

GAHC010163342026



2026:GAU-AS:11834

THE GAUHATI HIGH COURT

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4405/2026

SATYABRATA DEY,
S/O- SATYANDRA KR. DEY, R/O- WARD NO.4 , LANKA TOWN, DIST-
HOJAI, ASSAM, PIN-782446.

VERSUS

THE STATE OF ASSAM AND 2 ORS
TO BE REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF
ASSAM, DISPUR, GUWAHATI-781006.

2:OFFICER IN CHARGE
LANKA POLICE STATION
P.O.- LANKA
DISTRICT-HOJAI
PIN-782446

3:SUPERINTENDENT OF POLICE
HOJAI
SANKARDEV NAGAR
HOJAI
PIN-782442

Advocate for the Petitioner : MR. N H MAZARBHUIYAN, MR. D DOLEY, MR.
YEKA AWOMI, MS. L WAJEEDA, MR. M H SAIKIA, I S MAZARBHUIYAN, MR. R
NILLING, OSINAM TAYENG

Advocate for the Respondent : GA, ASSAM,

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY

JUDGMENT

19.08.2026

Heard Mr. N.H. Mazarbhuiyan, learned counsel for the petitioner and Mr. S.S. Roy, learned Junior Government Advocate, Assam for the all the respondents.

2. The case of the petitioner is that Lanka Municipal Board, District - Hojai, Assam invited quotations from intending suppliers for supply of sand gravels vide a Tender Notice, NIT no. LMB320/2022/153-157 dated 18.05.2022. In response to the NIT, the petitioner submitted his tender quoting rate @ Rs. 925/- per cubic meter of sand gravel. The petitioner has claimed that the rate quoted by him was the lowest rate. The date of opening of the tender box was 26.05.2022. The petitioner has stated that the Municipal Board prepared a comparative statement according to which, the lowest quoted rate was Rs. 925/- per cubic meter of sand gravel. But, the Municipal Board accepted the tender of one Chabi Tapadar at a higher rate @ Rs. 1,250/- per cubic meter of sand gravel. The petitioner has claimed that the beneficiary did not file the Tax Clearance Certificate along with the Tender Documents and submitted the Tax Clearance Certificate only on 27.05.2024, that is, after the last date of submission of the Tender Documents.
3. The petitioner had earlier approached this Court by a writ petition, W.P.[C] no. 1332/2025 and the said writ petition was dismissed by an Order dated 15.09.2025. In the writ petition, the petitioner sought for a criminal investigation as regards the alleged irregularities committed by the Lanka Municipal Board during the afore-mentioned tender process. As the petitioner before approaching this Court by the writ petition did not file any FIR, the Co-ordinate Bench of this Court while dismissing the writ petition by an Order dated 15.09.2025, had

observed that the question of issuance of any directions for a criminal investigation was not warranted. Liberty was, however, granted to the petitioner to take recourse to the appropriate provisions of law, if so advised.

4. In this writ petition, the petitioner has stated that after dismissal of the previous writ petition, W.P.[C] no. 1332/2025, the petitioner sent a First Information Report [FIR] to the Officer In-Charge, Lanka Police Station on 18.09.2025 by registered post. It is stated that the Officer In-Charge, Lanka Police Station did not register the said FIR. Thereafter, the petitioner submitted an application under the Right to Information Act before the Superintendent of Police, Hojai on 23.06.2026 seeking information regarding the afore-mentioned FIR. But, no information has been furnished to the petitioner till date.
5. With the above projections, the petitioner has instituted the present writ petition under Article 226 of the Constitution of India seeking invocation of the extraordinary jurisdiction of this Court for a direction to the respondent authorities to register and investigate the case on the basis of the FIR sent by him to the Officer In-Charge, Lanka Police Station on 18.09.2025.
6. Mr. Roy, learned Junior Government Advocate, Assam appearing for the State respondents has submitted that in the event the FIR, stated to have been sent by the petitioner, disclosing commission of any cognizable offence, has not been registered by the Officer In-Charge of the jurisdictional Police Station and also, by the jurisdictional Superintendent of Police or if no action has been taken on the basis of any application submitted by the petitioner before such authorities, the petitioner ought to have approached the jurisdictional Magistrate as per the provisions of Bharatiya Nagarik Suraksha Sanhita [BNSS], 2023 [earlier, the Code of Criminal Procedure, 1973].

