

**Rakesh Kumar Yadav vs State Of U.P. And 2 Others
on 9 October, 2026**

Author: [Santosh Rai](#)

Bench: [Santosh Rai](#)

HIGH COURT OF JUDICATURE AT ALLAHABAD

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CRIMINAL APPEAL No. – 8381 of 2026

Rakesh Kumar Yadav

..Appellant(s)

Versus

State of U.P. and 2 others

..Respondent(s)

Counsel for Appellant(s) : Ram Pravesh Yadav, Shashank Kumar

Counsel for Respondent(s) : Pawan Kumar, G.A.

Court No. 91

AFR

Reserved On 29.9.2026

Delivered On 9.10.2026

HON'BLE SANTOSH RAI, J.

1. Heard Sri Shashank Kumar, learned counsel for the appellant, Sri Pawan Kumar, learned counsel for opposite party nos.2 and 3, Sri Sushil Pandey, learned AGA for the State and perused the material on record.
2. The present criminal appeal has been filed by the appellant with a prayer to set aside the impugned order dated 11.8.2026 passed by Special Judge, Exclusive Special Court (SC/ST Act), Maharajganj in Misc. Application No.199 of 2026 ([Sheela & Anr. vs. Rakesh Kumar Yadav & Ors.](#)), under Section 173(4) BNSS, P.S.- Ghughuli, District- Maharajganj.
3. An application under Section 173(4) BNSS filed in the court of the Additional Sessions Judge/Special Judge (SC/ST Act), Maharajganj by opposite party no.2 Sheela wife of Pramod, and opposite party no.3 Anju wife of Rajesh, aged 29 and 26 years respectively, residents of Village Basantpur, Police Station Ghughuli, District Maharajganj. They stated that both belong to the Chamar caste, which is a Scheduled Caste category. A land and money dispute exists between the applicants' family and Ramasare's family. On the night of June 6, 2026, a clash occurred, injuring Rajesh and Pintoo. Later that night (around 10:00 PM 11:00 PM), police took away Pintoo, Molai, Suresh, and Rahul. Around 1:00 AM 2:00 AM, SI Rakesh Kumar Yadav, Constable Amit Kumar, and about 20 policemen (with no female police officers present) forced entry into the house of opposite party nos.2 and 3 without a search warrant. When objected to, they turned aggressive, committed obscenity, denied the women access to the bathroom, and outraged their modesty by making caste-

based remarks targeting their Chamar identity. On June 10, 2026, while mud was being dumped at another house, threats were received via mobile number 7235815717, warning that they would face severe consequences this time. The opposite party nos.2 and 3 informed the Superintendent of Police, Maharajganj, on June 12, 2026, but received no response, compelling them to approach the court out of fear of being implicated in false cases. Thus, the accused persons Rakesh Kumar Yadav (Sub-Inspector), Amit Kumar (Constable), and about 20 other police personnel from Police Station Ghughuli, District Maharajganj have committed the offence under Sections 74, 351, 333 BNS and Section 3(1)(r), 3(1)(s) of the SC/ST Act.

4. In brief the grounds of appeal are that the impugned order dated 11.8.2026 has been passed mechanically, without proper consideration of the police inquiry report and the relevant provisions of the BNSS and SC/ST Act. The appellants were discharging their official duties in connection with maintenance of law and order pursuant to a local dispute and the proceedings are a counter-blast to the earlier cross-cases, namely Case Crime Nos.126 of 2026 and 127 of 2026, in which charge-sheets had already been submitted as I.O. It is further contended that the allegations of physical search, indecent behaviour and intimidation are vague, omnibus, uncorroborated and motivated, while the alleged occurrence took place inside a private residential premises and, therefore, the essential requirement of public view under the SC/ST Act is not prima facie satisfied. The appellants further contend that the learned court below failed to comply with the mandatory procedural safeguards under Sections 175(3) and 175(4) BNSS and that, in the facts of the case, the protection contemplated under Section 218 BNSS was also not duly considered. The entry upon the spot was made in the course of lawful preventive action pursuant to a PRV/112 call and the subsequent official telephone call was merely administrative in nature for the purposes of investigation. Thus, the impugned order and continuation of proceedings in Misc. Application No.199 of 2026 are alleged to be legally unsustainable and an abuse of the process of law.

5. The gist of relevant para nos.6,7 of impugned order dated 11.8.2026 are as under:-

..According to the documents available on record, the applicant has alleged against the accused persons that the applicant's family has a dispute regarding land and money transactions with the family of Ramasare. On the night of 06-06-2026, the police of police station Ghughuli took the males of the house and arrested them and took them to the police station. On the same night (06/07-06-2026) between approximately 01:00 to 02:00 AM, the opposite parties SI Rakesh Kumar Yadav, Constable Amit Kumar, and about 20 other police personnel entered the house of the applicants without any female police personnel and without a search warrant, forcibly entered the house, outraged modesty, and committed obscene acts/caste-based atrocities against the applicants, and on being opposed, violated their modesty. The matter relates to forcibly trespassing into a house and committing obscene acts with women inside. Therefore, in the circumstances presented, it is necessary to thoroughly investigate the matter, register a First Information Report (FIR), and have the investigation conducted by the police in accordance with the

law. From the aforesaid facts mentioned by the applicant in the application under section 173(4) BNSS, a cognizable offence prima facie appears to have been committed. In the aforesaid circumstances The application filed on behalf of the applicants under section 173(4) BNSS is accepted. The Station House Officer (SHO) of police station Ghughuli, District Maharajganj, is ordered to register a case on the basis of the facts described in the applicant's application.

6. A bare perusal of the application moved under Section 173(4) of the BNSS, read with the detailed report/material placed by the concerned police station, indicates that certain material and relevant circumstances were brought to the notice of the learned Special Court, but the same have not been adverted to in the impugned order. It is not in dispute from the record that the persons against whom the allegations have been made include police personnel, namely, a Sub-Inspector and a Constable, and thus they are public servants. The record further discloses that, in relation to the occurrence of the same day, two cross-cases had already been registered at Police Station Ghughuli, namely, Crime No.126 of 2026 under Sections 115(2), 351(3), 352 BNS against Munna and four other persons and Crime No.127 of 2026 under Sections 115(2), 351(3), 352 BNS against Molai and four other persons. The allegations contained in the application under Section 173(4) BNSS cannot, therefore, be examined in isolation from the contemporaneous police record and the background of the occurrence, whereas special provisions are specifically provided in BNSS.

