Through e-mail

From,

Manjeet Singh Sheoran, HJS
Registrar General
High Court of Judicature,
at Allahabad

To,

All the District and Sessions Judges/OSD
All the Principal Judges, Family Courts
All the Presiding Officers of Commercial Courts, MACTs & LARRAs
State of Uttar Pradesh

Letter No. 13410 **/Admin G-II** **Dated** 03/10 **/2026**

Sub: Regarding compliance of the judgment/order dated 19.05.2026 passed by this Hon'ble Court in Application u/s 528 BNSS No. 1531 of 2026 (at Lucknow), Roli v/s State of U.P. Thru. Addl. Chief Secy. Deptt. Of Home Lko. And 4 others

Madam/Sir,

During the course of hearing of aforesaid case, this Hon'ble Court, vide order dated **19.05.2026 (pdf copy enclosed),** has examined the scope of a Magistrate's powers under **Section 175(3) BNSS (erstwhile Section 156(3) Cr.P.C.)** and laid down guiding principles as to when a Magistrate should direct registration of an FIR and when an application may be treated as a complaint case.

Thus, the Court has held that ***it is settled law that in a case where the complainant is in possession of the complete details of the case and also the material evidence and the investigation by the police may not be required, the Magistrate may follow the procedure of a complaint case. It is, thus, not necessary that in every case where a complaint has been filed under Section 200 of the Cr.P.C., the Magistrate should direct the police to investigate the crime merely because an application has also been filed under Section 156(3) Cr.P.C. even though the evidence to be led by the complainant is in his possession or can be produced by summoning witnesses, with the assistance of the court or otherwise.***

In this regard, I am directed by Hon'ble Court to send the **pdf** copy of aforesaid order dated **19.05.2026** passed by Hon'ble Court to your goodself for onward circulation of the same amongst all the Judicial Officers of your judgeship for their information and strict compliance.

Encl. As above

With Regards,

Yours faithfully,

3.10.26

Registrar General

Letter No. **/Admin G-II** **Dated** **/2026**

Copy to the **Director, Judicial Training and Research Institute, Lucknow** for information.

Registrar General

2026:AHC-LKO:35795

fHIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

APPLICATION U/S 528 BNSS No. - 1531 of 2026

Roli

.....Applicant(s)

Versus

State of U.P. Thru. Addl. Chief Secy. Deptt. Of Home Lko. and 4 others

.....Opposite Party(s)

Counsel for Applicant(s) : Dwijendra Mishra, Rajneesh Mishra, Vishva Deep Pandey
Counsel for Opposite Party(s) : G.A.

Reserved on 04.05.2026 AFR
Delivered and uploaded on 19.05.2026

HON'BLE BRIJ RAJ SINGH, J.

1. The present application under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 has been filed seeking setting aside the order dated 20.03.2026 passed by the Chief Judicial Magistrate, Gonda in Criminal Misc. Case No.535 of 2026, CNR No.UPGD040035172026, Smt. Roli Vs. Kanaiyalal and others, under Section 173(4) of BNSS, 2023, Police Station Colonelganj, District Gonda.

2. Brief facts of the case are that on 25.12.2025 at 6 P.M. when the applicant, who is a married women aged about 22 years, was bringing sugarcane leafs for feeding the animals from her sugarcane field, opposite parties no.2 to 5, ambushed in the sugarcane field, caught hold the applicant and started molesting her with malicious intent and forcibly dragged her to sugarcane filed with intention to rape her. When the applicant resisted, they beat her and tore her cloths due to which the applicant suffered severe injuries on her body. On alarm raised by the applicant, opposite parties no.2 to 5 ran away from there. On 25.12.2025 itself, the applicant gave an application to the Police Station Kotwali Colonelganj for lodging an FIR against opposite parties no.2 to 5 and also requested for her medical examination, but the police neither lodged the FIR against the opposite parties no.2 to 5 nor medical examination of the applicant was conducted. The applicant along with her husband went to the District Hospital, Gonda to get her medically examined on the very next day i.e. 26.12.2025.

3. It is said that when the police of police of Police Station Kotwali Colonelganj did not lodge the FIR on the application of the applicant, she moved applications to the Inspector General of Police Devipatan Zone, Gonda and to the Hon'ble Chief Minister on 27.12.2025 requesting therein to lodge an FIR against opposite parties no.2 to 5 and for taking appropriate action under the relevant provision of the Bharatiya Nyaya Sanhita, 2023. On 12.01.2026, the applicant also moved applications to the Superintendent of Police, Gonda and to the Deputy Inspector General of Police, Devipatan Range, Gonda through Registered Post for lodging an FIR against the accused.

4. When the police authorities did not lodge the FIR despite the repeated requests of the applicant, she moved an application under Section 175(3) of Bharatiya Nagarik Suraksha Sanhita, 2023 on 20.02.2026 before the Chief Judicial Magistrate, Gonda for lodging an FIR. However, the Magistrate instead of passing an order for lodging the FIR, has treated the application as a complaint case vide impugned order 20.03.2026 without applying his judicious mind by indicating that applicant has personal knowledge of all the facts, which she can prove herself and by way of other witnesses ignoring the fact that the evidence required in this matter to unearth the truth is not in the access of the applicant and is only in access of the police, who can collect the evidence after thorough investigation and fix for statement of the applicant under Section 223 of Bharatiya Nagarik Suraksha Sanhita, 2023 on 20.04.2026.

