



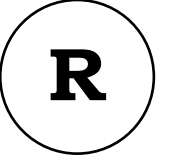
IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF JANUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 7806 OF 2025



BETWEEN:

PROF. NIRANJANA
AGED ABOUT 60 YEARS
S/O DR. SHIVARAMA HEGDE VANALLI
WORKING AS VICE CHANCELLOR
BENGALURU NORTH UNIVERSITY
AT SRI DEVARAJ URS EXTENSION
TAMAKA, KOLAR - 563 103.

...PETITIONER

(BY SRI SAMMITH S., ADVOCATE)

AND:

1. STATE BY
GULPET POLICE STATION
REPRESENTED BY SPP
HIGH COURT OF KARNTAKA
BENGALURU - 560 001.
2. SRI MANJUNATHA R.,
S/O LATE RAJAPPA
AGED ABOUT 37 YEARS
PREVIOUSLY WORKING AS GUEST FACULTY
JOURNALISM DEPARTMENT
BENGALURU NORTH UNIVERSITY
R/AT NO. 2, 3RD CROSS
VEERANJANEYA NAGAR





NEAR GOKUL COLLEGE
KOLAR TOWN, KOLAR - 563 102.

...RESPONDENTS

(BY SRI B.N.JAGADEESHA, ADDL. SPP FOR R1;
SRI D.ASWATHAPPA, ADVOCATE FOR R2)

THIS CRL.P FILED U/S 528 BNSS PRAYING TO QUASH THE FIR REGISTERED BY THE RESPONDENT POLICE i.e., GULPET POLICE IN CR.NO.71/2025 DTD 06.06.2025 AGAINST THE PETITIONER FOR THE OFFENCES P/U/S 3(1)(q) AND (u) OF SC/ST (POA) ACT, 1989, U/S 356(2) OF THE BNS, 2023; SET ASIDE THE ORDER DTD 04.06.2025 IN PCR.NO.2/2025, PENDING ON THE FILE OF THE II ADDL. DISTRICT AND SESSIONS JUDGE, KOLAR, KOLAR DISTRICT.

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

CORAM: **HON'BLE MR. JUSTICE M.NAGAPRASANNA**

ORAL ORDER

Petitioner – sole accused is before this Court calling in question registration of a crime in Crime No.71/2025, for the offences punishable under Sections 3(1)(q) and (u) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act') and Section 356(2) of the BNS, 2023, which arose from a PCR No.2/2025 registered on 04.06.2025.



2. Heard Sri Sammith S., learned counsel for petitioner, Sri B.N.Jagadeesha, learned Additional State Public Prosecutor for respondent No.1 and Sri D. Aswathappa, learned counsel for respondent No.2.

3. The petitioner is the accused and respondent No.2, the complainant. The petitioner at the relevant point in time was working as a Vice Chancellor of the Bengaluru North University. Owing to certain allegations against respondent No.2 - complainant, the petitioner - the Syndicate of the University opined to terminate the services of respondent No.2, who was a part time lecturer. Respondent No.2 then challenges the same before the co-ordinate bench of this Court and the co-ordinate bench in terms of the order dated 08.07.2025 sets aside the order of termination and remits the matter back to the hands of the University to afford an opportunity to the petitioner therein or conduct an enquiry in accordance with law and then pass necessary orders thereon. The said finding has nothing to do with what is now being agitated before this Court in the subject petition. During the subsistence of the writ petition, respondent No.2 sets the criminal law into motion by



registering a private complaint register in P.C.R.No.2/2025 on 04.06.2025, for the aforesaid offences. The Special Court refers the matter for investigation, which later becomes a crime in Crime No.71/2025. The registration of the crime has driven the petitioner to this Court in the subject petition.

4. Sri Sammith S., learned counsel appearing for the petitioner would submit that none of the allegations that are necessary to be met for the offences alleged are even present in the case at hand. He would contend that the provisions of the Act would not get attracted as the petitioner, owing to the resolution of the Syndicate, respondent No.2 had been terminated from the service and that cannot result as a counter blast and a crime being registered thereon.

5. Sri D. Aswathappa, learned counsel for respondent No.2 - complainant submits that all the offences are met in the termination order itself as a co-employee had registered a complaint against the petitioner for his misbehavior and therefore, the termination had come about. Be that as it may.



