



2026:DHC:8460-DB



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 30.07.2026
Pronounced on: 29.09.2026
Uploaded on: 29.09.2026

CNR No. DLHC010207062025

+ CRL.M.C. 2551/2025

DR RITA BAKSHI

.....Petitioner

Through: Mr.Rakesh Malhotra,
Mr.Bharat Malhotra, Mr.Kushal
Malhotra, Mr.Abhijeet Singh
and Ms.Gayatri Bhatia, Advs.

versus

SEEMA BAJAJ & ANR.

.....Respondents

Through: Mr.Raajan Chawla and
Ms.Pooja Joshi, Advs. for R-1
Mr.Aman Usman, APP with
Mr.Manvendra Yadav, Adv. for
R-2/State

Mr.Amit Tiwari, CGSC with
Ms.Ayushi Srivastava,
Mr.Arpan Narwal,
Mr.Kushagra Malik and
Mr.Ujjwal Tyagi, Advs. for
UOI

CNR No. DLHC010174322026

+ CRL.M.C. 3169/2026

MS. ANITA RANI MEHRA & ANR.

.....Petitioners

Through: Mr.Pavan Narang, Sr. Adv.
with Mr.Sidhartha Das,
Mr.Himanshu Sethi, Mr.Tushar
Sharma, Mr.Siddharth Gautam,



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Mr.Kamal Nayan and
Mr.Himanshu Goel, Advs.

versus

MS NEENA KAPOOR

.....Respondent

Through: Ms.Smiti Verma, Mr.Pranay
Chitale, Mr.Udayvir Rana and
Mr.Aditya Dutta, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

NAVIN CHAWLA, J.

1. Crl.M.C. 2551/2025 has been listed before us pursuant to the judgment dated 18.03.2026 passed by the learned Single Judge of this Court, referring the following questions of law for determination:

“(i) What is the stage at which a Magistrate can be said to have taken "cognizance" of an offence, in the context of a private complaint, under the provisions of BNSS, and whether the expression "while taking cognizance" as employed in Section 223(1) of the BNSS implies that the examination of the complainant and witnesses on oath is a step prior to taking of cognizance of offence?

(ii) At what stage is the Magistrate required to issue notice to the accused in compliance with the first proviso to Section 223(1) of the BNSS - whether (a) upon perusal of the complaint but prior to recording of the statement of the complainant and witnesses, if any, or (b) after recording such statements but before a formal decision on taking cognizance?”



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2. *Vide* an order dated 24.04.2026 passed by the learned Single Judge, Crl.M.C. 3169/2026 was thereafter directed to be listed before us along with Crl.M.C. 2551/2025, as it involved similar questions of law.
3. In Crl.M.C. 2551/2025, the petitioner/Dr.Rita Bakshi/proposed accused seeks to challenge the Order dated 21.01.2025 passed by the learned Judicial Magistrate First Class-03 ('JMFC'), South District, Saket Courts in CT Case no. 2771/2024 titled ***Dr.Seema Bajaj v. M/s Embryo Health Private Limited and Anr.***, whereby the learned JMFC directed issuance of notice to the petitioner under Section 223 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as the 'BNSS'), providing her an opportunity to be heard and to appear before the Court prior to the recording of the pre-summoning evidence in the private complaint filed against her by the respondent.
4. In Crl. M.C. 3169/2026, the petitioners/Anita Rani Mehra & Anr. seek to challenge the final order dated 07.04.2026 passed by the learned Additional Sessions Judge-05, South-East District, Saket Courts, Delhi in Criminal Revision No. 702/2025, titled ***Anita Rani Mehra & Ors. v. Neena Kapoor***, whereby the learned Sessions Court upheld the order dated 25.08.2025 passed by the learned Judicial Magistrate First Class-04, South-East District, Saket Courts, Delhi in CT Case No. 4100/2025, directing issuance of notice to the petitioners/proposed accused upon receipt of the private complaint filed by the respondent/complainant under Section 223 of the BNSS.
5. Before we venture to answer the reference, it would be appropriate to notice the reasoning which led the learned Single Judge



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to make the present reference.

FINDINGS OF THE LEARNED SINGLE JUDGE:

6. The learned Single Judge, in the order dated 18.03.2026 passed in Crl.M.C. 2551/2025, observed that Section 223 of the BNSS broadly retains the procedure contained in Section 200 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C.'), insofar as examination of the complainant and witnesses is concerned. However, Section 223(1) of the BNSS introduces, for the first time, a proviso requiring that the accused be afforded an opportunity of being heard before cognizance is taken.

7. The learned Single Judge thereafter considered the decisions passed by two different learned Single Judges of this Court in **Neeti Sharma v. Saranjit Singh**, 2025 SCC Online Del 2329, and in **Brand Protectors India Pvt. Ltd. v. Anil Kumar**, 2025 SCC Online Del 5046, which had examined the said issue and had taken a view that notice to the accused, in compliance with the proviso to Section 223 (1) of the BNSS, is to be issued after recording the statement of the complainant and witnesses, if any.

8. The learned Single Judge also took note of the decision of the Karnataka High Court in **Basanagouda R.Patil v. Shivananda S. Patil**, 2024 SCC Online Kar 96, which had been followed by the High Court of Allahabad in **Prateek Agarwal v State of UP**, 2024 SCC Online All 8212, and High Court of Kerela in **Suby Antony v Judicial First Class Magistrate III(deleted) & Ors.**, 2025 SCC Online Ker 532, holding that in terms of Section 223(1) of the BNSS, before



cognizance of offence is taken on a private complaint, the statements of the complainant and witnesses are to be recorded and thereafter notice in terms of the first proviso to Section 223(1) of the BNSS is to be issued to the proposed accused and hearing granted to such proposed accused.

9. The learned Single Judge, however, taking note of the judgments of the Supreme Court in **Gopal Das Sindhi v. State of Assam**, 1961 SCC Online SC 251; **Jamuna Singh v. Bhadai Shah**, 1963 SCC OnLine SC 263; **Nirmaljit Singh Hoon v. State of West Bengal**, (1973) 3 SCC 753; **Devarapally Lakshminarayana Reddy v. V. Narayana Reddy & Ors.**, (1976) 3 SCC 252; **CREF Finance Ltd. v. Shree Shanthi Homes (P) Ltd.**, (2005) 7 SCC 467, **State of Karnataka v. Pastor P. Raju**, (2006) 6 SCC 728; **S.K. Sinha, Chief Enforcement Officer v. Videocon International Ltd. & Ors.**, (2008) 2 SCC 492; **Sarah Mathew v. Institute of Cardio Vascular Diseases**, (2014) 2 SCC 62; and, **Manju Surana v. Sunil Arora**: (2018) 5 SCC 557; observed that a cumulative reading of the aforesaid decisions of the Supreme Court would indicate that "taking cognizance", in case of a private complaint, is understood as the stage where the Magistrate applies his judicial mind to the allegations in the complaint with a view to proceeding under the provisions of Chapter XV of the Cr.P.C. (corresponding to Chapter XVI of BNSS), including examination of the complainant under Section 200 of the Cr.P.C. (corresponding to Section 223 of BNSS). The learned Single Judge further observed that from the above judgments, it also emerges that cognizance is taken of the offence and not of the offender, and that it is distinct from the



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subsequent stage of issuance of process under Section 204 of the Cr.P.C. or dismissal of complaint under Section 203 of the Cr.P.C., which happens after the Magistrate applies his mind to the material placed before it.