5. Sri Dwijendra Mishra, counsel for the applicant has submitted that once the cognizable offence is made out for which an application under Section 175(3) of Bharatiya Nagarik Suraksha Sanhita, 2023 is filed, then the FIR must be registered in the light of the law laid down by the Hon’ble Supreme Court in the case of ***Lalita Kumari Vs. State of U.P.,*** (2014) 2 SCC 1. He has further submitted that the application is regarding sexual offence and the same can be investigated by the police after registration of the FIR, but the Magistrate has treated the application under Section 175(3) of Bharatiya Nagarik Suraksha Sanhita, 2023 as a complaint case without application of mind.

6. To buttress his argument, counsel for the applicant has placed reliance upon the following judgements:-

1. ***Lalita Kumari Vs. State of U.P.***, (2014) 2 SCC 1;

2. ***Mukesh Kharwar Vs. State of U.P. and others***, 2024 SCC OnLine All 6035;

3. ***XYZ Vs. State of Madhya Pradesh and others***, (2023) 9 SCC 705;

4. ***Anmol Singh V. State of U.P. and others***, 2021 SCC OnLine All 7; and

5. ***Gulab Chand Upadhyaya Vs. State of U.P. and others***, 2002 SCC OnLine All 1221.

7. On the other hand, Sri Anurag Varma, learned AGA-1 has submitted that the Magistrate is not bound in each and every case to pass an order to register the case if the cognizable offence is made out. The Magistrate is fully competent to use his judicial discretion in the case. He has further submitted that the Magistrate is empowered under Section 190 Cr.P.C. to take the cognizance directly or to pass an order directing the police to investigate and take cognizance or submit a report under Section 173 Cr.P.C. The Magistrate is not always bound to pass an order to register a case when an application under Section 156(3) Cr.P.C. is moved.

8. Learned AGA-I has further submitted that when a complaint is presented before a Magistrate, he has two options; one is to pass an order contemplated by Section 156(3) Cr.P.C. and the second is to direct examination of the complainant on oath and the witness present, and proceed further in the manner provided by Section 202 Cr.P.C. An order under Section 156(3) Cr.P.C. is in the nature of a peremptory reminder or intimation to the police to exercise its plenary power of investigation under Section 156(1) Cr.P.C. He has further submitted that the inner and outer limit of the exercise of this jurisdiction is on a case-to-case basis dependent on the complaint, nature of allegations and offence set out by such a complaint. While exercising the discretion, the Magistrate has to take judicious decision.

9. Learned AGA-I has further submitted that judgement of ***Lalita Kumari*** (supra) has laid down the ratio that police has no option but to register the offence in shape of FIR under Section 154 Cr.P.C. on receipt of first information regarding commission of cognizable offence. Further, it has been submitted that though the Hon’ble Supreme Court while formulating the question in paragraph-6 made reference to Sections 156 and 157 Cr.P.C., but the entire judgement of ***Lalita Kumari*** (supra) and final

directions issued therein, centre around the statutory obligation of the police to register the offence under Section 154 Cr.P.C. with only passing reference of Sections 156 and 157 Cr.P.C. without laying down any law as regards these provisions (Sections 156 and 157 Cr.P.C.). The judgement of ***Lalita Kumari*** (supra) does not lay down any dictum in respect of remedies available to the informant under the Code of Criminal Procedure to be invoked in case of failure on the part of the police to perform its statutory duty under Section 154(1)/154(3) Cr.P.C. as a *sine qua non* for seeking Writ of Mandamus.

10. To Buttress his argument, learned AGA-I has placed reliance upon the following judgements:-

1. ***Waseem Haider Vs. State of U.P. and other***s, 2020 SCC OnLine All 1866;

2. ***Sukhwasi Vs. State of U.P***., 2007 SCC OnLine All 2637;

3. ***Kailash Vijay Vargiya Vs. Rajlakshmi Chaudhuri and others***, (2023) 14 SCC 1;

4. ***Priti Agarwalla and others Vs. The State of GNCT of Delhi and others***, 2024 SCC OnLine SC 973;

5. ***Om Prakash Ambadkar Vs. State of Maharashtra and others***, (2026) 2 SCC 622;

6. ***Criminal Revision No.808 of 2025, X Vs. State of U.P. and others***, decided on 22.089.2025;

7. ***Application U/s 482 No.25994 of 2024, Shaligram Vs. State of U.P. and other***s, decided on 23.08.2024; and

8. ***Kailash Nath Dwivedi Vs. State of U.P. and other***s, 2021 SCC OnLine All 478.

