Most Urgent
Through E-mail/Fax

RAJASTHAN HIGH COURT BENCH, JAIPUR

No. 11050 **Date:** 26/5/25

From,

The Registrar (Judl.)
Rajasthan High Court Bench,
Jaipur (Raj.)
E-mail: hcjaipur-rj@nic.in
Fax No. 0141-227168

To,

The All District Judges,
State Of Rajasthan.

Sub:- SB Cr. Miscellaneous Petition No. 6580/2024
(Omprakash V/s The State of Rajasthan)

A certified copy of Hon'ble Court order dated 21/05/2024 is being send to you for kind information & necessary compliance as per direction of Hon'ble Court.

This may be treated as urgent and next date fix in this case is 30.05.2025.

Enc. As above

26/05/25
Registrar (Judicial)
Rajasthan High Court Bench
JAIPUR

37190
25/9/24

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

JAIPUR BENCH AT JAIPUR

S.B. CRIMINAL MISC. PETITION NO. 6580 /2024

1. Omprakash S/o Prabhati Lal,
2. Kamlesh Kumar Regar S/o Omprakash,
   Both R/o Village Machda, Post Nindar,
   Tehsil Amer, District Jaipur.

--Accused Petitioners

Versus

1. State of Rajasthan through the learned Public Prosecutor

--Respondent

2. Radheyshyam Rai S/o Girdhari Lal Rai, R/o A-44, Vivekanand Colony, Ambabari, Vidhyadhar Nagar, Jaipur City North, Jaipur, Rajasthan.

--Complainant-Respondent

S.B. CRIMINAL MISC. PETITION UNDER SECTION 528 BHARTIYA NAGARIK SURKSHA SANHITA, 2023 (BNSS) FOR QUASHING OF FIR NO.485/2024 DATED 14.07.2024 REGISTERED AT POLICE STATION HARMADA, DISTRICT JAIPUR WEST, FOR OFFENCE UNDER SECTION 420, 406 AND 120B IPC.

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Miscellaneous (Petition) No. 6580/2024

Omprakash S/o Prabhati Lal

----Petitioner

Versus

State Of Rajasthan

----Respondent

Connected With

1. S.B. Criminal Miscellaneous (petition) No. 3853/2016
2. S.B. Criminal Writ Petition No. 742/2018
3. S.B. Criminal Miscellaneous (petition) No. 1059/2019
4. S.B. Criminal Miscellaneous (petition) No. 4259/2019
5. S.B. Criminal Miscellaneous (petition) No. 3752/2021
6. S.B. Criminal Miscellaneous (petition) No. 6951/2021
7. S.B. Criminal Miscellaneous (petition) No. 1229/2022
8. S.B. Criminal Miscellaneous (petition) No. 1830/2022
9. S.B. Criminal Miscellaneous (petition) No. 2929/2022
10. S.B. Criminal Miscellaneous (petition) No. 3434/2022
11. S.B. Criminal Miscellaneous (petition) No. 4138/2022
12. S.B. Criminal Miscellaneous (petition) No. 4333/2022
13. S.B. Criminal Miscellaneous (petition) No. 6931/2022
14. S.B. Criminal Miscellaneous (petition) No. 9972/2022
15. S.B. Criminal Miscellaneous (petition) No. 10533/2022
16. S.B. Criminal Miscellaneous (petition) No. 104/2023
17. S.B. Criminal Miscellaneous (petition) No. 4667/2024
18. S.B. Criminal Miscellaneous (petition) No. 6189/2024
19. S.B. Criminal Miscellaneous (petition) No. 6431/2024
20. S.B. Criminal Miscellaneous (petition) No. 6532/2024
21. S.B. Criminal Miscellaneous (petition) No. 6593/2024
22. S.B. Criminal Miscellaneous (petition) No. 6621/2024
23. S.B. Criminal Miscellaneous (petition) No. 6730/2024
24. S.B. Criminal Miscellaneous (petition) No. 6739/2024
25. S.B. Criminal Miscellaneous (petition) No. 6742/2024
26. S.B. Criminal Miscellaneous (petition) No. 2247/2025
27. S.B. Criminal Miscellaneous (petition) No. 1985/2025
28. S.B. Criminal Miscellaneous (petition) No. 1595/2025