10. The learned Single Judge observed that the judgments in in **Brand Protectors** (supra), as well as of the High Courts of Karnataka, Allahabad and Kerala, in **Basangouda** (supra), **Prateek Agarwal** (supra) and **Suby Antony** (supra), which proceeded on the premise that cognizance is not taken before the stage of recording the statements of the complainant and witnesses and that notice to the accused is to be issued thereafter but before cognizance is formally taken, appears to be at variance to the above settled position in law.

11. The learned Single Judge also noticed that this apparent divergence may have arisen on account of the change in the statutory language. It was observed that the introduction of the word “while” may have led to the interpretation that examination of the complainant and witnesses forms part of or precedes the process of taking cognizance.

12. Expressing a doubt on the correctness of the ratio in **Neeti Sharma** (supra) and **Brand Protectors** (supra), and having regard to the principles of judicial discipline requiring a question on which a Co-ordinate Bench is unable to agree with an earlier Co-ordinate Bench to be placed before a Larger Bench, the learned Single Judge considered it appropriate to refer the aforesaid questions for determination before the larger bench.



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Submissions of the learned counsel for the Petitioner in Crl. MC No. 3169/2026

13. Mr. Pavan Narang, learned Senior Counsel for the petitioner in Crl.M.C. No, 3169/2026, submits that the newly introduced proviso to Section 223 of BNSS is a statutory safeguard unknown to the erstwhile Section 200 of the Cr.P.C., and is intended to protect a person from false implication and unwarranted harassment.

14. The learned Senior Counsel submits that a conjoint reading of Sections 210, 223(1), 225(1), 226 and 227 of the BNSS, unequivocally demonstrates that the examination of the complainant and the witnesses, if any, necessarily precedes any notice to the proposed accused, and that notice to the accused arises only when the Magistrate, upon being satisfied that sufficient grounds exist to proceed, decides to issue process in accordance with law.

15. He submits that the newly inserted proviso can only be given a real meaning, if it is understood to operate at a later stage of the proceedings, that is, after the recording of the statement of the complainant and the witnesses and not at the very outset. On the presentation of a complaint, he submits, the Magistrate is first required to examine the complainant and any witnesses present, on oath, and to reduce such substance to writing; at this stage, the proposed accused has no part to play. Thereafter, if the Magistrate considers it necessary, he may, under Section 225, postpone the issuance of process and either inquire into the matter himself or direct an investigation so as to satisfy himself as to whether there are sufficient



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grounds to proceed. Section 226 empowers the Magistrate to dismiss the complaint if he finds no ground to proceed. He submits that exercise of these powers can be without giving notice to the accused. He submits that, therefore, a complaint which is ill-founded would come to an end without the proposed accused even being made aware of it, and that if notice were required to be issued at an earlier stage, the Magistrate's power to dismiss the complaint under Section 226, as also the power to inquire further under Section 225, would stand rendered negated. He further submits that it is only once a complaint survives this scrutiny, that is, once the Magistrate, on the basis of the sworn testimony of the complainant and witnesses and any inquiry or investigation undertaken under Section 225, forms the opinion that sufficient material exists to proceed, that the question of hearing the proposed accused arises at all. It is at this stage, and not before, that the Magistrate is obliged to issue notice to the proposed accused and grant him an opportunity of being heard prior to formally taking cognizance under Section 210 and thereafter issuing process under Section 227.

16. The learned Senior Counsel submits that the examination of the complainant and witnesses under Section 223 must necessarily precede both, the issuance of notice to and the hearing of the proposed accused, and that any notice issued in anticipation of such examination is premature and liable to be set aside.

17. The learned Senior Counsel submits that the hearing contemplated under the first proviso to Section 223(1) is intended to be effective and meaningful, not a mere formality. He submits that if



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notice was issued immediately upon presentation of the complaint and even before the complainant and witnesses are examined on oath, the accused would be made to answer bare unverified pleadings, reducing the safeguard to an empty ritual and rendering Sections 225 and 226 otiose. He submits that at such a preliminary stage, even the identity or precise role of each proposed accused may not be clear, and it is the examination of the complainant and witnesses that clarifies the true scope of the allegations and the persons genuinely intended to be proceeded against.

18. To conclude, he submits that notice under the first proviso to Section 223(1) of the BNSS is required to be issued only after the complainant and witnesses have been examined on oath and the Magistrate, having undertaken such further inquiry as may be necessary, is satisfied that sufficient grounds exist to proceed, but before cognizance is formally taken under Section 210 of the BNSS. Issuance of notice at the threshold on mere presentation of the complaint, would be contrary to the statutory scheme and would defeat the safeguards against false implication and unwarranted harassment. He places reliance on **Basanagouda** (supra), **Suby Antony** (supra), **Brand Protectors** (supra), **Bhupendra Chaudhary & Anr. v. Arun Chaudhary** (Crl. Petition No. 1126/1127 of 2025) and **Shashidhar Jagdishan v. State of Maharashtra** 2025 SCC OnLine Bom 2928 and **Rakesh Kumar Chaturvedi v. State of U.P and Another** 2025 SCC OnLine All 4884, in support of his submissions.



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Submissions of the learned counsel for the Petitioner in Crl.M.C. No. 2551/2025

19. Mr. Rakesh Malhotra, learned counsel for the petitioner in Crl.M.C. No. 2551/2025, adopts the submissions made by the learned Senior Counsel in Crl.M.C. No. 3169/2026, and adds that the interpretation of the word 'cognizance' is clear, as it commences when the Magistrate for the first time takes notice of an offence and is the first stage of initiation of proceedings. Reliance in this regard has been placed on ***Ajit Kumar Palit v. State of West Bengal***, AIR 1953 SC 765; ***Jamuna Singh*** (supra); ***Manharbhai Muljibhai Kakadia v. Shaileshbhai Patel***, 2012 10 SCC 517; ***Manju Surana*** (supra); ***Narayan Das Bhagwan Das v. State of West Bengal***, AIR 1959 SC 111; ***CREF Finance*** (supra); and, ***SK Sinha*** (supra).

20. He further submits that the word "while" in Section 223(1) of the BNSS was deliberately added, and is absent from the old Section 200 of the Cr.P.C.. He submits that this shows that examining the complainant and witnesses on oath is not something done after the cognizance is taken, but is part of the process of taking cognizance itself. Cognizance, he submits, is not complete until this examination has been undertaken.

21. He submits that Section 223 of the BNSS lays down the stage leading up to cognizance, and not the stage that follows it: first, the examination of the complainant and witnesses on oath; second, the hearing of the proposed accused under the first proviso; and only thereafter, the formal act of taking cognizance. He submits that



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cognizance is thus the end result of this process, not its starting point, and any reading that allows notice to be issued before examination of the complainant and his witnesses would defeat the purpose of inserting the word "while".

22. He further submits that this reading also keeps Section 223 and Section 225 of the BNSS distinct from each other. Section 223, he submits, deals with the inquiry that must happen before cognizance, while Section 225 deals with a separate inquiry that a Magistrate may undertake after cognizance and to decide if there is enough ground to proceed further. He submits that if the examination under Section 223 is itself treated as post-cognizance, this distinction would disappear and Section 223 would serve no independent purpose.

