

# Arunkumar vs The State Of Karnataka And Anr on 30 September, 2024

Author: K Natarajan

Bench: K Natarajan

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NC: 2024:KHC-K:7531  
CRL.P No. 200913 of 2024

IN THE HIGH COURT OF KARNATAKA  
KALABURAGI BENCH

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DATED THIS THE 30TH DAY OF SEPTEMBER, 2024

BEFORE  
THE HON'BLE MR. JUSTICE K NATARAJAN

CRIMINAL PETITION NO.200913 OF 2024  
(482(Cr.PC)/528(BNSS))

BETWEEN:

ARUNKUMAR  
S/O VIRUPAKSHAPPA,  
AGED ABOUT 30 YEARS,  
OCC: STATE GOVT. EMPLOYEE,  
IN HEALTH DEPARTMENT,  
R/O LINGASUGUR, TQ. LINGASUGUR,  
DIST. RAICHUR-584123.

...PETITIONER

(BY SRI. MAHANTESH PATIL, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA

Digitally signed  
by SHIVALEELA  
DATTATRAYA  
UDAGI

REPRESENTED BY ADDL. S.P.P.  
HIGH COURT OF KARNATAKA

BENCH AT KALABURAGI,

Location: High  
Court Of  
Karnataka

(THROUGH LINGASUGUR P.S.  
TQ. LINGASUGUR, DIST. RAICHUR-585123)

2. ANJANA DEVI

W/O LATE CHANNAPPA NEERALAKERI,  
AGE: 37 YEARS, OCC: STATE GOVT. EMPLOYEE,  
IN HEALTH DEPARTMENT R/O CSF CAMP,  
NOW AT W. NO. 18, LINGASUGUR,  
TQ. LINGASUGUR, DIST. RAICHUR-584123.

...RESPONDENTS

(BY SRI. JAMADAR SHAHABUDDIN, HCGP FOR R1;  
SRI. S. S. MAMADAPUR, ADVOCATE FOR R2)

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CRL.P No. 200913 of 2024

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF  
CR.P.C, UNDER SECTION 528 OF BNSS, PRAYING TO QUASH THE  
FIR AND COMPLAINT IN CRIMINAL PROCEEDINGS IN CRIME NO.  
180/2024 OF LINGASUGUR P.S OFFENCES PUNISHABLE UNDER  
SECTIONS 376, 323, 506, 420 OF IPC PENDING ON THE FILE OF  
LEARNED PRL. CIVIL JUDGE (JR.DN) AND JMFC AT LINGASUGUR,

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER  
WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE K NATARAJAN

ORAL ORDER

(PER: HON'BLE MR. JUSTICE K NATARAJAN) This petition is filed by the petitioner / accused under Section 528 of Bharatiya Nagarika Suraksha Sanhita - 2023 (hereinafter referred as BNSS) for quashing First Information and FIR in Crime No.180/2024, registered by the Lingasugur Police Station, for the offences punishable under Sections 376, 323, 506 and 420 of IPC, pending on the file of Prl. Civil Judge (Jr. Dn) and JMFC, Lingasugur, Dist: Raichur.

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02. Heard the learned counsel for the petitioner, the learned High Court Government Pleader for the respondent No.1 - State and the learned counsel for the respondent No.2.

03. The case of the prosecution is that as per the first information lodged by the respondent No.2 before the police on 01.07.2024, alleging that she is working as a nurse in a Government Hospital, Lingasugur. Her husband met with an accident on 28.03.2021, admitted in the Government Hospital and he was died on 30.03.2021. During the time of treatment and after the death of her husband, the accused / petitioner said to be working in the same Hospital as 'D' group employee. He was helped the complainant while treatment. After the death of her husband and the accused frequently used to visit the house of the complainant and consoled the respondent No.2. He also came forward to give life to the complainant and promise to marry her. On this background, the accused took the complainant into a room under the guise NC: 2024:KHC-K:7531 of going to the Temple and committed sexual assault on her against her will on 24.06.2021. Further, he used to call her forcibly and commit the sexual assault. Subsequently, on the assurance of marriage, the accused has collected more than Rs.11,43,180/- from the complainant on various dates through online transfer and also received by cash totally Rs.2,00,000/- and cheated the complainant without repaying the same and also not remarrying the de-facto complainant. Hence, the complaint came to be filed.

