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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment reserved on: 18.12.2025*
Judgment pronounced on: 18.03.2026
Judgment uploaded on: 24.03.2026

\+ **CRL.M.C. 2551/2025 & CRL.M.A. 11417/2025**

DR RITA BAKSHI .....Petitioner

Through: Mr. Rakesh Malhotra, Mr. Bharat Malhotra and Ms. Smritika Kesri, Advocates

versus

SEEMA BAJAJ & ANR. .....Respondents

Through: Mr. Raajan Chawla, Ms. Pallavi Yadav and Ms. Lavanya Chadha, Advocates
Mr. Manoj Pant, APP for the State along with SI Amisha Kumari

CORAM:
HON'BLE DR. JUSTICE SWARANA KANTA SHARMA

J U D G M E N T

DR. SWARANA KANTA SHARMA, J

1. The petitioner has approached this Court seeking quashing of the order dated 21.01.2025 [hereafter '*impugned order*'] passed by the learned Judicial Magistrate, First Class-03, South District, Saket Courts, Delhi [hereafter '*Magistrate*'] in CT Case No. 2771/2024 titled *'Dr. Seema Bajaj v. M/s Embryo Health Pvt. Ltd. & Anr.'*.

INTRODUCTION

2. The issue that arises for consideration in the present case pertains to the interpretation of Section 223 of the Bharatiya Nagarik Suraksha Sanhita, 2023 [hereafter '*BNSS*'], and in particular, the scope and effect of the newly introduced first proviso to Section 223(1) of BNSS, which mandates that no cognizance of an offence on a complaint shall be taken by the Magistrate without affording the accused, an opportunity of being heard.

3. In the present case, a complaint was filed by the respondent-complainant against eight accused persons, including the present petitioner (accused no. 2), alleging commission of offences punishable under Sections 420/120B/34/35/37 of the Indian Penal Code, 1860 [hereafter '*IPC*']. The matter was briefly heard on 11.12.2024 and was thereafter listed for recording of pre-summoning evidence on 25.04.2025. Subsequently, the complainant moved an application before the learned Magistrate praying that, in terms of Section 223 of BNSS, notice be issued to the accused persons prior to taking cognizance and recording the statement of the complainant.

4. Pursuant thereto, the learned Magistrate passed the following order dated 21.01.2025:

> "Submissions of learned counsel for the complainant heard.
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> Learned counsel for the complainant has argued that no prejudice would be caused to the proposed accused persons if they are issued notice to appear in person before pre-summoning evidence is recorded.
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> Considering that the present complaint was filed on 11.12.2024

> under the new provisions of BNSS, let notice be issued to the proposed accused persons to appear in person on the next date of hearing, on filing of process fee within seven days, returnable on 25.04.2025.
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> **Dasti notice be given to the complainant to expedite service. Affidavit of service be filed by the complainant on the next date of hearing**."

5. The aforesaid order directing issuance of notice to the accused has been challenged by the petitioner by way of the present petition.

SUBMISSIONS BEFORE THE COURT

6. In essence, the petitioner contends that since the first proviso to Section 223(1) of the BNSS mandates that the accused must be heard before cognizance is taken, such opportunity of hearing can arise only after the Magistrate has perused the complaint and recorded the statement of the complainant and witnesses, if any, under Section 223(1) of BNSS [*corresponding to Section 200(1) of the Cr.P.C.*]. It is argued that it is only upon such examination that the Magistrate is in a position to apply judicial mind to the material on record, and thereafter issue notice to the accused for hearing on the question of whether cognizance ought to be taken. Thus, according to the learned counsel for the petitioner, the issuance of notice to the accused must follow the recording of pre-summoning evidence i.e. statement of the complainant and witnesses, if any, though both stages would still fall prior to formal taking of cognizance. In support of this submission, reliance has been placed on decisions of the High Courts of Karnataka, Allahabad and Kerala, as well as judgments of Co-

ordinate Benches of this Court, wherein while interpreting Section 223(1) of the BNSS and its proviso, it has been held that upon receipt of a complaint, the Magistrate must first examine the complainant and witnesses, if any, and only thereafter issue notice to the accused, so as to enable the accused to effectively respond on the question of cognizance after perusing not only the complaint but also the pre-summoning evidence tendered by the complainant.

7. On the other hand, the learned counsel for the respondent-complainant has opposed the aforesaid interpretation and has argued that the premise underlying the petitioner's contention is legally untenable. It is submitted that the law laid down by the Hon'ble Supreme Court in catena of judgments is that cognizance of an offence is taken upon application of judicial mind to the complaint, and once the Magistrate proceeds under Section 200 of the Cr.P.C. (now Section 223 of the BNSS), it necessarily implies that cognizance has already been taken. It is thus contended that the recording of the statement of the complainant and witnesses is a post-cognizance exercise. Accordingly, it is argued that in view of the proviso to Section 223(1) of BNSS, which prohibits taking cognizance of offence without affording an opportunity of hearing to the accused, such notice must necessarily be issued prior to the recording of the complainant's statement under Section 223(1) of BNSS, as any such recording of statement would itself presuppose that cognizance has already been taken by the Magistrate.

8. Both the learned counsels have addressed elaborate arguments

on this aspect and have also placed on record their written submissions along with relevant case laws. This Court has carefully considered the same.

ANALYSIS *&* FINDINGS

9. Section 223 of the BNSS deals with the "Examination of Complainant" and provides that a Magistrate, while taking cognizance of an offence on a complaint, shall examine upon oath the complainant and the witnesses present, if any. The first *proviso* thereto, however, introduces a significant departure from earlier Section 200 of Cr.P.C., by stipulating that no cognizance of an offence on complaint shall be taken without giving the accused an opportunity of being heard. For reference, relevant portion of Section 223 is set out below:

> "**223. Examination of complainant**.—
>
> (1) A Magistrate having jurisdiction while taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:
>
> Provided that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard..."