23. It is submitted that the proposed accused must be furnished with the complaint and the statements of the complainant and witnesses, if any, so as to enable him to effectively present his case before cognizance is taken. Reliance in this regard has been placed on **Basanagouda R. Patil** (supra), **Suby Antony** (supra), **Prateek Aggarwal** (supra), **Neeti Sharma** (supra), **Brand Protectors** (supra), and **Parvinder Singh v. Directorate of Enforcement** (2026) INSC 519 .

24. Reliance is also placed on **A.R. Antulay v. Ramdas Srinivas Nayak and Another**, AIR 1984 SC 718, wherein the Supreme Court held that an inquiry or investigation under Section 202 of the Cr.P.C. is not mandatory and that the Magistrate has judicial discretion whether to issue process or postpone its issuance. The Court observed



that making such inquiry or investigation mandatory would be contrary to the statutory scheme and the requirement of speedy trial.

25. To conclude, he submits that, particularly in warrant trial cases, the Magistrate must apply judicial mind before summoning the proposed accused and ought not to issue summons mechanically merely on presentation of a complaint. He submits that summoning the proposed accused even before examination of the complainant would be detrimental to the accused and may result in the criminal process being set in motion against a person merely on the basis of allegations in a complaint. To support his submission, he places reliance on ***Pepsi Foods Limited v. Special Judicial Magistrate***, 1998 5 SCC 749.

Submissions of the learned Counsel for the Union of India

26. Mr. Amit Tiwari, the learned counsel for the Union of India, submits that the word ‘while’ in Section 223(1) of the Cr.P.C. signifies that the examination of the complainant occurs in the course of the Magistrate taking cognizance and not after the cognizance of the offence has been taken. Therefore, the word ‘while’ is to be interpreted to mean that the examination of the complainant forms part of the process of cognizance.

27. He further submits that the first proviso of the said provision is worded in a negative sense. Relying upon ***Kushal Kumar Agarwal v. Directorate of Enforcement***, 2025 SCC OnLine SC 1221, wherein the Supreme Court had set aside the order taking cognizance, on the ground that the said proviso was not followed before the said order had been passed, he submits that the decision to take cognizance has



to be after hearing the accused. He submits that the examination of complainant and witnesses on oath is a step within the process of and prior to the act of cognizance and does not by itself amount to or presupposes the act of taking cognizance.

28. He submits that the interpretation urged above is consistent with the judgment in **Basangouda R. Patil** (supra). He further relies on judgments in **Prateek Agarwal** (supra) **Suby Antony** (supra) **Neeti Sharma** (supra) and **Brand Protectors** (supra).

29. He submits that the introduction of the proviso is to address the abuse of the process of criminal law through false complaints whereby a person could be dragged into criminal proceedings without any participation of his own in the proceedings. He submits that the proviso advances a remedy and serves the principles of natural justice, providing an opportunity of hearing to the proposed accused.

30. He submits that, however, the proviso does not prescribe the precise stage at which notice must be issued; it only states that the proposed accused must be heard. Thus, both courses; examination of the complainant followed by notice and hearing, or notice and hearing followed by examination of the complainant, are permissible, and the appropriate course may be determined by the Magistrate having regard to the facts of the case. He submits that adopting a rigid rule that examination of the complainant must precede the hearing of the accused, would render compliance with the statutory scheme impossible in certain categories of cases. He submits that this difficulty was also addressed in **Kushal Kumar Agarwal** (supra) itself, where a complaint under Section 44(1)(b) of the Prevention of Money



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Laundering Act, 2002 was instituted by the Directorate of Enforcement. In that matter, examination or recording was not required, yet the pre-cognizance hearing of the accused was held to be mandatory, and the Special Court was directed to hear the accused and thereafter take a fresh decision on cognizance. The hearing contemplated by the first proviso was therefore neither treated as dependent upon nor conditioned by a prior examination of the complainant.

31. He further submits that a similar position arises in complaints instituted by public servants, where examination may be dispensed with by virtue of the further proviso to Section 223(1), as well as in cases based upon documents, where a meaningful hearing may be afforded upon perusal of the documentary material. He submits that where the complaint involves disputed questions of fact, recording the complainant's sworn statement at the outset may better enable the accused to respond to the allegations and may ordinarily constitute the more appropriate course, as contemplated in ***Basanagouda R. Patil*** (supra). He submits that the hearing afforded to the accused must be genuine and meaningful and cannot be reduced to an empty formality. The notice ought to be accompanied by a copy of the complaint, the documents relied upon, and the statements, if any, recorded up to that stage, as contemplated in ***Basanagouda. R. Patil*** (supra). Where additional statements or other material are subsequently brought on record, the accused should likewise be afforded an opportunity to address the Magistrate with respect to such material before the final decision on cognizance is taken.



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32. He submits that the Bhartiya Nagarik Suraksha Sanhita Bill, 2023 was introduced in the Lok Sabha on 11.08.2023. The first proviso to Section 223(1) was featured in the Bill. The Committee reviewed the said provision and reproduced the entire first proviso verbatim. No dilution or deletion for the said proviso was recommended and thus, the first proviso was carried into BNSS unaltered. The said legislative decision shows that the approach to confer a right to the accused to be heard through the first proviso, was deliberate, as was the absence of any words prescribing the stage of notice as the same was left to the discretion of the Magistrate.

Submissions of the learned APP

33. Mr. Aman Usman, the learned Additional Public Prosecutor for the State, submits that the first proviso to Section 223(1) of the BNSS has introduced a substantive change and that the legislature has consciously mandated that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard. He submits that the interpretation that the Magistrate must first record pre-summoning evidence of the complainant and only thereafter issue notice to the proposed accused, would defeat the very object of the first proviso to Section 223(1) of the BNSS, as it would deprive the proposed accused of an effective opportunity to demonstrate that the complaint is not legally maintainable.

34. He submits that an interpretation that takes away this newly conferred right or renders it meaningless cannot be adopted. If the objection of the proposed accused to the maintainability of the



complaint is accepted, the complaint itself would fall at the threshold, and the entire exercise of recording the complainant's statement and pre-summoning evidence would stand wholly unnecessary and futile. He submits that it is a settled principle of statutory interpretation that the Legislature would not enact provisions which compel the Courts to undertake futile or redundant exercises.

35. He also submits that the first proviso to Section 223(1) of the BNSS has been enacted to enable the proposed accused to point out threshold legal defects before the Magistrate starts further proceedings. He submits that it is also a well-settled principle that every statutory safeguard introduced by the Legislature must be interpreted in a manner which advances its purpose and confers upon it a meaningful operation. If the proviso to Section 223(1) of the BNSS is interpreted to be identical to the law prevailing under Section 200 of the Cr.P.C., the legislative amendment would produce no meaningful alteration in the complaint procedure despite the Legislature consciously enacting a substantive procedural safeguard.

36. The learned APP submits that the hearing contemplated under the first proviso to Section 223(1) of the BNSS must also be real and effective. It cannot be reduced to a mere procedural formality after substantial judicial time has been spent in recording the complainant's evidence, particularly where the complaint itself may ultimately be found to be legally not maintainable.