04. After receipt of the complaint from the de-facto complainant on 01.07.2024, the police have registered the FIR under Section 154 of Cr.P.C. for the offences punishable under Sections 376, 323, 506 and 420 of IPC. Being aggrieved with the registering the FIR and the complainant, the petitioner has filed this petition for quashing the same.

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05. The learned counsel for the petitioner urged mainly two grounds for quashing the FIR, which is as under:-

(i) The learned counsel for the petitioner has contended that the offences alleged in the complaint was occurred on 24.06.2021 and subsequent dates on or prior to 30.06.2024, but the complaint was filed on 01.07.2024, wherein the criminal procedure code has been repealed by the Central Government and new law i.e., BNSS has been come into force from 01.07.2024 onwards. Therefore, the police cannot registered the FIR under Section 154 of Cr.P.C. on or after 01.07.2024. Therefore, conducting the investigation and the FIR registered under the repealed Cr.P.C. is not sustainable.

(ii). The learned counsel also argued on the merits of the case, that the complaint was major and working as a Government Nurse in the Hospital, married woman. But it is not possible to believe the accused committed rape NC: 2024:KHC-K:7531 against her will and consent, in order to bring under the provisions of Section 375 of IPC, and for the punishment prescribed under Section 376 of IPC. There is inordinate delay in lodging the complaint for more than 03 years.

Therefore, it is not fit case to investigate the matter by the police. Therefore, prayed for quashing the FIR.

o6. The learned counsel appearing for the respondent No.2 has seriously objected the petition contending that the petitioner under the guise of promise of marriage committed the sexual assault on the victim lady. He also received huge amount more than Rs.2,00,000/- from her and he has cheated the complainant. There is no consent of the victim, but the accused committed the rape by taking her under the guise of going to the Temple and misusing the loneliness of the victim, having acquainted with her under the guise of consoling her, when she has lost her husband. Therefore, it is contended that the matter is required for investigation. The FIR cannot be quashed.

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o7. The learned counsel for the respondent No.2 also contended that the victim has filed complaint to the police. She does not know about the commencement of the BNSS or repealing the Cr.P.C. by the Central Government. It is the duty of the police to register the FIR in accordance with the provision of law, which is in force. Therefore, there is no fault of the de-facto complainant for registering FIR under the provision of Cr.P.C. The contents of the FIR cannot be questioned or quashed. Hence, prayed for dismissing the petition.

o8. The learned High Court Government Pleader has also objected the petition contending that the Cr.P.C. was repealed and BNSS came into force w.e.f. 01.07.2024. This is a first FIR registered after commencement of the BNSS. Therefore, the police have not able to change the format of the FIR in the computer and enabling the correction of Cr.P.C. into BNSS. Therefore, an error crept in the provisions, for having registered the FIR, but that itself is not a ground for NC: 2024:KHC-K:7531 quashing the FIR. Merely, mentioning wrong provision, that itself is not a ground to quash the entire FIR and complaint. The provision of the FIR can be amended at the request of Magistrate, even otherwise the police have stated, in column No.11(C) of the FIR that investigation took up under Section 176 of BNSS. Therefore, it is only a clerical error, on this ground FIR cannot be quashed.

o9. The learned High Court Government Pleader further submits that there is a prima-facie material for investigate the matter. He has cheated the complainant both physically/sexually and financially. Therefore, the matter is required for investigation. Hence, prayed for dismissing the petition.