10. At the outset, it is not in dispute that two Coordinate Benches of this Court, in ***Neeti Sharma v. Saranjit Singh:*** *2025 SCC OnLine Del 2329*, and more specifically in ***Brand Protectors India Pvt. Ltd. v. Anil Kumar:*** *2025 SCC OnLine Del 5046*, have already examined this issue and have taken the 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.

11. In ***Neeti Sharma v. Saranjit Singh*** *(supra)*, while dealing with complaints under Section 138 of the Negotiable Instruments Act, 1881, and observing that the requirement of examination of the complainant, in cases under Section 138, may be dispensed with, it was nonetheless impliedly held that the stage of issuance of notice to the accused under the proviso to Section 223(1) of BNSS would arise after the Magistrate has examined the complainant and witnesses on oath. It was *inter alia* observed as under:

> "**20**. While Section 223 of the BNSS broadly retains the procedural framework of Section 200 of the CrPC with respect to the examination of the complainant and witnesses, it introduces a significant departure through the insertion of a proviso mandating that the proposed accused be afforded an opportunity of hearing before cognizance is taken. This proviso marks a substantive procedural safeguard that did not exist under the earlier regime. However, with regard to offences under Section 138 of the NI Act, the Supreme Court in A.C. Narayanan v. State of Maharashtra has categorically held that the Magistrate may, in his discretion, proceed on the basis of the complaint, supporting documents, and an affidavit of the complainant, without necessarily examining the complainant or witnesses on oath prior to issuing process. Accordingly, in the Court's view, the procedure for such cases has not undergone any material change with the enactment of Section 223 of the BNSS. The requirement of examining the complainant and the witnesses upon oath, at the pre-cognizance stage remains directory and not mandatory in complaints under Section 138 of the NI Act.
>
> **21**. Therefore, in cases under Section 138 of the NI Act, the Magistrate is not bound to examine the complainant and witnesses on oath before issuing notice under the first proviso to Section 223(1) of the BNSS. The requirement of a pre-cognizance hearing now statutorily introduced under the BNSS is a distinct and additional procedural step, but it does not alter the established position that, for offences under the NI Act, reliance on affidavits and documentary material suffices for taking cognizance. In this light, the Petitioner's

> contention, that the Magistrate erred in issuing notice under Section 223 without first examining the complainant and witnesses on oath, does not merit acceptance. The challenge to the Impugned notice is, therefore, misconceived and without legal basis."

12. Similarly, in ***Brand Protectors India Pvt. Ltd. v. Anil Kumar*** *(supra)*, the Coordinate Bench undertook an analysis of the scheme of Section 223 of the BNSS, and the meaning of 'cognizance'. In the said decision, it was held that under BNSS, the recording of statements of the complainant and witnesses is a step prior to taking cognizance of offence, and that only after recording such statements does the question arise of affording an opportunity of hearing to the accused – before cognizance is formally taken – as per first proviso to Section 223(1) of Cr.P.C. The relevant observations in the said decision are set out below:

> "**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.*
>
> **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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> **16.** In this regard, it may be pertinent to understand the meaning of word "*cognizance*" which was explained by the Apex Court in *Narayan Das Bhagwandas Madhavdas* v. *State of West Bengal*, AIR 1959 SC 111 that when a cognizance is taken of an offence, would depend upon the facts and circumstances of each case and it is difficult to attempt to define what is meant by taking cognizance. It is only when the Magistrate applies his mind for the purpose of proceeding under Section 200 and sub-sections of Chapter XVI of Cr. P.C. or under Section 204 of Chapter XVII, that the Court can be positively stated to have applied his mind and taken cognizance.
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> **17.** Similarly, in *Darshan Singh Ram Kishan* v. *State of*

Maharashtra, (1971) 2 SCC 654 the Apex Court reiterated the observations made in *R.R. Chari* v. *State of U.P.*, 1951 SCC 250.

18. The cognizance involves application of mind to the given facts to ascertain whether the Accused needs to be summoned. The purpose of recording statements prior to taking cognizance, is only to ascertain if any prima facie case is disclosed in the Complaint and thereby enable taking of cognizance in appropriate cases and avoid unnecessary harassment of the Respondent/Accused.

19. From the express language of the Section 223 and the aforesaid meaning of "Cognizance", it is abundantly evident that taking Cognizance of an Offence is the stage when the Magistrate applies his mind to the Complaint for the purpose of proceeding as per provisions of Chapter XVI of BNSS.

20. While under the erstwhile Section 200 Cr. P.C. and S. 202 Cr. P.C. (which are *para materia* with Section 223 and 225 of BNSS), it was clear that till the stage of Cognizance, the Accused had no role and it is only after the Cognizance was taken that summons were issued to the Accused. However, under the BNSS, there is a marked change as a procedural safeguard has been incorporated by way of *first proviso to S. 223 (1) BNSS* which mandates that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard.

21. On this change in the BNSS, the Calcutta High Court in *Tutu Ghosh* v. *Enforcement Directorate*, 2025 LiveLaw (Cal) 174, has observed that the Legislature, in its wisdom, has deliberately introduced the first proviso to Section 223, thereby conferring on the accused the right to have an opportunity of hearing at the pre-cognizance stage, despite the Legislature being obviously aware of the subsequent stages of a proceeding and criminal trial where a right of hearing is again given to the accused.

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 ld. 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.