6. The issue now revolves around the legal snags that have percolated into the subject proceedings. The private complaint under Section 223 of the BNSS is registered by respondent No.2 - complainant on 28.05.2025 for the aforesaid offences. The first legal snag is that, the reference is made for offence punishable under the provisions of the Act and Section 356(2) of the BNS, 2023, which was Section 500 of the earlier regime - the IPC, which is for defamation. If the issue is of defamation, the concerned Court could not have directed investigation to be conducted by the police as it is by now a settled principle of law that if defamation is an amalgam of all other offences, there cannot be an investigation by the police in the case of a defamation, which is between two individuals or entities. This Court in an identical issue in the case of **PRASHANTH SAMBARGI v. STATE OF KARNATAKA**¹, has held as follows:

" "

9. [...] The message depicts that the complainant is a con artist of Bangalore, smooth talker and a 420 and also narrates that multiple cases are registered against him in different police stations and the man is on a look out to cheat anyone. The afore-quoted statement is what drives the complainant to register the complaint against the

¹CRIMINAL PETITION NO.349 of 2021, Disposed On 10.05.2022



petitioner invoking Section 200 of the Cr.P.C. for offences punishable under Sections 499 and 500 of the IPC and Section 67 of the Act. The learned Magistrate refers the matter for investigation under Section 156(3) of the Cr.P.C., pursuant to which, an FIR is registered against the petitioner for offence punishable under Sections 499 and 500 of the IPC and Section 67 of the Act in Crime No.286 of 2020.

10. The learned counsel appearing for the petitioner has raised several grounds, but what is required to be noticed is, whether the learned Magistrate could have referred the matter for investigation to the Police under Section 156(3) of the Cr.P.C. in a case of defamation which is an offence punishable under Section 500 of the IPC. The issue need not detain this Court for long or delve deep into the matter in view of the decisions of the Apex Court and the High Court of Kerala while considering the very issue. In the case of **SUBRAMANIAN SWAMY v. UNION OF INDIA [(2016) 7 SCC 221]** the Apex Court has held as follows:

"207. Another aspect required to be addressed pertains to issue of summons. Section 199 Cr.P.C. envisages filing of a complaint in Court. In case of criminal defamation neither can any FIR be filed nor can any direction be issued under Section 156(3) Cr.P.C. The offence has its own gravity and hence, the responsibility of the Magistrate is more. In a way, it is immense at the time of issue of process. Issue of process, as has been held in *Rajindra Nath Mahato v. T.Ganguly* [MANU/SC/0167/1971: (1972) 1 SCC 450], is a matter of judicial determination and before issuing a process, the Magistrate has to examine the complainant. In *Punjab National Bank v. Surendra Prasad Sinha* [MANU/SC/0345/1992: (1993) SCC (Cri) 149] it has been held that judicial process should not be an instrument of oppression or needless harassment. The Court, though in a different context, has observed that there lies responsibility and duty on the Magistrate to find whether the accused concerned should be legally responsible for the offence charged for. Only on satisfying that the law casts liability or creates offence against the juristic person or the persons impleaded, then only process would be issued. At that stage the court would be circumspect and judicious in exercising



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discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the private complaint as vendetta to harass the persons needlessly. Vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it would not be the means of wreak personal vengeance. In Pepsi Foods Ltd., v. Special Judicial Magistrate [MANU/SC/1090/1998: (1998) 5 SCC 749], a Two Judge Bench has held that summoning of an accused in a criminal case is a serious matter and criminal law cannot be set into motion as a matter of course.”
(Emphasis supplied)

The Apex Court, in the aforesaid judgment, holds that where the complaint made by the complainant before the learned Magistrate involves offence punishable under Section 500 of the IPC, the learned Magistrate cannot exercise powers under Section 156(3) of the Cr.P.C. so as to direct Police to register a crime and then investigate into the offence, in view of the specific bar contained in Section 199 of the Cr.P.C. This would become applicable even in cases where offences are alleged of other provisions of law along with Section 500 of the IPC.

