



CNR: KAHC010567582026

NC: 2026:KHC:44377
CRL.P No. 12406 of 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 12406 OF 2026

R

BETWEEN:

SRI VIJAYARAGHAVA MARATHE
S/O LATE SHRI M MAHADEV MARATHE
AGED ABOUT 62 YEARS
STATE PRESIDENT OF LANCHAMUKTHA
KARNATAKA VEDIKE (REGD)
R/AT NO.25, "SANGVI", 2ND CROSS,
ASHRAMA ROAD, YELACHANAHALLI
K.S. LAYOUT POST,
BENGALURU - 560 111.

...PETITIONER

(BY SMT.LAKSHMY IYENGAR, SR.ADVOCATE FOR
SRI NAGESH VINAY S.,ADVOCATE)



AND:

1. THE STATE OF KARNATAKA
BY KARNATAKA LOKAYUKTHA,
BENGALURU
REPRESENTED BY
THE SPP OFFICE
HIGH COURT OF KARNATAKA
BENGALURU - 560 001.



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2. SHRI MALLIKARJUN KHARGE
AGED ABOUT MAJOR
R/AT NO.289, 17TH CROSS,
SADASHIVANAGARA,
BENGALURU - 560 080.
3. SRI. RADHAKRISHNA
AGED ABOUT MAJOR
R/AT NO.5/98, MAIN ROAD,
GUNDAGURTHI VILLAGE,
CHITTAPUR TALUK,
GULBARGA - 585 317.
4. SMT. RADHABAI M KHARGE
AGED ABOUT MAJOR
R/AT NO.289, 17TH CROSS,
SADASHIVANAGARA,
BENGALURU - 560 080.
5. SHRI RAHUL M. KHARGE
AGED ABOUT MAJOR
R/AT NO.289, 17TH CROSS,
SADASHIVANAGARA,
BENGALURU - 560 080.
6. SHRI PRIYANK M. KHARGE
AGED ABOUT MAJOR
R/AT NO.289, 17TH CROSS,
SADASHIVANAGARA,
BENGALURU - 560 080.

...RESPONDENTS

(BY SRI VENKATESH S.ARBATTI, ADVOCATE FOR R-1)



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THIS CRL.P FILED U/S.528 OF BNSS PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 11.08.2026 PASSED BY THE HON'BLE LXXXI ADDL. CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH-82), IN PCR NO.28/2025, PRODUCED HEREWITH AS ANNEXURE A, FOR THE OFFENCES P/U/S 314, 316, 336 AND 61 OF BNS 2023 R/W SEC.13(1)(a) AND 13(1)(b) OF PC ACT 1988.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: **HON'BLE MR. JUSTICE M.NAGAPRASANNA**

ORAL ORDER

The petitioner/complainant is before this Court calling in question an order dated 11-08-2026 in P.C.R.No.28 of 2025 passed by the LXXXI Additional City Civil and Sessions Judge, Bengaluru, insofar as it does not direct taking the route of Section 175 of the BNSS but, chooses the route of conducting an enquiry under Section 223 of the BNSS.

2. Heard Smt. Lakshmy Iyengar, learned senior counsel appearing for the petitioner and Sri Venkatesh S. Arbatti, learned counsel representing respondent No.1. Though other



accused 1 to 5 are arraigned as respondent Nos.2 to 6, they being formal parties, have no right of hearing at this stage of the proceedings. Therefore, no notice is issued to respondent Nos.2 to 6, who are pro-forma respondents.

3. Facts, in brief, germane are as follows:

3.1. The petitioner claims to be the President of *Lanchamukta Karnataka Vedike*, a registered organisation professedly engaged in espousing causes concerning probity in public administration. The genesis of the *lis* lies in a complaint submitted by the petitioner before the jurisdictional Police—High Grounds Police Station on 21-01-2025. The gravamen of the complaint is that, one *Siddharatha Vihar Trust* (hereinafter referred to as 'the Trust' for short), though constituted as a public charitable trust for the benefit of all communities, irrespective of caste, creed or religion, had allegedly projected itself to be an institution exclusively established for the benefit of the Scheduled Castes and Scheduled Tribes, with the object of securing concessions and benefits earmarked exclusively for such institutions.



3.2. The allegation proceeds that, on the strength of the aforesaid representation, the Trust approached the Bangalore Development Authority seeking allotment of a civic amenity site in Banashankari 6th Stage under the quota reserved for the Scheduled Castes and secured a concession of 50% in the lease amount—a concession which, according to the petitioner, was intended only for trusts established exclusively for the welfare of the Scheduled Castes and Scheduled Tribes. The complaint further alleges that the allotment did not come about in the ordinary course, but was facilitated by the influence wielded by certain trustees, acting in concert with public servants, thereby giving a complete go-by to the rules and procedure governing such allotments.

