



2025:DHC:8411



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

*Reserved on: 09.09.2025*  
*Date of Decision: 22.09.2025*

+ **W.P.(CRL) 2112/2025**

**SHRI SHIV KUMAR**

.....Petitioner

Through: Mr. Shiv Charan Garg,  
Mr. Imran and Ms. Aarushi Jain, Advs.

versus

**THE STATE (GOVT OF NCT OF DELHI) &  
ORS.**

.....Respondents

Through: Mr. Rahul Tyagi ASC Crl with  
Mr. Sangeet Sibou, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE AJAY DIGPAUL**

### **J U D G M E N T**

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1. The present petition is filed under Article 226 of the Constitution of India, read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023<sup>1</sup> (earlier Section 482 of the Code of Criminal procedure, 1973<sup>2</sup>), seeking a *mandamus* directing respondent no. 3 to register an FIR against respondent no. 4, based on the complaint dated 28.12.2022

2. The petitioner, Shiv Kumar seeks directions from this Court for the registration of a FIR against respondent no. 4, Kasturi Devi, for alleged offences of forgery and cheating in relation to a property dispute.

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<sup>1</sup> hereinafter "BNSS"



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3. The subject of the dispute is a property located at 5358/6, New Chandrawal, Jawahar Nagar, Delhi-110007, which is claimed by respondent no. 4. Respondent no. 4 filed an eviction petition (Eviction Petition No. 01/2022) before the learned Additional Rent Controller (Central), Tis Hazari Courts, Delhi, seeking the eviction of the petitioner from the said property. The claim to ownership of the property is based on a Will dated 01.12.2012, purportedly executed by Hanso Devi, the mother of the petitioner. The petitioner, however, disputes the authenticity of this Will, alleging that it is forged and fabricated by respondent no. 4.

4. The petitioner alleges that the Will on which respondent no. 4 bases her claim is fraudulent and has been fabricated by her in an attempt to wrongfully claim ownership of the property. The Will in question, which was allegedly executed by Hanso Devi, contains the names of two witnesses, namely Bhagwan Dass and Ranjeet. However, the petitioner claims that these witnesses never actually witnessed the signing of the Will. The petitioner further alleges that the stamp of the Notary Public on the Will is forged, and the Will is lacking a diary number, a crucial detail required for its validation.

5. On 28.12.2022, the petitioner lodged a complaint with the SHO of PS Roop Nagar, requesting the registration of an FIR against respondent no. 4 for committing the offences of forgery and cheating in relation to the said Will. Despite this, the petitioner asserts that no action was taken by the police, and the FIR was not registered.

6. In response to the lack of action from the police, the petitioner filed an RTI application on 18.03.2023, seeking the status of his

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<sup>2</sup> hereinafter “CrPC”



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complaint. The response received on 20.04.2023 informed the petitioner that SI Vinod Kumar had been assigned to investigate the matter. However, the response also stated that, as of the date of the RTI reply, no FIR had been registered against respondent no. 4, despite the allegations of criminal conduct.

7. On 10.04.2023, after no action was taken on the earlier complaints, the petitioner submitted a complaint under Section 154(3) of the CrPC to the Deputy Commissioner of Police, North District, once again requesting action against respondent no. 4. The petitioner asserts that the complaint clearly discloses the commission of a cognizable offence, yet no FIR has been registered.

8. During the course of investigation, the statement of Ranjeet Singh, one of the purported witnesses to the Will, was recorded. Ranjeet admitted that several years ago, respondent no. 4 and her husband had taken him to the learned Tis Hazari Court, where they asked him to sign a document. He stated that he did not know that the document was a Will, and he did not sign it in front of the executant, Hanso Devi. This statement, recorded on 04.04.2023, as per the petitioner, further supports the allegations that the Will is forged.

9. Consequently, the petitioner filed Complaint Case No. 870/2023 before the learned Judicial Magistrate First Class<sup>3</sup>, Central District, Tis Hazari Courts, Delhi, seeking the registration of an FIR against respondent no. 4. However, this complaint was dismissed by the learned Magistrate on 01.05.2025, who found no grounds to register an FIR based on the complaint.

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<sup>3</sup> hereinafter "JMFC"



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**10.** An Enquiry Report was submitted on 08.07.2023 by the concerned officials, which stated that respondent no. 4 had no evidence to support her claim over the disputed property. The report confirmed that the petitioner and his family were tenants in the property and that there was no supporting evidence for respondent no. 4's ownership claim. The report also cast doubt on the validity of the Will, noting that the attesting witnesses denied knowledge of the document.

