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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment reserved on: 05.08.2026*
Judgment pronounced on: 17.08.2026

\# **CNR No. DLHC010012742026**

\+ **CRL.M.C. 471/2026, CRL.M.A. 1881/2026 & CRL.M.A. 1879/2026**

EXCLUSIVE CAPITAL LIMITED .....Petitioner

Through: Mr. Anirban Bhattacharya, Advocate (*through videoconferencing*).

versus

STATE GOVT OF NCT DELHI & ORS. .....Respondents

Through: Mr. Sanjeev Sabharwal, APP for State with Inspector Pankaj.
Mr. Annirudh Sharma, Advocate for R3.

CORAM:

HON'BLE MR. JUSTICE GIRISH KATHPALIA

J U D G M E N T

1. The petitioner assails order dated 29.11.2025 of the learned Court of Sessions whereby order dated 16.05.2025 of the learned Magistrate dismissing the application under Section 175(3) Bharatiya Nagarik Suraksha Sanhita (BNSS) was upheld.

2. I have heard learned counsel for both sides and examined the record.

3. In order to appreciate the scope of the present discussion, relevant portion of order dated 19.01.2026 of the present proceedings is extracted below:

> *"5. It appears that the revision petition filed by the present petitioner assailing dismissal of application under Section 156(3) CrPC was dismissed. In view of Section 397(3) CrPC, second revision is prohibited. What is explicitly prohibited by law cannot be given backdoor entry by invoking inherent powers unless it is a case of gross injustice. On this aspect, learned senior counsel for petitioner also wants to address with the help of judicial precedents that such petition is maintainable on certain other grounds as well."*

Thence, what is to be considered by this court is as to whether the present petitioner has been able to set up a case of gross injustice, so as to allow backdoor entry by permitting what is practically the second revision.

4. The factual matrix set up by the petitioner/complainant is as follows.

4.1 The petitioner, a non-banking financial company is engaged in providing wealth management and financial services.

4.2 By way of a chain of financial transactions, IndusInd bank extended a term loan of Rs.100 crores to Asian Hotels (North) Ltd. by way of agreement dated 29.09.2017, which loan was repayable over 12 years 06 months, and an overdraft facility of Rs.5 crores by way of agreement dated 20.11.2017. Those financial facilities were modified and extended periodically. Apart from that, the Asian Hotels (North) Ltd. also availed credit facilities from Yes Bank Ltd., Bank of Maharashtra, Punjab National Bank and Axis Bank which formed a consortium of lenders.

4.3 Pursuant to the "Resolution Framework for Covid 19 Related Stress dated 06.08.2020" IndusInd Bank issued a revised sanction letter on 16.12.2021 proposing to restructure the loan and overdraft facilities granted to Asian Hotels (North) Ltd. Earlier, on 23.12.2020, the said consortium of lenders executed an Inter-Creditor Agreement, appointing the Bank of Maharashtra as the lead bank to coordinate decisions related to the borrower and they agreed to undertake One Time Restructuring of the borrowers loan exposure. In this regard, a Master Amendment Agreement was executed in June 2021 to set out the respective rights and obligations of the lenders under One Time Restructuring.

4.4 By way of loan recall and guarantee invocation notice dated 17.02.2022, Yes Bank sought to recall the financial facilities advanced to Asian Hotels (North) Ltd., contending that the Master Amendment Agreement had not come into force. As such, the Asian Hotels (North) Ltd. filed a civil suit before this High Court on 21.02.2022, during pendency whereof, a Deed of Assignment dated 28.12.2022 was executed between IndusInd Bank and the present petitioner company.

4.5 By way of the said Deed of Assignment, IndusInd Bank assigned its receivables from Asian Hotels (North) Ltd. to the present petitioner company for a consideration of Rs.98 crores and consequently, the present petitioner company was impleaded in the said pending civil suit. In order to finance acquisition of the said debt, the present petitioner company procured an Inter-Corporate Deposit (ICD) of Rs.60 crores from the present respondent no.3 and that ICD carried interest at the rate of 7% per annum payable within 12 months. The present petitioner company also executed a demand promissory note in favour of the present respondent no.3 as security for the ICD, and the present respondent no.3 recorded the same in its financial books as unsecured loan.

4.6 On 28.12.2023, approaching the end of the repayment cycle, the petitioner company remitted Rs.3.93 crores towards interest and sought 06 months extension for repayment, but the present respondent no.3 allegedly under influence of the present respondent no.7 rejected the extension request by way of communication dated 30.12.2023.

4.7 On 03.02.2024, the present respondent no.3 informed the present petitioner that it had assigned the Asian Hotels (North) Ltd. debt to the present respondent no.7 under an Assignment Agreement dated 01.02.2024 on the basis of an Inter-Corporate Loan Agreement dated 14.12.2022 between the present petitioner company and the present respondent no.3. Thereafter, on 05.02.2024, the present petitioner received a communication from the present respondent no.7 as regards assignment of rights of the present respondent no.3 to it.