3.3. The complaint so presented did not fructify into registration of a crime at the hands of the jurisdictional Police. The petitioner, therefore, carried the grievance to the Superintendent of Police, Karnataka Lokayukta, by submitting yet another complaint on 30-01-2025. This too, according to the petitioner, met with no response. Since the allegations were directed, *inter alia*, against public servants and the



offences alleged had their contours under the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act' for short), the petitioner, proceeding further in the matter, submitted an application on 30-07-2025 before the Governor seeking approval under Section 17A of the Act.

3.4. Having thus knocked at every door which, according to him, the law required him to knock at, and finding none opening, the petitioner ultimately knocked at the doors of the Special Court by registering a private complaint in P.C.R.No.28 of 2025. The complaint alleged large-scale irregularities in the allotment of civic amenity sites and sought reference of the matter for investigation in exercise of power under Section 175(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS' for short).

3.5. The concerned Court, however, did not accede to the prayer for reference of the complaint for investigation under Section 175(3) of the BNSS. It chose a different path. The Court directed that it would itself proceed to conduct an enquiry under Section 223 of the BNSS. It is this course adopted by the concerned Court, and more particularly, the



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operative portion of the order declining to set the investigative machinery in motion, that has driven the petitioner to this Court in the subject petition.

SUBMISSIONS:

PETITIONER'S:

4.1. Smt. Lakshmy Iyengar, learned senior counsel appearing for the petitioner—complainant, would vehemently contend that the allegations in the complaint, by their very nature and sweep, cry out for investigation under Section 175(3) of the BNSS. Her submission is that, allegations of corruption, abuse of public office and conferment of benefits contrary to the governing norms cannot appropriately be unravelled by the Special Court embarking upon an enquiry by itself, particularly when the statute has put in place a specialised investigative agency equipped to probe allegations of corruption involving public servants.

4.2. The learned senior counsel would submit that what the complaint unveils is not a matter capable of being unearthed merely on the material presently at the command of the complainant. The allegations necessarily require collection



of official records, examination of the process culminating in allotment, identification of the role played by the public servants concerned and investigation into the circumstances under which a concession allegedly reserved for a particular class of institutions came to be extended to the Trust. These, according to the learned senior counsel, are matters quintessentially within the realm of investigation and not an enquiry that the complainant can be expected to establish unaided before the Special Court.

4.3. The learned senior counsel would further contend that the requirement concerning filing of an affidavit or compliance with other procedural safeguards would arise at the appropriate stage when the Court considers reference of the complaint for investigation and cannot furnish justification for altogether steering the complaint into an enquiry under Section 223 of the BNSS. The concerned Court, according to the learned senior counsel, has thus misdirected itself both on fact and in law by choosing to undertake an enquiry where the allegations themselves demand investigation by the specialised



agency. She would, therefore, seek interference at the hands of this Court and grant of the relief sought in the petition.

RESPONDENT No.1 - KARNATAKA LOKAYUKTA:

5. Sri Venkatesh S. Arbatti, learned counsel appearing for respondent No.1—Karnataka Lokayukta, would fairly submit that the allegations in the complaint do concern acts of corruption and the role attributed to public servants. He would submit that allegations of the kind projected in the complaint would appropriately require investigation. Beyond this submission, the learned counsel would not join issue with the petitioner and would leave the matter to the considered decision of this Court.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

CONSIDERATION:

7. In the light of the submissions and contra submissions, the issue lies in a narrow compass as to whether the concerned Court was right in ordering an enquiry by the Court itself under



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223 of the BNSS or had to follow the procedure under Section 175(3) of the BNSS. Therefore, it is necessary to notice the order of the Court dated 11-08-2026. It reads as follows:

"The complainant Sri.Vijayaraghava Marathe has filed the memorandum of complaint under Sec.175(3) r/w Sec.2(1)(h) of BNSS, seeking for direction to the Superintendent of Police, Lokayuktha, to register FIR against the accused persons for the offences punishable under Sec.314, 316, 336 and 61 of BNS 2023 r/w Sec.13(1)(a) and 13(1)(b) of the Prevention of Corruption Act, 1988, investigate and proceed against them.

2. In the said memorandum of complaint, the complainant alleged that Siddhartha Vihar Trust established with 5 members viz., Mallikarjun Kharge S/o Mapanna Kharge, Radhakrishna S/o Rajendrappa, Maruthi Rao, Shantappa S/o Kashiraya, Saibanna S/o Tippanna Sangan through the registered Trust Deed dated 01.07.1994 with specific objectives for the betterment of public in general. Further, a supplementary Trust Deed dated 27.05.2010 came to be incorporated adding Smt.Radhabai M Kharge, Rahul M Kharge and Priyank M Kharge as Trustees to the said Trust. The BDA vide notification dated 30.01.2009 invited applications for allotment for civic amenities sites in Banashankari 6th Stage, 5th Block, Bengaluru and Siddartha Vihar Trust applied for grant of a civic amenity site measuring 8125 Sq.Mtrs., under scheduled caste category through its application dated 27.02.2009 with initial deposit. He alleged that said Trust did not fulfill the requirements of Rule 3(2) of BDA (Allotment of Civic Amenity Sites) Rules, 1989 and further, in question No.9 of the application form, said Siddarth Vihar Trust claimed for Scheduled Caste, even though said Trust is not exclusively established for the benefit of scheduled caste and scheduled tribes. The accused No.1 was the Union Minister at the time of allotment of civic amenity site and he used his personal influence as a Union Minister to get a civic amenity site allotted without following the procedure laid down under the applicable rules. The allotment of site



