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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 6388/2025 & CRL.M.A. 26987/2025,**
CRL.M.A. 26988/2025

AMITA SACHDEVA

.....Petitioner

Through: Mr. Makarand D. Adkar,
Mr. Vikram Kumar, Mr.
Yadavendra Saxena, Mr.
Mayank Dwivedi and Mr.
Abhinav Kumar, Advs.
with the petitioner in
person.

versus

STATE OF NCT OF DELHI & ORS.Respondents

Through: Mr. Raj Kumar, APP for
the State with SI Sudeep,
PS Parliament Street, New
Delhi.

Mr. Madhav Khurrana,
Senior Advocate with Mr.
Shivam Batra, Mr. Rony
John, Mr. Piyush Swami,
Mr. Teeksh and Mr.
Ibrahim, Advs.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **10.09.2025**

1. The present petition has been filed seeking to set aside the order dated 19.08.2025 (hereafter 'impugned order'), passed by the learned Additional Sessions Judge (ASJ), Patiala House Courts, New Delhi in Crl. Rev. No. 74/2025, affirming the order dated 22.01.2025 passed by the learned Judicial Magistrate First Class (Trial Court).
2. By the order dated 22.01.2025, the learned Trial Court dismissed the petitioner's application under Section 175 (3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS') seeking



registration of FIR against Respondent Nos. 2 to 4, for offence under Section 299 of the Bharatiya Nyaya Sanhita, 2023 ('BNS'). The learned Trial Court, however, directed issuance of notice to the accused persons in terms of the first *proviso* to Section 223 of the BNSS so as to afford them an opportunity of being heard, while observing that recourse to Section 225 of the BNSS may be taken at a subsequent stage, if so warranted.

3. It is the case of the petitioner that on 04.12.2024, while visiting an exhibition titled "*Hussain: The Timeless Modernist*" at the Delhi Art Gallery along with her clerk, she allegedly came across paintings made by painter Maqbool Fida Hussain, depicting Hindu Deities in a manner which was offensive, derogatory, and intended to insult religious sentiments and outrage religious feelings.

4. It is further the case of the petitioner that on 09.12.2024, she lodged a complaint with the Police against the Gallery (Respondent No. 2) and its Directors (Respondent Nos. 3 and 4), whereupon the SHO of the concerned Police Station allegedly informed her that a Police team had been dispatched to the spot.

5. It is also alleged that on 10.12.2024, the Investigating Officer contacted the petitioner and requested her to join the Police team at the venue of the exhibition to identify the location where the offensive paintings had been displayed. However, upon reaching the premises, it was found that the said paintings had already been removed.

6. It is stated that on 11.12.2024, the petitioner made a representation to the DCP, New Delhi, however, no action was taken in that regard, whereafter, on 12.12.2024, the petitioner



filed an application under Section 175 (3) of the BNSS before the learned Trial Court, seeking registration of FIR. The petitioner also filed two applications under Section 94 of the BNSS– one seeking preservation of CCTV footage, and another for seizure of the DVR system as well as the allegedly offensive paintings.

7. By order dated 19.12.2024, the learned Trial Court directed the Investigating Officer to preserve the CCTV footage from all cameras installed at the Delhi Art Gallery from 04.12.2024 to 10.12.2024, and to produce the same before Court.

8. On 04.01.2025, the Investigating Officer apprised the Court that CCTV footage only from 06.12.2024 to 10.12.2024 had been provided by the Managing Director of the Gallery, as the CCTVs were programmed to preserve Network Video Recorder (NVR) recordings for a maximum period of 10 days. It was further stated that the CCTV footage of 04.12.2024 had already been obtained earlier upon the filing of the complaint, and the same now stood placed on record along with the footage from 06.12.2024 to 10.12.2024.

9. By order dated 09.01.2025, the learned Trial Court partially allowed the second application under Section 94 of the BNSS and directed the Investigating Officer to seize and preserve the DVR system.

10. On 20.01.2025, the petitioner filed another application under Section 94 of the BNSS, for seizure of the alleged offensive paintings.

11. An Action Taken Report dated 20.01.2025 was also filed, noting that enquiry was conducted in the present case and the CCTV footage and NVR had been seized by the Police. It was



also stated therein that the Managing Director of the Gallery had provided a list of the paintings of which Sr. No. 10 was the painting of Lord Ganesha and on Sr. No. 6 was the painting of Lord Hanuman and that the organisers of the exhibition had accepted the presence of these paintings. It was further submitted therein that the Exhibition was held in a private space, only to display the original work of artists and authors and therefore, *prima facie*, commission of a cognizable offence was not made out.