For Petitioner(s)	:	Mr. V.R. Bajwa, Sr. Adv. Assisted by Mr. Nitin Jain (*Amicus curiae*) Mr. Amit Jindial Mr. Rahul Tiwari Mr. Chinmaya Mudgal for Mr. Deepak Chauhan Mr. Vivek Goyal Mr. Chain Singh Rathore Mr. Ravindra Singh Shekhawat Mr. Santosh Kumar Soni Mr. Shashi Shekhar Gaur Mr. Anshuman Saxena Mr. Umesh Shringi Mr. Aditya Matolia, through V.C.
For Respondent(s)	:	Mr. Rajesh Choudhary, GA-cum-AAG with Mr. Rishi Raj Singh Rathore, PP Mr. Manvendra Singh Shekhawat, PP Mr. Sandeep Taneja, AAG with Mr. G.L. Sharma (RAS) DIG, Stamp Jaipur-II, present in person Mr. Sandeep Pathak Mr. Keshar Dadhich for Mr. Mohit Khandelwal Mr. Chiranji Lal Saini Mr. Srijana Shresth Mr. Manu Bhargav Mr. Akshay Bhardwaj for Mr. R.D. Rastogi for ED Mr. R.S. Bhardwaj Mr. Arnav Singh

HON'BLE MR. JUSTICE SAMEER JAIN

Order

21/05/2025

1. While exercising its inherent jurisdiction under the provisions of Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) / Section 428 of the Code of Criminal Procedure, 1973 (CrPC), this Court observed that, notwithstanding the repeated pronouncements of the Hon'ble Supreme Court unequivocally clarifying that civil disputes ought not to be given the colour of criminal proceedings, the police authorities continue to transgress their jurisdiction in such matters. Furthermore, it has been noted that subordinate courts are routinely passing

mechanical orders under Section 175 of the BNSS / Section 156 of the CrPC. In light of the foregoing, and with the consent of the learned counsel representing the various petitioners, this Court deemed it appropriate to club the matters for the sake of convenience and effective adjudication.

2. In the matters at hand, learned Senior Counsel Mr. V.R. Bajwa, ably assisted by Mr. Nitin Jain, Advocate, appearing as *amicus curiae,* has submitted that pursuant to extensive deliberations, and in compliance of the erstwhile directions spelled out by this Court, the State has formulated a Standard Operating Procedure (SOP) dated 29.10.2024. This SOP, promulgated under the authority of the Director General of Police, delineates comprehensive checks and balances to be adhered to by law enforcement agencies.

3. Notably, it mandates that in instances where ambiguity exists regarding the civil or criminal nature of a dispute, a detailed procedural framework is to be followed, with oversight by an officer not below the rank of Superintendent of Police. Furthermore, learned Counsel has emphasized the institutional provisions enshrined under Sections 223 and 175 of the Bharatiya Nagarik Suraksha Sanhita, 2023(hereinafter referred to as "BNSS"). For the sake of handiness, the relevant provisions are reproduced herein below:

223. Examination of complainant.

1. A Magistrate having jurisdiction while taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be

signed by the complainant and the witnesses, and also by the Magistrate:

Provided that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard:

Provided further that when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 212:

Provided also that if the Magistrate makes over the case to another Magistrate under section 212 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

2. A Magistrate shall not take cognizance on a complaint against a public servant for any offence alleged to have been committed in course of the discharge of his official functions or duties unless-

(a) such public servant is given an opportunity to make assertions as to the situation that led to the incident so alleged; and

(b) a report containing facts and circumstances of the incident from the officer superior to such public servant is received.

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.*

4. It is contended that deviations from erstwhile legal frameworks, particularly concerning the principles of *audi alteram partem* and natural justice and the new criminal laws, necessitate that the opposing counsel be afforded an opportunity to present their version, which the Court may duly consider.

5. A pressing concern highlighted pertains to the mechanical issuance of orders under Section 175(3) BNSS by the trial or sub-ordinate Courts without conducting requisite inquiries or considering material evidences. Such practices undermine the essence of judicial scrutiny and the principles of natural justice. While the SOP addresses procedural aspects within the Police Department, it is submitted that a comprehensive policy formulation is imperative to guide judicial discretion under Section

175(3) of BNSS, and allied laws ensuring adherence to the letter and spirit of the law.