7. It is also borne out from the material placed on record that the conduct, behaviour and involvement of the family members of the applicants Sheela and Anju in relation to the criminal incident of the same day have been specifically referred to in the police record and that both the complainants had approached the police with complaints concerning the same occurrence. These circumstances were relevant for determining whether the allegations subsequently made against the police personnel required an independent registration of FIR and investigation in the manner directed by the learned Special Court. However, the impugned order proceeds substantially on the allegations contained in the application and records, in a general manner, that a cognizable offence prima facie appears to have been committed, without examining the effect of the two cross-cases, the contemporaneous complaints, the detailed police report and the fact that the proposed accused are public servants. The omission to consider these material circumstances assumes significance, particularly when the direction for registration of an FIR has been issued against police personnel in respect of an occurrence which had already resulted in cross-cases at the same police station. The impugned order, therefore, does not reflect due consideration of the entire relevant material placed before the Court and cannot be sustained merely on the basis of a general observation that the allegations disclose a cognizable offence.

8. It is admitted that complainant Anju is the wife of Rajesh, who is the informant of Crime No.126 of 2026 and is also an accused in the cross-case, Crime No.127 of 2026. It is further admitted that Sheela, wife of Pramod, is the Jethani (sister-in-law) of Anju, one of the complainants. It is also admitted that accused-appellant Rakesh Kumar Yadav was the

Investigating Officer in both the aforesaid cross-cases. These admitted facts, particularly the close relationship between the complainants and the parties involved in the cross-cases, coupled with the fact that the accused Rakesh Kumar Yadav was the Investigating Officer in both cases, provide the relevant background in which the present proceedings have been initiated, and the motive or interest of the complainants in setting the criminal law in motion against the concerned persons may reasonably be inferred.

9. It is an admitted position from the records relating to Crime No.126 of 2026 and Crime No.127 of 2026 that the alleged incident in both the cross-cases is stated to have occurred at about 8:00 p.m. on 06.06.2026. The relevant police records, including G.D. Entry No.64 dated 06.06.2026, indicate that, on receipt of information regarding the commission of a cognizable offence, the police personnel proceeded towards the place of occurrence with a view to maintaining peace and public order and also to apprehend the persons allegedly involved in the incident.

10. The aforesaid G.D. entry further indicates that seven persons allegedly involved in the two cross-cases were dealt with by the police. Munna Prasad, Ramashrey and Arun were stated to be involved in Crime No.126 of 2026, whereas Molai, Suresh, Pintu and Rahul were stated to be involved in Crime No.127 of 2026 and proceedings were initiated against them under section 170, 126, 135 BNSS on the very same day. Thus, the contemporaneous police record reflects that the Investigating Officer and other police personnel had taken steps in response to the information received, both for maintaining peace and order and for taking lawful action in respect of the criminal cases.

11. It is further borne out from G.D. Entry No.62 that certain police personnel had been deputed for night patrolling in Village Basantpur, where the alleged occurrence took place. The said G.D. entry, as well as G.D. Entry No.64, forms part of the police records available on the record. These contemporaneous entries are therefore relevant for appreciating the circumstances in which the police personnel reached the place of occurrence and the subsequent proceedings in relation to the above criminal cases.

12. It is also significant that the application itself filed under Section 173(4) of the BNSS discloses that certain family members of the applicants/complainants had been arrested by the police in connection with the dispute concerning the family of Ramashrey, which, according to the material placed before the Court, arose out of a land and financial dispute. The police report, which was specifically called for by the learned Presiding Officer of the Special Court (SC/ST Act) before passing the impugned order, also contains material relating to the said dispute and the arrest of the family members. Thus, these were not circumstances which were brought before the Court subsequently; rather, they formed part of the material available to the Court at the stage of consideration of the application under Section 173(4) BNSS.

13. In the aforesaid factual circumstances, particularly when the proposed allegations were against police/public servants and the allegations were connected with the very dispute in which the family members of the complainants had been arrested, the learned Special Court was required to consider the statutory safeguards contained in Section 175(3) BNSS before directing registration/investigation of the alleged offence. The said provision

assumes significance where the allegations are sought to be set in motion against public servants in circumstances requiring judicial scrutiny of the official acts and the surrounding facts. The impugned order, however, does not disclose any consideration of the aforesaid material circumstances or the necessity of following the procedure contemplated under Section 175(3) BNSS.

14. The omission is material and goes to the root of the exercise of jurisdiction. The learned Special Court had before it the application itself, as well as the police report called for by the Court, both of which furnished circumstances requiring judicial consideration before any direction was issued against the police officials. Yet, there is no discussion as to whether the statutory requirements of Section 175(3) BNSS were attracted, nor is there any finding as to why the safeguards contemplated therein were unnecessary or could be dispensed with. The absence of such consideration, in the facts of the present case, reflects non-application of judicial mind to a relevant statutory requirement and the material circumstances available on the record.

15. It is necessary to clarify the statutory scheme governing registration of a criminal case at the instance of an aggrieved person. Section 173(4) of the BNSS does not itself confer power upon the Magistrate to direct registration of an FIR. The said provision provides a remedy to a person whose information has not been recorded by the officer-in-charge of the police station and thereafter, upon approaching the Superintendent of Police, whose intervention has also not resulted in registration of the case. The judicial power to direct investigation/registration of a case is traceable to Section 175(3) BNSS, which corresponds to the earlier [Section 156\(3\)](#) Cr.P.C. Thus, [Sections 173\(4\)](#) and [175\(3\)](#) BNSS operate in sequence and are complementary in nature: ordinarily, the applicant must first exhaust the statutory remedies contemplated under [Section 173](#) BNSS, including the remedy before the Superintendent of Police, and only thereafter may the Magistrate exercise jurisdiction under [Section 175\(3\)](#) BNSS, subject to satisfaction of the legal requirements governing such exercise of power.

16. It would be just and proper, before examining the legality of the impugned order, to briefly notice the principles [laid down by](#) the Honble Supreme Court governing the exercise of judicial power under [Sections 156\(1\)](#) and [156\(3\)](#) Cr.P.C. [corresponding to [Section 175\(3\)](#) BNSS], particularly that such power is required to be exercised judicially, with due application of mind, and not mechanically or as a matter of course.