11. It is germane to notice the judgment of a learned single Judge of the High Court of Kerala considering the very issue in the case of **SURESH v. SUB-INSPECTOR OF POLICE [2019 (4) KLT 106]** wherein it has been held as follows:-

"4. It will be pertinent to refer to the provisions contained in Section 199 of the Cr.P.C. which reads as follows:-

*"199. Prosecution for defamation.—(1)
No Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence:*

Provided that where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other



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person may, with the leave of the Court, make a complaint on his or her behalf.

(2) Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code (45 of 1860) is alleged to have been committed against a person who, at the time of such commission, is the President of India, the Vice-President of India, the Governor of a State, the Administrator of a Union territory or a Minister of the Union or of a State or of a Union territory, or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions a Court of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor.

(3) Every complaint referred to in sub-section (2) shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him.

(4) No complaint under sub-section (2) shall be made by the Public Prosecutor except with the previous sanction—

(a) of the State Government, in the case of a person who is or has been the Governor of that State or a Minister of that Government;

(b) of the State Government, in the case of any other public servant employed in connection with the affairs of the State;

(c) of the Central Government, in any other case.

(5) No Court of Session shall take cognizance of an offence under sub-section (2) unless the complaint is made within six months from the date on which the offence is alleged to have been committed.

(6) Nothing in this section shall affect the right of the person against whom the offence is alleged to have been committed, to make a complaint in respect of that offence before a



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Magistrate having jurisdiction or the power of such Magistrate to take cognizance of the offence upon such complaint."

*In this case we are not really concerned much with the applicability of sub-sections (3), (4) and (5) of Section 199, as nobody has a case that the alleged defamation has been made as against anyone of the public dignitaries mentioned therein, more particularly in sub-section (2) thereof. Sub-section (1) of Section 199 of the Cr.P.C. clearly and categorically mandates that no court shall take cognizance of an offence punishable under chapter XXI of the IPC., except upon a complaint made by some person aggrieved by the offence. In this case, we are also not much concerned with the applicability of the proviso to subsection (1) of Section 199 as nobody has got a case that the complainant concerned is below the age of 19 or comes within any of the categories mentioned in that proviso. Chapter XXI of the IPC is captioned with the heading "OF DEFAMATION" and the said Chapter XXI contains Sections 499, 500, 501 and 502 of the IPC. In the instant case it is beyond any dispute that the offence alleged is as per Section 499 (criminal defamation), which is punishable as per Section 500 (punishment for defamation) of the IPC and hence it is beyond the pale of any controversy that the sole offence alleged in the instant case comes under Chapter XXI of the IPC and therefore there cannot be any dispute about the applicability of sub-section (1) of Section 199 of the IPC which deals with the offences mentioned in Chapter XXI of the IPC. **The legislature has specifically mandated as per Section 199(1) of the Cr.P.C. that no court shall take cognizance of an offence punishable under Chapter XXI of the IPC except upon a complaint made by some person aggrieved by the said offence. Therefore, the only manner on the basis of which, cognizance could be taken by the competent criminal court in respect of an offence alleged as per Section 500 of the IPC comes under Chapter XXI of the IPC is that the aggrieved complainant who has locus standi has to file a private criminal complaint as envisaged in Section 190(1)(a) of the Cr.P.C. and thereafter it is for the criminal trial Court concerned to take appropriate decision in the matter of taking cognizance and then to proceed thereafter in accordance with law.** If on the other hand, the learned Magistrate before whom the petition/complaint is filed, does not*