10. Having heard the argument, perused the records, the points that arise for my consideration as :-

i) Whether the FIR registered on 01.07.2024 under Section 154 of Cr.P.C. after commencement of BNSS, 2023 for the offences committed prior to 01.07.2024, is sustainable?

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ii) Whether the petitioner is entitled for relief of quashing the FIR and complaint as prayed for?

iii) What order?

11. On perusal of the records especially the first information lodged by the respondent No.2, she has alleged the sexual assault, were committed on 24.06.2021. Subsequently, the petitioner also cheated the victim by receiving the money till 01.06.2023. Admittedly, the alleged offences were committed prior to commencement of the new law of BNS by repealing the IPC. The offences were alleged to have been committed by the accused prior to 01.07.2024. The repealed IPC was in force till 30.06.2024. Hence, the FIR is required to be registered for the offences committed under IPC and not under BNS. But, the FIR is required to be registered on the complaint filed on 01.07.2024 under BNSS, 2023, but, not under the Cr.P.C.

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12. For example, If the offences are committed prior to 01.07.2024, the FIR should be registered for the offences punishable under only in IPC. But, not under BNS. For the convenience, as per Section 358 of BNS wherein the repeal and savings has defined as under:-

"358 Repeal and savings.- (1) The Indian Penal Code (45 of 1860) is hereby repealed.

(2) Notwithstanding the repeal of the Code referred to in sub-section (1), it shall not affect.-

(a) the previous operation of the Code so repealed or anything duly done or suffered there under; or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under the Code so repealed; or

(c) any penalty, or punishment incurred in respect of any offences committed against the Code so repealed; or

(d) any investigation or remedy in respect of any such penalty, or punishment; or

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(e) any proceeding, investigation or remedy in respect of any such penalty or punishment as aforesaid, and any such proceeding or remedy may be instituted, continued or enforced, and any such penalty may be imposed as if that Code had not been repealed.

(3) Notwithstanding such repeal, anything done or any action taken under the said Code shall be deemed to have been done or taken under the corresponding provisions of this Sanhita.

(4) The mention of particular matters in sub- section (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of the repeal."

13. On bare reading of Sub Section (a) to (e) of Section 358 (2) clearly defines any right accrued or liability acquired or obligation, suffered, prior to commencement of the BNS, the IPC will apply. Hence, if any offences committed prior to the commencement of

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NC: 2024:KHC-K:7531 BNS prior to 01.07.2024, the police required to register FIR for the offences under the IPC but, not under BNS. Therefore, the police have rightly registered FIR for the offences against the petitioner under the IPC.

14. That apart, the right of the accused is guaranteed under Article 20 (1) of the Indian Constitution, which is as under :-

"20 Protection in respect of conviction for offences.- (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence."

15. In view of the safeguard guaranteed under Article 20 (1) of the Constitution of India the offences cannot be registered against the petitioner under the BNS, which was come into force only on 01.07.2024. Therefore, the police rightly registered the FIR for the offences under the IPC.

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16. However, the main objection by the petitioner counsel is that the FIR is registered on 01.07.2024 under Section 154 of Cr.P.C. wherein the Cr.P.C. is already repealed from 01.07.2024 onwards. Therefore, it is contended that the police have no authorities to register the FIR under Cr.P.C. and they cannot investigate the matter by following procedure under Section 157 of Cr.P.C. and further contended that the police could have registered the FIR under Section 173 of BNSS and investigation must be under Section 176 of BNSS. But, not under the repealed Code of Criminal Procedure. Therefore, the FIR is not sustainable and hence, it is required to be quashed.

17. On perusal of the FIR under challenge, which reveals that the police have registered the FIR on 01.07.2024 under Section 154 of Cr.P.C. which prima-facie reveals that the police have registered FIR under repealed Cr.P.C. but not under BNSS. The police must have registered the FIR under Section 173 of BNSS, but not under Section 154 of Cr.P.C.