24. Similar observations have been made by the Calcutta High Court in *Tutu Ghosh* v. *Enforcement Directorate*, 2025 LiveLaw (Cal) 174 and, the Kerala High Court in *Suby Antony* v. *Judicial First-Class*

Magistrate III, 2025 SCC OnLine Kar 96, and *Prateek Agarwal* v. *State of U.P.*, 2024 SCC OnLine All 8212.

25. The Petitioner/Accused is not aggrieved to the extent that the Order taking Cognizance has been set aside with the direction to first issue a Notice to the Petitioner.

26. *The main grievance of the Petitioner is that the pre-summoning evidence also could not have been recorded by the ld. 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.

30. The procedure to be followed on filing of the Complaint under Section 200 Cr. P.C. (now Section 223 BNSS) was discussed by the Supreme Court in *Ram Das* v. *Shri Niwas Nair* (1984) 2 SCC. It was explained that when a private Complaint is filed, the Complainant has to be examined on oath except when it is a public servant. After examining the complainant on oath and the witnesses present, it would be open to the Court to judicially determine whether the case is made out for issuing process. When it is said that the Court issues process, it means that the Court has taken cognizance of the offence and has decided to initiate the proceedings and as a visible manifestation of taking cognizance, process is issued which means that the accused is called upon to appear before the Court. A reference was also made to Section 200 and Section 202 Cr. P.C. to observe that the power to take cognizance can be postponed and an

enquiry be held under 202 and an enquiry or investigation by a Police Officer can be directed to decide whether there is sufficient grounds for proceeding. The matter is left to the judicial discretion of the Court whether to examine the Complainant and the witnesses if any as contemplated under Section 200 Cr. P.C.or to postpone the issue of process and seek further investigations by the police or any other person.

31. In the case of *Manharibhai Muljibhai Kakadia* v. *Shaileshbhai Mohanbhai Patel*, (2012) 10 SCC 517 the Apex Court succinctly encapsulated the objective of Section 202 Cr. P.C. and stated that the twin objectives to be achieved are:

> *I. To enable the Magistrate to scrutinise carefully the allegations made in the complaint with a view to prevent a person named therein as accused from being called upon to face any unnecessary frivolous or meritless complain*
>
> *II. To find out whether there is some material to support the allegations made in the complaint.*

32. To elicit all these facts and having regard to the interest of the absent accused and also to bring to book a person against whom the allegations have been made, the Magistrate may hold an enquiry under Section 202 himself or direct the same to be made by a Police Officer. The dismissal of the Complaint under Section 203 is without doubt, a pre-issuance of process stage. It does not permit the accused person to intervene in the course of enquiry by the Magistrate under Section 202 Cr. P.C.

33. This legal position has been established by the Apex Court in *Vadilal Panchal* v. *Dattatraya Dulaji*, AIR 1960 SC 111 (3) wherein in reference to Section 202 Cr. P.C., it was held that the purpose of the enquiry under Section 202 was to ascertain the truth of the falsehood of the Complaint, i.e. there was evidence in support of the Complaint so as to justify the issuance of a process and commencement of proceedings against the accused.

34. This proposition of law has been reiterated by three-Judge Bench of the Apex Court in *Adalat Prasad* v. *Roop Lal Jugal*, ((2004) 7 SCC 338) wherein it was stated that when a Complaint is filed, the Magistrate on examination of the complainant and the witnesses, does not want to issue the process. Thus, if it is found that no sufficient ground is made out of proceeding, the Complaint can be dismissed forthwith under Section 203 Cr. P.C. without issuing any Notice to the Accused. *Per contra*, if the evidence and enquiry made under Section 202 shows that there is enough material, he may proceed to issue process under Section 204 Cr. P.C. *It was reiterated that the condition precedent for issuing process under 204 is the satisfaction of the Magistrate either by examination of the Complainant and witnesses or by the enquiry contemplated under Section 202, that there is sufficient ground to proceed by issue of*

process under Section 204 Cr. P.C.

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.

38. In view of the above discussion, it is held that the law has been rightly interpreted by ld. ASJ. The impugned Order does not suffer from any infirmity. The Petition is accordingly dismissed."

13. Before proceeding further, it would also be appropriate to take note of the decision of Karnataka High Court in ***Basanagouda R. Patil v. Shivananda S. Patil:*** *2024 SCC OnLine Kar 96*, which is one of the first decisions by a High Court on the issue on question, wherein the Court held as follows:

"**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."

14. It is the above-noted decision of Karnataka High Court, which was taken note of and followed by High Court of Allahabad in ***Prateek Agarwal v. State of U.P.:*** *2024 SCC Online All 8212*, High Court of Kerala in ***Suby Antony v. Judicial First-Class Magistrate-III (Deleted) & Ors.:*** *2025 SCC OnLine Ker 532*, as well as by the Coordinate Bench of this Court in ***Brand Protectors India Pvt. Ltd. v. Anil Kumar*** *(supra).*

15. However, before this Court, the learned counsel for the respondent has specifically contended that the view taken by the Coordinate Bench as well as other High Courts is contrary to the settled position of law laid down by the Hon'ble Supreme Court on the concept and stage of "taking cognizance". It has been argued that the issue requires a closer examination in light of decisions of the Hon'ble Supreme Court, which consistently hold that cognizance is taken upon application of judicial mind to the complaint and that the proceedings under Section 200 of the Cr.P.C. (now Section 223 of the BNSS) are, in fact, post-cognizance in nature.

16. In view of these submissions, and considering that the present case raises an important question of interpretation of a newly introduced statutory *proviso*, this Court deems it appropriate to examine the legal position governing the concept of "taking cognizance" and its stage. This Court has thus considered the authorities cited by the learned counsel for the respondent, particularly the meaning and stage of "taking cognizance" and the distinction between taking cognizance, issuance of process, and proceedings under Chapter XV of the Cr.P.C. (corresponding to Chapter XVI of the BNSS).