*treat it as a complaint under Sections 190 and 200 of the Cr.P.C. and then decides to direct the Police to register crime and then to investigate the offence as per Section 500 of the IPC in purported exercise of the powers conferred under Section 155(2) of the Cr.P.C., then the Police will have to register the crime and after conducting such investigation, if it is found that there is substance in the allegations, it is for the Police to file appropriate final report/charge sheet in the case in terms of Section 173 of the Cr.P.C. **Thereafter, the criminal trial court will be barred from taking cognizance in respect of an offence as per Section 500 of the IPC by following the latter course for the simple reason that the legislature permitted the said court to take cognizance in respect of an offence under Chapter XXI of the IPC only on the basis of a complaint made by the person aggrieved of the said offence and not on the basis of a final report/charge sheet or Police report given by the Police authority concerned. Since the very taking of the cognizance in such a case is barred by virtue of the specific mandatory provision contained in Section 199(1) of the Cr.P.C. it is only to be held that the learned Magistrate has no jurisdiction under Section 155(2) to direct the Police to register a crime and conduct investigation in respect of a petition involving allegation in relation to Section 500 of the IPC. There could be cases, where the petition/complaint given by the complainant concerned would be making allegations, not only in respect of offence as per Section 500 of the IPC which is a non cognizable offence but in respect of certain other cognizable offences as well. The Apex Court has held in the case of Subramanian Swamy v. UOI & Ors. [MANU/SC/0621/2016: (2016) 7 SCC 221] has held, more particularly in paragraph 207 thereof that in such situation, the learned Magistrate cannot even exercise the powers under Section 156(3) of the Cr.P.C. so as to direct the Police to register a crime as far as the investigation of an offence as per Section 500 of the IPC. Para 207 of the judgment of the Apex Court in Subramanian Swamy v. UOI & Ors. [MANU/SC/0621/2016: (2016) 7 SCC 221], P.350-351 reads as follows:***

"207. Another aspect required to be addressed pertains to issue of summons. Section 199 Cr.P.C. envisages filing of a complaint in



Court. In case of criminal defamation neither can any FIR be filed nor can any direction be issued under Section 156(3) Cr.P.C. The offence has its own gravity and hence, the responsibility of the Magistrate is more. In a way, it is immense at the time of issue of process. Issue of process, as has been held in Rajindra Nath Mahato v. T.Ganguly [MANU/SC/0167/1971: (1972) 1 SCC 450], is a matter of judicial determination and before issuing a process, the Magistrate has to examine the complainant. In Punjab National Bank v. Surendra Prasad Sinha [MANU/SC/0345/1992: (1993) SCC (Cri) 149] it has been held that judicial process should not be an instrument of oppression or needless harassment. The Court, though in a different context, has observed that there lies responsibility and duty on the Magistrate to find whether the accused concerned should be legally responsible for the offence charged for. Only on satisfying that the law casts liability or creates offence against the juristic person or the persons impleaded, then only process would be issued. At that stage the court would be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the private complaint as vendetta to harass the persons needlessly. Vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it would not be the means of wreak personal vengeance. In Pepsi Foods Ltd., v. Special Judicial Magistrate [MANU/SC/1090/1998: (1998) 5 SCC 749], a Two Judge Bench has held that summoning of an accused in a criminal case is a serious matter and criminal law cannot be set into motion as a matter of course."

5. Therefore, the Apex Court has clearly held that even in cases where the petitions/complaints made by the complainant before the learned Magistrate are in respect of allegations involving, not only offence under Section 500 of the IPC which is a non-cognizable offence, but also includes other cognizable offences, the learned Magistrate cannot exercise the powers under Section 156(3) of the Cr.P.C. so as to direct the Police to register a crime and then to investigate into the offence as per Section 500 of the IPC in view of the specific bar contained in Section 199 of the Cr.P.C. So the embargo under Section 199 of the Cr.P.C. would



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also bar the jurisdiction of the learned Magistrate under Section 156(3) of the Cr.P.C. to order the Police to register a crime and to investigate offence as per Section 500 of the IPC in a case where the allegations are, not only in respect of offences as per Section 500 of the IPC, which is a noncognizable offence, but also in respect of other offences which are cognizable offences, etc. it automatically flows there from that where the allegations are solely in respect of the offence as per Section 500 of the IPC which is under Chapter XXI of the IPC, then the jurisdiction under Section 155 (2) of the Cr.P.C. is not available to the learned Magistrate to direct the Police to register a crime and investigate the offence as per Section 500 of the IPC in view of the specific bar contained in Section 199 of the Cr.P.C. Thus, in view of the abovesaid legal position settled by the Apex Court in para 207 of the Subramanian Swamy's case supra, the embargo under Section 199 of the Cr.P.C. would also bar the learned Magistrate from taking resort to the provisions contained in Section 156(3) of the Cr.P.C. to direct the Police to register a crime and to investigate the offence as per Section 500 of the IPC in a case where the allegations involve, not only in respect of offence as per Section 500 of the IPC but also other offences which are cognizable offences. Needless to say, in respect of such offences, which are cognizable offences, for which there is no other statutory prohibition, the learned Magistrate can certainly exercise the power so as to direct the Police to register and to investigate into such aforementioned offences. Hence, it automatically flows therefrom that where the allegations of a complainant like the 3rd respondent which involves solely the offence as per Section 500 of the IPC which is under Chapter XXI of the IPC, then the statutory bar under Section 199 (1) of the Cr.P.C. would also prohibit the learned Magistrate from taking resort to the provisions contained in Section 155(2) of the Cr.P.C. so as to direct the Police to register a crime and to investigate the offence as per Section 500 of the IPC. This crucial aspect of the matter is all the more amplified by the legislature in engrafting the provision contained in the sub-section (6) of Section 199 of the Cr.P.C., wherein it is stipulated that nothing in Section 199 shall affect the right of the person against whom is offence is alleged to have been committed, to make a complaint



