

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CRM (M) No. 845/2024

Gurdas Chand and others

.... Petitioner/Appellant(s)

Through:- Mr. Rakesh Chagotra, Sr. Adv with
Mr. Abhishekh Verma, Advocate

V/s

Mangal Singh

.....Respondent(s)

Through:- Mr. Pawan K. Kundal, Advocate

CORAM: HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL, JUDGE

ORDER

29.09.2025

1. A complaint under Sections 500, 506, 418, 120-B IPC was filed by Mangal Singh against Rohit Sargotra and two others, alleging therein defamation, criminal breach of trust, cheating and criminal conspiracy. The Trial Court took cognizance of the complaint and while issuing process, relied upon the affidavits/statements of the complainant recorded on affidavit.
2. The said order of cognizance and issuance of process has been challenged in this petition, precisely on the ground that the Trial Court has not complied with the provisions as contained in Section 223 of BNSS, 2023, and also has not provided the petitioners an opportunity of being heard before taking cognizance. Section 223 of BNSS, is reproduced as under:-

223. 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:

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 a Magistrate makes over the case for inquiry or trial to another Magistrate under Section 212:**

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

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

3. Learned counsel for the petitioners submits that the provisions contained in the said Section have not been complied with by the Trial Court. He further submits that the impugned complaint before the learned Magistrate was required to be dealt with under BNSS. So far as provisions contained in Section 223 of BNSS are concerned, it is clear that Trial Court had not followed the same because a Magistrate, while taking cognizance of an offence on a complaint, is required to examine the complainant and witnesses present, if any, and reduce the substance of such examination in writing. He has also not given opportunity of being heard to the accused as is provided under said Section.
4. The impugned order is, therefore, in violation of the said Section and cannot sustain. The same is set aside. The complaint is remanded back

to the Trial Court, who shall proceed afresh strictly in accordance with the provisions contained in Chapter XVI, Section 223 of BNSS, 2023.

5. Disposed of.

(Vinod Chatterji Koul)
Judge

Jammu:
29.09.2025
Shafqat