4.8 The present petitioner disputes the very existence and validity of the said Inter-Corporate Loan Agreement dated 14.12.2022, on the basis whereof the Asian Hotels (North) Ltd. debt was assigned to the present respondent no.7 by the present respondent no.3. It is claimed by the present petitioner that it never executed any such agreement with the present respondent no.3. According to the present petitioner, the present respondents fabricated the said agreement dated 14.12.2022 by misusing sensitive and confidential documents, stolen from the petitioner by its Company Secretary (*respondent no.2*) in conspiracy with the remaining respondents. The present petitioner alleges that those confidential documents were transferred by the present respondent no.2 to the present respondent no.3, who fabricated the Inter-Corporate Loan Agreement dated 14.12.2022, purporting to show that the present petitioner had borrowed Rs.60 crores under the same.

4.9 On the basis of above factual matrix, the present petitioner filed an application under Section 175(3) BNSS [Section 156(3) CrPC], seeking directions for registration of FIR and investigation by the police for the offences of theft of documents, fabrication of loan agreements, dishonest misappropriation of funds and fraudulent assignment of rights. In its Action Taken Report filed before the learned Magistrate, it was submitted by the Economic Offences Wing of the Delhi Police that no action was taken because no concrete evidence supporting the allegations could be found and that no cognizable offence was made out, as the dispute appeared to be purely civil in nature. In the said Action Taken Report, the police also revealed that the present respondent no.2 had allegedly been pressurized by the non-independent directors of the petitioner company itself to execute the disputed agreement; that the authorized representative of the petitioner who filed the complaint had personally provided the stamp paper and the company seal for execution of the said agreement; that various emails exchanged between the present petitioner and respondent no.3 clearly show knowledge of the authorized representative of the present petitioner about the said Inter-Corporate Loan Agreement dated 14.12.2022; that even this High Court in the Commercial Suit No.128/2022 had found the said agreement dated 14.12.2022 to be a genuine agreement. Apart from the aforesaid, the Economic Offences Wing also submitted number of circumstances to show that there was apparently no offence committed and it was purely a civil dispute. On the basis of the said report, vide order dated 16.05.2025, the learned Magistrate dismissed the application for registration of FIR and held it appropriate to conduct the inquiry himself. Further, the learned Magistrate also observed in order dated 16.05.2025 that if any limited investigation becomes necessary, the law permits the Magistrate to seek assistance under Section 225 BNSS [Section 202 CrPC] after taking cognizance.

4.10 The present petitioner company assailed order dated 16.05.2025 of the learned Magistrate before the Court of Sessions by way of revision proceedings. After hearing both sides, the learned Court of Sessions by way of detailed judgment dated 29.11.2025 held that no case is made out directing the police investigation under Section 175(3) BNSS since the allegations being primarily contractual, do not require police intervention and the statutory mandate of Section 225 BNSS already provides adequate mechanism for verification of facts.

5. Hence, the present petition. As mentioned above, what is to be seen is as to whether the impugned denial of FIR registration and investigation in

the present case is gross injustice, because of which this court can allow the petitioner backdoor entry, invoking the inherent powers ignoring the explicit bar mandated by Section 438(3) BNSS.

6. Learned counsel for petitioner strongly contended that the scope of the provisions under Section 528 BNSS [Section 482 CrPC] is much wider than that of Section 438 BNSS [Section 397 CrPC] in the sense that merely because a litigant has availed the remedy of revision, he cannot be barred from seeking invocation of inherent powers of the High Court. In this regard, learned counsel for petitioner placed reliance on the judgments of the Supreme Court in cases titled ***Krishnan & Anr. vs Krishnaveni & Anr.***, (1997) 4 SCC 241; and ***Shakuntala Devi & Ors vs Chamru Mahto & Anr.,*** (2009) 3 SCC 310. Learned counsel for petitioner also laid heavy emphasis on the observation in paragraph 51 of the judgment dated 23.12.2024 of learned Single Judge of this Court passed in IA 3178/2024 of CS(COMM) No.128/2022 and submitted that even the learned Single Judge after analyzing the pleadings of both sides held that the allegations leveled by the present petitioner would call for initiation of criminal proceedings, so it is not a matter of civil liability. No other argument was advanced.

7. On the other hand, learned prosecutor on behalf of State and learned counsel for respondent no.3 submitted that the present petition is clearly not maintainable in view of issue crystallized in order dated 19.01.2026, as extracted above.

8. The fulcrum of the present discussion rests on the interplay of Section

438(3) BNSS and Section 528 BNSS. For ready reference, both provisions are extracted below:

> *"**Section 438**. Calling for records to exercise powers of revision.*
> *(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on his own bond or bail bond pending the examination of the record.*
> *Explanation.—All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this subsection and of section 439.*
> *(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.*
> *(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them."*
>
> *"**Section 528**. Saving of inherent powers of High Court.*
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> *Nothing in this Sanhita shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Sanhita, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."*

Noticeably, the provisions under Section 397 CrPC and Section 482 CrPC have in no manner been altered by Section 438 BNSS and Section 528 BNSS respectively. That being so, the judicial pronouncements dealing with the interplay of Section 397(3) CrPC and Section 482 CrPC would hold the field also as regards the interplay of Section 438(3) BNSS and Section 528

BNSS. It would be apposite to first briefly traverse through the said interplay in order to examine as to whether a person can avail both remedies, viz. Section 438 BNSS and Section 528 BNSS and if so, on what parameters.