6. Regarding fiscal regulations, learned Additional Advocate General Mr. Sandeep Taneja and learned counsel Mr. Sandeep Pathak, representing the Finance Department of the State of Rajasthan and the Income Tax Department respectively, have underscored the necessity of compliance with the provisions of the statutes, such as, the Section 31 Rajasthan Stamp Act, 1988, Sections 17, 33, 35 of the Indian Stamps Act, 1899, Section 50C, 194IA, 269AB, 269P of Income Tax Act, 1961, Registration Act, 1908, and Section 54 of the Transfer of Property Act, 1882. Non-compliance with these statutes, particularly in financial transactions, could render agreements void under Section 24 of the Indian Contract Act, 1872. For the sake of convenience the relevant provision is reproduced herein below:

> *"24. **Agreements void, if considerations and objects unlawful in part**— If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void."*

7. The Hon'ble Supreme Court, in its judgment dated 16 April 2025 in **Civil Appeal No. 5200 of 2025**, titled **The Correspondence, RBANMS Educational Institution v. B. Gunashekar**, has mandated that any transaction involving cash payments of ₹2,00,000/- or more must be reported by the Court or relevant agencies to the concerned departments to curb black money transactions and parallel economies. This directive reinforces the obligation of judicial and administrative bodies to ensure transparency and accountability in financial dealings.

8. It is pertinent to mention here that requisite provisions are introduced in the Income Tax Act to curb black money by digitalising transactions above Rs. 2,00,000/-. Promotion of a digital economy is an integral part of the Government strategy to clean the system and weed out corruption and black money for the reason that in India, the quantum of domestic black money is huge which adversely affects the revenue of the Government creating a source crunch for its various welfare programmes. Moreover, black money is generally transacted in cash and large amount of unaccounted wealth is stored and used in form of cash. The relevant extract of the directions spelled out in the afore-relied ratio is reproduced herein below:

> *"(A) Whenever, a suit is filed with a claim that Rs. 2,00,000/- and above is paid by cash towards any transaction, the courts must intimate the same to the jurisdictional Income Tax Department to verify the transaction and the violation of Section 269ST of the Income Tax Act, if any,*
>
> *(B) Whenever, any such information is received either from the court or otherwise, the Jurisdictional Income Tax authority shall take appropriate steps by following the due process in law,*
> *(C) Whenever, a sum of Rs. 2,00,000/- and above is claimed to be paid by cash towards consideration for conveyance of any immovable property in a document presented for registration, the jurisdictional Sub-Registrar shall intimate the same to the jurisdictional Income Tax Authority who shall follow the due process in law before taking any action,*
> *(D) Whenever, it comes to the knowledge of any Income Tax Authority that a sum of Rs. 2,00,000/- or above has been paid by way of consideration in any transaction relating to any immovable property from any other source or during the course of search or assessment proceedings, the failure of the registering authority shall be brought to the knowledge of the*

Chief Secretary of the State/UT for initiating appropriate disciplinary action against such officer who failed to intimate the transactions."

9. Additionally, reliance is placed upon the ratio encapsulated in **Rikhab Brani & Anr. Vs. State of U.P. and Anr.: SLP (Criminal) No. 8592/2024, Dinesh Sharma vs. Emgee Cables: 2025 INSC 571, Anil Bhavarlal Jain & Anr. Vs. The State of Maharashtra & Ors.: SLP (Crl.) No. 10078 of 2023** and **Radhey Shayam & Ors. Vs. State of Rajasthan & Anr.: Criminal Appeal No. 3020/2024.**

10. Learned GA cum AAG Mr. Rajesh Choudhary has drawn attention to the Apex Court's observations in **Om Prakash Ambadkar v. State of Maharashtra (Criminal Appeal No. 352 of 2020):2025 INSC 139**, wherein the Court condemned the routine issuance of orders under Section 175(3) of BNSS without adequate inquiry. The Court emphasized that magistrates must exercise discretion and conduct necessary inquiries before directing investigations, thereby upholding the sanctity of judicial processes. The relevant extract from **Om Prakash Ambadkar (Supra)** is reproduced hereinbelow:

"11. However, what is important to observe is that whenever any application is filed by the complainant before the Court of Judicial Magistrate seeking police investigation under Section 156(3) of the Cr.P.C., it is the duty of the concerned Magistrate to apply his mind for the purpose of ascertaining whether the allegations levelled in the complaint constitute any cognizable offence or not. In other words, the Magistrate may not undertake the exercise to ascertain whether the complaint is false or otherwise, however, the Magistrate is obliged before he proceeds to pass an order for police investigation to closely consider whether the necessary ingredients to constitute the alleged

offence are borne out on plain reading of the complaint.