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18. For the convenience the provision of Section 531 of BNSS refer as under:-

"531. Repeal and savings.- (1) The Code of Criminal Procedure, 1973 (2 of 1974) is hereby repealed.

(2) Notwithstanding such repeal-

(a) if, immediately before the date on which this Sanhita comes into force, there is any appeal, application, trial, inquiry or investigation pending, then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), as in force immediately before such commencement (hereinafter referred to as the said Code), as if this Sanhita had not come into force.

(b) xxxx

(c) xxxxx

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NC: 2024:KHC-K:7531 (3) Where the period specified for an application or other proceeding under the said Code had expired on or before the commencement of this Sanhita, nothing in this Sanhita shall be construed as enabling any such application to be made or proceeding to be commenced under this Sanhita by reason only of the fact that a longer period therefore is specified by this Sanhita or provisions are made in this Sanhita for the extension of time."

19. On careful reading of the Section 531(2)(a) of BNSS, which clearly defines that any appeal / application / trial / enquiry / investigation, pending on the date of prior to commencement of the BNSS, then such appeal/application/trial/inquiry/ investigation shall be continued in accordance with the Code of Criminal Procedure, 1973. But, herein this case there is no investigation pending prior to the commencement of BNSS in order to investigate the matter under Cr.P.C. It is clear case that complaint came to be filed on 01.07.2024 on the

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NC: 2024:KHC-K:7531 date of commencement of BNSS. Therefore, the FIR shall have to be registered by the police under Section 173 of BNSS and the investigation shall be conducted in accordance with the procedure made under Section 176 of BNSS and hence, FIR registered under Cr.P.C. as on 01.07.2024 is not correct.

20. The learned counsel for the petitioner relied upon the judgment of the Division Bench of Allahabad High Court, passed in Crl. Misc. Writ Petition No.12287/2024 in the case of Deepu and 04 others vs State of U.P. and 03 others. The Division Bench considered Section 531 of BNSS under Article 20 of the Constitution of India and considering the various judgments of the Hon'ble Supreme Court, wherein it is held in para-16 of the judgment as under:

Extract Para-16 (i to vi).

"16. On the basis of above analysis, this Court is also summarizing the law regarding effect of repealing the IPC and Cr.P.C. by BNS and BNSS respectively and same is being mentioned as below:

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(i) If an FIR is registered on or after 1.7.2024 for the offence committed prior to 1.07.2024, then FIR would be registered under the provisions of IPC but the investigation will continue as per BNSS;

(ii) In the pending investigation on 01.07.2024 (on the date of commencement of New Criminal Laws), investigation will continue as per the Cr.P.C. till the cognizance is taken on the police report and if any direction is made for further investigation by the competent Court then same will continue as per the Cr.P.C.;

(iii) The cognizance on the pending investigation on or after 01.07.2024 would be taken as per the BNSS and all the subsequent proceeding including enquiry, trial or appeal would be conducted as per the procedure of BNSS;

(iv) Section 531(2)(a) of BNSS saved only pending investigation, trial, appeal, application and enquiry, therefore, if any trial, appeal, revision or application is commenced after 01.07.2024, the same will be proceeded as per the procedure of BNSS.

(v) The pending trial on 01.07.2024, if concluded on or after 01.07.2024 then appeal or revision against the judgment passed in such a trial will be

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NC: 2024:KHC-K:7531 as per the BNSS. However, if any application is filed in appeal, which was pending on 01.07.2024 then the procedure of Cr.P.C. will apply;

(vi) If the criminal proceeding or charge-



sheet is challenged before the High Court on or after 01.07.2024, where the investigation was conducted as per Cr.P.C. then same will be filed under section 528 of BNSS not under section 482 Cr.P.C."