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reserved for organizations that were working solely for the benefit of the scheduled caste, in favour of the Siddartha Vihar Trust shows that the said Trust through its members accused No.1 to 5 used their influence and connived with the officials of BDA. The allotment made in favour of the Siddartha Vihara Trust is illegal, without adhering the mandatory parameters laid down under the rules.

3. Further, it is alleged that the Trust requested BDA to give concession in the lease amount on the ground that the Trust is managed by scheduled caste management by the letter dated 08.06.2010 and such request was approved by granting 50% of concession to Siddartha Vihara Trust within a month which shows undue influence in the allotment of said site to the Trust and connivance of the officials of BDA.

4. Further it is alleged that Siddartha Vihar Trust requested the BDA by its letter dated 15.09.2010 for alternative site No.5 measuring 8002 Sq.mtrs., at BTM 4th Stage, Bengaluru and the committee by the meeting dated 25.09.2010 decided to allot said alternative site by the resolution No.337/2010 and it shows the said application was processed in a abnormal speed and decided within 10 days, canceling the allotment of site of Divya Foundation. Further it is alleged that the said gross irregularities committed to cause undue advantage to Siddartha Vihar Trust by undue influence and misuse of power by accused No.1 and 5. The market value of the alternative site is approximately Rs.130 Crores and the BDA allotted more valuable site to the Trust than the Trust eligible for the allotment. After the allotment of alternative site, a issue arose with regard to grant of 50% concession again and the Law Officer opined that Siddhartha Vihara Trust was not created only for the benefit of scheduled caste and said Trust is not eligible for the benefit of concession. Further Siddartha Vihar Trust and accused No.1 to 5 violated the Rule 10(7) of aforesaid rules and did not construct any building in



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spite of lapse of three years, which is accepted by the letter dated 30.03.2022. The Estate Officer also in his note dated 08.06.2022 noted that no building has been constructed over CA Site No.5. The officials of BDA knowing about the illegality failed to take any action in accordance with Rule 10(7) of aforesaid Rules and Siddartha Vihar Trust in collusion with officials of BDA illegally retained the land allotted to them. The accused No.1 to 5 used their personal influence to gain undue advantage by getting the site allotted under SC quota, thereafter obtained concession though not applicable to them and they were granted with alternative site and failed to utilize the land for the purpose for which said land leased out by the BDA. The accused No.1 to 5 committed criminal breach of trust in connivance with the officials of BDA; and illegally and unlawfully converted the property for their own personal use. Further, the accused No.1, 5 and 6 holding high posts, misused their offices to gain undue advantage to Siddartha Vihar Trust. Thus, complainant alleged the commission of alleged offences by the accused persons.

5. On careful perusal of the records placed, the complainant has presented the complaint along with his sworn affidavit narrating the alleged facts in detail. The complainant produced the documents in support of his contentions and upon perusal of the copies of Trust Deed and the supplementary Trust Deed, it appears that the accused No.1 to 5 are the Trustees of the Trust named Siddartha Vihar Trust and such Trust is a Charitable Trust, with specific objectives, for the benefit of all the persons irrespective of caste, creed, religion, sex or color and such Trust is a secular Trust.

6. Further, on perusal of the copy of application for allotment of CA Site dated 05.03.2009, it would indicate that Siddartha Vihar Trust applied for allotment of CA Site to start the educational institution. The copy of allotment letter dated 07.04.2010 would indicate that the BDA allotted the CA site No.3 measuring 8125 Sq.mtrs at



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Banashankari 6th Stage, 5th Block for establishment of educational institutions, subject to conditions. From the copy of letter dated 08.06.2010, it appears that the said Trust requested for concession in payment of lease amount as the said Trust is managed by the management of scheduled caste. The copy of 9 PCR No.28/2025 noting sheet of BDA produced would indicate that the Commissioner approved for payment of 50% of the lease amount. Further the record appears that, by the letter dated 15.09.2010, said Siddartha Vihar Trust requested for allotment of alternative site and the BDA by the order dated 25.09.2010 allotted the alternative site measuring 8002 Sq. mtrs at BTM 4th Stage, 2nd Block. The copy of letter dated 30.03.2022 of Siddartha Vihar Trust by its Secretary accused No.2 indicates that the said site is not utilized by the said Trust and weeds grown over the said allotted site.