8.1 The purpose behind enactment of sub Sections (2) and (3) to Section 438 BNSS was to prevent delays in trial, caused by accused by taking every order to every possible court of superior jurisdiction. Delay in trial almost always benefits the accused. No doubt, the inherent powers vested in a High Court are of wide magnitude and the same do not owe their existence to the statutory provisions under Section 528 BNSS or even Section 482 CrPC; but that cannot be read to mean completely untrammeled powers. While exercising inherent powers, the High Court must be cautious not to permit a backdoor entry to what is explicitly prohibited by sub Sections (2) and (3) of Section 438 BNSS. If inherent powers are exercised in a routine manner by the High Court, it would make sub Sections (2) and (3) of Section 438 BNSS completely otiose. At the same time, in exceptional circumstances, where the High Court opines it to be a case of gross injustice or grave miscarriage of justice, it shall not hesitate to invoke the inherent powers, ignoring the prohibitions laid down by sub Sections (2) and (3) of Section 438 BNSS.

8.2 In the case of ***Krishnan*** (supra) relied upon by learned counsel for petitioner himself, the Supreme Court examined the scope of both provisions, namely Sections 397(3) and 482 CrPC and held that the object of Section 397(3) is to put a bar on simultaneous revisional applications to the High Court and the Court of Sessions, so as to prevent unnecessary delay and multiplicity of proceedings. The Supreme Court held that the inherent powers of the High Court are very wide, however, the High Court must exercise such powers sparingly and cautiously where the Sessions Judge has exercised revisional powers; and that when the High Court notices that there has been gross failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of process or miscarriage of justice or to correct irregularities/incorrectness committed by the inferior criminal court in its juridical process or illegality of sentence or order. The Supreme Court specifically held thus:

> *"10. Ordinarily, when revision has been barred by Section 397(3) of the Code, a person — accused/complainant — cannot be allowed to take recourse to the revision to the High Court under Section 397(1) or under inherent powers of the High Court under Section 482 of the Code since it may amount to circumvention of the provisions of Section 397(3) or Section 397(2) of the Code. It is seen that the High Court has suo motu power under Section 401 and continuous supervisory jurisdiction under Section 483 of the Code. So,* ***when the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of the process of the courts or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is, therefore, to meet the ends of justice or to prevent abuse of the process that the High Court is preserved with inherent power and would be justified, under such circumstances, to exercise the inherent power and in an appropriate case even revisional power under Section 397(1) read with Section 401 of the Code. As stated earlier, it may be exercised sparingly so as to avoid needless multiplicity of procedure, unnecessary delay in trial and protraction of proceedings. The object of criminal trial is to render public justice, to punish the criminal and to see that the trial is concluded expeditiously before the memory of the witness fades out. The recent trend is to delay the trial and threaten the***

witness or to win over the witness by promise or inducement. These malpractices need to be curbed and public justice can be ensured only when trial is conducted expeditiously."

(emphasis supplied)

8.3 Similarly, in the case of ***Shakuntala Devi*** (supra) also relied upon by learned counsel for petitioner himself, the Supreme Court reiterated the legal position thus:

> *"24. It is well settled that the object of the introduction of sub-section (3) in Section 397 was to prevent a second revision so as to avoid frivolous litigation, but, at the same time, the doors to the High Court to a litigant who had lost before the Sessions Judge were not completely closed and in special cases the bar under Section 397(3) could be lifted. In other words, the power of the High Court to entertain a petition under Section 482, was not subject to the prohibition under sub-section (3) of Section 397 of the Code, and was capable of being invoked in appropriate cases. Mr Sanyal's contention that there was a complete bar under Section 397(3) of the Code debarring the High Court from entertaining an application under Section 482 thereof does not, therefore, commend itself to us."*

8.4 In the case of ***Amar Nath & Ors. vs State of Haryana & Ors.***, (1977) 4 SCC 137, the issue before the Supreme Court was the ambit of the expression "interlocutory order" as appearing in Section 397(2) CrPC. After traversing through the historical development of the provision under Section 397(2) CrPC, the Supreme Court expressed agreement with the view taken by the learned Judge of the High Court to the effect that where a revision to the High Court is expressly barred under Section 397(2) CrPC, the inherent powers under Section 482 CrPC cannot be invoked in order to defeat the bar contained under Section 397(2) CrPC. For, "*where there is an express provision, barring a particular remedy, the court cannot resort to the exercise of inherent powers*". However, after detailed analysis, the Supreme

Court held that the order impugned before the High Court was not an interlocutory order, so not covered by the mischief of Section 397(2) CrPC and as such, the matter was remanded to the High Court to decide the revision on merits.