17. In this context, it would be apposite to note that the Hon'ble Supreme Court, in catena of decisions, has held that "taking cognizance" is a term of wide import and signifies the application of judicial mind by the Magistrate to the facts of the case for the purpose of proceeding in a particular manner. It is neither synonymous with issuance of process nor with any specific procedural step, and whether cognizance has been taken depends upon the facts and circumstances of each case.

18. A three-Judge Bench of the Hon'ble Supreme Court in ***Gopal Das Sindhi v. State of Assam*****:** *1961 SCC OnLine SC 251*, held that "taking cognizance" occurs when the Magistrate applies his mind to the complaint for the purpose of proceeding under Chapter XVI of the Cr.P.C., 1898 (i.e. Chapter XV of Cr.P.C., 1973). It was clarified that if the Magistrate, instead of proceeding under Section 200, directs investigation under Section 156(3), it cannot be said that

cognizance has been taken. It was also observed that if the Magistrate had not taken cognizance of the offence on the complaint filed before him, he was not obliged to examine the complainant on oath and the witnesses present at the time of the filing of the complaint (under Section 200 of Cr.P.C.). It was held as under:

> "**9**. When the complaint was received by Mr Thomas on August 3, 1957, his order, which we have already quoted, clearly indicates that he did not take cognizance of the offences mentioned in the complaint but had sent the complaint under Section 156(3) of the Code to the Officer Incharge of Police Station Gauhati for investigation. Section 156(3) states "Any Magistrate empowered under Section 190 may order such investigation as above-mentioned". Mr Thomas was certainly a Magistrate empowered to take cognizance under Section 190 and he was empowered to take cognizance of an offence upon receiving a complaint. He, however, decided not to take cognizance but to send the complaint to the police for investigation as Sections 147, 342 and 448 were cognizable offences. It was, however, urged that once a complaint was filed the Magistrate was bound to take cognizance and proceed under Chapter XVI of the Code. **It is clear, however, that Chapter XVI would come into play only if the Magistrate had taken cognizance of an offence on the complaint filed before him, because Section 200 states that a Magistrate taking cognizance of an offence on complaint shall at once examine the complainant and the witnesses present, if any, upon oath and the substance of the examination shall be reduced to writing and shall be signed by the complainant and the witnesses and also by the Magistrate. If the Magistrate had not taken cognizance of the offence on the complaint filed before him, he was not obliged to examine the complainant on oath and the witnesses present at the time of the filing of the complaint.** We cannot read the provisions of Section 190 to mean that once a complaint is filed, a Magistrate is bound to take cognizance if the facts stated in the complaint disclose the commission of any offence. We are unable to construe the word 'may' in Section 190 to mean 'must. The reason is obvious. A complaint disclosing cognizable offences may well justify a Magistrate in sending the complaint, under Section 156(3) to the police for investigation. There is no reason why the time of the Magistrate should be wasted when primarily the duty to investigate in cases involving cognizable offence is with the police. On the other hand, there may be occasions when the Magistrate may exercise his discretion and take cognizance of a cognizable offence. If he does so, then he would have to proceed in the manner provided by Chapter

XVI of the Code. Numerous cases were cited before us in support of the submissions made on behalf of the appellants. Certain submissions were also made as to what is meant by "taking cognizance". It is unnecessary to refer to the cases cited. The following observations of Mr Justice Das Gupta in the case of Superintendent and Remembrancer of Legal Affairs, West Bengal v. Abani Kumar Banerjee

> *"What is taking cognizance has not been defined in the Code of Criminal Procedure and I have no desire to attempt to define it. It seems to me clear, however, that before it can be said that any Magistrate has taken cognizance of any offence under Section 190(1)(a) of the Cr PC, he must not only have applied his mind to the contents of the petition but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter —proceeding under Section 200 and thereafter sending it for inquiry and report under Section 202. When the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this Chapter, but for taking action of some other kind, e.g., ordering investigation under Section 156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence."*

were approved by this Court in R.R. Chari v. State of Uttar Pradesh. It would be clear from the observations of Mr Justice Das Gupta that when a Magistrate applies his mind not for the purpose of proceeding under the various sections of Chapter XVI but for taking action of some other kind, eg. ordering investigation under Section 156(3) or issuing a search warrant for the purpose of investigation, he cannot be said to have taken cognizance of any offence. The observations of Mr Justice Das Gupta above-referred to were also approved by this Court in the case of Narayandas Bhagwandas Madhavdas v. State of West Bengal?. It will be clear, therefore, that in the present case neither the Additional District Magistrate nor Mr Thomas applied his mind to the complaint filed on August 3, 1957, with a view to taking cognizance of an offence. The Additional District Magistrate passed on the complaint to Mr Thomas to deal with it. Mr Thomas seeing that cognizable offences were mentioned in the complaint did not apply his mind to it with a view to taking cognizance of any offence; on the contrary in his opinion it was a matter to be investigated by the police under Section 156(3) of the Code. The action of Mr Thomas comes within the observations of Mr Justice Das Gupta. In the circumstances, we do not think that the first contention on behalf of the appellants has any substance."