in respect of that offence before a Magistrate having jurisdiction or the power of such Magistrate to take cognizance of the offence upon such complaint. Therefore, by the specific provision in Section 199(6) of the Cr.P.C. the legislature has made it clear that for offences under Chapter XXI of the IPC, the only remedy of the complainant, who is aggrieved of the said offences, is to file a private criminal complaint as understood in Sections 190 and 200 of the IPC and then for the competent criminal court concerned to take appropriate decision in the matter of taking cognizance and then to proceed with the matter in accordance with law.

6. Accordingly, it is held that the impugned decision taken by the learned Magistrate as referred to in Anx.I(7), whereby the learned Magistrate has directed the Police to register and to investigate the offence as per Section 500 of the IPC in this case is illegal and ultra vires. Consequently, it is only to be held that further impugned action on the part of the 1st respondent SHO in registering Anx.I FIR in Crime No.900/2018 of Vadakkekara Police Station, for offence as per Section 500 of the IPC, wherein the petitioner has been arrayed as the sole accused therein, is also illegal and ultra vires. Accordingly, the abovesaid impugned proceedings in Anx.I will stand set aside. However, it is made clear that nothing in this order will in any manner preclude the 3rd respondent in filing an appropriate private criminal complaint in respect of the abovesaid offence and then to proceed with the matter in accordance with law. It is made clear that this Court has only held that the learned Magistrate has no jurisdiction to take resort to the provision contained in Section 155(2) of the Cr.P.C. so as to direct the Police to register a crime and then to investigate the offence as per Section 500 of the IPC, etc."

(Emphasis supplied)

In the light of the judgment of the Apex court and that of the learned single Judge of the High Court of Kerala (*supra*) interpreting Sections 199, 499 and 500 of the IPC, the order of the learned Magistrate directing investigation and all proceedings thereto would be a nullity in law. Therefore, the proceedings



require to be obliterated and the matter remitted back to the learned Magistrate to take up such proceedings bearing in mind the observations made in the course of the order.”

(Emphasis supplied)

In the light of the afore-quoted judgment, the concerned Court should have taken cognizance of the offences on the basis of the complaint, on the score that when cognizable offences are alleged along with the offence of defamation, the bar under Section 222 of the BNSS, which was Section 199 of the Cr.P.C. – the earlier regime, would kick in. Therefore, the matter ought not to have been referred to investigation.

7. The second legal snag is that, in the light of the procedure prescribed under Subsection (1) of Section 223 of the BNSS, the concerned Court ought to have heard the accused prior to taking cognizance of the offences. The said procedure which is mandatory in terms of law and plethora of judgments rendered by the Apex Court and this Court is given a go-by. I deem it appropriate to notice the law on this issue.



7.1. The Apex Court, in the case of **KUSHAL KUMAR AGARWAL v. DIRECTORATE OF ENFORCEMENT**², holds as follows:

" "

4. Section 223 of the BNSS corresponds to Section 200 of the Criminal Procedure Code, 1973 (hereinafter referred to as 'the CrPC'). However, a proviso similar to the proviso to sub-section (1) of Section 223 does not find place in Section 200 of the CrPC.