11. Heard learned counsel for the parties and perused the record.

12. In the case of ***Lalita Kumari*** (supra), Hon’ble Supreme Court has held that FIR is mandatory under Section 154 Cr.P.C. if information discloses commission of cognizable offence. Paragraphs 120.1, 120.2, 1203, 120.4 and 120.5 of the aforesaid judgement read as under:-

“*120.1 The Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.*

120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence."

13. In the case of ***Mukesh Kharwar*** (supra), a coordinate Bench of this Court has held that gravity and seriousness of the evidence required should be looked into by the Magistrate for the purposes of launching a successful litigation. Paragraphs 19, 20 and 21 of the aforesaid judgement read as under:-

"*19. Perusal of the impugned order shows that no sufficient reason has been disclosed, on the basis of which, the Magistrate has proceeded to treat the application under section 156(3) Cr.P.C. as a complaint. Merely because the facts are in the knowledge of the applicant, direction to lodge FIR cannot be refused. The gravity/seriousness of the offence; the requirement of the evidence for the purpose of launching a successful prosecution, and basically the interest of justice depending on the facts of each case, need be considered in passing the order under Section 156(3) Cr.P.C. The impugned order does not assign any valid reason nor reflects application of judicious mind and has been passed in a mechanical manner only on the ground that the facts of the case were within the knowledge of the applicant, thus, the same is liable to be set-aside.*

20. The present Application U/S 482 is ***allowed.***

21. Accordingly, the impugned order dated 08.05.2024 is set aside with the direction to the court concerned to pass a fresh order on the application under Section 156(3) Cr.P.C. filed by the applicant after affording opportunity of hearing to both the parties, in accordance with law, within a period of one month from the date of production of certified copy of this order."

14. In the case of ***XYZ*** (supra), Hon'ble Supreme Court has held that it is not possible for the complainant to retrieve important evidence regarding her complaint. It may not be possible to arrive at the truth of the matter in the absence of such evidence. If such evidence cannot be produced by the complainant and there is a complaint of sexual harassment and there is evidence of CCTV footage, then FIR should be lodged. Paragraphs 24, 25, 26 and 29 of the aforesaid judgement read as under:-

"*24. Especially in cases alleging sexual harassment, sexual assault or any similar*

criminal allegation wherein the victim has possibly already been traumatized, the Courts should not further burden the complainant and should press upon the police to investigate. Due regard must be had to the fact that it is not possible for the complainant to retrieve important evidence regarding her complaint. It may not be possible to arrive at the truth of the matter in the absence of such evidence. The complainant would then be required to prove her case without being able to bring relevant evidence (which is potentially of great probative value) on record, which would be unjust.

25. In this backdrop, we are clearly of the view that the JMFC ought to have exercised jurisdiction under Section 156(3) of CrPC to direct the police to investigate.

26. At this stage, the Court is not called upon to decide upon the veracity of the allegations in the complaint, save and except to underscore the importance of an investigation by the police in a matter where the CCTV footage (or other evidence) is not under the possession or control of the appellant, but to be inquired into in the course of an investigation by the police. The discretion which has been conferred upon the Magistrate by Section 156(3) CrPC, must be exercised in a judicious manner.

29. Finally, we wish to once again reiterate the importance of courts dealing with complainants of sexual harassment and sexual assault in a sensitive manner. It is important for all courts to remain cognizant of the fact that the legal process tends to be even more onerous for complainants who are potentially dealing with trauma and societal shame due to the unwarranted stigma attached to victims of sexual harassment and assault. At this juncture, especially in cases where the police fails to address the grievance of such complainants, the Courts have an important responsibility. As the Delhi High Court held in Virender v State (NCT of Delhi), courts have to remain alive to both treating the victim sensitively while also discharging the onerous task of ensuring that the complete truth is brought on record so as to facilitate adjudication and answering the basic question regarding the complicity of the accused in the commission of the offence. In that case, the High Court held that:

22. It is to be noted that the embarrassment, and reservations of those concerned with the proceedings including the prosecutrix, witnesses, counsel may result in a camouflage of the trauma of the victim's experience. The judge has to be conscious of these factors and rise above any such reservations to ensure that they do not cloud the real facts and the actions which are attributable to the accused persons. The trial courts must be alive to the onerous responsibility which rests on their shoulders and be sensitive in cases involving sexual abuse.

(emphasis supplied)"

15. In the case of ***Anmol Singh*** (supra), a coordinate Bench of this Court has passed judgement making an observation that once cognizable offence is disclosed regarding sexual offence, then the FIR should be lodged. Paragraphs 14 and 15 of the aforesaid judgement read as under:-

"*14. It is true that every application under Section 156(3) Cr.P.C. disclosing commission of a cognizable offence may not be directed for investigation by police and the Magistrate has jurisdiction to treat the same as a complaint case but in exercise of such jurisdiction the Magistrate has to keep in view various factors as laid down in Lalaram (supra), which are only illustrative and not exhaustive. The exercise of jurisdiction is basically guided by interest of justice, from case to case.*

