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MP-7257-2025

IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

ON THE 7<sup>th</sup> OF JANUARY, 2026MISC. PETITION No. 7257 of 2025*SHAILENDRA SHARMA AND OTHERS**Versus**M/S INDUS RESIDENCY PVT. LTD AND OTHERS*

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Appearance:

*Shri Devashish Sakalkar - Advocate with Shri Saket Agrawal -  
Advocate for the petitioners.*

*Shri Sanjay Agrawal - Senior Advocate with Shri Siddharth Kumar  
Sharma,- Advocate for the respondents.*

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ORDER

The present petition has been filed challenging the order dated 18.11.2025 passed by the Executing Court, the instance of the decree holders. By the aforesaid order, the Executing Court has directed the matter of impersonation of surety to be enquired into police authorities and if the police authorities find the surety bond to have been fraudulently furnished before the Court, then to register an office and proceed further in the matter.

2. The undisputed facts of the case are that there is a decree of recovery of money against the respondents-judgement debtors in an suit filed by the petitioner. Against the judgement and decree passed by the trial Court, FA No.442/2022 is pending before this Court and in terms of the interim order passed in the said first appeal, part of decretal amount was deposited



by the respondents/judgement debtors before the Executing Court amounting to Rs.35.25 lakhs. The Executing Court ordered the amount to be disbursed to the decree holders/petitioners upon furnishing of solvent surety by one Jugal Kishore. Later on, it was revealed before the Executing Court that the surety was of some agricultural land on which there were as many as 9 sureties given by the same person and later on, Jugal Kishore himself appeared before the Executing Court and stated that he never furnished any such surety before the Court and that he has been impersonated in furnishing the surety for the amount of Rs.35.25 lakhs before it being disbursed to the decree holders.

3. Thereafter, the judgment debtors filed an application under Section 379 BNSS (corresponding to Section 340 Cr.P.C.) seeking prosecution of decree holders and the impersonating surety under various sections of I.P.C.

4. It is contended by counsel for the decree holders/petitioners that without passing any order on the said application, the Executing Court has directed that the police should investigate the matter and in case any criminal offence is found to be established, then police should register FIR. It is contended that the Executing Court should not have left it to be discretion of the police authorities whether to register criminal case or not and the procedure as per Sections 215 and 379 of B.N.S.S. was to be followed and the Executing Court was required to apply its own mind that whether any offence is made out, by following the procedure under Section 379 B.N.S.S. Counsel for the petitioners has also relied on the judgments of the Hon'ble Supreme Couse in the cases of *Iqbal Singh Marwah and another vs.*



*Meenakshi Marwah and another (2005) 4 SCC 370, Sachida Nand Singh and another vs. State of Bihar and another (1998) 2 SCC 493* and in the case of *Saifdeen Y. and another vs. State of Kerala and another* passed in *CRL.MC No.7011 of 2024 on 22.01.2025* by the High Court of Kerala at Ernakulam.

5 . *Per contra*, counsel for the judgement debtor/respondent has vehemently supported the impugned order passed by the Executing Court.

6. After hearing the counsel for the rival parties and on perusal of the record, the relevant provisions of B.N.S.S., i.e. Sections 215 and 379 are as under:-

**"215. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.—(1) No Court shall take cognizance—**

(a) (i) of any offence punishable under sections 206 to 223 (both inclusive but excluding section 209) of the Bharatiya Nyaya Sanhita, 2023; or

(ii) of any abetment of, or attempt to commit, such offence; or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate or of some other public servant who is authorised by the concerned public servant so to do;

(b) (i) of any offence punishable under any of the following sections of the Bharatiya Nyaya Sanhita, 2023, namely, sections 229 to 233 (both inclusive), 236, 237, 242 to 248 (both inclusive) and 267, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court; or

(ii) of any offence described in sub-section (1) of section 336, or punishable under sub-section (2) of section 340 or



section 342 of the said Sanhita, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court; or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii),

except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.

**379. Procedure in cases mentioned in section 215.**—(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 215, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,—

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 215.

(3) A complaint made under this section shall be signed,—

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court or by such officer of the Court as the Court may authorise in writing in this behalf.

(4) In this section, “Court” has the same meaning as in section 215.”



7. The offence is alleged to have been caused in producing an impersonating surety before the Executing Court for getting disbursed the part decretal amount of Rs.35.25 lakhs from the Executing Court. Later on, the said surety appeared before the Executing Court and stated that some impersonator appeared while furnishing surety and he has never furnished any surety before the Executing Court.

8. A police officer cannot directly register a crime for offence under Section 215 B.N.S.S. once the offence is committed in or in relation to a proceeding in the Court. As per Section 379 B.N.S.S., the Court has to cause preliminary enquiry and then can make a complaint in writing. However, in the present case, the Court has not made any enquiry, nor recorded any prima-facie satisfaction and has simply directed the police authorities to carry out an investigation and submit a report before the Court. Though the Court in its discretion could have directed the police authorities to investigate the matter and to furnish report before the Court, but the discretion to register FIR should not have been left at the discretion of the police authorities. It was for the Court to have applied its mind after receiving the preliminary enquiry report of the police authorities.

9. Therefore, the impugned order dated 18.11.2025 is modified to the extent that the concerned police authority of Police Station, M.P. Nagar, Bhopal may investigate the matter, but before registering any FIR, the investigation report shall be furnished before the Executing Court and FIR shall be registered only under orders of the Executing Court, and not suo-



motu by the Police authorities.

10. With the aforesaid modification in the impugned order, the petition is **disposed of**.

(VIVEK JAIN)  
JUDGE

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