(Emphasis added)

19. A four-Judge Bench of the Hon'ble Supreme Court in ***Jamuna Singh v. Bhadai Shah:*** *1963 SCC OnLine SC 263*, reiterated that cognizance is taken when the Magistrate applies his mind to proceed under Chapter XVI of the Cr.P.C., 1898 (i.e. Chapter XV of Cr.P.C., 1973), and specifically held that examination of the complainant under Section 200 of the Cr.P.C. is a clear indicator that cognizance has already been taken. It was also observed that after taking cognizance and examining complainant under Section 200 of Cr.P.C., the Magistrate could either issue process under Section 204 of Cr.P.C. or dismiss complaint under Section 203 of Cr.P.C.; *or*, could even proceed under Section 202 of Cr.P.C. The relevant observations are as under:

> "**8**. To decide whether the case in which the appellants were first acquitted and thereafter convicted was instituted on a complaint or not, it is necessary to find put whether the Sub-Divisional Magistrate, Gopalganj, in whose Court the case was instituted, took cognizance of the offences in question on the complaint of Bhadai Sah filed in his Court on November 22, 1956 or on the report of the Sub-Inspector of Police dated December, 13, 1956. **It is well settled now that when on a petition of complaint being filed before him a Magistrate applies his mind for proceeding under the various provisions of Chapter 16 of the Code of Criminal Procedure, he must be held to have taken cognizance of the offences mentioned in the complaint.** When however he applies his mind not for such purpose but for purposes of ordering investigation under Section 156(3) or issues a search warrant for the purpose of investigation he cannot be said to have taken cognizance of any offence. It was so held by this Court in *R.R. Chari v. State of U.P.* [1951 SCC 250 : (1951) SCR 312] and again in *Gopal Dass v. State of Assam* [AIR 1961 SC 986].
>
> **9**. In the case before us the Magistrate after receipt of Bhadai Shah's complaint proceeded to examine him under Section 200 of the Code of Criminal Procedure. That section itself states that the Magistrate taking cognizance of an offence on a complaint shall at once examine the complainant and the witnesses present, if any, upon oath. **This examination by the Magistrate under Section 200 of**

> **the Code of Criminal Procedure puts it beyond doubt that the Magistrate did take cognizance of the offences mentioned in the complaint. After completing such examination and recording the substance of it to writing as required by Section 200 the Magistrate could have issued process at once under Section 204 of the Code of Criminal Procedure or could have dismissed the complaint under Section 203 of the Code of Criminal Procedure. It was also open to him, before taking either of these courses, to take action under Section 202 of the Code of criminal Procedure.** That section empowers the Magistrate to "postpone the issue of process for compelling the attendance of persons complained against, and either enquire into the case himself or if he is a Magistrate other than a Magistrate of the third class, direct an enquiry or investigation to be made by any Magistrate subordinate to him, or by a police officer, or by such other person as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint". If and when such investigation or inquiry is ordered the result of the investigation or inquiry has to be taken into consideration before the Magistrate takes any action under Section 203 of the Code of Criminal Procedure.
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> ***
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> **12**. Relying on the provisions in Section 190 of the Code that cognizance could be taken by the Magistrate on the report of the police officer the learned counsel for the appellants argued that when the Magistrate made the order on November 22, 1956 his intention was that he would take cognizance only after receipt of the report of the police officer and that cognizance should be held to have been taken only after that report was actually received in the shape of a charge-sheet under Section 173 of the Code, after December 13, 1956. **The insuperable difficulty in the way of this argument, however, is the fact that the Magistrate had already examined the complainant under Section 200 of the Code of Criminal Procedure. That examination proceeded on the basis that he had taken cognizance** and in the face of this action it is not possible to say that cognizance had not already been taken when he made the order "to Sub-Inspector, Baikunthpur, for instituting a case and report by 12.12.56."
>
> (Emphasis added)

20. In ***Nirmaljit Singh Hoon v. State of West Bengal:*** *(1973) 3 SCC 753*, the Hon'ble Supreme Court observed that once a complaint is presented, the Magistrate can take cognizance under Section 200 of Cr.P.C. – and then examine the complainant and witnesses, to

determine whether a *prima facie* case exists so as to proceed further against the accused. The relevant portion of the judgment reads as under:

> "**22**. Under Section 190 of the Code of Criminal Procedure, a Magistrate can take cognizance of an offence, either on receiving a complaint or on a police report or on information otherwise received. **Where a complaint is presented before him, he can under Section 200 take cognizance of the offence made out therein and has then to examine the complainant and his witnesses.** The object of such examination is to ascertain whether there is prima facie case against the person accused of the offence in the complaint and to prevent the issue of process on a complaint which is either false or vexatious or intended only to harass such a person..."
>
> (Emphasis added)

21. Thereafter, three-judge Bench of the Hon'ble Supreme Court in ***Devarapally Lakshminarayana Reddy v. V. Narayana Reddy & Ors.:*** *(1976) 3 SCC 252* again held that cognizance is taken when the Magistrate applies his mind to the complaint for the purpose of proceeding under Chapter XV of the Cr.P.C., whereas if the Magistrate instead directs investigation under Section 156(3), it cannot be said that cognizance has been taken. These are observations are reproduced hereunder:

> "**14**. This raises the incidental question: What is meant by "taking cognizance of an offence" by a Magistrate within the contemplation of Section 190? This expression has not been defined in the Code. But from the scheme of the Code, the content and marginal heading of Section 190 and the caption of Chapter XIV under which Sections 190 to 199 occur, it is clear that a case can be said to be instituted in a court only when the court takes cognizance of the offence alleged therein. The ways in which such cognizance can be taken are set out in clauses (a), (b) and (c) of Section 190(1). Whether the Magistrate has or has not taken cognizance of the offence will depend on the circumstances of the particular case including the mode in which the case is sought to be instituted, and the nature of the preliminary