37. The learned APP further submits that this interpretation also finds support from the internal scheme of BNSS itself. Section 226 of the BNSS specifically provides for dismissal of a complaint on merits



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after evaluation of the complainant's sworn testimony and other available material, but before issuing process. He submits that the Legislature was fully conscious that the Magistrate has already possessed the power to reject a complaint after recording pre-summoning evidence, where the complainant failed to disclose sufficient grounds for proceeding. He submits that if notwithstanding the existence of Section 226 of the BNSS, the first proviso to Section 223(1) of the BNSS was consciously introduced, this indicates that the hearing contemplated by the proviso was never intended to operate at the same stage as the merits-based consideration under Section 226 of the BNSS. He submits that the two provisions operate in distinct fields and for distinct purposes; while the first proviso to Section 223 of the BNSS is designed to enable the proposed accused to raise threshold objections affecting the maintainability, Section 226 empowers the Magistrate to decide whether sufficient grounds exist to proceed on merits. He submits that a harmonious construction must be adopted and the legislative distinction between these two stages must be preserved. He submits that, therefore, an interpretation that places both the provisions at the same procedural stage, cannot be adopted. He submits that this harmonious construction is possible when the hearing under the first proviso to Section 223 of the BNSS is understood to precede the recording of pre-summoning evidence. The Magistrate is, therefore, required to first consider the threshold objections raised by the proposed accused, and if these objections fail, the Court may thereafter exercise its jurisdiction under Section 226 to determine if the complaint deserves to be dismissed on merits.



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38. The learned APP submits that despite the settled judicial interpretation governing Section 200 of the Cr.P.C., the legislature enacted the first proviso to Section 223 of the BNSS. The proviso is, therefore, a conscious departure from the procedure prescribed under the Cr.P.C. and must be construed as requiring the Magistrate to afford an opportunity of hearing to the proposed accused before embarking upon the recording of pre-summoning evidence, thereby enabling the Court to first determine any threshold objections relating to jurisdiction, maintainability or statutory bar before proceeding to examine the complaint on its merits.

Submissions of the learned Counsel for the Respondent No.1 in Crl. M.C. 2551/2025 & in CRL.M.C. 3169/2026

39. Mr. Raajan Chawla, the learned counsel for the respondent no.1 in Crl.M.C. 2551/2025, submits that Section 223 of the BNSS substantially corresponds to Section 200 of the Cr.P.C., the material addition being the words “having jurisdiction while”. According to him, on a plain reading, these words merely indicate that the Magistrate examining the complainant and the witnesses, must be the Magistrate having jurisdiction at the relevant stage; they do not contemplate that such examination must take place before cognizance is taken.

40. The learned counsel further submits that the first proviso to Section 223, which provides for hearing of the accused before cognizance, cannot be construed as changing the stage at which cognizance is taken. Section 223, according to him, is essentially a provision concerning examination of the complainant and witnesses,



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whereas the power and manner of taking cognizance are dealt with under Section 210.

41. Relying on the settled principle that a proviso operates as an exception or qualification to the main provision, it was contended that the first proviso cannot be interpreted in a manner which introduces into Section 223 a scheme contrary to Section 210. The placement of the proviso, therefore, was submitted to be a matter of drafting or placement which ought to be harmoniously construed with Section 210. Reliance in this regard is placed on ***JK Synthesis v. Chief Inspector of Factories***, 1996 6 SCC 665 and ***UOI v. Dilip Singh*** (2015) 4 SCC 421.

42. The learned counsel for the respondent no.1 further submits that an accused has no right of hearing or participation at the pre-summoning stage. The accused cannot be permitted, at the pre-summoning stage, to interfere with the manner in which the complainant chooses to lead evidence, particularly when the burden of proving the case lies upon the prosecution. The learned counsel further pointed out that the legislature has not made any corresponding amendment to Section 227 of the BNSS to provide for a right of hearing to the accused before issuing process. Reliance is placed on ***Chandra Deo Singh v. Prokash Chandra Bose*** (1964) 1 SCR 639, ***Shashi Jena and Ors. v. Khadal Swain and Anr.*** (2004) 4 SCC 236, ***Manharibhai Muljibhai Kakadia and Anr. v. Shaileshbhai Mohanbhai Patel and Ors.***, (2012) 10 SCC 517 and ***UOI v WN Chaddha***, (1993) Supp (4) SCC 260, to submit that at this stage, the accused has no right to be heard.



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43. The learned counsel further submits that, at the stage of cognizance, what is relevant is the complaint containing the facts constituting the offence. The statement of the complainant on oath and that of the witnesses, constitutes supporting evidence and cannot be treated as a prerequisite for taking cognizance. The private complaint mechanism is intended to provide direct access to criminal justice where the State machinery has failed to act, and the interpretation of Section 223 should therefore preserve that object. The Magistrate, being judicially trained, is competent to examine the complaint and determine whether it discloses a *prima facie* case.

44. He submits that since the scheme of the Cr.P.C. also holds the placement of provision of cognizance prior to examination of the complainant and the witnesses present, the Magistrate first takes cognizance and then proceed to examine the complainant and its witnesses. Since the same is not an empty formality, recording of the statement of the complainant and its witnesses, cannot be done without application of judicial mind and taking cognizance of the complaint. It was accordingly submitted that, if the accused is to be heard at the stage contemplated by the first proviso to Section 223, such hearing should be confined to assisting the Court on whether a *prima facie* case is disclosed from the complaint, and on such legal issues as may be permissible in law; the accused cannot, however, be permitted to participate in or control the complainant's pre-summoning evidence.

45. The learned counsel for the respondent in CRL.M.C. 3169/2026 adopted the above arguments.



Analysis/Reasoning

46. We have considered the submissions made by the learned counsels for the petitioners, respondents, the Union of India, and the learned APP.

47. We would first take note of the relevant provisions of the Cr.P.C., as under:

“190. Cognizance of offences by Magistrates.—(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence—

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.”

200. Examination of complainant.—A Magistrate 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, 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 192:

Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

202. Postponement of issue of process.—(1)

Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, [and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction,] postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made,—

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.



(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.

203. Dismissal of complaint.—If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 202, the Magistrate is of the opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing.

204. Issue of process.—(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be—

(a) a summons-case, he shall issue his summons for the attendance of the accused, or

(b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.

(4) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid



within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this section shall be deemed to affect the provisions of section 87.”

48. The corresponding provisions of the BNSS (highlighting the change made in Section 223 of the BNSS, which otherwise corresponds to Section 200 of the Cr.P.C.), are reproduced as under:

“210. Cognizance of offences by Magistrates

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Judicial Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence—

(a) upon receiving a complaint of facts, including any complaint filed by a person authorised under any special law, which constitutes such offence;

(b) upon a police report (recorded in any mode including digital mode) of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.

(3) Any Magistrate empowered under this section, shall upon receiving a complaint against a public servant arising in course of the discharge of his official duties, take cognizance, subject to—

(a) receiving a report containing facts and circumstances of the incident from the officer superior to such public servant; and



(b) after consideration of the assertions made by the public servant as to the situation that led to the incident so alleged.

223.Examination of complainant- 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 under this section 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 further 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:

Provided further that in case of a complaint against a public servant, the Magistrate shall comply with the procedure provided in section 217.

225.Postponement of issue of process- (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to



him under section 212, may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made,—

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 223.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Sanhita on an officer in-charge of a police station except the power to arrest without warrant.

226. Dismissal of complaint.—If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 225, the Magistrate is of the opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint,



and in every such case he shall briefly record his reasons for so doing.

