

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CRM(M) 272/2025
CrIM(638/2025)

ABDUL MAJEED LONE

...Appellant(s)/Petitioner(s)

Through: Mr. Owais Ashraf Lone, Advocate

Vs.

GULSHANA BANO

...Respondent(s)

Through: Mr. Ateeb Kanth, Advocate

CORAM:

HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL-JUDGE

ORDER
02.12.2025

Through the medium of this petition, petitioner is challenging the proceedings which according to the petitioner have not been taken strictly in accordance with the provisions as contained in Chapter XXXVI of the Bharatiya Nagarik Suraksha Sanhita, 2023, (BNSS). The complaint has been filed before the Trial court by the respondent-complainant alleging therein commission of offences under Section 316, 314, 351, 115(2) of BNS read with Section 225 of BNSS.

The complainant has alleged in the complaint that she is legally wedded wife of Accused No. 1 and the marriage between Accused No. 1 and the complainant was solemnized in the year 2011 in accordance with Muslim Personal law.

That right from the inception of marriage, the behavior, attitude and conduct of the above-named accused persons towards her remained harsh, cruel and un-becoming and she was subjected to mental and physical torture by the said accused persons.

That after the intervention of the common well-wishers and respectable of the society tried to resolve the dispute between her and the accused persons, but the accused persons didn't change their conduct and behavior towards her.

That that accused persons used to beat her mercilessly without any rhyme or reason.

That at the time of marriage, she received various items and gifts from her parents and relatives which were entrusted by her to the above named accused persons for safe custody at the time of marriage and same are in their illegal custody till date.

The above-named accused persons inflicted atrocities upon her and ultimately, threw her out from in laws home few days before in helpless and merciless conditions. It is submitted that she begged before them for allowing her to take articles/items.

She approached them with request to handover the belongings to her lying in their custody, but in return she was threatened of dire consequences if she makes any claim of the said goods and threatened the complainant that they will kill her.

The Trial court on the presentation of the complaint passed the following order: -

“The instant complaint has been transferred to this court for disposal under law by worthy CJM. Office report sought and perused. File is in order. Let it be diarized and numbered office to issue pre cognizance notice to accused in terms of section 223 BNSS along with complaint & Annexures. Put up on 22.04.2025.”

On the said notice having been issued, accused appeared and have filed objections in response to the notice so served. And on the next dated i.e 02.05.2024, Magistrate has directed the SHO, P/S Khansahab to investigate the matter in terms of Section 225 of BNSS.

Chapter XXXVI dealing with the complaints to the Magistrates providing under Section 223, Examination of complainant, which reads as under:

“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:

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:

Magistrate under Section 212 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.”

It would be clear from the provisions so contained in Section 223 that the Magistrate while taking cognizance of an offence on the complaint has to examine upon oath the complainant and witnesses present and has to reduce into writing the substance of such examination and that statement has to be signed by the complainant and the witnesses and also the Magistrate. Order dated 02.05.2024 would make it clear that the Magistrate has not complied with this procedure. He has not recorded the statement of the complainant nor any witnesses and instead of recorded that he has issued a pre-cognizance notice as provided in Section 223 and before considering the objections of the accused has proceeded further and took recourse to Section 225 of BNSS and had directed the SHO P/S Khanshab to investigate who in pursuance of the said order has taken into possession certain belongings, list of which has been placed on record.

I have considered the complaint and have also heard learned counsel for the respondent, who submits that Trial court can be asked to proceed afresh in the matter as the provisions have not been complied with.

Having regard to the submissions made and procedure, the Trial court is required to adopt the provisions which are to be complied with and the Trial court having not complied with the said provisions, the procedure so adopted and the proceedings initiated are bad in law and are therefore, quashed. The Trial court shall proceed in the matter afresh strictly in accordance with the provisions of law.

(VINOD CHATTERJI KOUL)
JUDGE

Srinagar
02.12.2025.
“Imtiyaz”