8.5 Subsequently, in the same year 1977, a larger bench of the Supreme Court in the case of ***Madhu Limaye vs The State of Maharashtra***, (1977) 4 SCC 551, took a view that the bar under Section 397(2) CrPC would operate only in the exercise of revisional powers of the High Court and not against the inherent powers because there is no other provision in the Code for redressal of grievance of the aggrieved party. The Supreme Court held that in case the impugned order clearly brings about a situation which is an abuse of the process of court or for the purpose of securing ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) CrPC can limit the inherent powers of the High Court. At the same time, the Supreme Court also added a cautious rider that the High Court must exercise the inherent powers very sparingly, for example in cases where criminal proceedings were initiated illegally, vexatiously or as being without jurisdiction.

8.6 The scope of powers under Section 482 CrPC was elaborately dealt with by the Supreme Court in the celebrated judgment of ***State of Haryana vs Bhajan Lal***, 1992 SCC (Crl) 426, reiterating the caution that powers available under Section 482 CrPC should be exercised in "rarest of rare" cases and "very sparingly" as well as "with circumspection". The Supreme Court held that such extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.

8.7 In the case of ***Girish Kumar Suneja vs Central Bureau of Investigation,*** (2017) 14 SCC 809, the three judge bench of the Supreme Court again traversed through the legal position as regards interplay between revisional, inherent and writ jurisdiction, reiterating the view that if the interlocutory order is not revisable due to the prohibition contained in Section 397(2) CrPC, that cannot be circumvented by taking recourse to Section 482 CrPC; but in order to preserve the sanctity of Section 482 CrPC, the harmonious way out would be to invoke inherent powers where the impugned order clearly brings about a situation which is an abuse of process of the court or exercise of such powers is necessary for securing ends of justice and that the High Court must exercise inherent powers very sparingly.

9. For present purposes, the legal position culled out of the above cited judicial pronouncements is as follows. The provision under Section 397(3) CrPC, which is now replaced by Section 438(3) BNSS stipulates an explicit prohibition that if a revision petition has been preferred by any party to the High Court or to the Court of Sessions, no further revision petition shall be entertained by the said party. It is trite that what is explicitly prohibited by law cannot be allowed backdoor entry by invoking inherent powers, but this principle is subject to a harmonious understanding that where the High Court, called upon to invoke inherent powers is satisfied that the impugned order is clearly without jurisdiction or abuse of process or there is gross injustice, the High Court would be justified in rarest of rare cases to invoke

inherent powers and interfere. Such invocation of inherent powers has to be done sparingly and not in routine.

10. Falling back to the present case, what is to be seen is as to whether the case set up by the petitioner satisfies the above noted parameters for invocation of inherent powers; what is to be seen is as to whether dismissal of the revision petition and consequent upholding of dismissal of application under Section 175(3) BNSS can be treated as a "rarest of rare case" or of gross injustice or miscarriage of justice that would call for the invocation of inherent powers, which powers have to be invoked sparingly. One of the situations of gross injustice in the present context would be where the litigant is rendered remediless. If the litigant has no remedy other than taking recourse to Article 136 of the Constitution of India, in which case the decision of the Supreme Court need not to be a reasoned decision, the High Court would be justified to invoke inherent powers and interfere to meet the ends of justice. In the present case, the magisterial order impugned before the revisional court was dismissal of application under Section 175(3) BNSS. The order impugned before this court is the dismissal of the said revision petition. What is to be examined next is as to whether after dismissal of its revision petition, the present petitioner is left with no remedy, and has to suffer gross injustice unless this court interferes. The learned Magistrate, while dismissing the application under Section 175(3) BNSS held that the present petitioner should lead pre-summoning evidence and at a later stage, if required, recourse to Section 225 BNSS shall be taken. The Court of Sessions in the order presently impugned upheld that view of the learned magistrate.

11. The order impugned before the revisional court having been refusal by the Magistrate to direct registration of FIR and consequent investigation under Section 175(3) BNSS, it would also be apposite to briefly examine the legal position in which the magistrate can justifiably invoke the provision under Section 175(3) BNSS, which is *pari materia* with Section 156(3) CrPC. For, if the impugned refusal to direct registration of FIR was not in accordance with law and/or the present petitioner was left without remedy after dismissal of its revision petition, it may be a case of gross injustice, calling upon this court to exercise inherent powers.

11.1 The Supreme Court in the case of ***Devarapalli Lakshminarayana Reddy vs V.Narayana Reddy,*** (1976) 3 SCC 252 held that if upon reading of the complaint, the magistrate finds disclosure of a cognizable offence in the allegations and takes a view that forwarding the complaint to police for investigation under Section 156(3) CrPC would be conducive to justice and would save the valuable time of the magistrate from being wasted in inquiring into the matter, which was primarily the duty of the police, the magistrate would be justified in adopting that course as an alternative to taking cognizance of the offence himself.