7. The copy of unofficial note of BDA produced would indicate that, the Estate Officer gave the report that the building has not constructed in the said site. Further, it appears that one T.Chandrareddy and others filed the WP No.23199/2025 (LA-BDA) against the BDA, which had withdrawn by the petitioner therein. Further, it appears that a WP No.6370/2020 (LA-BDA) preferred and the preliminary notification and final notification quashed in so far as Sy.No.50/2, 50/1 and 51/5 of Devarachikkanahalli village.

8. It appears from the copy of Order dated 02.09.2022 passed in W.P.No.13011/2022 (LA-BDA) produced by the complainant appears that Siddartha Vihar Trust challenged the aforesaid quashing order and the Hon'ble High Court disposed of the said matter by granting liberty to said Trust for impleadment in pending W.A.No.252/2022 filed by BDA or recourse of appeal.

9. Ms.Lakshmi Iyengar, learned Senior Counsel appearing on behalf of learned counsel for complainant taking through the copy of application



for allotment of Civic Amenity Site by Siddartha Vihar Trust and the objectives of the Trust Deed contended that the said Trust applied for allotment of site under Scheduled Caste category, though the objectives of the Trust is not only for the members of the scheduled caste. She drawn the attention of the court to Column No.9 of the application and objectives of the Trust and submitted that said Trust fraudulently claimed for the CA Site. The Trustees of the said Trust misrepresented the BDA and in collusion with the officials of BDA, fraudulently got obtained the site and thereby, obtained wrongful gain. Further, taking through the copy of application for alternative site, she submitted that the Trust claimed the alternative site as the said Trust is a scheduled caste Trust, and further, the concession obtained by the said Trust on the ground that the management of the said Trust is a scheduled caste management. So, prima-facie the accused committed the alleged offences and therefore, the matter needs investigation. She further submitted that the complainant submitted the complaints before the Station House Officer at High Grounds Police Station on 21.01.2025 and before the Superintendent of Police, Karnataka Lokayuktha on 30.01.2025, narrating the incident and commission of offences in detail. Further, he also approached His Excellency Hon'ble Governor of Karnataka seeking for the sanction under Sec.17-A of Prevention of Corruption Act, since accused No.5 is the elected legislative member.

10. In the course of arguments, the learned Senior Counsel, has taken through the order passed by the Hon'ble High Court of Karnataka in **Crl.Petition No.11571/2025 c/w Crl.Misc.No.11573/2025 (Mahantesh Bilagi and another Vs. The State of Karnataka and others)** dated 02.12.2025 and submitted that the Hon'ble High Court of Karnataka took note of the procedure contemplated under Sec.17-A PC Act and Sec.175(4) of BNSS; and such procedure would come into play after the Lokayuktha Police submitted their report and thereafter, the Magistrate proceed with the



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case on examining the Report of the Police. Further, learned Senior Counsel taking through the decision reported in **2025 SCC Online SC 238 (Om Prakash Ambadkar Vs. The State of Maharashtra and others)** submitted that under Sec.175(3) of BNSS, the police officer must be heard before investigation in the matter. She has drawn the attention of the court to Para-29 to 31 of the said decision, which are extracted here below;

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



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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



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the refusal to register an FIR before issuing any directions under Sec.175(3).

11. Further, the Hon'ble Apex Court after considering the case of 'Priyanka Srivasthava Vs. State of U.P.' and 'Babu Venkatesh Vs. The State of Karnataka', explained the object to change brought under BNSS and at para-34 and 35, concluded that:

34. In light of the judicial interpretation and evolution of Sec.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.

12. Thus, before proceeding for direction under Sec.175(3) of BNSS, the court is required to consider the application made by the complainant under Sec.175(3) of BNSS with application made to the Superintendent of Police under Section 173(4) of BNSS, supported by an sworn affidavit, hold an inquiry and consider the submission of the Police officer as regards to the refusal to register the FIR.



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13. In the instant case, the accused no.1 and 5 are the elected representatives and Sec.175(4) of BNSS contemplates twin conditions for compliance, before ordering for investigation in the complaint against a public servant arising in course of the discharge of official duties. At this juncture, it is pertinent to mention that in the decision reported in 2026 SCC Online SC 114 (XXX Vs. State of Kerala), the Hon'ble Apex Court examined the relative scope of Sec.175(3) and 175(4) of BNSS elaborately in the light of 'Lalitha Kumari Vs. State of U.P.,' with regard to preliminary inquiry, legal position evolved in the case of 'Om Prakash Ambadkar' supra and safeguards profounded in the case of 'Priyanka Srivasthava Vs. State of U.P' and held that Sec.175(4) of BNSS provides additional protective layer in the cases of public servants and all the mandatory requirements under Sec.175(3) BNSS must be complied, before ordering for investigation; and Sec.175(3) and 175(4) BNSS are not isolated silos, but must read in harmony with Section 175(4) forming extension of Sec.175(3) of BNSS.