15. Perusal of the order clearly shows that the Magistrate has not applied judicious mind to the facts of the case and in particular paragraph no.3 of the application, which not only made out commission of a cognizable offence but an offence of molestation and sexual assault on the mother of the applicant. The application clearly stated that the accused persons are related to influential persons and as such neither the FIR was being lodged nor the medical of the applicant's mother was carried out. In such matters the medical examination of the victim is necessary. The medical report of the victim is of importance. Merely because the facts are in the knowledge of the applicant, direction to lodge FIR cannot be refused. The gravity/seriousness of the offence; the requirement of the evidence for the purpose of launching a successful prosecution, and basically the interest of justice depending on the facts of each case, need be considered in passing the order under Section 156(3) Cr.P.C. The offence, as per the contents of the application is not a matrimonial, commercial or family dispute, etc. The order does not assign any valid reason nor reflects application of judicious mind to relevant considerations and does not stand the test of the law as laid down in the cases of "Ram Deo Food Products' (Supra) and 'Gulab Chand Upadhyay' (Supra).”

16. In the case of ***Sukhwasi*** (supra), a Division Bench of this Court has held that a complaint disclosing cognizable offence may well justify a M agistrate in sending the complaint under Section 156(3) Cr.P.C. to the police for investigation. There is no reason why the time of the Magistrate should be wasted when primarily the duty to investigate in cases involving cognizable offences is with the police. On the other hand, there may be occasions when the Magistrate may exercise his discretion and 'Take' cognizance of a cognizable offence. The Magistrate has authority to treat an application under Section 156(3) Cr.P.C. as a complaint case. The Magistrate is always not bound to pass an order to register a case and investigate when an application under Section 156(3) is moved. Paragraphs 13, 15, 19 and 23 of the aforesaid judgement read as under:-

“*13. It is clear from the judgment of the Supreme Court in the case Suresh Chandra Jain Vs. State of Madhya Pradesh and another, 2001 (42) A.C.C. 459, that a Magistrate has the authority to treat an application under Section 156 (3) Cr.P.C. as a complaint. This will become clear from the reference in the said report to the case of Gopal Das Sindhi and others Vs. State of Assam and another, A.I.R. 1961 S.C. 986, in which the following observations were made:*

"If the Magistrate had not taken cognizance of the offence on the complaint filed before him, he was not obliged to examine the complainant on oath and the witnesses present at the time of filing of the complaint. We cannot read the provisions of Section 190 to mean that once a complaint is filed, a Magistrate is bound to take cognizance if the facts stated in the complaint disclose the commission of any offence. We are unable to construe the word 'may' in Section 190 to mean 'must'. The reason is obvious. A complaint disclosing cognizable offences may well justify a Magistrate in sending the complaint, under Section 156(3) to the police for investigation. There is no reason why the time of the Magistrate should be wasted when primarily the duty to investigate in cases involving cognizable offences is with the police. On the other hand, there may be occasions when the Magistrate may exercise his discretion and

'Take' cognizance of a cognizable offence."

15. It is hardly possible to infer from the aforesaid observations that the Magistrate cannot treat an application under Section 156(3) Cr.P.C. as a 'Complaint'. Even a nebulous of far fetched interpretation will not lead to that inference. The inference drawn by Hon'ble Vinod Prasad, J. is not logical.

19. In a recent pronouncement, Hon'ble Mr. Justice Shiv Charan Sharma in the case of Chandrika Singh Vs. State of U.P. and others [2007(58) ACC, 777] has held that a Magistrate can treat an application under Section 156 (3) Cr.P.C. as a complaint. The Hon'ble Judge referred to various cases in his judgment and has come to this conclusion thereafter. It was observed by Shiv Charan, J. as follows:

"In view of this judgment of Full Bench, the Magistrate is fully competent to pass an order to register a case and investigate on an application under Section 156 (3) Cr. P.C., all the application under Section 156(3) Cr.P.C. may be treated as complaint and in the circumstance, the Magistrate shall follow the procedure as provided in Chapter XV Cr.P.C. This judgment of Full Bench has not been set aside. Hence, in view of the Apex Court and Full Bench of this Court the Magistrate is fully competent to treat an application under section 156 Cr.P.C. as a complaint and in the present case the Magistrate passed an order in the circumstances of the case that it may be registered as a complaint case and proceed to record the statement under Sections 200 and 202 Cr.P.C. There appears no illegality and impropriety in the order of the Magistrate.

This controversy must come to an end that an application under section 156(3) Cr.P.C. can only be treated as an application for passing an order for registration of the case and investigation cannot be treated as a complaint case. The Magistrate is not bound in each and every case to pass an order to register a case and investigate if cognizable offence is made out. The Magistrate is fully competent to use this judicial direction in the matter. This is wrong notion that if an application has been moved under section 156(3) Cr.P.C. that the only order can be passed for registration in the matter. The magistrate has got direction under Section 190 Cr.P.C. to take the cognizance directly or to pass an order that the police to investigate and then take cognizance on submissions of a report under Section 173 Cr.P.C. The Magistrate is also expected to act under some guidelines and it should not be left at the arbitrary discretion of the Magistrate to pass an order or not to pass an order to register the case and investigation under Section 156(3) Cr.P.C. In Gulab Chandra Upadhyaya Vs. State of U.P. Hon'ble Single Judge of this Court laid down the guidelines for the guidance of Magistrate while deciding the application under Section 156(3) Cr.P.C. and the guidelines cannot be said against any provision of law or check on the judicial direction of the Magistrate. Even Hon'ble Apex Court also held that the Magistrate has got a direction to pass an order to register the case and investigation under Section 156(3) Cr.P.C. or to treat an application as a complaint case.