17. In [State of Haryana & Ors. Vs. Bhajan Lal & Ors.](#) 1992 Supp (1) SCC 335, the Honble Supreme Court held in para 102 as under:-

102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under [Article 226](#) or the inherent powers under [Section 482](#) of the Code which we have extracted and reproduced above, we have given the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently

channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under [Section 156\(1\)](#) of the Code except under an order of a Magistrate within the purview of [Section 155\(2\)](#) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under [Section 155\(2\)](#) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

18. In [Anil Kumar & Ors. Vs. M.K. Aiyappa & Anr.](#) (2013) 10 SCC 705, the Honble Supreme Court held in para 11 as under:-

11. The scope of [Section 156\(3\)](#) CrPC came up for consideration before this Court in several cases. This Court in Maksud Saiyed case [(2008) 5 SCC 668 : (2008) 2 SCC (Cri) 692] examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under [Section 156\(3\)](#) and held that where jurisdiction is exercised on a complaint filed in terms of [Section 156\(3\)](#) or [Section 200](#) CrPC, the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under [Section 156\(3\)](#) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the

order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under [Section 156\(3\)](#) CrPC, should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation.

19. In [Priyanka Srivastava & Anr. Vs. State of U.P. & Ors.](#) (2015) 6 SCC 287, the Honble Supreme Court laid down following principles in para 20 and 27 to 31:-

The duty cast on the Magistrate while exercising power under [Section 156\(3\)](#) CrPC cannot be marginalised. The power under [Section 156\(3\)](#) CrPC warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of [Section 154](#) CrPC. The Magistrate exercising power under [Section 156\(3\)](#) CrPC has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind. He has to bear in mind that sending the matter for investigation would be conducive to justice and then he may pass the requisite order. There has to be prior applications under [Sections 154\(1\)](#) and [154\(3\)](#) CrPC while filing a petition under [Section 156\(3\)](#) CrPC. Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. A litigant at his own whim cannot invoke the authority of the Magistrate under [Section 156\(3\)](#) CrPC. A principled and really aggrieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when perverted litigants take this route to harass their fellow citizens, efforts must be made to scuttle and curb the same. A number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, are being filed. Consequently, in an appropriate case, the truth and veracity of the allegations made can be verified by the Magistrate, regard being had to the nature thereof.

20. In [Ramdev Food Products Private Limited Vs. State of Gujarat](#) (2015) 6 SCC 439, the Honble Supreme Court held in para 20, 38 as under:-

20. It has been held, for the same reasons, that direction by the Magistrate for investigation under [Section 156\(3\)](#) cannot be given mechanically. In [Anil Kumar v. M.K. Aiyappa](#) [(2013) 10 SCC 705 : (2014) 1 SCC (Cri) 35] , it was observed : (SCC p. 711, para 11)

11. The scope of [Section 156\(3\)](#) CrPC came up for consideration before this Court in several cases. This Court in Maksud Saiyed case [[Maksud Saiyed v. State of Gujarat](#), (2008) 5 SCC 668 : (2008) 2 SCC (Cri) 692] examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under [Section 156\(3\)](#) and held that where jurisdiction is exercised on a complaint filed in terms of [Section 156\(3\)](#) or [Section 200](#) CrPC, the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter

under [Section 156\(3\)](#) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under [Section 156\(3\)](#) CrPC, should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation.

The above observations apply to category of cases mentioned in para 120.6 in [Lalita Kumari \[Lalita Kumari v. State of U.P., \(2014\) 2 SCC 1 : \(2014\) 1 SCC \(Cri\) 524\]](#).

38. In [Devarapalli Lakshminarayana Reddy v. V. Narayana Reddy \[\(1976\) 3 SCC 252 : 1976 SCC \(Cri\) 380\]](#), [National Bank of Oman v. Barakara Abdul Aziz \[\(2013\) 2 SCC 488 : \(2013\) 2 SCC \(Cri\) 731\]](#), [Madhao v. State of Maharashtra \[\(2013\) 5 SCC 615 : \(2013\) 4 SCC \(Cri\) 141\]](#), [Rameshbhai Pandurao Hedau v. State of Gujarat \[\(2010\) 4 SCC 185 : \(2010\) 2 SCC \(Cri\) 801\]](#), the scheme of [Sections 156\(3\)](#) and [202](#) has been discussed. It was observed that power under [Section 156\(3\)](#) can be invoked by the Magistrate before taking cognizance and was in the nature of pre-emptory reminder or intimation to the police to exercise its plenary power of investigation beginning with [Section 156](#) and ending with report or charge-sheet under [Section 173](#). On the other hand, [Section 202](#) applies at post-cognizance stage and the direction for investigation was for the purpose of deciding whether there was sufficient ground to proceed.

21. In [Babu Venkatesh & Ors. Vs. State of Karnataka & Anr. \(2022\) 5 SCC 639](#), the Honble Supreme Court held in para 25 as under:-

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

22. Accordingly, an application merely described or treated as an application under [Section 173\(4\)](#) BNSS cannot, by that nomenclature, confer upon the Special Court the power to order registration of an FIR. If the substance of the prayer is for a direction to the police to register a criminal case and investigate, the judicial authority must examine whether the application satisfies the requirements of [Section 175\(3\)](#) BNSS and whether the conditions precedent for exercise of that jurisdiction exist. The distinction is material because [Section 175\(3\)](#) BNSS involves a judicial direction for investigation, and such power is required to be exercised upon proper application of mind to the allegations, the material placed by the applicant, the prior approach to the police authorities and the necessity for investigation by the police. Therefore, an order allowing an application under [Section 173\(4\)](#) BNSS, without considering the statutory requirements of [Section 175\(3\)](#) BNSS, cannot be sustained merely on the ground that the applicant had invoked [Section 173\(4\)](#) BNSS.

23. The record further indicates that appellant Rakesh Kumar Yadav, Sub-Inspector, appellant Amit Kumar, Constable, along with about 20 other police personnel, have been arrayed in the proceedings on the basis of the allegations contained in the application under [Section 173\(4\)](#) BNSS. At the same time, the application itself, as well as the police report subsequently called for by the learned Special Judge, discloses that on the very same day certain family members connected with the dispute were arrested by the police in connection with a cognizable criminal case. This contemporaneous circumstance assumes considerable significance while examining the allegations made against the police personnel. The fact that the police had proceeded in connection with a cognizable offence and had apprehended persons in relation to the said criminal proceedings could not have been ignored while determining whether the acts attributed to the appellants were wholly unrelated to the discharge of their official functions or were connected with the performance of their lawful duties.