14. Further, in the the said decision, the Hon'ble Apex Court, clarified the requirements of valid affidavit before the court, under Sec.175(3) of Cr.P.C. and at para-41 held that:

41. We make it clear that an affidavit, such as the one referred to in subsection (3) of Section 175, must fulfil the conditions provided in Section 333, BNSS which reads as follows:

"333. Authorities before whom affidavits may be sworn.—(1) Affidavits to be used before any Court under this Sanhita may be sworn or affirmed before—

(a) any Judge or Judicial or Executive Magistrate; or

(b) any Commissioner of Oaths



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appointed by a High Court or Court of Session; or

(c) any notary appointed under the Notaries Act, 1952 (53 of 1952).

(2) Affidavits shall be confined to, and shall state separately, such facts as the deponent is able to prove from his own knowledge and such facts as he has reasonable ground to believe to be true, and in the latter case, the deponent shall clearly state the grounds of such belief.

(3) The Court may order any scandalous and irrelevant matter in the affidavit to be struck out or amended."

15. In the case on hand, the complainant submitted the detailed complaint to Station House Officer on 21.01.2025; and complaint with his affidavit to the Superintendent of Police, Karnataka Lokayuktha on 30.07.2025, alleging the commission of offences by the accused and others under Sec.403, 406, 409, 420 and 426 of IPC r/w Sec.13(1)(a) and 13(2) of PC Act and such complaint is not considered by the said authority. But, such affidavit produced before the Superintendent of police was not duly verified by the complainant. The complainant presented the memorandum of complaint under Sec.175(3) r/w Sec.2(1)(h) of BNSS, before this Court with sworn affidavit narrating the illegalities, which said to have been resulted in alleged offences, which are highlighted by the learned Senior Counsel during hearing. However, on perusal of the said Affidavit, it does not show the affirmation/verification of facts as required under Sec.333(2) of BNSS. So, the required condition for valid affidavit under law is not fulfilled by the complainant to proceed under Sec.175(3) of BNSS and on such defective affidavit of complainant, the court cannot proceed under Sec.175(3) of BNSS. Under such circumstances, having considering the nature of allegation made in the memorandum of complaint and documents produced, the Court inevitably required to proceed



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under Sec.223 of Cr.P.C. Hence, I proceed to pass the following:

ORDER

For enquiry under Sec.223 of BNSS
by 28.08.2026."

(Emphasis added)

8. The case at hand presents a rather peculiar situation. The allegations are not of a private squabble dressed in criminal colours, nor do they concern facts resting entirely within the knowledge of the complainant. They concern alleged acts of corruption, misuse of public office, conferment of an undue advantage and manipulation of the process of allotment of valuable public property. The complaint alleges that a Trust, whose avowed objects are secular and extend to all persons irrespective of caste, creed or religion, projected itself as falling within the Scheduled Caste category; secured allotment of a civic amenity site under that category; obtained a concession of 50% in the lease amount; thereafter secured an alternative and allegedly more valuable site; and continued to retain the property despite non-utilisation. The concerned



Court itself notices that the documents placed before it disclose that the Trust is a charitable and secular Trust and that the concession and alternative allotment had, in fact, followed.

9. If these are the allegations, the question is not merely whether the complainant can step into the witness box and establish what he knows. The real question is, whether what he does **not and cannot know**, without the aid of investigation, can ever be unearthed through an enquiry under Section 223 of the BNSS. **Who processed the application? On what basis was the Trust treated as falling within the Scheduled Caste category? What were the notings in the official file? Who recommended the concession? How did the request for an alternative site travel through the corridors of the BDA and culminate in a decision within the period alleged? Whether there was any meeting of minds between the trustees and public servants; whether any public servant abused his position; whether any undue advantage was conferred; and whether the official record corroborates or demolishes the allegations—these are all matters lying beyond the reach**



of a private complainant. They lie buried, if at all, in official records and in the circumstances surrounding official decision-making. Their excavation is the province of investigation, not merely of an enquiry by the Court.

10. It is here that the distinction between Sections 175(3) and 223 of the BNSS assumes significance. The two provisions cannot be treated as interchangeable procedural pathways leading to the same destination. Section 223 of the BNSS operates in the realm of taking cognizance upon a complaint and examination of the complainant and witnesses. Section 175(3) of the BNSS, on the other hand, enables the Court to set the investigative machinery in motion where the nature of the allegations demands collection of material which the complainant cannot reasonably be expected to produce. Therefore, the choice between the two is not one of convenience; it must bear a rational nexus to the nature of the allegations and, more importantly, to the manner in which the truth behind those allegations can be unearthed.