227.Issue of Process- (1) *If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be—*

(a) a summons-case, he shall issue summons to the accused for his attendance; or

(b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint:

Provided that summons or warrants may also be issued through electronic means.

(4) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this section shall be deemed to affect the provisions of section 90."

49. It is a settled principle of law that under the scheme of the Cr.P.C., the cognizance of an offence is taken by the Magistrate under Section 190 of the Cr. P.C and it is only thereafter that the Magistrate



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proceeds to the various alternates that are provided in Chapter XV of the Cr.P.C. including the examination of the complainant and the witnesses present. In this regard, we may refer to the judgments of the Supreme Court in **Gopal Das Sindhi** (supra), **Jamuna Singh** (supra), **Nirmaljit Singh Hoon** (supra), **Devarapally Lakshminarayana Reddy** (supra), **CREF Finance** (supra), **Pastor P. Raju** (supra), **S.K. Sinha** (supra); **Sarah Mathew** (supra), **Manju Surana** (supra), which have also been taken note of by the learned Single Judge in the reference judgment.

50. Having noted the above, what is now to be considered is whether this position in law has undergone a change under the BNSS.

51. Section 210 of the BNSS corresponds to Section 190 of the Cr.P.C. and in fact there is no change made in the same. However, this is not determinative of the issue raised and referred to us by the learned Single Judge in the present reference.

52. Section 223 of the BNSS, which otherwise corresponds to Section 200 of the Cr.P.C., makes two very vital changes in the Section 223 of the BNSS which were not there in the erstwhile Section 200 of the Cr.P.C. These have been highlighted by us hereinabove, however, we would again take note of them; the first being the addition of the words “having jurisdiction while” in Section 223 of the BNSS.

53. These three words add two vital pre-requisites. The first is that the Magistrate competent to record the statement of the complainant and the witnesses present must be one ‘having jurisdiction’. The



second, that the statement of the complainant and the witnesses is to be recorded ‘while’ taking cognizance.

54. The word “while” has been defined in The New Law Lexicon Webster’s Dictionary 1989 Edition, as “a period of time” or “during that time”. Similarly, the Black Law Dictionary Sixth Edition 1990, defines the term “while” as “pending or during that time that”. The Cambridge Guide to English Usage, 2004 Edition, states that “while” has several meanings with the most essential and oldest use being as a temporal conjunction. Its use also overlaps with a concessive sense, it can also, in some circumstances, be contrastive, and in some circumstances, be not much more than an additive conjunction. Therefore, the word “while” can bear temporal, concessive and contrastive meanings.

55. In Section 223 of the BNSS, it is clearly the temporal use of the word “while”, meaning thereby that when the Magistrate “having jurisdiction” is taking cognizance of an offence on complaint, such Magistrate shall examine upon oath, the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and thereafter signed by the complainant and the witnesses, as also by the Magistrate.

56. Therefore, instead of the stage of the examination of the complainant and the witnesses present, being subsequent to the Magistrate taking cognizance, as was the position in the Cr. P.C., the legislature, by using the word “while” has made the process of examination of the complainant and the witnesses a part of the process of the Magistrate taking cognizance of an offence on a complaint.



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57. Though the positioning of Section 210 in Chapter XV and Section 223 in Chapter XVI of the BNSS corresponds to the positioning of the Section 190 of the Cr.P.C. in Chapter XIV and Section 200 in Chapter XV of the Cr. P.C., the same cannot be determinative of the stage at which the respective provisions operate. It is also a settled principle of law that the provisions of the statute must be read as a whole and harmoniously. They are not to be read in silos. In this regard, we may refer to a Constitution Bench decision in **Prakash Kumar v. State of Gujarat**, (2005) 2 SCC 409, relevant portion of which is reproduced as under:

“30. By now it is well settled principle of law that no part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is also trite that the statute or rules made thereunder should be read as a whole and one provision should be construed with reference to the other provision to make the provision consistent with the object sought to be achieved”

31. *In Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. 14 this Court said: (SCC p. 450, para 33)*

“33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase



and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such a context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place."

(emphasis supplied)

32. *In Anwar Hasan Khan v. Mohd. Shaji 15 this Court held: (SCC p. 543,para 8)*

"8 It is a cardinal principle of construction of a statute that effort should be made in construing its provisions by avoiding a conflict and adopting a harmonious construction. The statute or rules made thereunder should be read as a whole and one provision should be construed with reference to the other provision to make the provision consistent with the object sought to be achieved."

58. Section 223 of the BNSS thus makes a vital change to the earlier position existing under the Cr.P.C., whereby the examination of the complainant and the witnesses becomes a part of the process of taking cognizance rather than following it.

59. For the above reasons, the reliance of the learned Single Judge on the precedents which had explained the position under the Cr. P.C. of cognizance preceding the examination of the complainant and the witnesses, overlooked this major change brought in by the legislature in Section 223 of the BNSS.



60. The other major change which has been brought about in the Section 223 of the BNSS, is the addition of the first *proviso* of Section 223(1) of the BNSS which prohibits the Magistrate from taking cognizance without giving the accused an opportunity of being heard. For the sake of convenience, we reproduce the same as under:

“ 223.(1)....

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

61. It is not disputed before us that it is now mandatory, unlike under the Cr.P.C., to give a notice to the accused and grant the accused an opportunity of being heard before the cognizance of an offence is taken by the Magistrate. The only point of difference and which is the second issue that has been referred to us is at what stage the Magistrate is required to issue notice to the accused, that is, whether such notice is to be issued prior to the examination of the complainant and the witnesses under Section 223 (1) of the BNSS or thereafter but before a formal decision is taken by the Magistrate for taking cognizance.

62. For appreciating the above issue, we must first take note of the position of law that prevailed under the Cr.P.C.

63. It was a settled position in law that prevailed under the Cr.P.C., that at the stage of the Magistrate taking cognizance, the accused had no right to be heard, in fact, under the entire scheme of Chapter XVI of the Cr. P.C., the accused had no right to take part in the proceedings nor the Magistrate had any jurisdiction to permit the accused to do so.



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In this regard, we may make a reference only to the judgment of the Supreme Court in **Chandra Deo Singh** (supra).

64. At the same time, accepting that the summoning of an accused in a criminal case is a serious matter and that the criminal procedure cannot be allowed to be put in motion against the accused as a matter of course, the Supreme Court had carved out exceptions where the accused can challenge the order passed by the Magistrate taking cognizance or the order issuing the process against the accused under Section 204 of the Cr. P.C.. These were very stringent exceptions and extremely limited grounds, as set out in the celebrated judgment of the Supreme Court in **The State of Haryana v. Bhajan Lal**, 1992 Supp(1) SCC 335. We may also usefully refer to the judgment of the Supreme Court in **Pepsi Foods Limited** (supra) in this regard.