12. The learned Trial Court allowed the second application of the petitioner *vide* an even dated order, directing the Investigating Officer to seize the paintings in question. The Compliance report was received in this regard, stating that the alleged offensive paintings had been seized and kept in *Malkhana*.

13. After disposing of the applications filed by the petitioner with respect to seizure and preservation and perusing the material on record, the learned Trial Court, by order dated 22.01.2025, dismissed the application filed by the petitioner under Section 175(3) of the BNSS, while taking note of the fact that the CCTV footage of the Delhi Art Gallery, along with the NVR and the paintings in question, already stood seized, and that no further investigation or collection of evidence was warranted at that stage. As stated above, the Court held that the proceedings were liable to be treated as a complaint case, and accordingly issued notice to Respondent Nos. 2 to 4, in terms of the first *proviso* to Section 223 of the BNSS.

14. Aggrieved by the order passed by the learned Trial Court,



the petitioner preferred a revision before the learned ASJ, which came to be dismissed *vide* the impugned order dated 19.08.2025. The learned ASJ, upon considering various judgments of the Hon'ble Apex Court as well as of this Court, was of the view that no perversity could be found in the order dated 22.01.2025, and accordingly held that police investigation was not warranted at the pre-cognizance stage.

15. The learned counsel for the petitioner submits that the impugned order is unsustainable and erroneous, as it overlooks the inaction on the part of the Police and is contrary to the mandate laid down by the Hon'ble Apex Court in ***Lalita Kumari v. Government of Uttar Pradesh and Others : (2014) 2 SCC 1***, which requires registration of an FIR in cases involving cognizable offences.

16. He submits that the case may require forensic verification of paintings for their authenticity and police intervention for probing into the malicious intent of Respondent Nos. 2 to 4 and the tampering of the CCTV footage. He submits that these resources are beyond the petitioner's capacity as a private individual.

17. He submits that the impugned order disregards material evidence establishing that the exhibition was open to public access, including news articles from reputed media outlets. It is also pointed out that the website of Respondent No. 2 is also inviting public with phrases like "*Join us for a walkthrough*".

18. He refers to the pictures of the alleged offensive painting annexed with this petition, that the placement of these images in a public exhibition, cannot be justified as the same has the



potential to hurt religious sentiments and spark religious outrage and social disorder, and therefore, the same warrants Police intervention. In this regard, reliance is placed on the orders passed by the Hon'ble Apex Court in WP(C) No. 940/2022 and WP(C) No. 943/2021.

19. He submits that both the learned trial Court as well as the ASJ failed to observe that the complaint of the petitioner disclosed a cognizable offence under Section 299 of the BNSS, and no finding has been made to that effect, as opposed to the principles laid down in *Om Prakash Ambadkar v. State of Maharashtra : 2025 SCC OnLine SC 238*, which mandates a reasoned assessment of whether the offence disclosed is cognizable in nature, must be undertaken, before dismissing an application under Section 156 (3) of the Code of Criminal Procedure, 1973 ('CrPC').

20. He submits that the display of the alleged offensive paintings at the Gallery triggered widespread outrage on social media platforms, including X.

21. The learned senior counsel appearing on behalf of Respondent Nos. 2 to 4, on the other hand, submits that the allegations raised by the petitioner are misconceived, inasmuch as similar complaints have been instituted in the past in relation to the works of the late artist, who passed away in 2011, and that such complaints have invariably been treated as matters requiring evidence to be led before the Court, rather than being regarded as cognizable offences at the threshold.

22. He submits that the alleged offensive paintings in question have already been seized pursuant to the orders of the learned



Trial Court and are presently in the custody of the Police. It is submitted that in such circumstances, no further investigation by the Police is required, as all the relevant material evidence stands secured before the Court.

23. This Court has heard the parties and perused the record.

24. The first issue that falls for the consideration of this Court is whether the petitioner having already availed the remedy of revision should be allowed to take recourse to Section 528 of the BNSS [corresponding to Section 428 of the CrPC] as a substitute for initiating a second revisional challenge which is clearly barred under Section 438(3) of the BNSS [corresponding to Section 397(3) of the CrPC] which reads as follows:

(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.