11. The concerned Court was itself alive to this position. It noticed the allegations, examined the documents and



recorded the statutory requirements engrafted into Section 175(3) of the BNSS. It also noticed the additional protective layer contained in Section 175(4) of the BNSS, where the accusation concerns a public servant in relation to acts arising in the course of discharge of official duties. Having travelled thus far, the concerned Court halted only at the threshold of the affidavit. According to it, the affidavit accompanying the complaint did not contain affirmation or verification in conformity with Section 333(2) of the BNSS and, therefore, the Court could not proceed under Section 175(3) of the BNSS. The consequence it drew was to abandon that route altogether and proceed under Section 223 of the BNSS.

12. It is this leap, from noticing a defect in an affidavit to altogether changing the statutory course of the proceeding that, in my considered view, cannot commend acceptance. There is a world of difference between **non-compliance incapable of cure** and a **procedural defect capable of rectification**. The complainant could have been directed to cure the defect and place a properly verified affidavit before the



Court. **Procedure is undoubtedly the handmaid of justice; it cannot be permitted to become its hangman.**

13. The safeguards engrafted into Section 175(3) of the BNSS are undoubtedly mandatory in their purpose. They have been placed there, to prevent the criminal process from being casually unleashed at the instance of unscrupulous complainants. The requirement of approaching the police hierarchy, supporting the application by an affidavit, permitting such enquiry as the Magistrate considers necessary and considering the submissions of the police officer are all intended to ensure application of judicial mind before the coercive machinery of criminal investigation is set in motion. The order itself notices these safeguards and the principles governing them. **But a safeguard against abuse cannot be transformed into a shield against investigation of an otherwise investigable allegation. The procedural filter cannot become a procedural fortress.**

14. **There is yet another facet. Allegations of corruption involving public servants occupy a peculiar field. Proof of corruption seldom lies neatly packaged in**



the hands of a complainant. Its footprints ordinarily lie scattered across official files, notings, correspondence, movement of proposals, decisions of committees and the conduct of those who participated in the decision-making process. To expect a private complainant to unravel this entire chain through a complaint enquiry would, in an appropriate case, amount to asking him to prove what only an investigation can discover. An enquiry cannot be made a substitute for investigation where investigation itself is indispensable to discover the evidence.

15. Therefore, the concerned Court ought not to have shut the door of Section 175 of the BNSS, merely because the affidavit presented by the complainant was wanting in the manner of verification. The appropriate course was to direct rectification of the affidavit and thereafter proceed sequentially in accordance with Sections 175(3) of the BNSS and, wherever attracted, 175(4) of the BNSS and the applicable provisions of the Prevention of Corruption Act. **Every statutory safeguard must undoubtedly be observed; not one may be sacrificed. But equally, every safeguard must serve the**



purpose for which the Parliament engrafted it and cannot be employed to defeat the very process that the statute otherwise permits.

16. The allegations may ultimately prove true; they may equally prove unfounded. That is not a conclusion for this Court to pronounce at this embryonic stage. What cannot be countenanced is that allegations which, by their very nature, require investigation should remain uninvestigated merely because an affidavit accompanying the complaint suffered from a defect capable of cure. **The truth cannot be permitted to become a casualty at the altar of an imperfect verification clause.**

17. The impugned course adopted by the concerned Court, therefore, cannot be sustained. The defect in the affidavit may be directed to be cured; the safeguards commanded by Sections 175(3) and 175(4) of the BNSS must thereafter be scrupulously followed; and the concerned Court must then consider the prayer for investigation on its merits, uninfluenced by the technical defect which occasioned the impugned order.



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18. It becomes apposite to refer to the judgment of the Apex Court in the case of **S.N. VIJAYALAKSHMI v. STATE OF KARNATAKA**¹, wherein the Apex Court observes as follows:

"....."

44. A further contention urged by the appellants is that the procedure laid down in *Priyanka Srivastava* (supra) has not been followed by the complainant before filing the PCR. As per the guidelines prescribed in *Priyanka Srivastava* (supra), any person aggrieved by non-registration of an FIR by the police is required to approach the concerned Superintendent of Police and on his failure to take action, can move before the Magistrate concerned under Section 200 of the CrPC by filing a private complaint. **In this case, the complainant approached the police on 12.05.2022 which refused to register an FIR. Thereafter, the complainant approached the ACMM by filing the PCR on 20.07.2022, and while such private complaint was pending on the file of the ACMM, the complainant approached the Deputy Commissioner of Police, Bangalore City. On nothing being done even then, faced with such inaction, the complainant finally filed the requisite affidavit before the ACMM. Subsequently on 21.07.2023, the ACMM referred the PCR to the police, culminating into the underlying FIR.**

45. The High Court has taken a view that this is a curable defect since before the referral order on the PCR by the ACMM for registering an FIR under Section 156(3) of the CrPC, the required formalities were done. In our considered opinion, this approach cannot be labelled erroneous. The requirement under *Priyanka Srivastava* (supra) is to safeguard the rights of the citizenry and to put a stop to unjust criminal action and filing of vexatious applications to settle personal scores. Thus, such requirement