**11.** Despite the findings of the Enquiry Report, the petitioner claims that the police authorities, particularly SI Ashish from PS Roop Nagar, failed to act. The petitioner alleges that the investigation has been biased and that the police have shown dereliction of duty by not registering an FIR, despite the clear evidence of forgery and cheating presented in the complaint.

**12.** On 12.12.2024, the petitioner filed a separate complaint under Section 175(3) of the BNSS, alleging that SI Ashish had submitted false and fabricated documents in the court. The petitioner further claims that the police are engaged in a deliberate attempt to harass him by failing to register an FIR despite the clear allegations of a cognizable offence.

**13.** Therefore, the petitioner seeks this Court's intervention to ensure that the police fulfill their statutory duty and to secure a fair and just investigation into the allegations of forgery and cheating.

**14.** In the present petition, arguments were advanced with regard to the maintainability of the present petition. This Court will restrict the adjudication in this judgment solely to that particular issue and refrains from making any observations on the merits of the case.



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### ***Submissions on the issue of maintainability***

15. Mr. Rahul Tyagi, learned ASC for the State, raises a preliminary objection that the present criminal writ petition is not maintainable. He submits that the reliefs sought, namely a direction to respondent no. 3 to register an FIR on the complaint dated 28.12.2022 and the setting aside of the order of the learned Magistrate refusing relief, fall within the statutory framework of the CrPC and reliance is made on the judgment passed by this Court in ***Nishu Wadhwa vs. Siddharth Wadhwa & Anr.***<sup>4</sup>

16. Learned ASC points out that where a complainant seeks police investigation or is aggrieved by an order on an application under Section 156(3) of the CrPC, the CrPC itself prescribes the course to be followed: the complainant must proceed within the CrPC framework and not invoke writ powers to secure directions in the nature of registering or modifying the contents of an FIR. The judgment reiterates what was held by the Hon'ble Supreme Court in ***Gangadhar Janardan Mhatre vs. State of Maharashtra & Ors.***<sup>5</sup>, that *writ petitions in such cases are not to be entertained*, which means that the complainant's remedy lies before the criminal court in accordance with Chapter XII and the supervisory or the revisional structure of the CrPC.

17. Furthermore, it is argued that the petitioner's prayer to *set aside* the order of the learned JMFC rejecting the Section 156(3) request squarely attracts the principle in ***Nishu Wadhwa*** that an order

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<sup>4</sup> 2017 SCC OnLine Del 6444



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allowing or dismissing a 156(3) application is not interlocutory and is amenable to revision under Section 397 of the CrPC (present Section 438 of the BNSS). Consequently, the appropriate and efficacious remedy is a criminal revision before the learned Sessions Court rather than a writ under Article 226.

**18.** It is further submitted that entertaining the present writ would result in this Court exercising supervisory control over investigation or directing the registration of a case in a manner that the CrPC assigns to the Magistrate and the police. *Nishu Wadhwa* also refers to binding precedent to emphasise that investigation is a domain reserved for the police under Chapter XII, with calibrated judicial checks through Sections 154(3), 156(3), 200 to 203 and the revisional jurisdiction, which cannot be short-circuited by resort to writ jurisdiction.

**19.** Learned ASC underlines that the petitioner, having already invoked Section 156(3) before the Magistrate and suffered an adverse order, cannot bypass the Section 397 revisional remedy by styling the relief as a writ of *mandamus* to the SHO. The course, as per *Nishu Wadhwa*, is to pursue the revisional remedy, since writ jurisdiction is not meant to direct registration where the Magistrate's order under Section 156(3) is in issue.

**20.** On the same logic, the additional prayer, which seeks directions to respondent no. 3 to register an FIR on the complaint dated 28.12.2022, also fails on maintainability. According to *Nishu Wadhwa*, directions as to registration of offences are matters to be channelled through the Magistrate under Section 156(3) and, if

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<sup>5</sup> (2004) 7 SCC 768



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necessary, tested in revision, not by invoking writ jurisdiction at the threshold.

**21.** On the cumulative application of these principles, Mr. Tyagi prays that the petition, framed to secure a direction for registration of FIR on a particular complaint and to set aside the Magistrate's order under Section 156(3), be confined at the threshold on the ground of non-maintainability, the petitioner having an adequate and efficacious revisional remedy under the CrPC.

**22.** In reply, Mr. Shiv Charan Garg, learned counsel for the petitioner, submits that the present petition is maintainable under Article 226 read with Section 528 of the BNSS, as an exceptional recourse to secure registration of the FIR and a fair investigation where the statutory machinery has failed. He places reliance on several decisions of the Hon'ble Supreme Court which were placed on record, namely *M. Subramaniam & Anr. vs. S. Janaki & Anr.*<sup>6</sup>, *Sakiri Vasu vs. State of Uttar Pradesh & Ors.*<sup>7</sup>, *Sudhir Bhaskarrao Tambe vs. Hemant Yashwant Dhage*<sup>8</sup>, *XYZ vs. State of Madhya Pradesh & Ors.*<sup>9</sup>, *Vinubhai Haribhai Malaviya & Ors. vs. State of Gujrat & Anr.*<sup>10</sup>, *Kailash Vijayvargiya vs. Rajlakshmi Chaudhari & Ors.*<sup>11</sup> to contend that the High Court's constitutional jurisdiction may be invoked to ensure that the rule of law is effectuated.