> action, if any, taken by the Magistrate. **Broadly speaking, when on receiving a complaint, the Magistrate applies his mind for the purposes of proceeding under Section 200 and the succeeding sections in Chapter XV to the Code of 1973, he is said to have taken cognizance of the offence within the meaning to Section 190(1)(a).** It, instead of proceeding under Chapter XV, he has, in the judicial exercise of his discretion, taken action of some other kind, such as issuing a search warrant for the purpose of investigation, or ordering investigation by the police under Section 156(3), he cannot be said to have taken cognizance of any offence.
>
> **15**. This position of law has been explained in several cases by this Court, the latest being *Nirmaljit Singh Hoon v. The State of West Bengal and Anr*."
>
> (Emphasis added)

22. In ***CREF Finance Ltd. v. Shree Shanthi Homes (P) Ltd.:*** *(2005) 7 SCC 467*, a decision which has been repeatedly referred to by the learned counsel for the respondent, the Hon'ble Supreme Court had observed that cognizance is taken of the offence and not the offender, and that once the Magistrate, upon perusal of the complaint, proceeds further in the matter, it must be held that cognizance has been taken; it was further emphasized that taking cognizance is distinct from issuance of process, which occurs at a later stage. The relevant observations are extracted below:

> "**10**. In the instant case, the appellant had filed a detailed complaint before the Magistrate. The record shows that the Magistrate took cognizance and fixed the matter for recording of the statement of the complainant on 1-6- 2000. Even if we assume, though that is not the case, that the words "cognizance taken" were not to be found in the order recorded by him on that date, in our view that would make no difference. Cognizance is taken of the offence and not of the offender and, therefore, once the court on perusal of the complaint is satisfied that the complaint discloses the commission of an offence and there is no reason to reject the complaint at that stage, and proceeds further in the matter, it must be held to have taken cognizance of the offence. **One should not confuse taking of cognizance with issuance of process. Cognizance is taken at the**

> **initial stage when the Magistrate peruses the complaint with a view to ascertain whether the commission of any offence is disclosed. The issuance of process is at a later stage when after considering the material placed before it, the court decides to proceed against the offenders against whom a prima facie case is made out.** It is possible that a complaint may be filed against several persons, but the Magistrate may choose to issue process only against some of the accused. **It may also be that after taking cognizance and examining the complainant on oath, the court may come to the conclusion that no case is made out for issuance of process and it may reject the complaint.** It may also be that having considered the complaint, the court may consider it appropriate to send the complaint to the police for investigation under Section 156(3) of the Code of Criminal Procedure. We can conceive of many other situations in which a Magistrate may not take cognizance at all, for instance, a case where he finds that the complaint is not made by the person who in law can lodge the complaint, or that the complaint is not entertainable by that court, or that cognizance of the offence alleged to have been committed cannot be taken without the sanction of the competent authority, etc. **These are cases where the Magistrate will refuse to take cognizance and return the complaint to the complainant. But if he does not do so and proceeds to examine the complainant and such other evidence as the complainant may produce before him then, it should be held to have taken cognizance of the offence and proceeded with the inquiry. We are, therefore, of the opinion that in the facts and circumstances of this case, the High Court erred in holding that the Magistrate had not taken cognizance, and that being a condition precedent, issuance of process was illegal**."
>
> (Emphasis added)

23. In ***State of Karnataka v. Pastor P. Raju:*** *(2006) 6 SCC 728*, the Hon'ble Supreme Court reiterated that "taking cognizance" signifies the application of judicial mind by the Magistrate to the allegations for the purpose of initiating judicial proceedings, and that it is a stage distinct from issuance of process, which follows after satisfaction regarding the existence of a *prima facie* case on the basis of material placed before the Court. The relevant observations in this regard are reproduced hereunder:

"**10**. Several provisions in Chapter XIV of the Code of Criminal Procedure use the word "cognizance". The very first Section in the said Chapter, viz., Section 190 lays down how cognizance of offences will be taken by a Magistrate. However, the word "cognizance" has not been defined in the Code of Criminal Procedure. The dictionary meaning of the word "cognizance" is - 'judicial hearing of a matter'. The meaning of the word has been explained by judicial pronouncements and it has acquired a definite connotation.

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12. In *Narayandas Bhagwandas Madhavdas v. The State of West Bengal AIR 1959 SC 1118* it was held that before it can be said that any Magistrate has taken cognizance of any offence under Section 190(1)(a) Criminal Procedure Code, he must not only have applied his mind to the contents of the petition but must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of the Chapter proceeding under Section 200 and thereafter sending it for inquiry and report under Section 202. It was observed that there is no special charm or any magical formula in the expression "taking cognizance" which merely means judicial application of the mind of the Magistrate to the facts mentioned in the complaint with a view to taking further action. It was also observed that what Section 190 contemplates is that the Magistrate takes cognizance once he makes himself fully conscious and aware of the allegations made in the complaint and decides to examine or test the validity of the said allegations. The Court then referred to the three situations enumerated in sub-section (1) of Section 190 upon which a Magistrate could take cognizance.Similar view was expressed in *Kishun Singh & Ors. v. State of Bihar (1993) 2 SCC 16* that when the Magistrate takes notice of the accusations and applies his mind to the allegations made in the complaint or police report or information and on being satisfied that the allegations, if proved, would constitute an offence, decides to initiate judicial proceedings against the alleged offender, he is said to have taken cognizance of the offence. In *State of West Bengal v. Mohd. Khalid & Ors. (1995) 1 SCC 684* the Court after taking note of the fact that the expression had not been defined in the Code held :-

> "..... In its broad and literal sense, it means taking notice of an offence. This would include the intention of initiating judicial proceedings against the offender in respect of that offence and taking steps to see whether there is any basis for initiating judicial proceedings or for other purposes. The word 'cognizance' indicates the point when a Magistrate or a Judge first takes judicial notice of an offence. It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons."