24. The application under [Section 173\(4\)](#) BNSS itself, read with the police report, indicates that the police action was preceded by information regarding a cognizable offence and that certain persons were apprehended/arrested in connection with the criminal case arising out of the same dispute. These circumstances, at least prima facie, establish a direct factual nexus between the presence and conduct of the police personnel and the discharge of their official functions. Whether any particular act exceeded the scope of lawful duty is a matter requiring objective consideration; however, the Court could not have proceeded on the assumption that every allegation against a police officer necessarily constituted an act wholly unconnected with his official duty.

25. At the stage of considering an application seeking judicial intervention for registration/investigation, the allegations made by the applicant cannot be treated as gospel truth merely because they have been made on affidavits. The Court is required to examine the statutory requirements, the surrounding circumstances and the material placed before it, and to apply its judicial mind to determine whether the extraordinary judicial direction sought from the Court is warranted. Particularly where a large number of police personnel are implicated and the contemporaneous record indicates that they were acting in connection with a cognizable criminal case, the Court is expected to exercise greater judicial care before directing criminal proceedings against them. A mechanical acceptance of the allegations, without examining the police report and the circumstances appearing from the record, cannot be regarded as a proper exercise of judicial discretion.

26. In the present case, the impugned order does not demonstrate that the learned Special Judge considered the significant circumstance that appellant Rakesh Kumar Yadav, Sub-Inspector was I.O. of both the cases, appellant Amit Kumar, Constable, and 20 other police personnel were alleged to have acted in the course of police proceedings on the very day when persons connected with the dispute were arrested in a cognizable criminal case. The police report called for by the Court also contained material relevant to this aspect. Yet, there is no meaningful consideration of the said material in the impugned order, nor is there any finding as to how the alleged acts of the police personnel were disconnected from their official functions. The absence of such consideration assumes greater significance in

view of the provisions of [Section 175](#) BNSS. The impugned order, therefore, reflects a mechanical approach rather than the judicial application of mind required before directing criminal action against public servants.

27. It would, therefore, be just and proper to briefly notice the statutory scheme under [Section 173\(4\)](#), [Section 175\(3\)](#) & (4) of the BNSS, read with the principles recently enunciated by the Honble Supreme Court in *Om Prakash Ambadkar Vs. State of Maharashtra & Ors.* (2026) 2 SCC 622 and *XXX Vs. State of Kerala & Ors.* (2026) 6 SCC 770 cases which govern the manner in which such applications are required to be considered and the judicial duty of the Court while exercising the said jurisdiction.

28. [Section 173](#) B.N.S.S.: Information in cognizable cases-

(1)

(2)..

(3).

(4) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1), may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Sanhita, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence failing which such aggrieved person may make an application to the Magistrate.

29. [Section 175](#) B.N.S.S. provides as under:-

175. Police officer's power to investigate cognizable case.-

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

Provided that considering the nature and gravity of the offence, the Superintendent of Police may require the Deputy Superintendent of Police to investigate the case.

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

(3) Any Magistrate empowered under [section 210](#) may, after considering the application supported by an affidavit made under sub-section (4) of [section 173](#), and after making such inquiry as he thinks necessary and submission made in this regard by the police officer, order such an investigation as above-mentioned.

(4) Any Magistrate empowered under [section 210](#), may, upon receiving a complaint against a public servant arising in course of the discharge of his official

duties, order investigation, subject to-

(a) receiving a report containing facts and circumstances of the incident from the officer superior to him; and

(b) after consideration of the assertions made by the public servant as to the situation that led to the incident so alleged.

30. In *Om Prakash Ambadkar Vs. State of Maharashtra & Ors.* (2026) 2 SCC 622, the Honble Supreme Court held in para 31 to 36 as under:-

31. [Section 175](#) BNSS corresponds to Section 156CrPC. Sub-section (1) of [Section 175](#) BNSS is in pari materia with [Section 156\(1\)](#)CrPC 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](#) BNSS is identical to [Section 156\(2\)](#)CrPC. [Section 175\(3\)](#) 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\(3\)](#)CrPC.

32. However, unlike [Section 156\(3\)](#)CrPC, any Magistrate, before ordering investigation under [Section 175\(3\)](#) BNSS, is required to:

(a) Consider the application, supported by an affidavit, made by the complainant to the Superintendent of Police under [Section 173\(4\)](#) BNSS;

(b) Conduct such inquiry as he thinks necessary; and

(c) Consider the submissions made by the police officer.

33. Sub-section (4) of [Section 175](#) BNSS is a new addition to the scheme of investigation of cognizable cases when compared with the scheme previously existing in Section 156CrPC. It provides an additional safeguard to a public servant against whom an accusation of committing a cognizable offence arising in the course of discharge of his official duty is made. The provision stipulates that any Magistrate who is empowered to take cognizance under [Section 210](#) 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.

34. A comparison of [Section 175\(3\)](#) BNSS with [Section 156\(3\)](#)CrPC indicates three prominent changes that have been introduced by the enactment of BNSS as follows:

(a) First, the requirement of making an application to the Superintendent of Police upon refusal by the officer in charge of a police station to lodge the FIR has been made mandatory, and the applicant making an application under [Section 175\(3\)](#) is required to furnish a copy of the application made to the Superintendent of Police

under [Section 173\(4\)](#), supported by an affidavit, while making the application to the Magistrate under [Section 175\(3\)](#).

(b) Secondly, the Magistrate has been empowered to conduct such enquiry as he deems necessary before making an order directing registration of FIR.

(c) Thirdly, the Magistrate is required to consider the submissions of the officer in charge of the police station as regards the refusal to register an FIR before issuing any directions under [Section 175\(3\)](#).

35. The introduction of these changes by the legislature can be attributed to the judicial evolution of Section 156CrPC undertaken by a number of decisions of this Court. In [Priyanka Srivastava v. State of U.P.](#) [[Priyanka Srivastava v. State of U.P.](#), (2015) 6 SCC 287 : (2015) 3 SCC (Civ) 294 : (2015) 4 SCC (Cri) 153], this Court held that prior to making an application to the Magistrate under [Section 156\(3\)](#)CrPC, the applicant must necessarily make applications under [Sections 154\(1\)](#) and [154\(3\)](#). It was further observed by the Court that applications made under [Section 156\(3\)](#)CrPC must necessarily be supported by an affidavit sworn by the applicant. The reason given by the Court for introducing such a requirement was that applications under [Section 156\(3\)](#)CrPC were being made in a routine manner and in a number of cases only with a view to cause harassment to the accused by registration of FIR.