¹ 2025 SCC OnLine SC 1575



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could not be said to be a mere formality. One of us (Sudhanshu Dhulia, J.) as a Single Judge of the Uttarakhand High Court, in *Sachin Chamoli v. State of Uttarakhand*, 2016 (3) NCC 68, where no affidavit had been filed, held that filing of affidavit was a mandatory requirement as per *Priyanka Srivastava* (supra). In *Babu Venkatesh v. State of Karnataka*, (2022) 5 SCC 639, this Court held that the Magistrate concerned should not have entertained the complaint/application under Section 156(3) of the CrPC therein, as it was not supported by an affidavit. **In the case at hand, before the ACMM passed the referral order, the complaint was backed by an affidavit.** In *Ramesh Kumar Bung v. State of Telangana*, 2024 SCC OnLine SC 264, the Court, while stating that the directions in *Priyanka Srivastava* (supra) are mandatory, declined to interfere with the order(s) impugned therein, but noted that the informant had filed the affidavit belatedly. To complete the discussion on this aspect of the law, we may also refer to our judgment in *Kanishk Sinha v. State of West Bengal*, 2025 SCC OnLine SC 443 where, speaking through Sudhanshu Dhulia, J., this Court upheld an order of the Calcutta High Court, to the effect that the direction in *Priyanka Srivastava* (supra) to file the affidavit, was prospective in nature. **Therefore, if after the filing of the complaint/application but before any order thereon is passed, such requirement is allowed to be fulfilled/complied with by the complainant, it would not, in our view, run counter to the law expounded in *Priyanka Srivastava* (supra). We sum up our conclusions on this score as follows :** (i) Directions issued in *Priyanka Srivastava* (supra) are mandatory; (ii) Guidelines laid down in *Priyanka Srivastava* (supra) operate prospectively; **(iii) Non-filing of the supporting affidavit is a curable defect, but must be cured before the Magistrate passes any substantive order on the complaint/application,** and; (iv) If the Magistrate proceeds without the requisite affidavit, such order/any consequential orders/proceedings can be quashed on the sole ground of non-compliance with *Priyanka Srivastava* (supra).

46. In the above view, the Impugned Judgment does not militate against the law laid down in *Priyanka*



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Srivastava (supra). That said, and as reasoned above, our interference with the Impugned Judgment is necessitated as the ingredients of offences apropos which cognizance was taken by the ACMM are not made out. The *dicta* in *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335; *Vesa Holdings Private Limited v. State of Kerala*, (2015) 8 SCC 293, and; *Gulam Mustafa v. State of Karnataka*, (2023) 18 SCC 265 also impel this Court to intervene."

(Emphasis supplied)

The Apex Court observes that non-filing of an affidavit in support of an application under Section 156(3) of the Cr.P.C. is undoubtedly a defect, but a defect which is **curable in character. The curability of the defect, however, does not dispense with the requirement itself. The defect must necessarily be cured before the Magistrate proceeds to pass any substantive order on the complaint or directs investigation by the Police. Thus, what the law frowns upon is not the initial omission by itself, but the exercise of substantive jurisdiction under Section 156(3) of the Cr.P.C. / Section 175(3) of the BNSS, without the procedural safeguard of a supporting affidavit being brought into place.**



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19. Following the law laid down by the Apex Court in the case of **S.N.VIJAYALAKSHMI** *supra*, the High Court of Madras in the case of **ARUL GERALD PRAKASH v. STATE OF TAMIL NADU²**, observes as follows:

"38. **The Court made it clear that the immediate issue in this revision is whether the learned Magistrate was justified in rejecting the Section 175(3) BNSS petition for want of affidavit, in light of the Hon'ble Supreme Court's pronouncement in *S.N. Vijayalakshmi & Others v. State of Karnataka & Another, 2025 INSC 917*, that non-filing of an affidavit is a curable defect.** The broader factual controversies over resolutions, signatures, alleged fabrication and rival complaints are matters to be examined by the appropriate forum once the procedural hurdle is removed.

39. *Points for Determination:*

In light of the pleadings and submissions, the following points arise for consideration:

(i) Whether non-filing of a supporting affidavit along with a petition under Section 175(3) BNSS, 2023, is a curable defect and whether the learned Judicial Magistrate-II, Nagercoil, erred in dismissing the petition in Crl.M.P.No.984 of 2025 solely on that ground.

(ii) Whether, on the materials placed, a prima facie case of commission of an offence under Section 301 of the Bharatiya Nyaya Sanhita, 2023, and the TNPPDL Act is disclosed, warranting registration of FIR and investigation.

(iii) Whether a church cemetery can be treated as a mere property of the Bishop or Parish Priest, or whether it is in the nature of a sacred trust / endowment held for the

² Crl.R.C.(MD) No.1181 of 2025, Disposed on 16.12.2025



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benefit of the faithful, thereby limiting the authority of church administrators to unilaterally demolish existing graves/tombs.