In the law laid down by Hon'ble the Apex Court and various judgments of this Court clearly laid down that the Magistrate is not always bound to pass an order to register a case and investigation when application under Section 156(3) Cr.P.C. is moved. It will not be proper to deal with this hypothetical position that if the Magistrate is of opinion that false and frivolous allegation has been made in application than he may reject the application or it is for the investigating officer to decide the truthfulness of the story and if found false then launch prosecution against the applicant. But it is discretion of the Magistrate to be used judiciously while disposing of the application.

For the reasons mentioned above, I am of the opinion that the Magistrate is not always bound to pass an order for register of the case and investigation after receipt of the application under Section 156(3) Cr.P.C. disclosing a cognizable offence. The

Magistrate may use his discretion judiciously and if he is of the opinion that in the circumstances of the case, it will be proper to treat the application as a complaint case then he may proceed according to the procedure provided under Chapter XV of Cr.P.C. I am also of the opinion that it is not always mandatory in each and every case for the Magistrate to pass an order to register and investigate on receipt of the application under Section 156(3) Cr.P.C. In the present case, the Magistrate is perfectly within the judicial power to treat the application under section 156(3) Cr.P.C. as a complaint case. There is no illegality or impropriety in the order. The revision is devoid of merit and is liable to be dismissed".

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."

17. In the case of ***Wasim Haider*** (supra), a Division Bench of this Court has held that while interpreting the statutory provision under Section 154 Cr.P.C. in the case of ***Lalita Kumari*** (supra), nothing further as regards remedy available to the informant whose information of commission of cognizable offence does not invoke any response from the police and judgement of ***Lalita Kumari*** (supra) does not lay down any law in respect of the remedies available to the informant under Cr.P.C. to be invoked in case of failure on the part of the police to perform its statutory duty under Section 154(1)/154(3) Cr.P.C. as a *sine qua non* for seeking Writ of Mandamus. Paragraphs 20, 21, 22, 23, 26, 27, 28 and 29 of the aforesaid judgement are extracted herein below:-

"*20. Perusal of the judgment of Lalita Kumari (supra) and the final directions passed in paragraphs 120.1 to 120.8 clearly reveal the laying down of ratio that the police has no option but to register the offence in shape of FIR under Section 154 Cr.P.C. on receipt of first information regarding commission of cognizable offence without verifying the veracity of the first information.*

21. Though the Apex Court while formulating the question in paragraph 6 (supra) made reference to Sections 156 & 157 but the entire judgment of Lalita Kumari and final directions issued therein centre around the statutory obligation of the police to register the offence under Section 154 Cr.P.C, with only passing reference of Section 156 & 157 without laying down any law as regards these provisions (Section 156 and 157 Cr.P.C.).

22. Therefore, it can safely be concluded that the Apex Court while interpreting the statutory provision under Section 154 Cr.P.C said nothing further as regards remedy available to the informant whose information of commission of cognizable offence does not invoke any response from the police. Thus, the judgment of Lalita Kumari does not lay down any law in respect of remedies available to the informant under Cr.P.C. to be invoked in case of failure on the part of the police to perform its statutory duty under Section 154(1)/154(3) Cr.P.C. as a sine qua non for seeking writ of mandamus.

23. Consequently, the case of Lalita Kumari of the Apex Court does not answer the principal issue No.1 framed by this Court.

26. The Code of Criminal Procedure provides various avenues before the informant/victim to initiate criminal prosecution. The first avenue is of lodging of FIR under Section 154(1)/154(3) which can be availed by the victim and as well as a stranger to the offence, provided the first information discloses commission of cognizable offence. The lodging of FIR under Section 154 Cr.P.C. sets the investigative machinery into motion without prior permission of the Magistrate as is otherwise required for non-cognizable offences.

27. The second avenue available to the victim and as well as a stranger to the cognizable offence, is under Section 156(3) by approaching the concerned Magistrate by informing commission of cognizable offence. The Magistrate can then conduct an enquiry himself or direct the concerned police station to register the offence alleged, thereby triggering the investigation.

28. The third avenue available is under Section 190 Cr.P.C empowering the competent Magistrate to take cognizance of any offence upon receipt of complaint of facts containing allegation constituting the offence, or upon a police report of such facts or upon information received from any person other than a police officer, or upon his own knowledge of commission of cognizable and as well as non-cognizable offence, except offences punishable under Chapter XX of IPC, for which procedure prescribed under Section 198 Cr.P.C. is to be adhered to.