36. It was further observed in [Priyanka Srivastava](#) [[Priyanka Srivastava v. State of U.P.](#), (2015) 6 SCC 287 : (2015) 3 SCC (Civ) 294 : (2015) 4 SCC (Cri) 153] that the requirement of supporting the complaint with an affidavit would ensure that the person making the application is conscious and also to see that no false affidavit is made. Once an affidavit is found to be false, the applicant would be liable for prosecution in accordance with law. This would deter him from casually invoking the authority of the Magistrate under [Section 156\(3\)](#).

31. In XXX Vs. State of Kerala & Ors. (2026) 6 SCC 770, the Honble Supreme Court held in para 27, 28, 32 to 35, 46 to 48, 61 to 67 as under:-

27. A bare reading of [Section 175](#) BNSS reveals the marginal note as police officer's power to investigate cognizable case. While sub-section (1) confers power on any officer in charge of a police station to investigate a cognizable case and sub-section (2) provides the effect of investigation by a police officer not empowered under sub-section (1), sub-sections (3) and (4) relate to the power of a Magistrate, empowered under [Section 210](#) BNSS to order investigation as above-mentioned i.e. an investigation that a police officer is required to undertake as in sub-section (1) of [Section 175](#). Reference to [Section 210](#) in sub-sections (3) and (4) is for the purpose of drawing guidance as to the class of Magistrate empowered to take cognizance of an offence.

28. We are minded to hold that by the very nature of its contents, sub-sections (3) and (4) of [Section 175](#) could have formed a different section of BNSS altogether. Suffice it to record at the outset that BNSS being a statute of recent origin, which has been enacted after exactly half a century of its precursor ([CrPC](#)) governing the

field of criminal procedure, one would have expected the legislative drafting thereof to be of the highest order with clear expression of the will of the people. Sadly, [Section 175](#) BNSS is somewhat confusing and requires ironing out the creases in the legislation without altering the material of which it is woven.

32. Sub-section (4) of [Section 175](#) BNSS is a provision that was absent in [CrPC](#). It reads as follows:

175. (4) Any Magistrate empowered under [Section 210](#), may, upon receiving a complaint against a public servant arising in course of the discharge of his official duties, order investigation, subject to

(a) receiving a report containing facts and circumstances of the incident from the officer superior to him; and

(b) after consideration of the assertions made by the public servant as to the situation that led to the incident so alleged.

33. Sub-section (4) prescribes a special procedure to be followed before an order for investigation is made in cases involving offences committed by a public servant in course of the discharge of his official duties. Having regard to the modal verb may, appearing in sub-section (4), a Judicial Magistrate has the discretion to order an investigation upon: (i) calling for a report regarding the incident from an officer superior to the accused public servant; and (ii) considering the version of the public servant concerning the incident. It is subject to these conditions, that (A)ny Magistrate , may, , if satisfied of sufficient grounds existing, pass an order for investigation against the accused public servant.

34. The legislative intention behind insertion of sub-section (4) of [Section 175](#) is clear: Parliament intended it as an additional safeguard for public servants when a complaint is made against them. Cognizant of practical realities and to prevent false or frivolous allegations, it appears to us that the mandate is to obtain a report from the accused public servant's superior officer and to extend to such public servant an opportunity to explain his side of the story. While society's interest is served by prosecuting offenders, it is equally vital, if not more, to ensure that prosecution is not launched against individuals, including public servants, to settle a score or wreak vengeance or put them in such an awkward position that it becomes difficult for them to act in a similar future occasion. The responsibility, nay duty, after all, is not just to pursue the actual culprit, but also to protect the innocent from being falsely implicated, wrongly accused and unnecessarily victimised.

35. Having analysed sub-section (4) of [Section 175](#), its scope, and the object it seeks to achieve, the question that now arises for consideration is the manner in which such provision has to be interpreted whether sub-section (4) stands alone or serves as an adjunct to sub-section (3) or is it to be read as a proviso to sub-section (3)?

Construction of [Section 175\(4\)](#)

46. Having held that sub-section (4) of [Section 175](#) is neither an independent/a standalone provision nor a proviso to sub-section (3) thereof, the next question that arises is in relation to the manner in which it ought to be construed.

47. On a plain and contextual reading of the scheme of [Section 175](#), we find that sub-section (3) vests the Judicial Magistrate (empowered under [Section 210](#)) with the power to order investigation, while sub-section (4) while conferring similar power additionally prescribes a special procedural safeguard to be observed by the Judicial Magistrate (empowered under [Section 210](#)) where the proposed direction could concern a public servant. While the authority to direct investigation flows from sub-section (3) as well as from sub-section (4), the latter provides a qualifying procedural layer.

48. Ordinarily, sub-sections of a section of an Act usually deal with related, parallel aspects with one sub-section dealing with a general principle and the other providing for a specific aspect, on its own terms. Viewed in this light, sub-section (3) lays down the general principle whereas sub-section (4) dives into specifics of public servants in the given situation, introducing an additional procedural requirement before the power to order investigation is exercised. Consequently, the exercise of power to order investigation must be preceded by satisfaction of not only the conditions expressly stated in sub-section (4) but also those implicit and traceable to sub-section (3).

Summary of the discussion

61. Sub-section (3) and sub-section (4) of [Section 175](#) are not isolated silos but must be read in harmony with sub-section (4) forming an extension of sub-section (3).

62. The power to order investigation is conferred upon a Judicial Magistrate by sub-section (3) of [Section 175](#). Sub-section (4) of [Section 175](#) too confers such power but prescribes a special procedure to be followed in case of a complaint against a public servant alleging commission of offences in the discharge of official duties.

63. The expression complaint in sub-section (4) of [Section 175](#) does not encompass oral complaints. Having regard to the text of the provision and the context in which it is set, and in light of our conclusion that sub-section (4) is not a provision which stands alone or is a proviso to sub-section (3), the term must derive its meaning in sync with allegations of cognizable offence levelled in an application of the nature referred to in sub-section (3) of [Section 175](#) i.e. an application supported by affidavit.

When must [Section 175\(4\)](#) be invoked a guide for Judicial Magistrates

64. Having clarified the symbiotic relationship between sub-sections (3) and (4) of [Section 175](#), it is indispensable to indicate the circumstances in which the procedure under sub-section (4) could get activated. Significantly, sub-section (4) of [Section 175](#) uses the modal verb may and not shall. In the context where it finds place and the object that is sought to be achieved, may has to be read as may, bearing an element of discretion, and not shall. The principles, discussed in the following paragraphs, are intended to guide Judicial Magistrates at the stage of considering applications under [Section 175](#).

