

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Case: WP(C) No.1075/2025

Jagmohan Singh

..... Petitioner(s)

Through :- Mr. Farhan Mirza, Advocate

Vs

Union Territory of J&K and others

.....Respondent(s)

Through :- Mrs. Monika Kohli, Sr. AAG with
Sh. Ajay S. P. South, is present in person.

CORAM:

HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE

ORDER

13.05.2025

01. Impugned in the instant petition filed under the provisions of Article 226 of the Constitution of India is a notice issued by the respondent No.2 i.e. Superintendent of Police, City South, Jammu in terms of Section 35 (3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS for short) to the petitioner-Jagmohan Singh Wazir, whereby the later was directed to appear before the former on 01.05.2025 at 10:00 am in connection with the verification of the facts of a complaint filed against him (petitioner) by the respondent No.3-Jaslok Singh.

02. The impugned notice has been assailed on the main grounds that same is bad under law for having been issued in contravention of the provisions of Section 35 BNSS, as the same could have been issued only subsequent to the registration of FIR; that same was sent through Whatsapp- a mode not prescribed for such type of notice and that too at the initial stage and

that the respondent No.3 i.e. the alleged complainant instead of complying with the orders of the courts below having been passed in the pending litigations, managed to hatch criminal proceedings on false, frivolous and vexatious grounds.

03. I have heard Mr. Farhan Mirza, Advocate for the petitioner and Mrs. Monika Kohli, learned Sr. AAG in rebuttal for respondent No.2, who also appeared in person.

04. From the perusal of the petition and the consideration of the rival contentions advanced on both the sides it appeared that actually the respondent No.3 was married to the daughter of the petitioner some years back but unfortunately the matrimonial differences arose between the two spouses which resulted in the animosity between the two families leading to the filing of multiple litigations inter-se. The respondent No.3, who happens to be the son-in-law of the petitioner and reported to be presently outside the country got a complaint filed through his parents before the respondent No.2 against the petitioner and his family on the allegations of criminal intimidation, threatening and attempts of extortion etc. That respondent No.2 on perusal of the complaint and upon proper application of his mind did not thought it proper to immediately arrest the petitioner-Jagmohan Singh Wazir on the basis of the mere reflection of cognizable offences from the complaint, having regard to the matrimonial dispute being the bone of contention and accordingly chose to issue a notice under Section 35(3) BNSS to the petitioner/accused for verification of the averments of the complaint.

05. As hereinbefore mentioned, the petitioner is aggrieved of the issuance of impugned notice as there was no FIR registered against him and secondly, the said notice was not accompanied with the copy of any complaint against him.

06. In the light of the provisions of Sections 30 & 35(3) BNSS, there appear to be no illegality in the issuance of the impugned notice. It is a settled legal position that a Station House Officer or his superior officer exercising the similar powers in view of the provisions of Section 30 of BNSS, is under an obligation to register an FIR if the complaint on the face of it discloses the commission of a cognizable offence unless the allegations appear to be actuated by *mala-fides/malice*.

07. The provisions of clause 3 of the Section 35 of the BNSS authorizes a police officer to issue a prior notice in the circumstances where he is of the opinion that the arrest of the accused is not required as per the provisions of the clause (1).

08. It is profitable to reproduce the provisions of the Sections 30 and 35 of BNSS for the sake of convenience:

30: Powers of superior officers of police:- Police officers superior in rank to an officer in charge of a police station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station.

35: When police may arrest without warrant:-

(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person—

(a) who commits, in the presence of a police officer, a cognizable offence; or

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:—

(i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(ii) the police officer is satisfied that such arrest is necessary—

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing:

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest; or

(2) Subject to the provisions of section 39, no person concerned in a non-cognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned, shall be arrested except under a warrant or order of a Magistrate.

(3) The police officer shall, in all cases where the arrest of a person is not required under sub-section (1) issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(4) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(5) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(6) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.

(7) No arrest shall be made without prior permission of an officer not below the rank of Deputy Superintendent of Police in case of an offence which is punishable for imprisonment of less than three years and such person is infirm or is above sixty years of age.

09. In the facts and circumstances of the case especially having regard to the matrimonial dispute being the bone of contention between the two families, the respondent No.2 appears to have proceeded on the complaint in a just and

proper manner. The respondent No.2 by initiating a preliminary verification appears to have complied with the relevant provision of the law governing the field. However, the respondent No.2 ought to have facilitated the service of the notice through an ordinary mode accompanied with a copy of the complaint as being the requirement of law. Principles of natural justice are applicable in both civil and criminal proceedings.

10. The instant petition is, accordingly, disposed of with the direction to the respondent No.2 to deal with the complaint in question fairly in accordance with the law, while being mindful of the animosity existing between the two families of petitioner/accused and respondent No.3/complainant as also the pendency of litigation between them. The respondent No.2 shall, however, facilitate the issuance of a fresh notice if needed to the petitioner/accused through ordinary mode accompanied with a copy of the complaint and documents, if any.

11. *Disposed of.*

**(MOHD. YOUSUF WANI)
JUDGE**

JAMMU

13.05.2025

Shammi

Whether the order is speaking:	Yes/No
Whether the order is reportable:	Yes/No