29. The fourth avenue is under Section 200 Cr.P.C where a complaint, oral or in writing if made before the competent Magistrate leads to hearing by the Magistrate on the question of taking cognizance of offence or not and if it is found that complaint discloses commission of any offence punishable in law then the Magistrate issues summons to the proposed accused on appearance of whom statements of rival parties are recorded and the Magistrate decides on the question of framing of charge or discharging the accused. If charges are framed then trial proceeds."

18. In the case of ***Kailash Vijay Vargiya*** (supra), Hon'ble Supreme Court has held that when a complaint is presented before the Magistrate, he has two options; one is to pass an order under Section 156(3) Cr.P.C. and the second is to direct examination of the complainant and the witness present and proceed further in the matter provided by Section 202 Cr.P.C. Once the Magistrate has taken cognizance under Section 190 Cr.P.C., he cannot ask for an investigation by the police. Paragraphs 16, 18, 39, 41, 42, 59 and 61 of the aforesaid judgment read as under:-

"*16. The present proceedings arise out of a complaint filed by the original complainant under Section 156(3) Cr.P.C. The learned CJM, by a detailed order and giving cogent reasons, dismissed the said application/complaint under Section 156(3) Cr.P.C and refused to direct the police to register an FIR. It is not even disputed by the State that prior to filing of the application/complaint by the complainant under Section 156(3) Cr.P.C., complaints were made to the police authorities, namely, Officer in Charge of Bahela Police Station, DCP (South Division) and the SHO. The SHO conducted a preliminary enquiry as mandated by a Constitution Bench of this Court in the case of Lalita Kumari (supra) and upon finding that there was a delay of about two years in filing the complaint, refused to register the FIR. That thereafter, the original complainant filed a complaint/application before the learned CJM under Section 156(3) Cr.P.C. and on a careful consideration of the allegations*

in the complaint/application under Section 156(3) Cr.P.C., by a detailed reasoned order, the learned CJM dismissed the said application under Section 156(3) Cr.P.C.

18. While quashing and setting aside the order passed by the learned CJM, the High Court was of the opinion that at the stage of considering the application under Section 156(3) Cr.P.C., it was not open for the learned CJM to verify the truth and veracity of the allegations. The High Court was of the opinion that in view of the decision of this Court in the case of Lalita Kumari (supra), what was required to be considered was, whether the allegations in the complaint/ application disclose prima facie commission of a cognizable offence or not and if so, the Magistrate has to pass an order directing the concerned police officer to register an FIR. That thereafter, pursuant to the impugned judgment and order passed by the High Court and on remand, the learned CJM has straightway directed to register the application/complaint as an FIR. T herefore, as such, the subsequent order passed by the learned CJM is a consequential order passed by the High Court on quashing and setting aside the order passed by the learned CJM dismissing the application/complaint.

39. We would now refer to the power of the Magistrate to take cognizance, postpone issue of process and follow the procedure under Section 202 of the Code.

Difference in the power of Police to register and investigate an FIR under Section 154(1) read with 157 of the Code, and the Magistrate's direction to register an FIR under Section 156(3) of the Code. Power of the Magistrate to direct registration of an FIR under Section 156(3) in contrast with post-cognizance stage power under Section 202 of the Code.

41. The power of Magistrate to direct investigation falls under two limbs of the Code: one is pre-cognizance stage under Section 156(3), and another on cognizance under Chapter XIV ('Conditions Requisite for Initiation of Proceedings'; Sections 190-199) read with Chapter XV ('Complaints to Magistrates'; Sections 200-210). These two powers are different and there also lies a procedural distinction between the two.

42. A three Judge Bench decision of this Court in Ramdev Food Products Private Limited (supra) had examined the distinction between powers of the Magistrate to direct registration of an FIR under Section 156(3) and power of the Magistrate to proceed under Section 202 of the Code. It was observed that the power under the former Section is to be exercised, on receiving a complaint or a Police report or information from any person other than the Police officer or upon his own knowledge, before he takes cognizance under Section 190. Once the Magistrate takes cognizance, the Magistrate has discretion to take recourse to his powers under Section 202, which provides for postponement of the issue of process and inquire into the case himself or direct investigation to be made by a Police officer or by such other person as he thinks fit for the purpose of deciding whether or not there are sufficient grounds for proceedings. The proviso to Section 202 states that no direction for investigation shall be made where a complaint has not been made by a Court, unless the complainant and the witnesses present (if any) are examined on oath under Section 200. When it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions, he shall call upon the complainant to produce all his witnesses and examine them on oath. However, in such cases, the Magistrate cannot issue direction for investigation of an offence.

59. The decision in Mona Panwar v. High Court of Judicature of Allahabad through its Registrar and Others, (2011) 3 SCC 496 is rather succinct. This Court held that

when a complaint is presented before a Magistrate, he has two options. One is to pass an order contemplated by Section 156(3). The second one is to direct examination of the complainant on oath and the witness present, and proceed further in the manner provided by Section 202. An order under Section 156(3) is in the nature of a peremptory reminder or intimation to the police to exercise its plenary power of investigation under Section 156(1). However, once the Magistrate has taken cognizance under Section 190 of the Code, he cannot ask for an investigation by the Police. After cognizance has been taken, if the Magistrate wants any investigation, it will be under Section 202, whose purpose is to ascertain whether there is prima facie case against the person accused of the offence and to prevent issue of process in a false or vexatious complaint intended to harass the person named. Such examination is provided, therefore, to find out whether there is or not sufficient ground for proceeding further.