65. Upon receiving a complaint under sub-section (4) of [Section 175](#) BNSS alleging commission of an offence by a public servant arising in course of the discharge of his official duties, the Magistrate may do either of the following:

65.1. Reading the complaint, if the Judicial Magistrate is prima facie satisfied that commission of the alleged act giving rise to an offence arose in course of discharge of official duties by the public servant, such Magistrate may not have any option other than following the procedure prescribed under sub-section (4) of [Section 175](#) of calling for reports from the superior officer and the accused public servant.

65.2. Or, on a consideration of the complaint, where the Judicial Magistrate entertains a prima facie doubt depending upon the circumstances as to whether the offence alleged to have been committed by the public servant arose in course of discharge of his official duties, such Magistrate might err on the side of caution and proceed to follow the procedure prescribed in sub-section (4) of [Section 175](#).

65.3. Or, where the Judicial Magistrate is satisfied that the alleged act of offence was not committed in the discharge of official duties and/or it bears no reasonable nexus thereto, and also that the rigours of sub-section (4) of [Section 175](#) are not attracted, the complaint may be dealt with in accordance with the general procedure prescribed under sub-section (3) of [Section 175](#).

66. It is hereby clarified that the Judicial Magistrate would continue to retain the authority to reject an application under sub-section (3) of [Section 175](#), lodged against a public servant, where such Magistrate finds that the allegations made therein are wholly untenable, manifestly absurd, or so inherently improbable that no reasonable person could conclude that any offence is disclosed. However, it is needless to observe, such an order of rejection ought not to be based on whims and fancy but must have the support of valid reasons.

67. A situation may arise where, in an appropriate case, the Judicial Magistrate has called for a report from the superior officer concerned under clause (a) of sub-section (4) of [Section 175](#), but such officer fails to comply with the direction or does not submit the report within a reasonable period of time. What is the course open to the Magistrate in such a situation? In the unlikely event of such a situation, we hold, the Judicial Magistrate is not obliged to wait indefinitely for compliance and may proceed further in accordance with sub-section (3) of [Section 175](#) after considering the version of the accused public servant under clause (b) of sub-section (4) of [Section 175](#), if on record. What would constitute reasonable time cannot be determined in rigid or inflexible terms and must necessarily depend upon the facts and circumstances of each case before the Judicial Magistrate who has to take the call.

32. Thus, without expressing any final opinion on the truth or otherwise of the allegations levelled by the applicants, this Court finds that the learned Special Judge was required to undertake an objective and legally informed examination of the material before directing further criminal process. The contemporaneous police action, the arrest of persons in connection with a cognizable offence, the official status of the appellants, the police report and the statutory scheme under [Sections 173](#) and [175](#) BNSS were all relevant considerations. Their omission from consideration, coupled with an apparent acceptance of the allegations as

substantially true and reliable, renders the impugned order vulnerable on the ground of non-application of judicial mind.

33. There is yet another material aspect which appears to have escaped consideration by the learned Special Judge. [Section 175\(4\)](#) BNSS incorporates a specific statutory safeguard in respect of a complaint against a public servant arising in the course of discharge of his official duties. In such a case, the Magistrate is required to proceed only after receiving a report containing the facts and circumstances of the incident from the officer superior to the public servant and after considering the assertions made by the public servant as to the situation which led to the incident. Thus, the statutory scheme does not contemplate a mechanical acceptance of the allegations made by the complainant; rather, where the alleged acts have a nexus with official duty, the Court is required to undertake the additional scrutiny mandated by [Section 175\(4\)](#) BNSS.

34. In the present case, the said statutory requirement assumed particular significance because appellant Rakesh Kumar Yadav was a Sub-Inspector and I.O. of both the cases, appellant Amit Kumar was a Constable and approximately 20 other police personnel have also been implicated. More importantly, the application under [Section 173\(4\)](#) BNSS and the police report itself disclose that the police personnel were acting in the backdrop of a cognizable criminal case and that certain family members had been arrested by the police on the very same day. These circumstances furnished a prima facie factual nexus between the alleged incident and the discharge of official police functions. Consequently, before directing investigation against such public servants, the learned Special Judge was required to examine whether the statutory safeguards and the specific conditions contemplated under [Section 175\(4\)](#) BNSS had been duly satisfied.

35. The requirement of [Section 175\(4\)](#) BNSS is substantive and cannot be reduced to an empty formality. Where the allegations arise out of an incident occurring in the course of official police action, the Court is required to take into consideration the report of the officer superior to the concerned public servant as well as the assertions of the public servant explaining the circumstances which led to the incident. The purpose of such consideration is to enable the Court to distinguish between an act having a reasonable nexus with official duty and an act which is wholly extraneous to such duty. In the present case, the police report and surrounding circumstances were therefore directly relevant to the statutory inquiry contemplated by [Section 175\(4\)](#) BNSS.

36. The impugned order does not disclose any consideration of the specific statutory test prescribed by [Section 175\(4\)](#) BNSS. There is no apparent finding that the learned Special Judge examined the report of the superior police officer from the standpoint required by the provision, nor is there any meaningful consideration of the assertions of the concerned public servants regarding the circumstances in which the police action was undertaken. Instead, the allegations contained in the application under [Section 173\(4\)](#) BNSS appear to have been

treated as sufficient, without first undertaking the statutory scrutiny required where the complaint concerns public servants allegedly acting in the course of their official duties. Such an approach defeats the very purpose of the safeguard incorporated by the Legislature in [Section 175\(4\)](#) BNSS.

37. The power under [Section 175\(3\)](#) BNSS to order an investigation cannot be exercised in isolation from the specific statutory requirement contained in [Section 175\(4\)](#) BNSS where the complaint is against a public servant arising in the course of discharge of official duties. [Section 175\(3\)](#) BNSS contemplates consideration of the application supported by affidavit, such inquiry as the Magistrate considers necessary and the submission made by the police officer, whereas [Section 175\(4\)](#) BNSS introduces an additional safeguard in cases concerning public servants and official duty.