7. It has been observed by the Hon'ble Supreme Court of India in **Sakari Vasu vs. State of Uttar Pradesh and others**, [2008] 2 SCC 409, that the Magistrate had very wide powers under Section 156[3], Code of Criminal Procedure, 1973 ['the CrPC', or 'the Code', for short] to direct registration of an FIR and to ensure a proper investigation, and for this purpose, he can monitor the investigation to ensure that the investigation is done properly [though he cannot investigate himself]. It has been observed that the High Court should discourage the practice of filing a writ petition under Article 226 of the Constitution or a petition under Section 482, CrPC simply because a person has a grievance that his/her FIR had not been registered by the Police, or after being registered, proper investigation had not been done by the police. For this kind of grievance, the remedy would lie under Sections 36, CrPC and Section 154[3], CrPC before the Police Officers concerned at first, and if that is of no avail, then under Section 156[3], CrPC before the Magistrate or by filing a criminal complaint under Section 200, CrPC, and not by filing a writ petition under Article 226 of the Constitution or a petition under Section 482, CrPC. It has been observed that an alternative remedy would not be an absolute bar to prefer the writ petition but it is equally well settled that if there is an alternative remedy, the High Court should not ordinarily interfere.
8. There was an implied power in the Magistrate under Section 156[3], CrPC to order registration of a criminal offence and/or to direct the Officer In-Charge of the concerned Police Station to hold a proper investigation and take all such necessary steps that might be necessary for ensuring a proper investigation including monitoring of the same.
9. In **Sakiri Vasu** [supra], the Hon'ble Supreme Court has made the following observations :-

11. In this connection we would like to state that if a person has a grievance that the police station is not registering his FIR under Section 154 CrPC, then he can approach the Superintendent of Police under Section 154[3] CrPC by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under Section 156[3] CrPC before the learned Magistrate concerned. If such an application under Section 156[3] is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation.

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17. In our opinion Section 156[3] CrPC is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an FIR and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. Section 156[3] CrPC, though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation.

* * * * *

24. In view of the abovementioned legal position, we are of the view that although Section 156[3] is very briefly worded, there is an implied power in the Magistrate under Section 156[3] CrPC to order registration of a criminal offence and/or to direct the officer in charge of the police station concerned to hold a proper investigation and take all such necessary steps that may be necessary for ensuring a proper investigation including monitoring the same. Even though these powers have not been expressly mentioned in Section 156[3] CrPC, we are of the opinion that they are implied in the above provision.

25. We have elaborated on the above matter because we often find that when someone has a grievance that his FIR has not been registered at the police station and/or a proper investigation is not being done by the police, he rushes to the High Court to file a writ petition or a petition under Section 482 CrPC. We are of the opinion that the High Court should not encourage this practice and should ordinarily refuse to interfere in such matters and relegate the petitioner to his alternating remedy, first under Section 154[3] and Section 36 CrPC before the police officers concerned, and if that is of no avail, by approaching the Magistrate concerned under Section 156[3].

26. If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154[3] CrPC or other police officer referred to in Section 36 CrPC. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156[3] CrPC instead of rushing

to the High Court by way of a writ petition or a petition under Section 482 CrPC. Moreover, he has a further remedy of filing a criminal complaint under Section 200 CrPC. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?

27. As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation and for this purpose he can monitor the investigation to ensure that the investigation is done properly [though he cannot investigate himself]. The High Court should discourage the practice of filing a writ petition or petition under Section 482 CrPC simply because a person has a grievance that his FIR has not been registered by the police, or after being registered, proper investigation has not been done by the police. For this grievance, the remedy lies under Sections 36 and 154[3] before the police officers concerned, and if that is of no avail, under Section 156[3] CrPC before the Magistrate or by filing a criminal complaint under Section 200 CrPC and not by filing a writ petition or a petition under Section 482 CrPC.

10. It is also relevant to refer to the following observations of the Hon'ble Supreme Court of India in **Sudhir Bhaskarrao Tambe vs. Hemant Yashwant Dhage**, [2016] 6 SCC 277, :-

2. This Court has held in **Sakiri Vasu vs. State of Uttar Pradesh**, that if a person has a grievance that his FIR has not been registered by the police, or having been registered, proper investigation is not being done, then the remedy of the aggrieved person is not to go to the High Court under Article 226 of the Constitution of India, but to approach the

Magistrate concerned under Section 156[3] CrPC. If such an application under Section 156[3] CrPC is made and the Magistrate is, prima facie, satisfied, he can direct the FIR to be registered, or if it has already been registered, he can direct proper investigation to be done which includes in his discretion, if he deems it necessary, recommending change of investigating officer, so that a proper investigation is done in the matter. We have said this in **Sakiri Vasu** case because what we have found in this country is that the High Courts have been flooded with writ petitions praying for registration of the first information report or praying for a proper investigation.

3. We are of the opinion that if the High Courts entertain such writ petitions, then they will be flooded with such writ petitions and will not be able to do any other work except dealing with such writ petitions. Hence, we have held that the complainant must avail of his alternate remedy to approach the Magistrate concerned under Section 156[3], CrPC and if he does so, the Magistrate will ensure, if prima facie he is satisfied, registration of the first information report and also ensure a proper investigation in the matter, and he can also monitor the investigation.