11.2 In the case of ***Indian Oil Corpn. vs NEPC India Ltd.*** (2006) 6 SCC 736 the Supreme Court observed thus:

> *"13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases, this is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of*

> *lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513] this Court observed : (SCC p. 643, para 8)*
>
>> *'8. ... It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."*

11.3 In the case of ***Rameshbhai Pandurao Hedau vs State of Gujarat,*** (2010) 2 SCC (Crl) 801 also the Supreme Court examined the scope of Section 156(3) CrPC vis-à-vis Section 202 CrPC and observed that power under Section 156(3) can be invoked by the magistrate prior to taking cognizance and the same is in the nature of pre-emptory reminder/intimation to the police to exercise its plenary power of investigation, commencing from Section 156 CrPC and culminating with filing of chargesheet or closure report under Section 173 CrPC, whereas the provision under Section 202 CrPC operates at post cognizance stage and the purpose is to direct investigation and report for deciding whether there was sufficient ground to proceed.

11.4 In the case of ***Mona Panwar vs Allahabad High Court,*** (2011) 3 SCC 496, the Supreme Court reiterated that when a complaint is filed before a magistrate, he has two options, namely, either to direct investigation under Section 156(3) CrPC or to direct examination of the complainant and witnesses on oath and thereafter proceed further in the manner provided by Section 202 CrPC. The Supreme Court reiterated that after cognizance has been taken, if the magistrate wants an investigation, it can be under Section 202 CrPC, purpose whereof is to ascertain as to whether there is a *prima facie* case against the accused and so as to prevent issue of process in a false or vexatious complaint aimed at harassment of the person accused.

11.5 In cases titled ***M/s Skipper Beverages Private Limited vs State,*** 2001 IV AD (Delhi) 625; ***Subhkaran Luharuka vs State,*** 2010 (3) JCC 1972; ***Suresh Sahu vs State,*** 2014 (3) JCC 1836;; ***Brahm Prakash Gupta vs State,*** 2008 (106) DRJ 199;; and ***Himanshu Bhalla vs State,*** 2016 SCC Online Del. 5493, criteria were laid down on the basis whereof an order under Section 156(3) CrPC can be passed by Magistrate, keeping mainly in mind that these powers are to be exercised primarily in those cases where allegations are quite serious or the evidence is beyond reach of the complainant or custodial interrogation is necessary for recovery of some article or discovery of some fact. The existence of Section 202 in the Code is too significant to be ignored by the courts.

11.6 In the case of ***Ramdev Food Products Private Limited vs State of***

Gujarat (2015) 6SCC 439, the learned Magistrate refused to direct registration of FIR under Section 156(3) CrPC for the reasons *inter alia* that police had refused to register a case; that the dispute was civil in nature and civil litigation between the parties had gone even up to the Supreme Court; and that whether or not the documents in question were forged could be ascertained in civil proceedings by getting opinion of the handwriting expert. However, the learned Magistrate directed the police to give report under Section 202(1) CrPC instead of proceeding under Section 156(3) of the Code. The High Court refused to interfere with the order passed by the learned Magistrate and the issue reached the Supreme Court in appeal by special leave. After elaborate discussion, the Supreme Court held thus:

> *"22.1.* ***The direction under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone the issuance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice it is considered appropriate to straightaway direct investigation, such a direction is issued.***
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> *22.2.* ***The cases where Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet to determine "existence of sufficient ground to proceed".*** *Category of cases falling under para 120.6 in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] may fall under Section 202.*
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> *22.3. Subject to these broad guidelines available from the scheme of the Code, exercise of discretion by the Magistrate is guided by interest of justice from case to case.*
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> .....
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> *25…….Under Section 202, since the Magistrate is in seisin of the matter and has yet to decide "whether or not there is sufficient ground for proceeding", there is no occasion for formation of opinion by the police about credibility of available*

information necessary to exercise power of arrest as the only authority of the police is to give report to Magistrate to enable him to decide whether there is sufficient ground to proceed. Power of arrest is not to be exercised mechanically.

.....

27. The nature of cases dealt with under Section 202 are cases where material available is not clear to proceed further. The Magistrate is in seisin of the matter having taken the cognizance. He has to decide whether there is ground to proceed further.

...

...

32. We now come to the last question whether in the present case the Magistrate ought to have proceeded under Section 156(3) instead of Section 202. Our answer is in the negative. ***The Magistrate has given reasons, which have been upheld by the High Court. The case has been held to be primarily of civil nature. The accused is alleged to have forged partnership. Whether such forgery actually took place, whether it caused any loss to the complainant and whether there is the requisite mens rea are the questions which are yet to be determined. The Magistrate has not found clear material to proceed against the accused. Even a case for summoning has not yet been found. While a transaction giving rise to cause of action for a civil action may also involve a crime in which case resort to criminal proceedings may be justified, there is judicially acknowledged tendency in the commercial world to give colour of a criminal case to a purely commercial transaction. This Court has cautioned against such abuse.*** *"*

(emphasis supplied)

11.7 In the case of ***Priyanka Srivastava vs State of UP,*** (2015) 6SCC 287, the Supreme Court recapitulated various judicial precedents including the cases of *Ramdev Food* (supra) and *Lalita Kumari* (supra) and emphasized that the direction under Section 156(3) of the Code is to be issued only after application of mind by the Magistrate; that when the Magistrate does not take cognizance and does not find it necessary to postpone issuance of process and finds a case made out to proceed forthwith, direction under that provision is issued. It was emphasized by the Supreme Court that the magistrate has to remain vigilant with regard to the allegations made and nature of those allegations and not to issue directions under Section 156(3) of the Code without application of mind, since such directions are distinct from the police taking steps under Section 154 of the Code.