61. We were informed that the Magistrate, on remand, has passed an order under Section 156(3) directing registration of the FIR. He has misread the order and directions given by the High Court. In terms of the judgments of this Court, the Magistrate is required to examine, apply his judicious mind and then exercise discretion whether or not to issue directions under Section 156(3) or whether he should take cognizance and follow the procedure under Section 202. He can also direct a preliminary inquiry by the Police in terms of the law laid down by this Court in Lalita Kumari."

19. In the case of ***Priti Agarwalla and others*** (supra), Hon'ble Supreme Court has held that the Magistrate while exercising his power under Section 156(3) Cr.P.C. has to exercise his discretion on case-to-case basis dependent on the complaint, nature of allegations and the offence set out by such complaint. Paragraphs 14.3 and 26 of the aforesaid judgment read as under:-

"*14.3 We do not propose to multiply citations on the point and succinctly stated, the Magistrate, under section 156(3) of the CrPC, asks himself a question: whether the complaint, as presented, makes out a case for directing the registration of an FIR or calls for inquiry or report from the jurisdictional police station. The inner and outer limit of the exercise of this jurisdiction is on a case-to-case basis dependent on the complaint, nature of allegations and offence set out by such a complaint. Therefore, it is fairly well-settled and axiomatic by the decisions rendered under Section 156(3) of the CrPC that the Magistrate does not act mechanically and exercises his discretion judiciously by applying mind to the circumstances complained of and the offence alleged against the accused for taking one or the other step. The case on hand principally concerns deciding whether the discretion is invalidly exercised by the Magistrate while ordering a report from the SHO.*

26. From the above consideration, the available conclusion is that firstly, the Metropolitan Magistrate at the relevant point of time was justified in ordering a preliminary inquiry on the application dated 09.05.2018 and receiving the Action Taken Report from the jurisdictional police station. Further, the accusations in the complaints do not satisfy as having been made in any place within public view. Therefore, in a case such as the present, directing registration of FIR and further steps is unsustainable. Points A and B are answered in favour of the Appellants."

20. In the case of ***Om Prakash Ambadkar*** (supra), Hon'ble Supreme

Court has held that it is the discretion of the Magistrate concerned whether to order police investigation under Section 156(3) Cr.P.C. or take cognizance upon the complaint and issue process or dismiss the complaint under Section 203 Cr.P.C. Paragraphs 10 and 12 of the aforesaid judgment read as under:-

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

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

21. Further, in the case of ***Om Prakash Ambadkar*** (supra), Hon'ble Supreme Court has held that the Magistrate is not obliged to pass an order for registration of the FIR in every case if the evidence is within the possession of the complainant and the same can be produced by summoning the witnesses with the assistance of the court otherwise. Paragraphs 26 and 27 of the aforesaid judgment read as under:-

"*26.* ***It is, thus, not necessary that in every case where a complaint has been filed under Section 200 of the Cr.P.C. the Magistrate should direct the Police to investigate the crime merely because an application has also been filed under Section 156(3) of the Cr.P.C. even though the evidence to be led by the complainant is in his possession or can be produced by summoning witnesses, with the assistance of the court or otherwise.*** *The issue of jurisdiction also becomes important at that stage and cannot be ignored.*

27. In fact, the Magistrate ought to direct investigation by the police only where the assistance of the Investigating Agency is necessary and the Court feels that the cause of justice is likely to suffer in the absence of investigation by the police. The Magistrate is not expected to mechanically direct investigation by the police without

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

22. In paragraph-27 of the case of ***Om Prakash Ambadkar*** (supra), Hon'ble Supreme Court has categorically held that if the allegations made in the complaint require complex and complicated investigation which cannot be undertaken without active assistance and expertise of the State machinery, it would only be appropriate for the Magistrate to direct investigation by the police authorities.

23. In the case of ***X Vs. State of U.P.*** (supra), a coordinate Bench of this Court has held that application under Section 156(3) Cr.P.C. can be entertained by giving a direction to lodge an FIR on the given facts and circumstances or to treat such application as a complaint case. Paragraph 17 of the aforesaid judgment read as under:-

"*17. In other words, the Magistrate/Court of competent jurisdiction while dealing with an application under Section 156(3) Cr.P.C. is empowered to pass an order for registration of FIR and investigate into the matter or to treat such application as a 'Complaint Case', if Investigation in the matter is not required and he is fully empowered to reject the application under Section 156(3) Cr.P.C."*

24. In the case of ***Shaligram*** (supra), a coordinate Bench of this Court has held that there is no illegality or irregularity in the order impugned and after collecting the report from the police station concerned or the report otherwise the Magistrate is of the view that no investigation from the police is required and he has rightly directed the present case to be treated as complaint case. Paragraph 13 of the aforesaid judgment read as under:-