25. It is settled law that the power under Section 528 of the BNSS is to be exercised cautiously and sparingly, especially when Sessions Judge has already exercised revisional power under Section 438 of the BNSS [corresponding to Section 397 of the CrPC]. The Hon'ble Apex Court, in the case of ***Krishnan v. Krishnaveni*** : (1997) 4 SCC 241, had observed as under:

“8. The object of Section 483 and the purpose behind conferring the revisional power under Section 397 read with Section 401, upon the High Court is to invest continuous supervisory jurisdiction so as to prevent miscarriage of justice or to correct irregularity of the procedure or to mete out justice. In addition, the inherent power of the High Court is preserved by Section 482. The power of the High Court, therefore, is very wide. However, the High Court must exercise such power sparingly and cautiously when the Sessions Judge has simultaneously exercised revisional power under Section 397(1). However, when the High Court notices that there has been 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 the process or miscarriage of justice or to correct irregularities/incorrectness committed by inferior criminal court in its juridical process or illegality of sentence or order.”

(emphasis supplied)

26. At the outset, a reference can be made to Section 175 of the BNSS , which reads as under :

175. Police officer’s power to investigate cognizable case.—

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

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

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

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

(4) Any Magistrate empowered under section 210, may, upon receiving a complaint against a public servant arising in course of the discharge of his official duties, order investigation, subject to— (a) receiving a report containing facts and circumstances of the incident from the officer superior to him; and (b) after consideration of the assertions made by the public servant as to the situation that led to the incident so alleged.

27. Thus, while exercising powers under Section 175(3) of the BNSS and directing the registration of an FIR, the Magistrate needs to ensure that a cognizable offence is disclosed from the allegations mentioned in the application and the essential elements of the alleged offences, thereof, are *prima facie* satisfied. Once an application under Section 175(3) of the BNSS is filed, the Magistrate can exercise the option of applying his



own judicial mind to the entire material on record and ‘may’ direct registration of FIR. However, at times, the Magistrate also calls for a report from the police as to why no action had been taken on an earlier complaint filed by the complainant with the police, and thereafter, once a report is filed by the police, the Magistrate applies his mind to the material before him i.e. the complaint as well as the Action Taken Report which constitutes a ‘preliminary inquiry’ conducted by the police. After this, the Magistrate may make up his mind to either order registration of FIR or otherwise.

28. The petitioner relies on the judgement passed by the Hon’ble Apex Court in *Lalita Kumari v. Govt. of U.P.* (*supra*), wherein it was held that registration of FIR is mandatory under Section 154 of the CrPC, if the information *discloses* commission of a cognizable offence. However, if the information received does not *prima facie* disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether a cognizable offence is disclosed or not.

29. This Court in *Subhakaran Loharuka & Anr. vs. State* : **(2010) 170 DLT 516** examined the scope of a Magistrate’s power under Section 156(3) of the CrPC and held that the remedy is discretionary in nature, to be exercised only upon satisfaction that the complaint discloses a cognizable offence and if police investigation is necessary for collecting evidence not otherwise available to the complainant. The Court clarified that it is not incumbent upon the Magistrate to direct investigation in every case where a complaint under Section 200 of the CrPC is



accompanied by an application under Section 156(3), it was observed as under:

*"42. Thus, there are pre-requisites to be followed by the complainant before approaching the Magistrate under Section 156 (3) of the Code which is discretionary remedy as the provision proceeds with the word 'May'. **The Magistrate is required to exercise his mind while doing so. He should pass the orders only if he is satisfied that the information reveals commission of cognizable offences and also about necessity of police investigation for digging out of evidence neither in possession of the complainant nor can be procured without the assistance of the police. It is thus not necessary that in every case where a complaint has been filed under Section 200 of the Code the Magistrate should direct the police to investigate the crime merely because an application has also been filed under Section 156 (3) of the Code even though the evidence to be led by the complainant is in his possession or can be produced by summoning witnesses, may be with the assistance of the Court or otherwise,....."***

(emphasis supplied)

30. Keeping in perspective the aforesaid observations, this Court has carefully perused and examined the records of the case including the orders impugned before this Court.