11.8 In the case of ***Kailash Vijayvargiya vs Rajlakshmi and Ors,*** 2023 SCC OnLine SC 569, the Supreme Court reiterated the legal position on the scope of Section 156(3) CrPC and Section 202 CrPC thus:

> *"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 [Ramdev Food Products (P) Ltd. v. State of Gujarat, (2015) 6 SCC 439 : (2015) 3 SCC (Cri) 192] 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 Session, 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.

43. Thus, the Magistrate has the power, when a written complaint is made, to issue direction under Section 156(3), but this power is to be exercised before the Magistrate takes cognizance of the offence under Section 190. However, in both cases, whether under Section 156(3) or under Section 202 of the Code, the person accused as the perpetrator, when the proceedings are pending before the Magistrate, remains unrepresented. Under Section 203, the Magistrate, after considering the statement of the complainant and witnesses (if any) on oath and the result of an inquiry (if any) under Section 202, can dismiss the complaint if he is of the opinion that there is no sufficient ground for proceeding and in every such case briefly record his reasons. If the Magistrate after taking cognizance of the offence, is of the opinion that there are sufficient grounds for proceeding he will issue the process to the accused for appearance as per the procedure and mode specified under Section 204 of the Code. Process to the accused under Section 204 falls under Chapter XVI of the Code and is issued post the cognizance and inquiry/investigation/evidence recorded in a private complaint in terms of Section 202 of the Code.

.....

45. Explaining the nature of cases to be dealt with under Section 202 of the Code, the judgment in Ramdev Food Products [Ramdev Food Products (P) Ltd. v. State of Gujarat, (2015) 6 SCC 439 : (2015) 3 SCC (Cri) 192] observes, are those cases where the material available is not clear to proceed further. The Magistrate, though in seisin of the matter having taken cognizance, has to decide whether there is any ground to proceed further. Further, Section 202 not only refers to an inquiry but also to an investigation. Thus, in such cases, the police cannot on its own exercise the power of arrest in course of making its report in pursuance of the direction under Section 202 of the Code.

46. This Court in Priyanka Srivastava [Priyanka Srivastava v. State of U.P., (2015) 6 SCC 287 : (2015) 3 SCC (Civ) 294 : (2015) 4 SCC (Cri) 153] referred to the nature of power exercised by the Magistrate under Section 156(3) of the Code and after referring to several earlier judgments held that ***the direction for registration of an FIR should not be issued in a routine manner. The Magistrate is required to apply his mind and exercise his discretion in a judicious manner. If the***

Magistrate finds that the allegations made before him disclose commission of a cognizable offence, he can forward the complaint to the police for investigation under Section 156 and thereby save valuable time of the Magistrate from being wasted in inquiry as it is primarily the duty of the police to investigate. However, the Magistrate also has the power to take cognizance and take recourse to procedure under Section 202 of the Code and postpone the issue of process where the Magistrate is yet to determine existence of sufficient ground to proceed. In a third category of cases, the court may not take cognizance or direct registration of an FIR, but direct preliminary inquiry *in terms of the dictum in Lalita Kumari case [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524]"*

....

....

51. In HDFC Securities Ltd. v. State of Maharashtra [HDFC Securities Ltd. v. State of Maharashtra, (2017) 1 SCC 640 : (2017) 1 SCC (Cri) 485] , this Court while interpreting the words "may take cognizance" and Section 156(3), held : (SCC p. 651, para 24)

> *"24. Per contra,* ***the learned counsel for Respondent 2 submitted that the complaint has disclosed the commission of an offence which is cognizable in nature and in the light of Lalita Kumari case [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524], registration of FIR becomes mandatory. We observe that it is clear from the use of the words "may take cognizance" in the context in which they occur, that the same cannot be equated with "must take cognizance". The word "may" gives discretion to the Magistrate in the matter. If on a reading of the complaint he finds that the allegations therein disclose a cognizable offence and that the forwarding of the complaint to the police for investigation under Section 156(3) will be conducive to justice and save the valuable time of the Magistrate from being wasted in enquiring into a matter, which was primarily the duty of the police to investigate, he will be justified in adopting that course as an alternative to taking cognizance of the offence, himself. It is settled that when a Magistrate receives a complaint, he is not bound to take cognizance if the facts alleged in the complaint, do***

not disclose the commission of an offence."
(emphasis in original)