12. In the case on hand, ***it appears that the Magistrate passed an order directing police investigation mechanically and without ascertaining whether the allegations levelled disclose commission of any offence or not.***

13. It is the case of the complainant that the appellant herein committed offence punishable under Section 294 the IPC. ***The Magistrate very promptly accepted this contention without ascertaining if the necessary ingredients required to constitute the offence were disclosed in the complaint or not.*** *In our view, even if all the allegations as levelled in the complaint are believed to be true, none of the ingredients to constitute the offence punishable under Section 294 of the IPC could be said to be borne out."*

(Emphasis supplied)

11. In light of the aforementioned submissions this Court has drawn the following *prima facie* opinion:

11.1 That while dealing with the matters before it, under the provisions of Section 175(3) of BNSS and allied provisions the Sub-ordinate Courts omit to keep a diligent check as to whether the provisions *inter alia* of Section 31 Rajasthan Stamp Act, 1988, Sections 17, 33, 35 of the Indian Stamps Act, 1899, Section 50C, 194IA, 269AB, 269P of Income Tax Act, 1961, Registration Act, 1908, and Section 54 of the Transfer of Property Act, 1882, are followed by the persons before it, vis-a-vis the subject matter of dispute.

11.2 That the sub-ordinate judicial officers while exercising their jurisdiction under the provisions of Section 175 of BNSS overlook the updated judicial precedents and pass mechanical obsolete orders, *sans* any appreciation of fact in issue, relevant

facts, admissibility of documents in question and other legal principles. The provisions of Sections 35, 47A, 49, 64-65 of the Rajasthan Stamps Act, 1998 are overlooked. The subordinate judiciary and its orders are a founding stone to any litigation, Magistrates therein cannot merely act as "rubber stamps" in ordering FIR registrations without independent assessment of factual matrices.

11.3 That it *prima facie* appears that the police authorities exceed their jurisdiction and make an attempt to settle the disputes, by all measures *sans* checking any lawfulness and legality of their attempts, rather preventing the parties to reach out to efficacious judicial recourse. The authorities like the Income Tax Department, Revenue and Stamps Department are neither informed of any such insufficiently carried transactions, nor any actions against the said irregularities are taken, at the end of the police department.

11.4 Nevertheless, the Apex Court in **Om Prakash Ambadkar (Supra)** has categorically noted the difference between the provisions of Section 156 of Cr.P.C. and 175 BNSS. It is elucidated that the provisions of BNSS underscores a greater accountability on the police officer responsible for registering FIRs. Reliance can also be placed upon the ratio encapsulated in **Priyanka Srivastava and Anr. Vs. State of U.P.: (2015) 6 SCC 287**, which clarified the need for an affidavit to accompany any application under Section 156(3) of the CrPC [*pari materia* to Section 175(3) of BNSS]. It was categorically opined therein *"the requirement of supporting the complaint with an affidavit would ensure that the person making the application is conscious and*

also to see that no false affidavit is made, once an affidavit is found to be false, the applicant would be liable for prosecution in accordance with law. This would deter him from casually invoking the authority of the magistrate under Section 156(3)".

11.5 That the aforementioned actions of the authorities not only create an illusion amongst the parties to the litigation/complaint, but also increase white-collar crimes, tax evasions, and other unlawful activities; which are being rampant and ultimately causing enormous loss to the revenue of the State.

11.6 The documents which are not duly stamped, and the properties which are transferred without registration, or with undervalued consideration per-se formulates intentional evasion of stamp duty. This not only causes a hit in the roots of the revenue system, rather encourages white-collar crimes.

12. Therefore, to ensure consistent interdepartmental coordination, this Court deems it appropriate to direct that deliberations be conducted among the Tax Authorities of the Income Tax Department in the State of Rajasthan, the Director General of Stamp, the Principal Secretary (Finance), the Director General of Police, and the Home Secretary and furnish a *modus operandi* that should be adopted as a solution to the aforementioned issues. These discussions should focus on establishing stout checks and measures, delineating clear protocols for interdepartmental referrals, and formulating strategies to address and rectify issues related to black money and parallel financial transactions.

13. The minutes of these deliberations are to be submitted in the office of learned Additional Advocate General Mr. Sandeep

Taneja. Upon review and consultation, Mr. Taneja shall present the State's consolidated position on the matter before this Court for further consideration.

14. Needful to be done within a period of one week.

15. List these matters on 30.05.2025 in the supplementary cause list, at the top of the Board.

16. The copy of SoP dated 29.10.2024 is taken on record.

17. Registrar (Judicial) is directed to send a copy of this order to all the District Judges, State of Rajasthan, who shall further circulate the same to the judicial officers in his judgeship, so that while passing any orders henceforth the aforementioned legal principles and judicial precedents are acknowledged.

18. In the meantime, interim order, if any, to continue.

(SAMEER JAIN),J

JKP/232-259, 299, 300 & 302

No.....Date.....
Copy Forwarded to :
The.....
For Information & Necessary Action.

Assistant Registrar