essential for investigation, the option to direct the registration of the FIR and its investigation by the police officer should be exercised, for example:-

(i) where the full details of the accused are not known to the complainant and the same can be determined only as a result of investigation, or

(ii) where recovery of abducted person or stolen property is required to be made by conducting raids or searches of suspected places or persons, or

(iii) where for the purpose of launching a successful prosecution of the accused evidence is required to be collected and preserved, and to illustrate this, by few example cases may be visualised where for production before Court at the trial

(a) sample of blood soaked soil is to be taken and kept sealed for fixing the place of incident; or

(b) recovery of case property is to be made and kept sealed; or

(c) recovery under Section 27 of the Evidence Act; or

(d) preparation of inquest report; or

(e) witnesses are not known and have to be found out or discovered through the

process of investigation.

(40.09). Where the complainant is in possession of the complete details of all the accused and the witnesses who have to be examined and neither recovery is needed nor any such material evidence is required to be collected which can be done only by the police, no "investigation" would normally be required and the procedure of complaint case should be adopted.

(40.10). Category of cases falling under para 120.6 in Lalita Kumari (Supra) i.e.

(a) Matrimonial disputes/family disputes

(b) Commercial offences

(c) Medical negligence cases,

(d) Corruption cases

(e) Cases where there is abnormal delay in filling criminal complaint etc. may fall under Section 202 Cr.P.C .

(40.11). The Magistrate should also keep in view that primarily, it is the duty of the State/police to investigate the cases involving cognizable offence. Generally, the burden of proof to bring the guilt of the accused is on the State and this burden is a heavy burden to prove the guilt beyond all reasonable doubts. This burden should not unreasonably be shifted on an individual/complainant from the State by treating the application under Section 156(3) Cr.P.C. as a complaint case.

(40.12). The investigation which the police officer or such other person makes in pursuance of the direction of the Magistrate under Section 202(1) Cr.P.C. is the same kind of investigation as is required to be conducted by police officer, under Chapter

XII Cr.P.C. which ends with submission of the report as per Section 173(2) Cr.P.C.

(40.13). The distinction between the investigation by the police officer under Section 156(3) and under Section 202(1) Cr.P.C. is that the former is at the pre-cognizance stage and the latter is at post cognizance stage, when the Magistrate is seisin of the case. The investigation under Section 202(1) Cr.P.C. is for the purpose of ascertaining the truth or false hood of the complaint for helping the Magistrate to decide, whether or not there is sufficient ground, for him to proceed further against the accused by issuing process, whereas, the inquiry report under Section 173(2) Cr.P.C. of the investigation made by the police of its own or under the directions of the Magistrate under Section 156(3) Cr.P.C. is for the purpose of enabling the Magistrate to take cognizance of an offence under Section 190(1)(a) Cr.P.C.

(40.14). Once cognizance is taken on the application under Section 156(3) Cr.P.C. by the Magistrate and he embarks upon the procedure embodied in Chapter XV, he would not be competent to revert to the pre-cognizance stage under Section 156(3) Cr.P.C.

(40.15). If the Magistrate did not order for police investigation under Section 156(3) Cr.P.C. and took cognizance of the case, that would not be bar to the exercise of the power of the Magistrate for directing the police investigation under Section 202(1) Cr.P.C.

41. Point nos. 1, 2 and 3 as framed in para 12 of this judgment stands answered as per para no.40 above."

18. In the opinion of this Court, the consideration by the Learned Magistrate of factors weighing upon his decision to either treat the application moved before him seeking registration of a case and an

investigation to be treated as a complaint or to direct registration of a First Information Report, are still the same when it comes to exercise of powers under Section 175(3) B.N.S.S. Thus, the propositions of law summarized in the case of **Lala Ram (Supra)**, as quoted above, still apply to proceedings under Section 175(3) B.N.S.S. The considerations of the Learned Magistrate extracted above on the facts and circumstances of the case, in the opinion of this Court, are in consonance with Paragraph Nos.40.06 and 40.07 of the case of **Lala Ram (Supra)** extracted above. The Learned Magistrate has given his reasons why a police investigation is not required. He has recorded his satisfaction that nothing has been mentioned in the application, which would require the collection of such evidence which can only be done by a police investigation. One more factor that weighs with this Court while considering the impugned order passed by the Chief Judicial Magistrate, District Kanpur Dehat, is that the alleged attack on the brother of the applicant is stated to have occurred on 19.07.2024. After the lapse of more than one and a half years from the date of the incident, no physical evidence would reasonably remain at an open place, and therefore, recovery of blood-stained soil at this stage would not be possible.

19. These considerations are without prejudice to the claims of the applicant in the application under Section 175(3) B.N.S.S. The Learned Magistrate has rightly treated the application under Section 175(3) B.N.S.S, as a complaint by applying the same principles, as were applicable to the exercise of powers under section 156(3) Cr.P.C.

20. As a result of the discussions made above, I find no legal or factual infirmity or jurisdictional error or any perversity in the order passed by

the Learned Magistrate and as a result of the same, this application fails and is **dismissed**.

21. There shall be no order as to costs.

(Rajiv Lochan Shukla,J.)

February 12, 2026
Sachin