52. ***However, the position is different at the post cognizance stage. Under Section 202, the Magistrate can analyse the veracity of the complaint made and appreciate whether there are grounds to proceed further.*** *In Chandra Deo Singh v. Prokash Chandra Bose [Chandra Deo Singh v. Prokash Chandra Bose, 1963 SCC OnLine SC 4 : AIR 1963 SC 1430] , this Court referred to the objective of Section 202, to observe : (SCC OnLine SC para 8)*

"8. ... ***to enable the Magistrate to form an opinion as to whether process should be issued or not and to remove from his mind any hesitation that he may have felt upon the mere perusal of the complaint and the consideration of the complainant's evidence on oath. The courts have also pointed out in these cases that what the Magistrate has to see is whether there is evidence in support of the allegations of the complainant and not whether the evidence is sufficient to warrant a conviction. The learned Judges in some of these cases have been at pains to observe that an enquiry under Section 202 is not to be likened to a trial which can only take place after process is issued, and that there can be only one trial. No doubt, as stated in sub-section (1) of Section 202 itself, the object of the enquiry is to ascertain the truth or falsehood of the complaint, but the Magistrate making the enquiry has to do this only with reference to the intrinsic quality of the statements made before him at the enquiry which would naturally mean the complaint itself, the statement on oath made by the complainant and the statements made before him by persons examined at the instance of the complainant."***
(emphasis supplied)

11.9. Most recently in the case of ***Om Prakash Ambadkar vs State of Maharashtra & Ors***, 2025 SCC OnLine SC 238, the Supreme Court recapitulated the legal position, holding thus:

"26. ***It is, thus, not necessary that in every case where a complaint has been filed under Section 200CrPC the Magistrate should direct the police to investigate the crime***

merely because an application has also been filed under Section 156(3)CrPC 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)CrPC. 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.***

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."*
> >
> > *(emphasis supplied)*

12. In nutshell, the overall scheme of the Code/Sanhita and prevailing circumstances require that the option to direct investigation under Section 156(3) CrPC should be exercised by the magistrate where some *investigation* is required and that investigation is of the nature which is not possible for a private individual to carry out. Circumstances which require investigation as contemplated by Section 156(3) of the Code and Section 175(3) of the Sanhita can be numerous, for example: where complete identity of the proposed accused is not known; or where recovery of an abducted person or stolen property is required by way of raids and searches; or where some physical piece of evidence like blood soaked earth or some case property have to be collected and seized; or where the complainant is unable to name the witnesses required to be examined in support of his charge. Also if the allegations in the complaint require complex and complicated unearthing of relevant facts, which cannot be carried out by the magistrate without assistance and expertise of the State machinery, directing

investigation under Section 175(3) BNSS would be justified. Where such kind of investigation is not required to be conducted, denial to issue directions for registration of FIR by the magistrate is legally sustainable. The magistrate has to be cautious that the procedure under Section 175 BNSS is being invoked not for oblique purposes of arm-twisting the accused into settling what is primarily a civil dispute. Such investigation has to be after application of mind and not in a routine manner, because the magistrate is not just a post office.

13. Falling back to the present case, the learned magistrate by way of elaborate order based on contents of the complaint and the Action Taken Report filed by the local police as well as observations of this court in the civil suit arrived at the conclusion as follows:

> *"13. After going through the complaint and annexed documents, the Court is of the opinion that it is not expedient to order investigation in the present matter in exercise of the judicial power under Section 175(3) BNSS.* ***It has been revealed in the enquiry conducted by the investigating agency that Achal Jindal, Director of the complainant himself gave the stamp paper and company seal. Further, agreement dated 14.12.2022 was within the knowledge of Achal Jindal as could be gathered from the various emails. The document dated 14.12.2022 has been held to be a valid agreement by the Hon'ble High Court of Delhi in IA No.3178/2024 in Suit bearing no. CS(Comm) 128/2022 in order dated 23.12.2024. There is nothing in the case necessitating police investigation or intervention.*** *This Court does not deem fit to involve police machinery in this Case.*
> *14. The Court is of the considered view that* ***all the facts and circumstances are well within the knowledge of the complainant. The identity of accused persons also well established. Evidence is essentially within the possession and reach of the complainant. Since the complainant very well knows the accused person and has named the accused person in its complaint, there is further nothing in the case necessitating police investigation or intervention. Moreover, if***

needed an enquiry under Section 202 Cr.P.C. can be directed at the appropriate stage.

15. Taking note of the aforesaid, the application of complainant under 175(3) BNSS. seeking order of registration of FIR and investigation by police, is hereby declined.”

