

APHC010443902025



IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

[3396]

FRIDAY, THE TWENTY SECOND DAY OF AUGUST
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE DR. JUSTICE VENKATA JYOTHIRMAI PRATAPA

WRIT PETITION NO: 22577/2025

Between:

V D MOORTHY, S/O. N. VISHWANATHAN AGED ABOUT 65 YEARS,
R/O. F-2202, SUNSHINE HELIOS, SECTOR-78, NOIDA-201301 (U.P.)

...PETITIONER

AND

1. THE STATE OF AP, REP. BY ITS PRINCIPAL SECRETARY, HOME DEPARTMENT, A.P. SECRETARIAT, VELAGAPUDI, GUNTUR DISTRICT, ANDHRA PRADESH
2. THE INVESTIGATING OFFICER CUM ADDITIONAL SUPERINTENDENT OF POLICE, , SPECIAL INVESTIGATION TEAM, OFFICE OF COMMISSIONER OF POLICE, VIJAYAWADA, STATE OF ANDHRA PRADESH, EMAIL I.D. SIT-LIAUOR-AP@APPOLICE.GOV.IN
3. THE SPECIAL INVESTIGATION TEAM, REP. BY COMMISSIONER OF POLICE, VIJAYAWADA, VIJAYAWADA, STATE OF ANDHRA PRADESH.
4. THE STATION HOUSE OFFICER, C.I.D POLICE STATION, MANGALAGIRI, GUNTUR DISTRICT, STATE OF ANDHRA PRADESH.

...RESPONDENT(S):

Counsel for the Petitioner:

1. T NAGARJUNA REDDY

Counsel for the Respondent(S):

1. GP FOR HOME

The Court made the following:

ORDER:

This Writ Petition is filed under Article 226 of Constitution of India with the following prayer for:

“.... a Writ of Mandamus declaring the action of the respondents in abusing the provisions of BNSS and calling the petitioner to appear before the 2nd respondent office instead of examine the petitioner at

his residence address given in the cause title or in any neutral place at Noida (UP) in the presence of his Advocates of his choice, under video and audio coverage in connection with Crime No.21/2024 of CID Police Station, Mangalagiri, Guntur District as violative of Articles 14, 19 and 21 of the Constitution of the India and contrary to the provisions of BNSS, 2023 and consequently direct the respondent to examine the petitioner at his residence given in the cause title or in any neutral place at Noida(UP) in the presence of his Advocates of his choice, under video and audio coverage in connection with Crime No.21/2024 of CID Police Station, Mangalagiri, Guntur District.”

Factual matrix of the case:

2. The C.I.D Police Station, Mangalagiri has registered Crime No.21 of 2024 dated 23.09.2024 for the offences punishable under Sections 420, 409 read with 120-B of the Indian Penal Code (for short, 'IPC') corresponding to Sections 318, 316(5) read with Section 61(2) of the Bharatiya Nyaya Sanhita, 2023 (for short 'BNS'). Petitioner herein is not an Accused in the said crime. The Petitioner is the Director of Sigma Supply Chain Solutions Private Limited, residing in Noida, Uttar Pradesh. In connection with the said crime, the Investigating Officer issued notice dated 15.08.2025 to the Petitioner under Section 179 of the Bharatiya Nagarik Suraksha Sanhita (for short 'BNSS') with a request to appear before him on 18.08.2025 for the purpose of investigation and also to produce some relevant documents. Thereafter, the Petitioner has received another notice dated 19.08.2025 with a request to attend before the S.I.T office at Vijayawada on 21.08.2025.

Arguments advanced at the Bar:

3. Heard Sri T.Nagarjuna Reddy, learned counsel for the Petitioner and Sri Posani Venkateswarlu, learned Senior Counsel assisted by Sri Sai Rohit, learned Assistant Public Prosecutor for CID.

4. Learned counsel for the Petitioner would submit that the Petitioner has attended before the Investigating Officer at Mangalagiri twice in obedience to the notice served on him. Learned counsel would further submit that Petitioner is residing in Noida, which is outside the jurisdiction of Respondent No.2. It is further submitted that Petitioner is aged above 65 years. Hence, Respondent No.2 has no authority to secure the presence of the Petitioner at Vijayawada by making a request in writing under Section 179 of BNSS. Learned counsel would further submit that Petitioner is suffering from severe health issues. He has been undergoing treatment for Cervical Radiculopathy and is advised not to travel and not to sit for a long time. Learned counsel would submit that, the Investigating Officer may examine the Petitioner at his residence by giving advance intimation to know his availability or at any other neutral place at Noida, in the presence of his Advocate. Learned counsel finally submits that the statement of the Petitioner may also be recorded by audio-video electronic means as per Section 180 of BNSS.