(iv) To what directions the learned Magistrate and the first respondent police are to be subjected in the facts and circumstances of this case.

Discussion and Findings:

40. As regards Point (i), the record shows that the petition under Section 175(3) BNSS was dismissed by the learned Judicial Magistrate solely on the ground that it was not accompanied by a supporting affidavit. No opportunity was given to the petitioners to cure the defect, nor was the substance of the allegations evaluated.

41. In *S.N. Vijayalakshmi & Others v. State of Karnataka & Another*, 2025 INSC 917, the Hon'ble Supreme Court has categorically held that non-filing of a supporting affidavit is a curable defect, and that before passing any substantive order on a complaint/application of this nature, the Magistrate must afford an opportunity to file such affidavit.

42. In view of the binding nature of the Hon'ble Supreme Court's pronouncement, this Court is constrained to hold that the learned Judicial Magistrate-II, Nagercoil, was not justified in dismissing Crl.M.P.No.984 of 2025 outright for want of supporting affidavit. The defect was curable and the petitioners ought to have been given an opportunity to file the affidavit before passing any order on merits.

43. Accordingly, Point (i) is answered in favour of the petitioner. The impugned order dated 19.05.2025 in Crl.M.P.No.984 of 2025 is liable to be set aside on this ground alone."

(Emphasis supplied)



The High Court of Madras observes that non-filing of an affidavit, by itself, is not an incurable infirmity which would put an end to the proceedings. **It is a defect capable of cure. The Court is, therefore, required to afford an opportunity to the complainant to cure such defect by filing the requisite affidavit before proceeding to consider the application on its merits and pass any substantive order thereon. In other words, the absence of an affidavit may halt the proceeding until the defect is cured, but cannot bring the proceeding itself to an end.**

20. If the law declared by the Apex Court and reiterated by the High Court of Madras is that even **complete non-filing of an affidavit** is a defect capable of cure, the sequitur becomes irresistible. **A defective affidavit, as obtains in the case at hand, cannot be placed on a pedestal higher than the complete absence of one and branded incurable. If absence itself admits of cure, an imperfection in what is already placed on record must, *a fortiori*, admit of rectification.**



21. This becomes all the more significant in the peculiar facts of the case. The concerned Court had not reached the stage of directing investigation under Section 175(3) of the BNSS. The statutory journey contemplated under Sections 175(3) and 175(4) of the BNSS was yet to be undertaken. No substantive order setting the investigative machinery in motion had been passed. The defect in the affidavit, therefore, stood at a stage where it could effortlessly have been cured by directing the complainant to place on record an affidavit conforming to the requirements of law before the Court proceeded any further.

22. The concerned Court, instead of permitting such rectification and thereafter traversing the statutory route ordained under Section 175 of the BNSS, allowed itself to be arrested by the technical infirmity in the affidavit and diverted the proceeding altogether to an enquiry under Section 223 of the BNSS. Such an approach places procedure on a pedestal above purpose. The requirement of an affidavit is undoubtedly a statutory safeguard and must be scrupulously complied



with before any substantive order directing investigation is made; but a safeguard intended to ensure responsibility in invocation of the criminal process cannot be converted into a stumbling block, which extinguishes that very process even before the stage for its invocation arrives.

23. The concerned Court, therefore, ought not to have been bogged down by the hyper-technicality of an imperfectly verified affidavit. It ought to have afforded the complainant an opportunity to cure the defect and, upon such cure, proceeded further in the manner mandated under Sections 175(3) and 175(4) of the BNSS. **A curable defect calls for a cure, not the abandonment of the statutory course itself.**

24. I, therefore, deem it appropriate to set aside the operative portion of the impugned order insofar as it directs an enquiry under Section 223 of the BNSS. The concerned Court shall afford an opportunity to the complainant to cure the defect in the affidavit and thereafter proceed with the complaint strictly in accordance with the procedure obtaining under



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Section 175 of the BNSS, including compliance with the safeguards engrafted therein, wherever applicable.

25. It is made clear that this Court has expressed no opinion on the merits of the allegations. Whether the complaint ultimately warrants reference for investigation is a matter for the concerned Court to determine after following the procedure prescribed in law.

26. For the aforesaid reasons, the following:-

ORDER

- (i) Criminal petition is **allowed in part**.
- (ii) The order dated 11-08-2026 passed by the LXXXI Additional City Civil and Sessions Judge, Bengaluru City in P.C.R.No.28 of 2025, stands obliterated, insofar as it directs enquiry under Section 223 of the BNSS.
- (iii) The matter is remitted back to the concerned Court to proceed with the case by following the procedure



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contained under Section 175 of the BNSS, bearing
in mind the observations made in the course of the
order.

Sd/-
(M.NAGAPRASANNA)
JUDGE

NVJ
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