"*13. In light of the above facts and above proposition of law, this Court is of the view that there is no illegality or irregularity in the order impugned and after collecting the report from the police station concerned or the report otherwise the Magistrate is of the view that no investigation from the Police is required and he has rightly directed the present case to be treated as complaint case."*

25. In the case of ***Kailash Nath Dwivedi*** (supra), a coordinate Bench of this Court has held that in a case where the complainant is in possession of the complete details of the case and also the material evidence, such that investigation by the police may not be required, the Magistrate may

follow the procedure of a complaint case. Paragraphs 27 and 29 of the aforesaid case read as under:-

"*27. It is, therefore, seen that upon an application received under Section 156(3) disclosing a cognizable offence, the Magistrate may direct the police to register the F.I.R. and investigate or alternatively the Magistrate can take cognizance of the complaint, register it as complaint case and follow the procedure under Chapter XV of the Code. While exercising this discretion and taking either of the courses, it would be incumbent upon the Magistrate to apply judicial mind and the exercise of discretion would have to be guided by interest of justice, depending upon the facts of the case. In a situation where the investigation required is of a nature which can only be made by a police officer upon whom the statute has conferred the powers of investigation, the Magistrate may be well within his discretion to direct the registration of an F.I.R. and its investigation by the police officer.* ***In a case where the complainant is in possession of the complete details of the case and also the material evidence, such that 'investigation' by the police may not be required, the Magistrate may follow the procedure of a complaint case. (Emphasis applied)***

29. In the facts of the present case, the courts below have taken notice of the fact that civil and criminal litigation was pending between the parties and the applicant had full knowledge of the facts and also the material evidence in respect of the case and accordingly the order passed by the Magistrate while exercising discretionary powers under Section 156(3) of the Code and directing the registration of the case as complaint case and also its affirmation by the revisional court cannot be said to suffer from any material illegality or procedural irregularity so as to warrant interference."

26. After discussing various judgements of the Hon'ble Supreme Court as well as by this Court on the issue in question, this Court comes to the conclusion that inner and outer limit of exercise of this jurisdiction is on a case-to-case basis dependent on the complaint, nature of allegations and offence set out by the complainant. The Magistrate while exercising his discretion, has to apply his mind judiciously considering the nature of the complaint and the evidence available with the complainant at the time of filing the complaint. Once an application under Section 156(3) Cr.P.C. is entertained by the Magistrate, he has two options; one is to pass an order under Section 156(3) Cr.P.C. for registration of the FIR and, the second is to direct examination of the complainant on oath and the witness present and proceed further in the manner provided by Section 202 Cr.P.C. Once the Magistrate has taken cognizance under Section 190 Cr.P.C., he cannot ask for an investigation by the police. It is, however, to be looked into that in a case where evidence like CCTV footage, unknown accused and any such evidence, which can only be collected by thorough investigation by the police, the Magistrate will pass an order for registration of the FIR based on objective satisfaction. The Magistrate has to look into the

seriousness of the case and nature of evidence while passing an order for registration of the FIR under Section 156(3) Cr.P.C. by applying his judicial mind, as the power under Section 156(3) Cr.P.C. is discretionary in nature and required to be exercised cautiously based on case-to-case basis. However, it is borne in mind that the Magistrate is not always bound to pass an order to register a case and investigation when an application under Section 156(3) Cr.P.C. is moved.

27. After the aforesaid discussion of factual and legal aspect, the case can be summarized in the following manner:-

While exercising the power under Section 175(3) of B.N.S.S., 2023 (erstwhile Section 156(3) Cr.P.C.), the Magistrate has the following options:-

(i) to pass an order for registration of the FIR;

(ii) to treat the application as a complaint case and proceed accordingly

(iii) in case the evidence of such nature which can only be collected by doing thorough investigation by the police, the Magistrate has to pass an o rder for registration of the FIR. However, while exercising his power, he has to apply his mind judiciously.

(iv) in case the complainant is in possession of the complete details of the case and also the material evidence and the investigation by the police may not be required, the Magistrate may follow the procedure of a complaint case. However, he may exercise this jurisdiction is on a case-to-case basis dependent on the complaint, nature of allegations and offence set out by the complainant.

28. It is settled law that in a case where the complainant is in possession of the complete details of the case and also the material evidence and the investigation by the police may not be required, the Magistrate may follow the procedure of a complaint case. It is, thus, not necessary that in every case where a complaint has been filed under Section 200 of the Cr.P.C., the Magistrate should direct the police to investigate the crime merely because an application has also been filed under Section 156(3) Cr.P.C. even though the evidence to be led by the complainant is in his possession or can be produced by summoning witnesses, with the assistance of the court or otherwise. In the present case, after perusing the complaint, this Court finds that there is no such evidence, which requires

any investigation by the police. Therefore, the Magistrate has rightly passed the impugned order treating the application as a complaint case, which needs no interference.

29. Application being devoid of merit, is ***rejected.***

30. Registrar General of this Court is directed to circulate a copy of this judgement to all the subordinate courts through the District Judges for perusal.

(Brij Raj Singh,J.)

May 19, 2026
Rao/-