5. This Court has taken a consistent view that a complaint filed by the Enforcement Directorate under Section 44 (1)(b) of the PMLA will be governed by Sections 200 to 204 of the CrPC. This view has been taken by this Court in the cases of *Yash Tuteja v. Union of India*¹ and *Tarsem Lal v. Enforcement Directorate*². Therefore, the provisions of Chapter XVI, containing Sections 223 to 226, will also apply to a complaint under Section 44 of the PMLA. As the complaint has been filed after 1st July, 2024, Section 223 of the BNSS will apply to the present complaint.

6. The proviso to sub-section (1) of Section 223 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.

7. In this case, admittedly, an opportunity of being heard was not given by the learned Special Judge to the appellant before taking cognizance of the offence on the complaint. Only on that ground, the impugned order dated 20th April, 2024, will have to be set aside."

(Emphasis supplied)

²2025 SCC OnLine SC 1221



7.2. A little earlier to the afore-quoted judgment of the Apex Court, this Court in the case of **BASANAGOUDA R. PATIL v. SHIVANANDA S. PATIL**³, has interpreted Section 223 of the BNSS and delineated the procedural drill for the consideration of a private complaint wherein, it is held as follows:

"....

7. The registration of the private complaint for offences punishable under Section 356(2) of the BNSS is not in dispute. The fulcrum of the complaint was that the petitioner made a defamatory speech against the respondent at an election rally. The issue that is brought before the Court, at this juncture, is not on the merit of the matter. The complaint is filed by the respondent invoking Section 223 of the BNSS, which is Section 200 in the earlier regime - Cr. P.C. The moment complaint is registered, a notice is issued to the accused. Issuance of notice to the accused has driven the petitioner to this Court, in the subject petition, contending that it is contrary to the procedure to be adopted in law. Therefore, it becomes germane to notice certain provisions of the BNS 2023. Filing of the private complaint is dealt with under Section 223 of the BNSS, which was Section 200 of Cr. P.C., it reads as follows:

"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:

³2024 SCC OnLine Kar 96



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

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

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

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

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

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

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

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

(Emphasis supplied)

Proviso to sub-section (1) of Section 223 of the BNSS mandates that a Magistrate while taking cognizance of an offence, on a complaint, shall examine upon oath, the complainant and the witnesses present if any and reduce it into writing. The proviso further mandates that no cognizance of an offence shall be taken by the Magistrate without giving an opportunity to the accused of being heard. Section 227 of the BNSS deals with issuance of process which is akin to Section 204 of the Cr. P.C. This stage is yet to arrive in the case at hand.



8. The obfuscation generated in the case at hand is with regard to interpretation of Section 223 of the BNSS, as to whether on presentation of the complaint, notice should be issued to the accused, without recording sworn statement of the complainant, or notice should be issued to the accused after recording the sworn statement, as the mandate of the statute is, while taking cognizance of an offence the complainant shall be examined on oath. **The proviso mandates that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard.**

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.

11. The proviso indicates that an accused should have an opportunity of being heard. Opportunity of being heard would not mean an empty



formality. Therefore, the notice that is sent to the accused in terms of proviso to sub-section (1) of Section 223 of the BNSS shall append to it the complaint; the sworn statement; statement of witnesses if any, for the accused to appear and submit his case before taking of cognizance. In the considered view of this Court, it is the clear purport of Section 223 of BNSS 2023."

(Emphasis supplied)

On a blend of the afore-quoted judgments of the Apex Court and of this Court, what would unmistakably emerge is that, the accused has to be afforded an opportunity of hearing prior to taking cognizance of the offences.

8. The aforesaid legal snags would undoubtedly lead to obliteration of the reference and the crime so registered by the learned Magistrate. What remains is the complaint. In that light, I deem it appropriate to obliterate the crime so registered and the order of reference while sustaining the complaint. The concerned Court to act in accordance with law while considering the complaint of respondent No.2 afresh, bearing in mind the observations made in the course of the order.

9. For the aforesaid reasons, the following:

ORDER

a. The criminal petition is allowed in part.



- b. The order of reference dated 04.06.2025 and registration of the crime in Crime No.71/2025 stand quashed.
- c. The matter is remitted back to the hands of the concerned Court, to consider the complaint of respondent No.2, bearing in mind the observations made in the course of the order.

Ordered accordingly.

Sd/-
(M.NAGAPRASANNA)
JUDGE

NVJ
List No.: 1 Sl No.: 15
CT:SS