38. A significant and material aspect which has been completely overlooked by the learned Special Judge is the express language employed by the Legislature in [Section 175\(3\)](#) of the BNSS. The provision does not merely state that the Magistrate may order an investigation after considering the application under [Section 173\(4\)](#) BNSS. It specifically provides under [Section 175\(3\)](#) BNSS that the Magistrate may do so ...and after making such inquiry as he thinks necessary and submission made in this regard by the police officer. The expression so employed by the Legislature is a deliberate departure from the comparatively simple language of [Section 156\(3\)](#) Cr.P.C., which merely empowered the Magistrate to order such investigation. The additional requirements introduced by [Section 175\(3\)](#) BNSS are therefore substantive procedural safeguards and cannot be treated as an empty formality. The Supreme Court in *Om Prakash Ambadkar* (supra), has specifically noticed that, unlike [Section 156\(3\)](#) Cr.P.C., [Section 175\(3\)](#) BNSS requires the Magistrate to consider the application supported by an affidavit, make such inquiry as he thinks necessary and consider the submissions made by the police officer before directing investigation.

39. The expression such inquiry as he thinks necessary undoubtedly confers judicial discretion upon the Magistrate regarding the nature, extent and manner of the inquiry warranted by the facts of the particular case. However, such discretion cannot be construed as conferring a power to completely ignore the statutory requirement of applying his/her mind to whether an inquiry is necessary. Where the material placed before the Court discloses circumstances requiring verification or explanation, particularly where the proposed criminal proceedings are directed against public servants and the police version, relevant facts or contemporaneous official record is available, the Magistrate is under a legal obligation to consider that material and determine whether an inquiry is necessary before issuing a direction for investigation.

40. Consequently, where the Magistrate proceeds to direct investigation without making any inquiry, the judicial order must disclose due consideration of the statutory requirement and the reasons why, in the facts and circumstances of that

particular case, no inquiry was considered necessary. A bald direction for registration/investigation, without advertence to the words and after making such inquiry as he thinks necessary and without considering the submission of the police officer, would render the additional safeguards incorporated by the Legislature meaningless. The requirement of a reasoned judicial order assumes greater significance where the record already contains a police report, relevant facts or other contemporaneous material which is capable of throwing light upon the allegations made by the applicant.

41. In the present case, the necessity for such judicial scrutiny was particularly evident. The application under [Section 173\(4\)](#) BNSS, the police report called for by the learned Special Judge himself, and the contemporaneous circumstances disclose that the appellants are police personnel and that, on the very day in question, police action had taken place in connection with a cognizable criminal case in which certain persons connected with the dispute had been arrested. These circumstances were directly relevant to determine whether the allegations made against the police personnel represented acts wholly unconnected with their official functions or arose in the course of police action. In such circumstances, the learned Special Judge was required to consider whether an inquiry into these aspects was necessary before directing investigation. The impugned order, however, does not disclose any such consideration.

42. The words and submission made in this regard by the police officer are equally significant. It has been specifically required the Magistrate to consider the submission made by the police officer before directing investigation. Thus, the statutory scheme requires the Court to consider not merely the version of the applicant but also the explanation or material placed by the police concerning the alleged refusal to register the case and the circumstances surrounding such refusal. The object is to ensure that the Magistrate exercises an informed judicial discretion after considering both sides of the relevant record and does not mechanically convert an allegation into a direction for police investigation. This requirement enhances judicial accountability and assists in ensuring that the order directing investigation is a reasoned one.

43. In the present case, the learned Special Judge has neither recorded any finding that the statutory inquiry contemplated by [Section 175\(3\)](#) BNSS was undertaken nor disclosed any reason why, despite the police report and the contemporaneous circumstances available on record, no further inquiry was considered necessary. There is also no meaningful consideration of the submission made by the police officer. Thus, the impugned order does not demonstrate compliance with the three distinct statutory requirements under [Section 175\(3\)](#) BNSS, namely, (i) consideration of the application supported by affidavit, (ii) making such inquiry as the Magistrate thinks necessary, and (iii) consideration of the submission made by the police officer. The omission is not a mere procedural irregularity but goes to the very exercise of jurisdiction under [Section 175\(3\)](#) BNSS.

44. The approach adopted by the learned Special Judge is also inconsistent with the law declared by the Supreme Court in [State of Haryana & Anr., Anil Kumar & Ors., Priyanka Srivastava & Anr., Ramdev Food Products Private Limited, Babu Venkatesh & Ors., Om Prakash Ambadkar, XXX](#) (supra). Thus, in the above circumstances, the learned Special Judge, Special Court (SC/ST Act), Maharajganj was not justified in proceeding merely upon the allegations contained in the application under [Section 173\(4\)](#) BNSS as though they constituted conclusive material for directing criminal investigation. The Court was legally required to undertake the statutory exercise under [Section 175\(3\)](#) BNSS, including consideration of whether an inquiry was necessary and consideration of the submission/material furnished by the police officer. The absence of any finding on these aspects, despite the police report having been called for and despite the circumstances indicating contemporaneous police action, demonstrates that the specific statutory safeguards introduced by [Section 175\(3\)](#) & (4) BNSS were overlooked. The impugned order, therefore, suffers from a material non-application of mind and cannot be sustained in law.

45. The manner in which the learned Special Judge, SC/ST Act, Maharajganj has dealt with the application under [Section 173\(4\)](#) BNSS is a matter of serious concern. The impugned order reflects a serious lack of appreciation and application of the statutory procedure under the BNSS and the binding principles [laid down by](#) the Honble Supreme Court as discussed herein above. Such disregard of the mandatory requirements of [Section 173\(4\)](#), [Section 175\(3\)](#) & (4) BNSS by a Special Judge exercising judicial power is wholly unwarranted and cannot be countenanced. The impugned order reflects a fundamental lack of understanding of the basic principles of criminal law and procedure, on the part of Special Judge, SC/ST Act, Maharajganj.

46. Directions for ensuring compliance with the procedural mandates by all the Judicial Officers in the State of Uttar Pradesh:-

(i) All the Judicial Officers exercising jurisdiction under [Section 173\(4\)](#) and [175](#) of the BNSS shall bear in mind that the words after making such inquiry as he thinks necessary occurring in [Section 175\(3\)](#) BNSS are a conscious and substantive statutory departure from the erstwhile [Section 156\(3\)](#) Cr.P.C. The object is not to conduct a mini-trial at the stage of [Section 175\(3\)](#) BNSS, but to ensure that the statutory power of directing police investigation is exercised judicially and not mechanically.

(ii) The Judicial Officers shall consider the submission/report of the concerned police officer regarding the refusal or failure to register the FIR before passing an order under [Section 173\(4\)](#) and [Section 175\(3\)](#) BNSS.