21. The sub-para (i) of para-16 has held that if an FIR is registered on or after 01.07.2024 for the offence committed prior to 01.07.2024, then FIR would be registered under the provision of IPC, but the investigation will continue as per BNSS. My respectful agreement with the law laid down by the Division Bench of the Allahabad High Court in respect of registering the FIR under BNSS on or after 01.07.2024 and the FIR must be under Section 173 of BNSS and the investigation must be conducted as per Section 176 of BNSS. Therefore, the FIR registered under Section 154 of Cr.P.C. is not sustainable.

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22. Therefore, it is held that the FIR registered by the respondent - Police under Section 154 of Cr.P.C. on 01.07.2024 is not in accordance with the law. However, whether mere mentioning a wrong provision by the police in the FIR, which leads to quashing the entire FIR at this stage.

23. In this regard, the Kerala High Court has considered in a case wherein an appeal was filed under section 374(2) of Cr.P.C. on 10.07.2024 after commencement of the BNSS. After considering the various cases the Kerala High Court has held the appeal must filed only under section 415(2) of BNSS but not under Cr.P.C. after commencement of BNSS from 01.07.2024. While considering the petition the Kerala High Court referred the judgment of the Punjab and Haryana High Court in xxxx vs. State of UT Chandigarh and another [CRM- M-1808-2024] wherein the Chandigarh High Court held if any appeal or application filed on or after 01.07.2024 under the provisions of Cr.P.C. is not maintainable and

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NC: 2024:KHC-K:7531 hence, would deserve dismissal on this score alone. However, any application/appeal/revision/petition filed upto 30.06.2024 under the provisions of Cr.P.C., 1973 is maintainable in law. To clarify in case any application/appeal/revision/petition is filed upto 30.06.2024 but there is defect (Registry objections as referred in common parlance) and such defect is cured or removed on or after 01.07.2024, such application / appeal / revision / petition shall be deemed to have been validly filed/instituted on or after 01.07.2024 and therefore would be non-maintainable.

24. But the judgment of the Chandigarh has been distinguished by the Kerala High Court and has held if any application/appeal/revision filed prior to 01.07.2024 if any defect is raised by the office/registry, if it is complied or clarified on or after 01.07.2024 and if the petition is represented then it is to be continued under Cr.P.C. as it is only a defect has been cured on or after 01.07.2024. I am in respectful agree with the view taken by the Kerala High Court.

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25. For the reasons stated above that any petition/appeal/revision/application filed on or before 30.06.2024 if any defect or office objections raised and if it is cured or clarified and represented on or after 01.07.2024 then all the appeal / petition / application / revision shall have to be considered under Cr.P.C. but not under the BNSS.

26. But in this case the FIR was registered on 01.07.2024 for the offence committed on or before 30.06.2024. Therefore, the offence must be registered under the IPC, but FIR must be registered on or after 01.07.2024 only in BNSS, but not in Cr.P.C.

27. As regards to the contention of the counsel for the respondent that whether mere mentioning the wrong provision in the FIR, the FIR can be quashed or it can be rectified and amended as per Section 173 of BNSS instead of 154 of Cr.P.C.

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28. In my considered opinion the FIR is basic document for the purpose of setting the law into motion and it is also foundation for investing the matter by the Police Officer for the offences registered against the accused. Therefore, it cannot be permissible to investigate the matter under Section 176 of BNSS for the FIR registered under 154 of Cr.P.C. after commencement of the BNSS on or after 01.07.2024. It cannot be a considered as curable defect. Even on perusal of Section 464 or 465 of Cr.P.C. which is pari materia of Section 510 and 511 of BNSS. Nowhere in the 510 or 511 of BNSS saved or defined that registering the FIR in Cr.P.C. and investigation done in BNSS is curable defect. Therefore, I am of the view that when the basic foundation itself is not correct, the police cannot have power to investigate the case under section 176 of BNSS for the offence registered in IPC and FIR registered under Section 154 of Cr.P.C. Therefore, the FIR registered under 154 of Cr.P.C. on 01.07.2024 after commencement of BNSS is not sustainable and liable to be quashed.