31. In the present case, the Action Taken Report filed by the police before the learned Magistrate contained a detailed account of preliminary inquiry conducted by the police. To summarise, a perusal of contents of the Action Taken Report reveals as under:

- (1) No cognizable offence was disclosed from the contents of complaint;
- (2) The documentary evidence – CCTV footage, NVR and the alleged offensive paintings are already on record;
- (3) The assistance of investigating agency is not required for the collection of the evidence.



(4) The organizers of the exhibition already accepted the presence of the paintings.

(5) The exhibition was conducted at a private space to display original work of artists, lacking the malicious intent as required to attribute the provisions of Section 299 of the BNS.

32. The petitioner contends that investigation by the police is necessary to conduct forensic verification of the paintings, to probe the alleged malicious intent of Respondent Nos. 2 to 4, and to examine possible tampering of CCTV footage. This contention, however, is untenable. The offence alleged under Section 299 of the BNS essentially hinges upon whether the act complained of was intended to outrage religious feelings. Such an assessment primarily depends upon the contents of the paintings and the circumstances of their display, all of which are already before the Court, as the paintings themselves stand seized. At this stage, no specialised police investigation is necessary to ascertain the existence of the offence. Questions of authenticity, intent, or possible tampering can be considered at the time of trial, and if any further assistance is required, the learned Trial Court retains the power under Section 225 of the BNSS to requisition police aid.

33. At this stage, this Court refrains from entering into the merits of the petitioner's contentions regarding the nature of the exhibition or the impact of the paintings on public sentiment, as such issues are matters to be examined during trial based on evidence and not within the scope of the present proceedings.



34. In *Priyanka Srivastava v. State of U.P.* : (2015) 6 SCC 287, the Hon'ble Apex Court took note of the growing tendency of filing applications under Section 156(3) CrPC in a routine and mechanical manner. The judgment emphasizes that judicial application of mind and scrutiny of the facts are indispensable pre-requisites before directing police investigation under Section 156(3), however, a preliminary inquiry may be conducted, to ascertain whether a cognizable offence is made out or not.

35. It is apparent that the petitioner is merely seeking the assistance of the police to conduct a fishing and roving inquiry. As is evident from the above narration of facts and the Action Taken Report filed by the Police before the learned ASJ, all pertinent facts and evidence are within the petitioner's reach, and she can present such information during the inquiry conducted by the learned Trial Court pursuant to Section 223 of the BNSS. Moreover, it must be noted that even after cognizance is taken, the learned Trial Court is vested with powers under Section 225 of the BNSS to requisition police assistance for further investigation, should the need arise. In the present case, given the afore-mentioned factors, the need for police involvement in evidence collection appears to be minimal, as the complainant is well-equipped to facilitate the presentation of evidence on her own behalf.

36. In the opinion of this Court, the learned ASJ has rightly relied upon the judgments passed in *Lalita Kumari v. Govt. of U.P.* (*supra*), *Priyanka Srivastava v. State of U.P.* (*supra*) and *Subhakaran Loharuka v. State (Govt. of NCT of Delhi)* (*supra*) wherein it was held that when the allegations are not particularly



severe, and the complainant already possessed sufficient evidence to support their claims, there may be no necessity to pass orders under Section 156(3) of the CrPC, however, a preliminary inquiry may be conducted only to ascertain whether a cognizable offence is made out.

37. The petitioner contends that both the Trial Court and the ASJ failed to record any finding on whether the complaint disclosed a cognizable offence. It is urged that, in terms of *Om Prakash Ambadkar v. State of Maharashtra (supra)*, such a reasoned assessment was mandatory before rejecting her application under Section 175(3) BNSS.

38. This contention of the petitioner is misconceived. In the present case, both the learned Trial Court and the learned ASJ after examining the petitioner's complaint along with the Action Taken Report filed by the Police, gave reasoned findings that no further investigation by the Police was warranted at that stage. In *Om Prakash Ambadkar v. State of Maharashtra (supra)* the Hon'ble Apex Court, while relying upon its earlier ruling in *Priyanka Srivastava v. State of U.P. (supra)*, reiterated that before dismissing or allowing an application under Section 175(3) BNSS, the Magistrate is duty bound to apply judicial mind and record a reasoned satisfaction as to whether the complaint discloses a cognizable offence, however, the Hon'ble Court ultimately set aside the order of the Magistrate directing the police authorities to register an FIR and undertake investigation, holding that applications under Section 156(3) CrPC (now Section 175(3) BNSS) cannot be entertained in a routine manner.