(iii) Before exercising jurisdiction under [Section 173\(4\)/175\(3\)](#) BNSS, the Court shall verify that the applicant has followed the statutory course contemplated by [Section 173](#) BNSS. The power under [Section 175\(3\)](#) BNSS is not intended to permit

a complainant to introduce an entirely new factual foundation before the Magistrate after the police have declined to register the original information.

(iv) [Section 175\(4\)](#) BNSS is not an independent or stand-alone mechanism by which the safeguards contained in [Section 175\(3\)](#) BNSS can be bypassed. The sub-sections (3) and (4) must be read harmoniously and that an application against a public servant, where the allegation arises in the course of official duty, must also satisfy the procedural requirements applicable under [Section 175\(3\)](#) BNSS.

(v) Where, on a prima facie consideration of the complaint, the alleged act appears to have arisen in the course of discharge of official duties, the Magistrate and Special Courts shall follow the procedure contemplated by [Section 175\(4\)](#) BNSS.

(vi) Whenever [Section 175\(4\)](#) BNSS is attracted or is specifically relied upon, the judicial order shall contain a brief but clear finding as to whether the alleged act bears a reasonable nexus with the discharge of official duty. Such finding shall be based upon the material available before the Court, including the material gathered in the inquiry under [Section 175\(3\)](#) BNSS, the police report/submission and, where applicable, the report and assertions contemplated under [Section 175\(4\)](#) BNSS.

(vii) The Magistrates and Special Courts shall exercise heightened judicial caution where the proposed accused is a public servant or police officer/police personnel, particularly in cases where the same police establishment or its officers:-

(a) had earlier registered or investigated a criminal case against the complainant or his/her family members;

(b) had arrested the complainant or members of his/her family;

(c) had taken preventive or coercive action against the complainant or his/her family;

(d) were involved in investigation of a criminal case or counter-case;

(e) had submitted a final report/closure report in a connected case; or

(f) were otherwise directly concerned with the occurrence or the earlier police proceedings.

In such circumstances, the Court shall carefully examine the chronology of events, the relevant General Diary entries, FIRs, criminal cases, arrest memos, police reports and other contemporaneous material placed before it. The existence of a prior police action or criminal cases shall neither by itself establish falsity of the complaint nor by itself establish its truth; it is a relevant circumstance requiring judicial consideration.

(viii) The inquiry contemplated by [Section 175\(3\)](#) BNSS should be confined to what is necessary for the proper exercise of judicial discretion.

(ix) Every order passed on an application under [section 173\(4\)](#), [Section 175\(3\)](#) or [Section 175\(4\)](#) BNSS shall be a speaking and reasoned judicial order. It must demonstrate

application of mind to the statutory requirements and should ordinarily indicate:

- (a) whether the requirements of [Section 173](#) BNSS have been complied with;
- (b) whether the application is supported by the requisite affidavit;
- (c) whether the police submission/report has been obtained and considered;
- (d) whether an inquiry under [Section 175\(3\)](#) BNSS was considered necessary;
- (e) if inquiry was conducted, the relevant result/material thereof;
- (f) if no inquiry was considered necessary, brief reasons for such conclusion;
- (g) whether [Section 175\(4\)](#) BNSS is attracted where a public servant is involved;
- (h) whether the alleged act bears a reasonable nexus with official duty;
- (i) whether the report of the superior officer and the assertions of the public servant, where required under [Section 175\(4\)](#) BNSS, have been considered; and
- (j) the precise reasons for either directing investigation or declining the prayer.
- (x) Where a report has been called for under [Section 175\(4\)\(a\)](#) BNSS but is not submitted within a reasonable period, the Magistrate/Special Court shall not be required to wait indefinitely. The Court may proceed in accordance with [Section 175\(3\)](#) BNSS, after taking into consideration the version of the accused public servant under [Section 175\(4\)\(b\)](#) BNSS, if available on record, in accordance with the law.
- (xi) All Magistrates and Special Courts shall strictly follow the binding principles declared by the Supreme Court in *Om Prakash Ambadkar and XXX (supra)* while exercising jurisdiction under [Section 173\(4\)](#), [175\(3\)](#) and [Section 175\(4\)](#) BNSS.

47. These directions are issued not to restrict the legitimate right of an aggrieved person to seek investigation into a cognizable offence, nor to confer immunity upon any public servant, but to ensure that the power to direct investigation is exercised judicially, transparently, fairly and in accordance with the statutory safeguards deliberately incorporated in [Section 174](#) & [175](#) BNSS and principles laid down by Honble Supreme Court in this regard.

48. In view of the foregoing discussion, this Court is of the considered opinion that the learned Special Judge, SC/ST Act, Maharajganj, while passing the impugned order dated 11.08.2026, has failed to exercise the jurisdiction vested in him in accordance with the mandatory statutory provisions contained in [Sections 175\(3\)](#) and [175\(4\)](#) BNSS. The learned Court has neither undertaken the requisite consideration as to whether an inquiry under [Section 175\(3\)](#) BNSS was necessary nor recorded cogent reasons for dispensing with such inquiry. Further, in view of the allegations against police/public servants and the material disclosing the earlier police action and criminal cases involving the complainants family members, the applicability and requirements of [Section 175\(4\)](#) BNSS were required to be specifically considered. The impugned order, being non-speaking and non-reasoned and suffering from material non-application of mind, cannot be sustained.

49. Accordingly, the present appeal is allowed.

50. The impugned order dated 11.08.2026, passed by the learned Special Judge, SC/ST Act, Maharajganj, on the application under [Section 173\(4\)](#) BNSS, is hereby set aside. If any consequential proceedings arising solely out of the said order shall also stand quashed.

51. The District & Sessions Judge shall monitor compliance with the aforesaid directions in the monthly meetings of the judicial officers, while the District Monitoring Cell shall review the same in its monthly meetings with the officers of the district administration and ensure effective implementation.

52. Let a copy of this judgment be forwarded to the Learned Registrar General, High Court of Judicature at Allahabad, for circulation amongst all the judicial officer in the State of Uttar Pradesh for strict compliance with the principles and guidelines contained herein.

53. Registrar General shall also forward a copy of this judgment to the Director, Judicial Training and Research Institute (JTRI), Lucknow for taking necessary steps for appropriate guidance for all Judicial Officers of the State.

54. A copy of this judgment shall be forwarded to all District Magistrates, Senior Superintendent of Police/Superintendent of Police and Commissioners of Police in the State of Uttar Pradesh for information and necessary compliance.

(Santosh Rai,J.) October 9, 2026 RA