65. In **Delhi Race Club (1940) Ltd. & Ors. v. State of Uttar Pradesh & Anr.** 2024 INSC 626, the Supreme Court, while reiterating that at the stage of issuing the process, the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same, and is only to be *prima facie* satisfied whether there are sufficient grounds for proceeding against the accused, re-emphasized that there are certain cases where the order of the Magistrate issuing process against the accused can be quashed or set aside, like where the allegations made in the complaint or the statement of the witnesses recorded in support of the same, taken at their face value, make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence



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which is alleged against the accused. We quote from the judgment as under:-

“7. Further it is also well settled that at the stage of issuing process a Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused. It is not the province of the Magistrate to enter into a detailed discussion of the merits or demerits of the case nor can the High Court go into this matter in its inherent jurisdiction which is to be sparingly used. The scope of the inquiry under Section 202 of the CrPC is extremely limited — only to the ascertainment of the truth or falsehood of the allegations made in the complaint — (i) on the materials placed by the complainant before the Court (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out, and (iii) for deciding the question purely from the point of view of the complainant without at all advert to any defence that the accused may have. In fact in proceedings under Section 202 of the CrPC, the accused has got absolutely no locus standi and is not entitled to be heard on the question whether the process should be issued against him or not. It is true that in coming to a decision as to whether a process should be issued the Magistrate can take into consideration inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations but there appears to be a very thin line of demarcation between a probability of conviction of the accused and establishment of a prima facie case against him. The discretion given to the Magistrate on this behalf has to be judicially exercised by him. Once the Magistrate has exercised his discretion, it is not for the High Court or even the Supreme



Court to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in the conviction of the accused. These considerations are totally foreign to the scope and ambit of an inquiry under Section 202 of the CrPC which culminates into an order under Section 204. It is no doubt true that in this very decision this Court has enumerated certain illustrations as to when the order of Magistrate issuing process against the accused can be quashed or set aside. These illustrations are as under :—

“(1) Where the allegations made in the complaint or the statement of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused.

(2) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused.

(3) Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) Where the complaint suffers from fundamental legal defects, such as want of sanction or absence of a complaint by legally competent authority and the like.””

66. It appears that the legislature, taking note of the above position of law in Cr. P.C., where, though the accused has no right to be heard at the stage of the Magistrate taking cognizance of the offence or issuing process against the accused, still has limited grounds available to challenge such order of cognizance or issuance of process,



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introduced the first *proviso* to Section 223(1) of the BNSS to formally vest with the accused a right to be heard at that stage, that is, the stage when the Magistrate takes cognizance of the offence. The *proviso* added to Section 223(1) of the BNSS is therefore to address a mischief where the criminal process was initiated against an accused leading to a serious prejudice to an accused but without giving him an opportunity of being heard. It is intended to be a remedial provision beneficial to the accused, where the accused can show to the Magistrate the limited grounds that have already been recognized by the Courts where the cognizance of an offence should not be taken by the Magistrate, like the one detailed by the Supreme Court in ***Delhi Race Club*** (supra) and other such judgments. Such provision must be given full force and should be made effective. The only way to make it effective is that the notice required by the proviso to Section 223(1) of the BNSS, is issued to the accused after the Magistrate has examined the complainant and its witnesses. This would give to an accused a fair and proper opportunity of being heard on the question of whether the Magistrate should or should not take cognizance of the offence. Issuing notice to the accused prior to that stage would in fact be a futile exercise and shall restrict the right which otherwise has been conferred upon such accused by the legislature purposefully.

67. Recently, the Supreme Court in ***Dr. Lokesh B.H. & Ors. v. State of Karnataka & Anr.***, 2026 INSC 784, while explaining the mischief rule, reiterated the aspect that the Court must adopt such construction as “shall suppress the mischief, and advance the remedy” and “add force and life to the cure and remedy, according to



the true intent of the makers of the Act.” Applying the said principle to the issue at hand, where the legislature, having consciously introduced a right of hearing in favour of the accused before taking cognizance, has provided a remedy which was previously not there in the erstwhile law, the first *proviso* to Section 223(1) of the BNSS must, therefore, be construed so as to give meaningful effect to such right and advance the remedy as intended by the legislature.

68. The submission of the learned counsel appearing for the Union of India that discretion must be left to the Magistrate to issue such notice either prior or post the examination of the complainant and the witnesses, cannot be accepted. If the statute itself exempts the complainant or witnesses to be examined before cognizance is taken, the notice to the accused must necessarily be without insisting on the same, however, if the statement of the complainant and the witnesses present is to be recorded, the meaningful notice to the accused will be after such statements have been recorded. In fact, if notice to the accused is issued even prior to recording of such statements, it may either make such right restricted or redundant for the accused, or may lead to the accused interfering with the recording of the statement of the complainant and the witnesses, which right has still not been conferred by the Statute on the accused.

69. Therefore, in our view, the legislature by adding the first *proviso* to Section 223(1) of the BNSS, has made examination of the complainant and the witnesses present a part of the process of the Magistrate taking cognizance of the offence, and has equally mandated that the Magistrate must issue notice to the accused and



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grant him an opportunity of being heard after examination of the complainant and the witnesses present has been recorded, where it is mandated to be so recorded, but before the formal cognizance of the offence is taken.

70. The submission of the learned counsel for the respondents that this would add a right in the accused to be heard before the process is issued to such accused, is, in fact, the very intent of the legislature. As noted hereinabove, the issuance of a process against an accused in a criminal proceeding, is a serious matter and prejudices the accused in his reputation and social and economic standing. The legislature clearly wanted to divert from the earlier position under the Cr.P.C. where the accused did not have a right to be heard at that stage, and faced a prolonged trial which was bound to fail. The accused can now show to the Magistrate that even taking the complaint and the statements of the complainant and the witnesses at their face value, the complaint does not disclose an offence; this is the limited right now conferred on the accused, but it must be fully granted.

71. The submission of the learned counsel for the respondents that issuing notice to the accused after the statement of the complainant and the witnesses has been recorded will lead to the merger of the stage of taking cognizance and that of issuing process to the accused, is also ill-founded. The proviso to Section 223(1) of the BNSS requires notice to be issued to the accused before cognizance is taken by the Magistrate. Once, after hearing the accused, the Magistrate decides to take cognizance of the offence, the Magistrate is still to decide whether the case demands postponement of issuance of the



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process and ordering an inquiry under Section 225 of the BNSS, dismiss the complaint under Section 226 of the BNSS, or issue process to the accused under Section 227 of the BNSS. Therefore, there is no merger in the two distinct stages of the processing of the complaint by the Magistrate.

72. As regards the precedents on this issue, the Supreme Court, in ***Kushal Kumar Agarwal*** (supra), while dealing with the complaint filed under Section 44 of the Prevention of Money Laundering Act, 2002, held that the *proviso* to Sub Section 1 of Section 223 of the BNSS puts an embargo on the power of the Court to take cognizance by providing that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard.

73. In ***Parvinder Singh*** (supra), the Supreme Court held that the *proviso* to Section 223(1) of the BNSS is substantive in nature, as it does not merely regulate the manner in which the proceedings are to be conducted, rather it confers a right upon the accused to be heard before taking cognizance, which forms a part of the right of an accused to a fair trial enshrined under Article 21 of the Constitution of India, 1950. It is mandatory in nature, and enures to the benefit of the accused. Resultantly, cognizance of an offence taken by a Court without due compliance of the aforesaid *proviso* would be *void ab initio*. We quote from the judgment as under:

“26. Section 223 of the BNSS deals with the examination of a complainant. The first proviso to Section 223(1) of the BNSS prohibits the Magistrate from taking cognizance of an offence, unless the accused is given an opportunity of being heard.



27. Though Chapter XVI of the BNSS lays down the procedural law dealing with complaints made to a Magistrate, we hold that the aforesaid proviso is substantive in nature, as it does not merely regulate the manner in which the proceedings are to be conducted, rather it confers a right upon the accused to be heard before taking cognizance which forms a part of the right of an accused to a fair trial enshrined under Article 21 of the Constitution of India. We further hold that the word “shall” occurring in the said proviso has to be construed to be mandatory in nature, which enures to the benefit of an accused. Resultantly, cognizance of an offence taken by a Court without due compliance of the aforestated proviso would be void ab initio...