(emphasis supplied)

14. The learned Court of Sessions, while exercising revisional jurisdiction also elaborately discussed the legal and factual matrix and dismissed the revision petition, holding thus:

“28. Section 175(3)/156(3), the Magistrate must record reasons which, though concise, reflect thoughtful consideration. A speaking order not only ensures transparency and legality but also protects the order from challenge. The reasons serve to demonstrate that the Magistrate has applied judicial mind and has not acted mechanically or merely at the behest of the complainant. ***In the present case, from a collective appreciation of the material placed before this Court, it is evident that the dispute between the parties is, in substance, predominantly commercial in nature.*** *The core controversy pertains to the interpretation of the ICL Agreement. Upon perusal of the record, I finds that* ***the present matter requires interpretation of contractual clauses and determination of rights and liabilities arising out of commercial agreements. These issues are primarily within the realm of civil adjudication****. In declining the complainant’s request for issuance of directions under Section 156(3) CrPC, the learned Magistrate rightly placed reliance on the judgments in* ***M/s Skipper Beverages Pvt. Ltd. v. State****,* ***2002 CriLJ NOC 333 (Delhi)****. This decisions reiterate the settled principle that the power under Section 156(3) CrPC is to be exercised sparingly, and only where the allegations disclose the commission of cognizable offences requiring police investigation. Where the dispute predominantly bears a civil character or pertains to contractual/commercial disagreements, orders under this section shall not be passed mechanically but only after proper appreciation of the facts leading to the complaint.*

29. In the present case, it is evident from ***the complaint and the materials placed on record that the complainant is already fully aware of the identities of all the persons whom it seeks to array as accused. Their roles have been specifically described,***

and they have been impleaded by name in the complaint. The transaction in question is founded upon a written Inter-Corporate Loan (ICL) Agreement and related documents, which can be readily obtained through the assistance of the Court or the police in the course of an inquiry under Section 202 CrPC / Section 225 BNSS 2023*.*

30. Additionally, ***the nature of the allegations does not disclose the immediate requirement of police intervention****. The core dispute pertains to the interpretation of contractual obligations, ascertainment of the validity and enforceability of the ICL Agreement, and verification of the compliance or non-compliance of reciprocal duties arising from the contract. These issues turn on documentary evidence and the intention of the parties at the time of execution of the agreement.*

31. It also bears emphasis that ***custodial interrogation of the respondents is wholly unnecessary for the purposes of determining the authenticity or execution of the ICL Agreement as its existence is not in dispute****.* ***Should the learned Magistrate deem it appropriate, the police can always be directed during the inquiry under Section 202 CrPC / Section 225 BNSS to produce the original ICL Agreement or to verify the signatures and particulars of the signatories****. The learned trial court can even sent any document for forensic examination if required. This limited step is distinct from a direction for full-fledged investigation under Section 156(3), which is an extraordinary power to be invoked sparingly, and only in cases disclosing cognizable offences that cannot be effectively inquired into by the Magistrate.*

32. Here, the complainant has already approached the Hon'ble High Court regarding the very same agreement and its consequences. The rights, obligations, liabilities, and remedies flowing therefrom fall squarely within the civil jurisdiction. Multiplying proceedings by invoking criminal process in what is essentially a contractual dispute is not desirable and would amount to an abuse of the process of law.

33. In view of the foregoing discussion, no case is made out for directing a police investigation under Section 156(3) CrPC / Section 175(3) BNSS 2023. The allegations, being primarily contractual, do not necessitate police intervention, and the statutory mandate of Section 202 CrPC / Section 225 BNSS already provides an adequate mechanism for verification of facts. The prayer for police investigation is, accordingly, rejected. For all these reasons, I find no illegality, irregularity, or impropriety in the impugned order passed by the learned Chief Judicial Magistrate. The revision petition is, therefore, *dismissed."*

15. To recapitulate, the learned magistrate as well as the learned Court of Sessions have minutely discussed the overall case set up by the present petitioner in arriving at concurrence, broadly on the points that the dispute revolves around interpretation of the contractual clauses; there is nothing that requires immediate intervention of the State machinery in order to decipher rights and liabilities of both sides under the contract; and that since the present petitioner is fully aware of not just identity of the proposed accused, but also the specific role played by each of them, there is no need of police assistance through custodial interrogation. And despite that, if at some later stage, the magistrate so requires, police assistance can always be taken invoking the provision under Section 225 BNSS, according to both courts. I am unable to find any infirmity in the impugned order.

16. The petitioner, as rightly held by both courts below, may step into the box and lead pre-summoning evidence, since it is completely aware of the identity and role played by each of the accused, and in case at some later stage, the magistrate so requires, directions under Section 225 BNSS can always be passed. That being so, it is certainly not a case that can be read as gross injustice or miscarriage of justice to the present petitioner, because it is not that the petitioner has been left remediless on account of denial of directions to the police to register FIR and investigate. Rather, grant of directions to register FIR and investigate here would be gross injustice to the accused persons, who would be arm-twisted on the basis of those directions and would be compelled to settle what appears to be only a civil dispute,

synthetically tainted with criminality. Nothing can be more abuse of process.

17. In view of the aforesaid, I do not find any reason to invoke inherent powers and allow backdoor entry to this practically second revision in abrogation of Section 438(3) BNSS.

18. This petition is not just devoid of merits, but is also completely frivolous and mischievous attempt to abuse process of this court. Therefore, the petition and the pending applications are dismissed with costs of Rs.25,000/- to be deposited online with *www.bharatkeveer.gov.in* by the petitioner within one week.

GIRISH KATHPALIA

GIRISH KATHPALIA
(JUDGE)

AUGUST 17, 2026/*ry*