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29. However, there is no fault of the victim or the complainant for registering the FIR under Cr.P.C. by the police therefore the police required to register a fresh FIR under Section 173 of BNSS, Hence, the FIR is required to be quashed by retaining the complaint filed by the de- facto complainant.

30. In respect of merits of the case there is serious allegation against the petitioner for having cheated the complainant physically as well as financially cheated more than Rs.2.00 lakhs by exploiting sexually by taking her loneliness by the accused and matter is required for investigation.

Therefore, at this stage even if the FIR is quashed on the technical ground but the police can register a fresh FIR under Section 173 of BNSS and investigate the matter under Section 176 of BNSS and file final report in accordance with law.

31. This Court while considering the various petitions before this Court especially the appeal filed under Section 374 Cr.P.C., revision filed under Section 397 Cr.P.C., Criminal Petitions filed under Section 482 of

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NC: 2024:KHC-K:7531 Cr.P.C., and interlocutory applications filed by the counsels for suspension of sentence or seeking permission to compound the offences, filing the same under the Cr.P.C. even after commencement of the BNSS from 01.07.2024 onwards and the registry is making endorsement in the cause-list showing both the provisions as "482 Cr.P.C./528 of BNSS", for Criminal Appeals by showing "374 Cr.P.C./415 BNSS", "378 Cr.P.C./419 BNSS"; for bail "438 Cr.P.C./482 BNSS"; and "439 Cr.P.C./483 BNSS".

32. On perusal of the endorsements made by the registry in the cause-list it is clearly misleading. The registry is required to correct the endorsement as appeal/revision/petition/application filed on or before 01.07.2024 must be shown in the cause-list as filed under Cr.P.C. and appeal/revision/petition/application are filed after 01.07.2024 shall be shown as filed under BNSS and the both Cr.P.C. and BNSS should not be clubbed together as Cr.P.C./BNSS. The registry/computers section shall enable the same in the computer regarding showing both the Cr.P.C. and BNSS and the same shall be shown separately without clubbing together.

33. For the foregoing reasons, I pass the following:

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#### ORDER

(i) The petition is allowed.

(ii) The FIR registered by the Lingasugur

police in Crime No.180/2024 under Section 154 of Cr.P.C. is hereby quashed.

(iii) However, the complaint filed by the de-

facto complainant is retained and remitted back to the police to register the FIR under Section 173 of BNSS and proceed to investigate the matter under BNSS and file final report under Section 193 of BNSS.

(iv) It is necessary to issue directions that if any offences committed prior to 01.07.2024 and if the FIR registered on or after 01.07.2024, the FIR should be registered under Section 173 of BNSS, the offences shall be registered under the Indian Penal Code, apart from any other special law, but the investigation shall be done and final report shall be submitted under the BNSS.

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(v) If the offences committed on or after 01.07.2024 then the offences shall be registered under the Bharatiya Nyaya Sanhita (BNS) 2023 and if any other special law and all the investigation and final report shall be filed under the BNSS.

(vi) The appeal / revision / petition / trial / application / investigation pending on or before the commencement of BNSS shall be disposed of under the Cr.P.C. and final report shall be filed after the investigation under Section 173 of Cr.P.C.

(vii) The Registry is directed to send a copy of this order to all the Trial Courts in the State to follow the procedure in respect of the Code of Criminal Procedure as well as Bharatiya Nagarik Suraksha Sanhita - 2023, Indian Penal Code and Bharatiya Nyaya Sanhita - 2023 as observed by this Court in this order.

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(viii) The Registry is also directed to serve a copy of this order to the DGP and IGP and in turn the same shall be circulated to all the police stations in the State.

(ix) Send a copy of this order to the DIG, East Division, Kalaburagi and Commissioner of Police Kalaburagi, S.P. Kalaburagi, to circulate to the police stations coming under their jurisdiction.

Sd/-

(K NATARAJAN) JUDGE SDU/KJJ/NJ CT:SI