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34. A mere ministerial act cannot be termed as an “inquiry” under Section 2(1)(k) of the BNSS. Taking cognizance is nothing but an application of judicial mind. So long as the application of the judicial mind is not exercised, an inquiry cannot commence. It is the judicial notice of an offence by the Court which is relevant. While doing so, it is presumed that the Court would take note of the complaint along with the materials placed before it.

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38. Based on the above discussion, the views expressed by the High Court are, therefore, liable to be set aside. We do find that the allegations against the appellant are quite serious. However, noncompliance with the first proviso to Section 223(1) of the BNSS vitiates the very order taking cognizance, and the same cannot be sustained in the eyes of the law. In fact, the appellant has, at the earliest point in time, filed the application for recall of the order taking cognizance by placing reliance upon the said proviso. Had the



Special Court allowed it, the trial would have proceeded further. Suffice it to state that the appellant cannot be faulted for any delay that has occasioned.”

74. The position of law found by us hereinabove, has also been approved by the other High Courts, including our own High Court, and we will now take a brief note of these judgments.

75. As far as this Court is concerned, a learned Single Judge of this Court in ***Brand Protectors India Pvt. Ltd.*** (supra) has held as under:-

“12. The core question which has arisen for consideration is : whether the pre-summoning evidence as well as Cognizance can be taken only after giving Notice to the Accused.

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15. From the comprehensive reading of these two Sections, it becomes evident that though under Section 200 Cr.P.C. (now S. 223 BNSS) at the stage of pre-cognizance, no Notice was required to be served upon the accused, this aspect has undergone a change in section 223 BNSS to which the proviso is added that no Cognizance of an Offence can be taken without giving a prior opportunity to the accused of being heard.

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22. The Coordinate Bench of this Court in Neeti Sharma v. Saranjit Singh 2025 DHC 2367, has observed that the first proviso to Section 223(1) of BNSS puts an embargo on the power of the Court to take Cognizance upon a Complaint, by providing that no Cognizance of an Offence shall be taken by the Magistrate without giving the accused an opportunity of being heard. This proviso marks a substantive procedural safeguard that did not exist under the earlier regime.

23. Therefore, the Id. ASJ has rightly held that the taking of Cognizance and issuing the summons to the Accused/Petitioner without



prior Notice was bad in the light of proviso to Section 223 (1) Cr. P.C. and thereby set it aside.

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26. The main grievance of the Petitioner is that the pre-summoning evidence also could not have been recorded by the Id. MM without giving prior notice to the Petitioner and an opportunity to cross-examine the witnesses.

27. Section 223 provides that “while taking cognizance of an offence on Complaint the Court shall examine upon oath the Complainant and the witnesses present”.

28. The words “while taking cognizance of an offence” clearly indicate that at the time of taking cognizance, first the witnesses present need to be mandatorily examined on oath. This aspect is further supported by Section 225 which deals with postponement of issue of process. It states that any Magistrate on receipt of Complaint may postpone issue of process against the Accused and can direct an investigation to be made by a Police Officer or by such other person as he thinks fit and may take evidence of witnesses on oath.

29. This reinforces that it is prior to taking Cognizance on the Complaint that the witnesses are required to be examined. The objective is evident that the recording of the statement of the Complainant/witnesses is to ensure the authenticity of the allegations made in the Complaint. It is only when the Magistrate is fully satisfied with the averments made in the Complaint and that it discloses a cognizable offence that the second stage of taking cognizance would arise. The purpose of recording of the statement of the Complainant/witnesses is only to satisfy that the allegations/averments made in the Complaint prima facie disclose a cognizable offence. This procedure, in fact, is for the protection of the accused from being summoned on frivolous Complaints.



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36. Similar interpretation has been given by the Karnataka High Court in the case of *Sri Basanagouda R. Patil v. Sri Shivananda S. Patil*, (Criminal PP No. 7526/2024) while interpreting Section 223 BNSS. It was held that while taking Cognizance of an Offence, a Magistrate should have with him a statement on oath of the Complainant and any witnesses present at the time of taking Cognizance under Section 223 BNSS. The stage of Cognizance comes only after the recording of the statement and only thereafter, the issue arises of giving a Notice to the Accused for the purpose of taking Cognizance. It was further explained that the proviso indicates that an accused should have an opportunity of being heard, which would not be an empty formality. Therefore, Complainant in terms of proviso to sub-section to S. 223 of BNSS, shall append the copy of the Complaint, the small statements of the Complainant and the witnesses, if any, for the accused to appear and submit his case before the cognizance is taken.

37. Thus, it may be concluded that Section 223 BNSS has reiterated the procedural framework of Section 200 Cr. P.C. with regard to examination of the Complainant and the witnesses, but has introduced significant departure that after the Complainant/witnesses as the Court may desire has been recorded, an opportunity of being heard be given to the accused before cognizance is taken.”

76. The High Court Karnataka in ***Basangouda R Patil*** (supra), which was followed by the learned Single Judge in ***Brand Protectors India Pvt. Ltd.*** (supra), has held as under:

“9. To steer clear the obfuscation, it is necessary to notice the language deployed therein. The Magistrate while taking cognizance of an offence should have with him



the statement on oath of the complainant and if any witnesses are present, their statements. The taking of cognizance under Section 223 of the BNSS would come after the recording of the sworn statement, at that juncture a notice is required to be sent to the accused, as the proviso mandates grant of an opportunity of being heard.

10. *Therefore, the procedural drill would be this way:*

A complaint is presented before the Magistrate under Section 223 of the BNSS; on presentation of the complaint, it would be the duty of the Magistrate/concerned Court to examine the complainant on oath, which would be his sworn statement and examine the witnesses present if any, and the substance of such examination should be reduced into writing. The question of taking of cognizance would not arise at this juncture. The magistrate has to, in terms of the proviso, issue a notice to the accused who is given an opportunity of being heard. Therefore, notice shall be issued to the accused at that stage and after hearing the accused, take cognizance and regulate its procedure thereafter.”

77. The High Court of Allahabad, in ***Prateek Agarwal*** (supra) and in ***Rakesh Kumar Chaturvedi*** (supra), reiterated the above position. In ***Rakesh Kumar Chaturvedi*** (supra), it was held as under:-

“8. In view of above, after filing of complaint under Section 210 BNSS, the learned Magistrate has to first examine upon oath the complainant and the witnesses, if any, and the substance of such examination is to be reduced in writing, which shall be signed by the complainant and the witnesses and also by the Magistrate as per Section 223(1) of BNSS, thereafter, after considering the same, if he finds that there is no sufficient ground to proceed, he shall dismiss the complaint under Section 226 BNSS and if he finds that it can



not be dismissed as such, he shall afford opportunity to the accused for which the notice of being heard shall be issued at that stage and only thereafter he would take cognizance after affording him opportunity of hearing. It is because, if the complaint is dismissed under Section 226 BNSS, the accused may not be harassed unnecessarily of appearing and the opportunity of hearing may not be a mere formality and it should be with material, which is required to be considered for taking cognizance. Thus, after recording of the statement under Section 223 BNSS and upon consideration that some sufficient ground is made out to proceed, learned Magistrate shall issue notice to the accused.”