> **13**. It is necessary to mention here that **taking cognizance of an offence is not the same thing as issuance of process. Cognizance is taken at the initial stage when the Magistrate applies his judicial mind to the facts mentioned in a complaint or to police report or upon information received from any other person that an offence has been committed. The issuance of process is at a subsequent stage when after considering the material placed before it the Court decides to proceed against the offenders against whom a prima facie case is made out**."
>
> (Emphasis added)

24. In ***S.K. Sinha, Chief Enforcement Officer v. Videocon International Ltd. & Ors.:*** *(2008) 2 SCC 492*, the Hon'ble Supreme Court held that cognizance is said to be taken the moment a Magistrate applies his mind to the suspected commission of an offence, and that it is a condition precedent for initiation of criminal proceedings. It was further clarified that cognizance is taken under Chapter XIV of the Cr.P.C., by way of following observations:

> "20. "Taking cognizance" does not involve any formal action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance is taken prior to commencement of criminal proceedings. Taking of cognizance is thus a sine qua non or condition precedent for holding a valid trial. Cognizance is taken of an offence and not of an offender. Whether or not a Magistrate has taken cognizance of an offence depends on the facts and circumstances of each case and no rule of universal application can be laid down as to when a Magistrate can be said to have taken cognizance.
>
> 21. Chapter XIV (Sections 190-199) of the Code deals with "Conditions requisite for initiation of proceedings". Section 190 empowers a Magistrate to take cognizance of an offence in certain circumstances……
>
> 22. Chapter XV (Sections 200-203) relates to Complaints to Magistrates and covers cases before actual commencement of proceedings in a Court or before a Magistrate. Section 200 of the Code requires a Magistrate taking cognizance of an offence to examine the complainant and his witnesses on oath. Section 202, however, enacts that a Magistrate is not bound to issue process against the accused as a matter of course. It enables him before the

> issue of process either to 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 there is sufficient ground for proceeding further. The underlying object of the inquiry under Section 202 is to ascertain whether there is prima facie case against the accused. It thus allows a Magistrate to form an opinion whether the process should or should not be issued. The scope of inquiry under Section 202 is, no doubt, extremely limited. At that stage, what a Magistrate is called upon to see is whether there is sufficient ground for proceeding with the matter and not whether there is sufficient ground for conviction of the accused.
>
> 23. **Then comes Chapter XVI (Commencement of proceedings before Magistrates). This Chapter will apply only after cognizance of an offence has been taken by a Magistrate under Chapter XIV**…"
>
> (Emphasis added)

25. In ***Sarah Mathew v. Institute of Cardio Vascular Diseases:*** *(2014) 2 SCC 62*, the Constitution Bench of the Hon'ble Supreme Court, while examining the concept of "taking cognizance", relied upon and reaffirmed the principles laid down in earlier decisions including ***Jamuna Singh v. Bhadai Shah*** *(supra)*, ***Gopal Das Sindhi v. State of Assam*** *(supra)*, and ***S.K. Sinha v. Videocon International Ltd.*** *(supra)*. It was reiterated that cognizance is taken when the Magistrate applies his judicial mind to the offence with a view to initiating proceedings, and that such stage precedes the commencement of proceedings under the subsequent chapters of the Code.

> "**31**. It is now necessary to see what the words "taking cognizance" mean. Cognizance is an act of the court. The term "cognizance" has not been defined in the Criminal Procedure Code. To understand what this term means we will have to have a look at certain provisions of the Criminal Procedure Code. Chapter XIV of the Code deals with "Conditions requisite for initiation of proceedings". Section 190 thereof empowers a Magistrate to take cognizance upon

(a) receiving a complaint of facts which constitute such offence; (b) a police report of such facts; (c) information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed. Chapter XV relates to "Complaints to Magistrates". Section 200 thereof provides for examination of the complainant and the witnesses on oath. Section 201 provides for the procedure which a Magistrate who is not competent to take cognizance has to follow. Section 202 provides for postponement of issue of process. He 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 for the purpose of deciding whether there is sufficient ground for proceeding. Chapter XVI relates to commencement of proceedings before the Magistrate. Section 204 provides for issue of process. Under this section if the Magistrate is of the opinion that there is sufficient ground for proceeding and the case appears to be a summons case, he shall issue summons for the attendance of the accused. In a warrant case, he may issue a warrant. Thus, after initiation of proceedings detailed in Chapter XIV, comes the stage of commencement of proceedings covered by Chapter XVI.

32. **In *Jamuna Singh v. Bhadai Shah*, relying on *R.R. Chari* and *Gopal Das Sindhi v. State of Assam*, this Court held that:**

> **"8.... It is well settled now that when on a petition of complaint being filed before him a Magistrate applies his mind for proceeding under the various provisions of Chapter XVI of the Criminal Procedure Code, he must be held to have taken cognizance of the offences mentioned in the complaint."**

33. After referring to the provisions of CrPC quoted by us hereinabove, in Videocon International Ltd., this Court explained what is meant by the term "taking cognizance". The relevant observations of this Court could be quoted:

> "19. The expression 'cognizance' has not been defined in the Code. But the word (cognizance) is of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means 'become aware of and when used with reference to a court or a Judge, it connotes to take notice of judicially. It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone.
>
> 20. Taking cognizance' does not involve any formal action of any kind, It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance is taken prior to commencement of criminal proceedings. Taking of

> cognizance is thus a sine qua non or condition precedent for holding a valid trial. Cognizance is taken of an offence and not of an offender. Whether or not a Magistrate has taken cognizance of an offence depends on the facts and circumstances of each case and no rule of universal application can be laid down as to when a Magistrate can be said to have taken cognizance."
>
> In several judgments, this view has been reiterated. It is not necessary to refer to all of them."
>
> (Emphasis added)