11. The Code of Criminal Procedure, 1973 has since been replaced by the Bharatiya Nagarik Suraksha Sanhita, 2023 [‘the BNSS’, for short]. The provisions contained in Section 175, BNSS is akin to the provisions contained in Section 156, CrPC.
12. Section 173 [4] and Section 175 [3] of the BNSS, which are of relevance, are quoted hereinbelow for ready reference :-

173. 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.*

175. Police Officer's power to investigate cognizable case –

[1] * * * * *

[2] * * * * *

[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] * * * * *

13. In **Sujal Viswas Attavar and another vs. State of Maharashtra and others**, [2026] 5 SCR 273, the question considered is : whether under Article 226 of the Constitution of India, a direction could be given to the State authorities to register an FIR without the applicant first having taken recourse to the

alternative remedies provided in law. In the case under reference, the FIR was registered under various provisions of the Bharatiya Nyaya Sanhita [BNS], 2023 pursuant to an interim order dated 17.12.2025 passed by the jurisdictional High Court in a writ petition preferred by the complainant. Aggrieved by such registration, the accused persons approached the Hon'ble Supreme Court contending that the registration of the FIR was a direct consequence of the directions issued in writ proceedings, and was therefore, contrary to law since alternative remedies available under the statutory framework had not been exhausted. The Hon'ble Supreme Court has referred to the decisions in **Sakiri Vasu** [supra] and **Sudhir Bhaskarrao Tambe** [supra] amongst others.

14. Finding that the complainant did not avail any of the statutory remedies provided under the BNSS and had instead directly invoked the writ jurisdiction of the High Court inter alia seeking directions for registration of the FIR, the Hon'ble Supreme Court has observed as under :-

7. Keeping in view the above exposition of law, we find that the extraordinary jurisdiction under Article 226 of the Constitution of India ought not to have been invoked when alternative equally efficacious statutory remedies were available. If a person has a grievance that his FIR has not been registered by the police, or having been registered, proper investigation is not being conducted, then the remedy does not ordinarily lie in invoking the writ jurisdiction in the first instance, but in seeking recourse to the statutory framework, unless of course the urgency of the circumstances warrant otherwise.

8. The Bharatiya Nagarik Suraksha Sanhita 2023 [erstwhile Code of Criminal Procedure, 1973] provides a structured sequential mechanism

for initiating criminal prosecution. The statutory framework contemplates that information relating to the commission of a cognizable offence is first placed before the officer-in-charge of the police station and an FIR is registered under Section 173[1] BNSS. In the event of refusal to register the FIR, recourse lies before the jurisdictional Superintendent of Police under Section 173[4] BNSS and, thereafter, before the Magistrate, under Section 175[3] BNSS.

9. In the present case, it is evident from the record that the complainant company did not avail any of the statutory remedies provided under BNSS and instead directly invoked the writ jurisdiction of the High Court, inter alia, seeking directions for registration of FIR. In our considered view, such a recourse, in the first instance, is contrary to the settled principles of law. Particularly in the absence of imminent danger of violation of life or liberty of an individual. Article 226 is not a panacea for all grievances.

10. It is not the case of the complainant company that it had approached the concerned Superintendent of Police or Magistrate prior to filing the writ petition, nor has any material been placed on record to show that such remedies were unavailable or inefficacious. Entertaining a writ petition, in the said circumstances, would in effect, result in the High Court, acting as a forum of first instance thereby bypassing the statutory scheme in its entirety. This is impermissible, save and except in special circumstances as mentioned in *Radha Krishan Industries vs. State of Himachal Pradesh*, [2021] 6 SCC 771, which are conspicuously absent in the present case.

11. The High Court is not bound to entertain a writ petition merely because a case of alleged inaction or negligence is made out against a statutory authority. Ordinarily, where a statute provides a complete and efficacious remedy, the same must be exhausted before invoking constitutional jurisdiction [See : **Sakiri Vasu** (supra) and **Sudhir Bhaskarrao Tambe** (supra)]. In the present facts, the complainant company, has not exhausted the sequential statutory remedies available under BNSS. There is, therefore, no foundation to invoke the extraordinary jurisdiction of the High Court for the reason that efficacious and efficient alternative remedies exists. Hence, at this stage, we find the instant writ petition to be premature, and, therefore, not fit to be entertained.

15. From the pleaded case of the petitioner, it has not emerged that the petitioner had, at any point of time, approached the jurisdictional Judicial Magistrate seeking registration of the FIR. The prayer made in this writ petition is for a direction to the respondent authorities to initiate investigation with the registration of the FIR without any previous approach to the jurisdictional Magistrate to avail the statutory remedy provided under Section 173[4] r/w Section 175[3] of the BNSS. Without availing such statutory remedy provided under the BNSS, the petitioner has directly invoked the writ jurisdiction of this Court seeking for initiation of criminal proceedings with registration of the FIR. Thus, in the considered view of this Court, such a recourse to writ proceeding in the first instance is contrary to the settled principles of law
16. In view of the settled position of law, as outlined above, and the fact situation obtaining in the case, this Court finds the present writ petition as a premature

one and therefore, it is not a one to be entertained. It is accordingly observed. While not entertaining the present writ petition, it is observed that the petitioner as aggrieved person has the liberty to avail the remedy under the BNSS by approaching the Superintendent of Police at first and thereafter, the jurisdictional Magistrate under Section 173[4] r/w Section 175[3], BNSS by following due procedure and formalities as laid down in those provisions.

17. It is further observed that none of the observations made hereinabove shall be construed as observations or an expression of opinion on the merits of the case or as to whether or not the facts disclose the commission of any criminal offence.

JUDGE

Comparing Assistant