39. The Court also distinguished between the scope of Section 156(3) CrPC and Section 175(3) BNSS, and held that unlike the CrPC, the BNSS requires that the application be supported by an affidavit, that the complainant first approach the Superintendent of Police, that the Magistrate consider the submissions of the police officer, and that a preliminary inquiry may be made before directing investigation. These distinctions, it was held, were designed to prevent routine or frivolous applications and to ensure that judicial mind is applied before involving the police machinery. Relevant portion of the said judgement is reproduced hereunder:

“24. Thus, there are prerequisites to be followed by the complainant before approaching the Magistrate under Section 156(3) of the Cr. P.C. which is a discretionary remedy as the provision proceeds with the word ‘may’. The Magistrate is required to exercise his mind while doing so. He should pass orders only if he is satisfied that the information reveals commission of cognizable offences and also about the necessity of police investigation for digging out of evidence neither in possession of the complainant nor can be procured without the assistance of the police. It is, thus, not necessary that in every case where a complaint has been filed under Section 200 of the Cr. P.C. the Magistrate should direct the Police to investigate the crime merely because an application has also been filed under Section 156(3) of the Cr. P.C. even though the evidence to be led by the complainant is in his possession or can be produced by summoning witnesses, with the assistance of the court or otherwise. The issue of jurisdiction also becomes important at that stage and cannot be ignored.

25. In fact, the Magistrate ought to direct investigation by the police only where the assistance of the Investigating Agency is necessary and the Court feels that the cause of justice is likely to suffer in the absence of investigation by the police. The Magistrate is not expected to mechanically direct investigation by the police without first examining whether in the facts and circumstances of the case, investigation by the State machinery is actually required or not. If the allegations made in the complaint are simple, where the Court can straightaway proceed to conduct the trial, the Magistrate is expected to



record evidence and proceed further in the matter, instead of passing the buck to the Police under Section 156(3) of the Cr. P.C. Ofcourse, 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.

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34. In light of the judicial interpretation and evolution of Section 156(3) of the Cr. P.C. by various decisions of this Court as discussed above, it becomes clear that the changes introduced by Section 175(3) of the BNSS to the existing scheme of Section 156(3) merely codify the procedural practices and safeguards which have been introduced by judicial decisions aimed at curbing the misuse of invocation of powers of a Magistrate by unscrupulous litigants for achieving ulterior motives.

35. Further, by requiring the Magistrate to consider the submissions made by the concerned police officer before proceeding to issue directions under Section 175(3), BNSS has affixed greater accountability on the police officer responsible for registering FIRs under Section 173. Mandating the Magistrate to consider the submissions of the concerned police officer also ensures that the Magistrate applies his mind judicially while considering both the complaint and the submissions of the police officer thereby ensuring that the requirement of passing reasoned orders is complied with in a more effective and comprehensive manner.

(emphasis supplied)

40. In the instant case, this court is of the opinion that no exceptional circumstances have been presented to warrant the exercise of its extraordinary jurisdiction under Section 528 of the BNSS. There is no indication of any miscarriage of justice or legal irregularity in the proceedings undertaken by the two lower courts, and the petitioner has not pointed out any such deficiencies.

41. The petitioner's contention that the display of the alleged offensive paintings hurts the religious sentiments of millions of



people in Sanatan community and therefore warrants mandatory registration of an FIR, is without merit.

42. Undisputedly, any act that genuinely offends religious sentiments through visual or artistic depictions is a serious and sensitive matter. However, in the present case, the learned Trial Court is already seized of the matter, and will duly examine whether the ingredients of the alleged offence are satisfied. If, during the course of the trial, the petitioner is able to substantiate her allegations, the law will take its course, and appropriate action will be taken against the accused persons.

43. An offence relating to the outraging of religious feelings, such as the one alleged in the present case, must be found on a direct impact on the complainant himself. The law requires that the person alleging such an offence must themselves have experienced the injury or hurt caused by the material in question. A complaint under the alleged offence cannot be treated as being in a representative capacity on behalf of an entire community or class. Only those individuals who personally came across the alleged offensive material and whose religious sentiments were actually offended, are entitled to seek recourse under the said provision.

44. In view of the above, I find no infirmity in the impugned order dated 19.08.2025 passed by the learned ASJ, and the same cannot be faulted with.

45. The petition, is, therefore, dismissed.

AMIT MAHAJAN, J

SEPTEMBER 10, 2025 / 'DR'

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