5. Learned Senior Counsel assisted by the learned Assistant Public Prosecutor for C.I.D, would submit that, the age of the Petitioner is 65 years, is factually incorrect in the light of the medical record, which shows that he is 64 years old. Learned Senior Counsel would further submit that, the *provisos*

appended to Section 179(1) of BNSS enable the Police Officer making an investigation to issue an order in writing to secure the presence of any person beyond his jurisdiction. However, such person, who is ordered to appear before the Police Officer can express his unwillingness to attend. Learned Senior Counsel further emphasizes that, in such circumstances, the Police Officer can take further course of action to record the statement of such witness.

6. Having heard the submissions made, the point that would emerge for determination is:

“Whether the Police Officer, making an investigation under Chapter XIII of BNSS, can issue an order in writing under Section 179(1) of BNSS to secure the attendance of any person before him / her, acquainted with the facts of the case, who is not residing within the limits of his Police Station or any adjoining station?”

Determination by the Court:

7. Before delving into the point framed *supra*, it is apt to mention that the Petitioner twice attended before the Investigating Officer honouring his order in writing under Section 179 of BNSS, and the said fact is not controverted by the Investigating Agency. It is also not in dispute that the Petitioner is the resident of Noida, which is in the state of Uttar Pradesh. The grievance of the Petitioner appears to be, despite his visit to the office of the S.I.T., twice, he is again called by issuing the notice under Section 179 of BNSS, which is an abuse of process of law. His further grievance is that, he is aged above 65 years and suffering from ill-health and as such, he cannot be compelled to

come to Vijayawada to attend before the Investigating Officer against the medical advice.

8. Be that as it may, in the light of the arguments advanced, this Court would like to examine the power of the Police Officer making an investigation for issuance of the notice under Section 179(1) of BNSS beyond his jurisdiction.

Legal Analysis:

9. It is beneficial to extract Section 179 of BNSS and the corresponding Section 160 of Code of Criminal Procedure (for short 'Cr.P.C').

“Section 179 of BNSS:

179. (1) *Any police officer making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the facts and circumstances of the case; and such person shall attend as so required:*

Provided that no male person under the age of fifteen years or above the age of sixty years or a woman or a mentally or physically disabled person or a person with acute illness shall be required to attend at any place other than the place in which such person resides:

Provided further that if such person is willing to attend the police station or at any other place within the limits of such police station, such person may be permitted so to do.

(2) *The State Government may, by rules made in this behalf, provide for the payment by the police officer of the reasonable expenses of every person, attending under sub-section (1) at any place other than his residence.*

Section 160 Cr.P.C:

160. Police officer's power to require attendance of witnesses.—

(1) *Any police officer making an investigation under this Chapter may, by order in writing, require the attendance before himself of any*

person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the facts and circumstances of the case; and such person shall attend as so required:

Provided that no male person 2[under the age of fifteen years or above the age of sixty-five years or a woman or a mentally or physically disabled person] shall be required to attend at any place other than the place in which such male person or woman resides.

(2) The State Government may, by rules made in this behalf, provide for the payment by the police officer of the reasonable expenses of every person, attending under sub-section (1) at any place other than his residence.”

For better understanding, it is necessary to extract Section 180 of BNSS which is *pari materia* to Section 161 Cr.P.C

“Section 180 of BNSS:

180. *(1) Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.*

(2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(3) The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records:

Provided that statement made under this sub-section may also be recorded by audio-video electronic means:

Provided further that the statement of a woman against whom an offence under section 64, section 66, section 67, section 68, section 70, section 71, section 73, section 74, section 75, section 76, section 77 or section 78 of the Bharatiya Nyaya Sanhita, 2023 is alleged to have been committed or attempted, shall be recorded, by a woman police officer or any woman officer.”

10. The word 'any person' used in Section 179(1) of BNSS denotes that the said person may be an informant, complainant, victim, witness or accused. The difference between Section 160 Cr.P.C and Section 179 BNSS would be on couple of points.

Firstly, under the first *proviso* to Section 160(1) Cr.P.C, a male person, who is aged above 65 years, does not require to attend before the Investigating Agency, which is situated other than the place in which such person resides, and the same is reduced under the first *proviso* to Section 179(1) to above 60 years.

Secondly, the second *proviso* is introduced in Section 179(1) of BNSS, which was not there in Section 160(1) Cr.P.C.