26. Again in ***Manju Surana v. Sunil Arora:*** *(2018) 5 SCC 557*, the Hon'ble Supreme Court observed that once cognizance is taken under Section 190 of the Cr.P.C., the procedural framework under Chapter XV (which includes Section 200 of Cr.P.C.; and now, 223 of BNSS) is set in motion. It was also held that Section 202 of Cr.P.C. (under Chapter XV itself) would apply only in cases where the Magistrate has taken cognizance. These observations are set out below:

> "**10**. We may next refer to Chapter XIV of the Cr.P.C., which is under the heading "Conditions Requisite for Initiation of Proceedings". Section 190 states as to when cognizance would be taken and is reproduced for convenience as under:
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> ***
>
> **12**. **Once cognizance is taken the procedure is triggered off under Chapter XV with the heading "Complaints to Magistrates"**. It would be suffice to reproduce Section 200 as under…
>
> ***
>
> **22**. ……Thus, **Section 202 would apply only in cases where the Magistrate has taken cognizance** and chooses to inquire into the complaint either himself or through any other agency…"
>
> (Emphasis added)

27. A cumulative reading of the aforesaid decisions of the Hon'ble 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 Cr.P.C. (corresponding to Section 223 of BNSS). It also emerges that cognizance is taken of the offence and not of the offender, and that it is distinct from the subsequent stage of issuance of process under Section 204 of Cr.P.C. or dismissal of complaint under Section 203 of Cr.P.C., which happens after the Magistrate applies his mind to the material placed before it.

28. *In light of the aforesaid legal position*, the learned counsel for the respondent contended before this Court that once the Magistrate proceeds under Section 223 of the BNSS (corresponding to Section 200 of the Cr.P.C.), it necessarily implies that cognizance has already been taken, and therefore, the recording of the statement of the complainant and witnesses is a post-cognizance exercise.

29. On the other hand, this Court notes that Karnataka High Court in ***Basanagouda R. Patil v. Shivananda S. Patil*** *(supra)*, as well as the Co-ordinate Bench in ***Brand Protectors India Pvt. Ltd. v. Anil Kumar*** *(supra)* have held that even at the stage, when the statement of the complainant and witnesses, if any, is recorded under Section 223(1) of the BNSS, the question of taking cognizance does not arise; and only after such statements are recorded, notice is to be issued to the accused in terms of the first proviso to 223(1) of BNSS, and

thereafter, upon hearing the accused, the Magistrate would take cognizance and regulate its procedure.

30. Therefore, in this Court's view, it *prima facie* appears that the view taken by the Coordinate Bench of this Court in ***Brand Protectors India Pvt. Ltd. v. Anil Kumar*** *(supra)*, as well as by the High Courts of Karnataka, Allahabad and Kerala – to the effect that notice to the accused under the first proviso to Section 223(1) of the BNSS is to be issued after recording the statement of the complainant and witnesses – proceeds on the premise that cognizance is not taken at the stage of recording such statements. This understanding, however, appears to be at variance with several judicial precedents of the Hon'ble Supreme Court, as discussed hereinabove, which indicate that cognizance is said to be have been taken when the Magistrate applies his mind to proceed under Section 200 of the Cr.P.C., and that the examination of the complainant is a step subsequent to such taking of cognizance.

31. At the same time, it is also necessary to appreciate that the interpretation adopted in the aforesaid decisions, by the Co-ordinate Bench and other High Courts, may have been influenced by the change in statutory language brought about by the enactment of the BNSS. While Section 200(1) of the Cr.P.C. employed the expression "*a Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant*…", Section 223(1) of the BNSS now provides that "*a Magistrate having jurisdiction,* ***while*** *taking cognizance of an offence on complaint, shall examine upon oath the*

complainant…". It thus also appears to this Court that the introduction of the word "while" in the latter provision has led to an interpretation that the act of examination of the complainant on oath forms part of, or even precedes, the process of taking cognizance.

32. In the aforesaid circumstances, since two Coordinate Benches of this Court, and especially in ***Brand Protectors India Pvt. Ltd. v. Anil Kumar*** *(supra)*, have already expressed a view on the interpretation of Section 223(1) of the BNSS and its first proviso, which, in the considered opinion of this Court, it will be appropriate that in view of the judicial precedents of the Hon'ble Supreme Court and for the reasons recorded hereinabove, that the issue be authoritatively settled.

33. In State of ***Punjab v. Devans Modern Breweries:*** *(2004) 11 SCC 26*, the Hon'ble Supreme Court held that judicial discipline envisages that a Coordinate Bench should follow the decision of an earlier Coordinate Bench, and if it does not agree with the principles of law enunciated by the earlier Bench, the matter may be referred only to a larger Bench. These observations were reiterated in ***Mary Pushpam v Telvi Curusumary:*** *(2024) 3 SCC 224*.

34. Accordingly, this Court is of the view that the matter warrants reference to a Larger Bench of this Court, subject to orders of Hon'ble the Chief Justice, for determination of the controversy in question, on following questions of law:

(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?

35. *Insofar as the present case is concerned*, it is an admitted position that pursuant to interim order passed by this Court on 16.04.2025, the sworn statement of the complainant already stands recorded before the learned Magistrate. In these circumstances, no prejudice would be caused to either party if the proceedings before the learned Magistrate continue from the present stage. The petitioner-accused has also expressed no objection to appearing before the learned Magistrate in compliance with the notice issued and to participate in the hearing as contemplated under Section 223(1) of the BNSS, after the statement of the complainant stands recorded. Accordingly, the proceedings before the learned Magistrate in the present case shall continue, subject to any other order passed

by the Larger Bench in this regard.

36. The Registry is directed to place this judgment before Hon'ble the Chief Justice.

37. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

MARCH 18, 2026/vc
T.D.