

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

CRM (M) No. 798/2024

VIKAS JHA ...Petitioner(s)/appellant(s)

Through: Mr. Umar Rashid Wani, Advocate

Vs.

SYED ARSHID HUSSAIN ...Respondent(s)

Through: Mr. Pir Baseer Ullah, Advocate

CORAM:
HON'BLE MR JUSTICE MOHD YOUSUF WANI, JUDGE
ORDER
19.09.2025

1. The short grievance of the petitioner as projected through the instant petition being filed under the provisions of Section 528 of the BNSS, 2023, is that in the complaint filed by the respondent against him and pending before the learned Forest Magistrate, Srinagar, the concerned Magistrate has adopted a procedure in contravention of the provisions of Section 225 of the BNSS by directly issuing pre-cognizance notice against him, undermining the fact that he does not reside within the jurisdiction of the said Magistrate. It has been inter-alia pleaded in the instant petition that, as per the provisions of Section 225 of the BNSS, the learned Magistrate, having regard to the fact that the petitioner/accused being a resident of the area, outside his jurisdiction had to postpone the issuance of process against him and to either enquire into the case himself or to direct an investigation to be made by a police officer or by such other person as he deemed fit, for the purpose of deciding whether or not there is sufficient ground for proceeding in the matter.
2. It is admitted by the learned counsel for the respondent/complainant that the accused resides outside the jurisdiction of the Id. Trial Magistrate.
3. I have heard learned counsel for both parties and considered their submissions.

4. Perused the instant petition and the reply submitted in rebuttal, as well as documents annexed thereto, including the order impugned dated 07.10.2024 and the basic complaint pending before the learned Magistrate.
5. In light of the aforementioned perusal and consideration, this Court does not find any patent illegality or irregularity in the impugned order in view of the provisions of Section 225 of the BNSS. The learned Magistrate, upon receiving the complaint, recorded the statement of the respondent/complainant on oath and thereafter issued the pre-cognizance notice to the petitioner/accused.
6. There is a proviso appended to the Section 225 of the BNSS which provides that postponement of the issuance of the process for conducting a prior investigation to determine whether a prima facie case exists, is not necessary where:
 - (a) it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or
 - (b) the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under Section 223.
7. The learned Magistrate in the instant case appears to have examined the complainant on oath, whereupon he has issued the pre-cognizance notice, upon being satisfied for proceeding in the matter. However, the ends of justice, will be met if the learned Magistrate is directed to give a second look to his order dated 07.10.2024 and to proceed on the complaint strictly in accordance with law.

8. Disposed of.

(MOHD YOUSUF WANI)
JUDGE

SRINAGAR
19.09.2025
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