11. Section 179 (1) of BNSS would authorize the Police Officer to secure the presence of any person subject to two conditions i.e.,

(1) if such person appears to be acquainted with the facts and circumstances of the case, and

(2) such person should reside within the limits of his own Police Station or any adjoining station.

12. By virtue of the governing clause under Section 179(1) of BNSS, the Investigating Officer is authorized to secure the presence of the person referred to above before him. It is also vivid that, he can issue such notice to such person in writing under Section 179(1) of BNSS. The governing clause further would say that, such person **shall** attend as required by the Investigating Officer. Meaning thereby, such person has legal obligation to

attend in obedience to the notice issued in writing under Section 179(1) of BNSS and the failure may lead to legal action.

13. Coming to the first *proviso*, which is a qualifying clause, would explain that there are some exceptions to the power of the Police Officer, which is described under Section 179(1) of BNSS. The exceptions are:-

- (1) *a male person under the age of 15 years or above the age of 60 years.*
- (2) *a woman irrespective of the age.*
- (3) *a mentally or physically disabled person irrespective of the age.*
- (4) *a person with acute illness irrespective of the age.*

The *proviso*, referred to *supra*, makes it clear that the Police Officer can issue an order in writing to them by virtue of the power under Section 179(1) of BNSS, but he cannot secure their presence before him as a matter of right. Meaning thereby, the said persons have no legal obligation to appear before him in obedience to the notice under Section 179(1) of BNSS, in the light of the exceptions. Such being the case, the Police Officer can examine such person at his residence. If any person receiving notice falls into one of the categories mentioned above, he is not bound to attend before the Police Officer. His failure to attend would not lead to any legal action. The object of this *proviso* appears to be, such persons, being vulnerable, cannot be troubled by the Police Officer in the name of investigation.

14. The second *proviso* further explains that, if such person is willing to attend the Police Station, the Police Officer may honour their request to do so.

The object of introducing the second *proviso* appears to be for couple of reasons.

(1) Every individual has a fundamental right to live with dignity which is guaranteed under Article 21 of the Constitution of India.

(2) If any Police Officer visiting the residence of any person, it attracts the attention of the persons in the vicinity and sometimes it may lead to social stigma to the family and gossips.

As discussed *supra*, the said person may be informant, victim, complainant, witness or accused. So, liberty is given to such persons to make a request to express their willingness to examine them at the Police Station. It is not uncommon to see that, in some cases, the informant or the complainant may turn to be an Accused during the course of investigation.

15. The first qualifying *proviso* though is giving exception to some individuals, it does not take away the power of the Police Officer for issuing the notice under Section 179(1) of BNSS. The said persons are at liberty to express their view either to attend the Police Station or giving their statement at their residence. Doubtless to say that, the language employed under Section 179(1) of BNSS regarding “***within the limit of his own Police Station or any adjoining station***” restricts the power of the Police Officer to issue such notice under Section 179(1) of BNSS to the person who is not residing within the limits of his own Police Station or any adjoining station. Section 179(1) of BNSS is not empowering the Police Officer with unlimited jurisdiction to issue such notice to any person, who is residing far away.

16. The argument that the age of the Petitioner is 64 years as per the medical record, has no merit in the light of the copy of the Aadhar card of the Petitioner, which shows the date of birth of the individual as 09.05.1960, and hence, he is aged above 65 years.

Conclusion:

17. In the present set of facts, irrespective of the age, gender, acute ill-health of the Petitioner, the fact remains that, the Police Officer making an investigation cannot issue such notice under Section 179(1) of BNSS to the Petitioner, who is residing at Noida in the State of Uttar Pradesh. However, it does not preclude the Police Officer making an investigation to examine such person by approaching him. In that view, the argument of the learned Senior Counsel that issuance of notice under Section 179(1) of BNSS to the Petitioner, is subject to the willingness of the Petitioner by the aid of second *proviso*, holds no water, as the question of willingness does not arise due to lack of power on the Police Officer making investigation to issue notice to such person, who is not residing within the limits of his Police Station or adjoining station.

18. In the present case, the notice issued under Section 179 of BNSS is without jurisdiction. The reason being, the governing provision i.e., Section 179(1) of BNSS itself in categorical terms excludes the jurisdiction of the Police Officer to issue such an order in writing. Then, the application of qualifying *provisos* to the circumstances which are specifically excluded in the governing clause, does not arise. The qualifying *provisos* emphasize the

procedure need to be followed for the persons falling under the scope of Section 179(1) of BNSS. That being the case, the qualifying *proviso* Nos.1 and 2 do not come to the rescue of the Police Officer to sustain such notice.