78. Similarly, the High Court of Kerala, in **Suby Antony** (supra), has held as under:-

“7. Indeed, a radical change in procedure is brought about by the proviso to Section 223(1) of BNSS. Pertinently, in spite of the proviso to Section 223(1) making it mandatory to provide opportunity of hearing to the accused before taking cognisance, Section 226 does not reckon the accused's objection at the stage of taking cognisance as a relevant factor for dismissing the complaint. Being guided by the precedents on Sections 200 and 202 of the Code and the plain language of the proviso to Section 223(1) of the BNSS, this Court is of the opinion that, after the complaint is filed, the Magistrate should first examine the complainant and witnesses on oath and thereafter, if the Magistrate proceeds to take cognisance of the offence/s, opportunity of hearing should be afforded to the accused. also in complete agreement with the following procedural drill delineated by the High Court of Karnataka in Basanagouda's case (supra)... ”



79. The High Court of Guwahati, in **Bhupendra Chaudhary** (supra), reiterated as under:-

“14. From a careful reading of Section 200 of Cr.P.C., it is clear that while taking cognizance of an offence on a Complaint, the Magistrate needs to examine the Complainant on oath and the witnesses present, if any and thereafter, substance of such examination shall have to be reduced to writing, which shall be signed by the Complainant and the witnesses and also by the Magistrate. Therefore, it is apparent that the involvement of the accused person was not required at the time of taking cognizance by the Magistrate under Section 200 Cr.P.C. However, under Section 223 of BNSS, 2023 a notable change has been brought into Sub-section (1) of Section 223 of BNSS, 2023. By adding the proviso to the aforesaid Sub-section (1), it has been made clear that no cognizance of an offence shall be taken by the Magistrate without giving the accused the opportunity of being heard. Therefore, it is discernable from a reading of section 223 BNSS, 2023 that a Magistrate cannot take cognizance of an offence alleged in a Complaint without first providing the accused an opportunity to be heard. Meaning thereby, before the Magistrate takes cognizance of the matter i.e. prior to the Magistrate applying his judicial mind in the whole issue, the proviso to Sub-section (1) of Section 223 BNSS, 2023 calls for issuance of a notice to the accused. What is discernable from the aforesaid proviso is that the possible object of such provision is to afford the accused an opportunity to point out potential false implications, amongst others and thereby, to avoid unwarranted harassments.

15. Since the term "cognizance" has been used in both the aforesaid Sections, it may be worthwhile to address the issue as to what actually means by the term 'Cognizance'. The



issue is important because on the basis of taking cognizance only, the timing of issuance of notice to the accused could be decided in a complaint case. Though there are many cases and the Hon'ble Apex Court has observed about this term, in this connection, the case of *R.R. Chari-vs-State of U.P.* reported in AIR 1951 SC 207 can be referred to. In that case, the Hon'ble Apex Court held that taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate as such applies his mind to the suspected commission of the offence. So, a proper assessment of the complaint as well as other materials, oral or documentary needs to be done by an application of a judicial mind. Therefore, as per Section 200 of Cr.P.C., the Magistrate mandatorily needs to examine upon oath the Complainant and the witnesses present, if any and on the basis of such examination, which is required to be reduced to writing on application of judicial mind on such examination of the Complainant and the witnesses present, if any. The Magistrate has to decide and come to a conclusion as to whether process is to be issued on taking cognizance of the offence. Therefore, as per Section 200 of Cr.P.C., the cognizance can be taken only after examination of the Complainant and the witnesses, if any; and the Magistrate does not require to examine the accused person at that point of time i.e. while taking cognizance.

16. However, under Sub-section (1) of Section 223, BNSS, in view of the proviso that has been added, before taking cognizance of an offence, the Magistrate has to mandatorily give the accused person an opportunity of being heard, meaning thereby on completion of examination of the Complainant and the witnesses, if any on oath, the Magistrate is required to issue a notice to the accused person for his examination. On completion of such exercise only, the cognizance of the



offence could be taken by the Magistrate by issuing process. So what is discernable from the aforesaid two provisions of Section 200 Cr.P.C. and Section 223 (1) BNSS, 2023 is the involvement of the accused person before taking cognizance by the learned Magistrate under Section 223 (1) BNSS 2023 which was not present under Section 200 Cr.P.C., 1973.

17. In view of the aforesaid discussions, this Court is of the considered view that issuance of notice to the accused prior to examination of the Complainant and the witnesses, if any, is not what is mandated under Section 223(1) of BNSS, 2023, rather what is mandated is notice to be issued to the Accused only after examination of the Complainant and the present witnesses, if any. However, this is only when the Magistrate does not want to exercise his powers under Section 226 of the BNSS, 2023."

80. Similarly, the High Court of Bombay, in **Sashidhar Jagdishan** (supra), has held as under:-

"19. Mr. Ponda's emphasis is on 'proviso'. It is true that if we read proviso independently, cognizance cannot be taken unless notice is given. But if we read 'First part and proviso' together, Mr. Ponda's submission cannot be accepted. Ultimately this proviso is nothing but an exception to what is stated in opening part of Section 223. It is the one of the principle of interpretation that "the main provision and the proviso" has to be read together. The purpose of legislatures behind Inserting proviso is there should be check on frivolous complaints at the first stage itself. Section 223 does not say hearing to be given prior to "recording verification". If that could have been the intention o legislatures then could have said "notice needs to be given prior to recording verification". However, that was not intended by the legislatures."



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81. In view of our above discussion, we answer the questions referred to us by the learned Single Judge as under:

Question 1: What is the stage at which a Magistrate can be said to have taken "cognizance" of an offence, in the context of a private complaint, under the provisions of BNSS, and whether the expression "while taking cognizance" as employed in Section 223(1) of the BNSS implies that the examination of the complainant and witnesses on oath is a step prior to taking of cognizance of offence?

Answer: The Magistrate can take cognizance of an offence only after examining the complainant and the witnesses present on oath, unless it is exempted by the statute, and giving an opportunity to the accused to be heard. Therefore, under Section 223(1) of the BNSS, the examination of the complainant and the witnesses present on oath, unless exempted, and hearing the accused, are steps prior to taking the cognizance of the offence by the Magistrate.

Question 2: At what stage is the Magistrate required to issue notice to the accused in compliance with the first proviso to Section 223(1) of the BNSS - whether (a) upon perusal of the complaint but prior to recording of the statement of the complainant and witnesses, if any, or (b) after recording such statements but before a formal decision on taking cognizance?



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Answer: The Magistrate is required to issue a notice to the accused, in compliance with the first *proviso* to Section 223(1) of the BNSS, after examining the complainant and the witnesses present on oath, unless exempted, and forming a *prima facie* opinion that the complaint does not deserve to be dismissed under Section 226 of the BNSS but cognizance may deserve to be taken of the offence. However, formal decision of taking cognizance can be taken by the Magistrate only after granting an opportunity of being heard to the accused.

82. With the above answers to the questions referred, and subject to the orders of Hon'ble the Chief Justice, list these petitions before the Roster Bench on 28th October 2026.

83. A copy of this judgment be communicated to the learned Referral Court for necessary information.

NAVIN CHAWLA, J

RAVINDER DUDEJA, J

SEPTEMBER 29, 2026/pb