**23.** Relying on *Sakiri Vasu*, it is submitted that while the CrPC prescribes a route through Sections 154(3) and 156(3), or by filing

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<sup>6</sup> (2020) 16 SCC 728

<sup>7</sup> (2008) 2 SCC 409

<sup>8</sup> (2016) 6 SCC 277

<sup>9</sup> Criminal Appeal No. 1184/2022

<sup>10</sup> (2019) 17 SCC 1

<sup>11</sup> (2023) 14 SCC 1



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criminal complaint under Section 200 of the CrPC, the existence of that route does not eclipse the High Court's power under Article 226 as alternate remedy is not an absolute bar to a writ petition. On that footing, it is urged that limited directions to ensure registration and a lawful investigation can be issued in the present facts.

**24.** Placing reliance on *Sudhir Bhaskarrao Tambe*, learned counsel submits that although the Hon'ble Supreme Court discouraged routine writs for registration of FIRs, it did so on the premise that efficacious remedies before the Magistrate are available and effective. He contends that since the petitioner's application under Section 156(3) has already been declined, a narrowly tailored exercise of writ jurisdiction is warranted to prevent a failure of justice.

### **Analysis**

**25.** Having considered the rival submissions, this Court is of the view that the preliminary objection on maintainability deserves acceptance. Where a complainant is aggrieved by an order passed on an application under Section 156(3) of the CrPC, the Code itself provides the course to be followed. The appropriate remedy is a criminal revision under Section 397 of the CrPC before the next court in the hierarchy, which in the present case would be the learned Sessions Court. The reliance placed by the learned ASC on *Nishu Wadhwa (Supra)*, is well founded. The Court therein records that:

“Therefore, an order dismissing or allowing an application under Section 156 (3) Cr.P.C. is not an interlocutory order and a revision petition against the same is maintainable.”





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**26.** In view of the foregoing, this Court holds that the petitioner has an efficacious statutory remedy by way of a criminal revision under Section 397 of the CrPC before the learned Sessions Court. Since an order allowing or dismissing an application under Section 156(3) of the CrPC is not interlocutory, a revision is maintainable. The recourse, its forum, and its subject matter are, therefore, squarely provided for in the Chapter XII of the Code.

**27.** The judgments cited on behalf of the petitioner were also considered. They do not advance the petitioner's case on the facts at hand. A common thread running through these judgments is that they deal with the recourse available where the police either fail or refuse to register an FIR or do not conduct a proper investigation. They uniformly emphasize that the Magistrate's powers under Section 156(3) of the CrPC operate as the key statutory safeguard in such situations, enabling directions for registration of FIRs, ensuring proper investigation, and even monitoring the same. However, the issue which arises in the present matter is not the extent of the Magistrate's powers under Section 156(3), but rather whether this Court, in exercise of its writ jurisdiction, ought to entertain the present petition. None of the decisions relied upon by the petitioner answer this specific issue. They are therefore distinguishable on facts and do not support the petitioner's argument in the adjudication of the present case, they rather recognise the existence of remedies within the CrPC and caution against routine invocation of writ jurisdiction for directions to register an FIR, particularly where the statutory pathway is available and the relief sought can be granted/availed.



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**28.** In the present case, the petitioner instituted Complaint Case No. 870/2023 before the learned JMFC, seeking registration of an FIR against respondent no. 4. By order dated 01.05.2025, the learned Magistrate declined the request. Once such an order has been made, the recourse available to the petitioner is to file a criminal revision under Section 397 of the CrPC before the learned Sessions Court.

**29.** The petitioner cannot bypass the revisional remedy by approaching this Court under Article 226, read with Section 528 of the BNSS. The existence of an adequate and efficacious statutory remedy, which directly addresses the grievance arising from the order under Section 156(3), weighs decisively against the exercise of writ jurisdiction in the circumstances of this case.

**30.** For these reasons, this Court confines the present adjudication to the maintainability issue and holds that the writ petition is not maintainable.

**31.** No opinion is expressed on the merits of the parties' rival claims. The petitioner is at liberty to avail the remedy and approach the concerned Court.

**AJAY DIGPAUL, J.**

**SEPTEMBER 22, 2025**

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