19. The *proviso* to Section 180(3) of BNSS would speak about the recording of such statement may also be done by audio-video electronic means. This Court is of the considered view that, the Police Officer, on his own or on the request of such person, whose statement he intends to record, may also record such statement in electronic means.

20. To sum up:

(1) Power of the Police Officer making an investigation to have the presence of “any person” before him by issuing a notice under Section 179 of BNSS is not untrammelled.

(2) The said power is restricted to “any person” residing in the limits of his own Police Station or adjoining station.

(3) Despite the said person residing in the limits of his Police Station or any other adjoining station, in case of male below 15 and above 60 years, or woman, mentally or physically disabled or a person with acute illness irrespective of their age, shall be examined at the place of their residence under the first *proviso* to Section 179(1) of BNSS. But the Police Officer can issue notice to such person under Section 179(1) of BNSS.

(4) The above persons may be permitted to be examined at the Police Station subject to their willingness, by the aid of second *proviso* to Section 179(1) of BNSS.

(5) Police Officer making an investigation has no power to issue notice under Section 179(1) of BNSS to any person who is not residing within the limits of his own station or any adjoining station.

(6) It does not preclude the Police Officer making an investigation to examine such person by approaching him at his place.

21. In the result, the Writ Petition is disposed of. However, the Police Officer making investigation relating to Crime No.21 of 2024 on the file of CID Police Station, Mangalagiri, Guntur District, is at liberty to take necessary steps to examine the Petitioner at his place and collect relevant documents, in the presence of his Advocate, who can sit 10 to 15 feet away from the Petitioner and to record such statement also by electronic means by giving prior information to the Petitioner according to governing rules and law. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

Dr.JUSTICE VENKATA JYOTHIRMAI PRATAPA

Date:22.08.2025
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Note: Issue C.C today
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HON'BLE DR. JUSTICE VENKATA JYOTHIRMAI PRATAPA

W.P.No.22577 of 2025

Dt.22.08.2025

Dinesh

IN THE HIGH COURT OF ANDHRA PRADESH, AMARAVATI

WRIT PETITION No. 22577/2025

Between:

V D MOORTHY, S/O. N. VISHWANATHAN AGED ABOUT 65 YEARS,
R/O. F-2202, SUNSHINE HELIOS, SECTOR-78, NOIDA-201301 (U.P.)

...PETITIONER

AND

1. THE STATE OF AP, REP. BY ITS PRINCIPAL SECRETARY, HOME DEPARTMENT, A.P. SECRETARIAT, VELAGAPUDI, GUNTUR DISTRICT, ANDHRA PRADESH
2. THE INVESTIGATING OFFICER CUM ADDITIONAL SUPERINTENDENT OF POLICE, , SPECIAL INVESTIGATION TEAM, OFFICE OF COMMISSIONER OF POLICE, VIJAYAWADA, STATE OF ANDHRA PRADESH, EMAIL I.D. SIT-LIAUOR-AP@APPOLICE.GOV.IN
3. THE SPECIAL INVESTIGATION TEAM, REP. BY COMMISSIONER OF POLICE, VIJAYAWADA, VIJAYAWADA, STATE OF ANDHRA PRADESH.
4. THE STATION HOUSE OFFICER, C.I.D POLICE STATION, MANGALAGIRI, GUNTUR DISTRICT, STATE OF ANDHRA PRADESH.

...RESPONDENT(S):

DATE OF ORDER PRONOUNCED: **22.08.2025**

SUBMITTED FOR APPROVAL:

THE HON'BLE Dr. JUSTICE VENKATA JYOTHIRMAI PRATAPA

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| 1. | Whether Reporters of Local Newspapers may be allowed to see the judgment? | Yes/No |
| 2. | Whether the copies of judgment may be marked to Law Reporters / Journals? | Yes/No |
| 3. | Whether Her Lordship wish to see the fair copy of the Judgment? | Yes/No |

Dr.JUSTICE VENKATA JYOTHIRMAI PRATAPA

*** THE HON'BLE Dr.JUSTICE VENKATA JYOTHIRMAI PRATAPA**

+ WRIT PETITION No. 22577/2025

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...RESPONDENT(S):

! Counsel for Appellant : Sri T.Nagarjua Reddy

^ Counsel for Respondents : Sri Posani Venkateswrlu, Senior
Counsel assisted by Sri Sai Rohit,
Assistant Public Prosecutor for C.I.D

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> Head Note:

? Cases referred: ---

This Court made the following: