



2025:AHC:168963

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 34654 of 2025

M/S Doordevices Manufacturing Company And
Another

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s) : Rishi Kant Rai, Sr. Advocate, Vishakha
Pande

Counsel for Opposite Party(s) : G.A.

Court No. - 75

HON'BLE VIKAS BUDHWAR, J.

1. Vakalatnama has been filed on behalf of Ms. Somya Chaturvedi (A/S 0764/16), counsel for opposite party no.2, is taken on record.

2. Heard Shri Yashaswin V. Bajpai (A/Y 0899/2022), hodling brief of Ms. Vishakha Pande, learned counsel for the applicants and Sri J.B. Singh, learned AGA for the State as well as Ms. Somya Chaturvedi, counsel for the opposite party no. 2.

3. This application under Section 528 BNSS has been filed by the applicant to quash the impugned cognizance and summoning order dated 24.03.2025 andailable warrant dated 18.08.2025 issued by Chief Judicial Magistrate Gautam Buddha Nagar as well as the entire proceedings in complaint Case No.45454/2025, (UPPCB Vs. M/S Door Devices Manufacturing) pending before Chief Judicial Magistrate Gautambuddh Nagar U/s 14 (2) of The Commission for Air Quality Management in National Capital Region and Adjoining Areas Act, 2021, P.S.- Phase-1, District Gautam Budhha Nagar.

4. This Court on 18.09.2025 proceeded to pass the following orders:

"1. The supplementary affidavit filed today is taken on record.

2. Contention of the learned counsel for the applicants is that the impugned complaint came to be lodged post enforcement of B.N.S.S. 2023, which came into effect from 01.07.2024, and the applicant came to be summoned on 24.03.2025, under Section 14(2) of the Commission for Air Quality Management in National Capital Region and Adjoining Area Act, 2021. Thus, in view of the first Proviso to sub-Section (1) of Section 223 B.N.S.S., the applicant ought to have been put to notice and say ought to have been taken of the applicant before at a pre-cognizance stage.

3. Attention has been invited towards paragraph no.3 of the supplementary affidavit filed today. Reliance has been placed upon the judgment of the Co-ordinate Bench of this Court in Prateek Agarwal Vs. State of U.P. : APPLICATION U/S 482 No. - 10390 of 2024. It is also contended that the summoning order itself is non-speaking unreasoned and it does not recite the case of the complainant and, thus, it is unsustainable in the eyes of law and reliance has been placed upon decision of the Hon'ble Supreme Court in M/s. JM Laboratories vs State of Andhra Pradesh 2025 INSC 127.

4. The Court has been apprised that the opposite party no.2, U.P. Pollution Control Board, Gautam Budh Nagar is represented through a counsel before this Court. Let a copy of the present application and the supplementary affidavit be served upon him.

5. Put up this matter as fresh tomorrow i.e. 19.09.2025 at 2:00 P.M.

6. Instructions be obtained by the counsel appearing for opposite party no.2.

7. Learned Counsel for the applicant is permitted to correct the array of the parties in so far as opposite party no.2 is concerned."

5. Today Ms. Somya Chaturvedi has filed her memo and according to her, she has full instructions in the matter and according to her, they are self-sufficient and she does not propose to file any affidavit, thus, with the consent of the parties, the application is being decided at the fresh stage.

6. The case of the applicants is that a complaint stood lodged by the opposite party no. 2 on being complaint case No. 45454/2025, (UPPCB Vs. M/S Door Devices Manufacturing) for the offences under Section 14 (2) of the Commission for Air Quality Management in National Capital Region and Adjoining Areas Act, 2021. Post lodging of the complaint, the applicants herein came to be summoned on 24.03.2025 in the complaint case No. 45454/2025, (UPPCB Vs. M/S Door Devices Manufacturing) by the Court of Chief Judicial Magistrate Gautambuddh Nagar. Thereafter the bailable warrants came to be issued on 18.08.2025.

7. Questioning the said order, the leading applications came to be preferred.

8. Learned counsel for the applicant has submitted that from the perusal of the complaint itself would reveal that the complaint stood preferred, post enforcement of the BNSS w.e.f. 01.07.2024 now first proviso to sub-section (1) of Section 223 BNSS mandates the Magistrate to put to notice the accused before at pre-cognizance stage. Submission is that the applicants have not been put to notice and thus there is a clear infraction of the said provision and reference has been made to para-3 of the supplementary affidavit in order to buttress the said submission. Reliance has been placed upon the coordinate Bench of this Court in **Application U/S 482 No. 10390**

of 2024; Prateek Agarwal v. State of U.P. and another. He further submits that the summoning order is non-speaking and unreasoned and even it does not recite the case of the complainant less to say about recording of any *prima facie* satisfaction of the penal sections. In order to bolster the said submission, reliance has also been placed upon the judgment in the case of **M/s. JM Laboratories vs State of Andhra Pradesh 2025 INSC 127**. He, however, submits that the summoning order be set aside and the matter be remitted back to Court below to pass fresh orders.

9. Ms. Somya Chaturvedi, counsel for the opposite party no. 2 as well as learned AGA on the other hand submits that though offences are made out from the bare look of the complaint and the case becomes triable in nature but they could not be dispute the fact that the mandatory requirement of issuing notice and according opportunity to the applicant- accused at pre-cognizance stage had not been done in term of first proviso to sub-section (1) of Section 223 BNSS and further the summoning order is cryptic and it does not as per the mandate of Hon'ble Apex in **Prateek Agarwal (supra)** and **M/s. JM Laboratories (supra)**. However, they submits that the summoning order be set aside and the matter be remitted back to Court below to pass fresh orders.

10. I have heard learned counsel for the parties and gone through the records carefully.

11. The summoning order dated 24.03.2025 reads as under:

"आज यह परिवाद मय शपथ पत्र परिवादी की ओर से द्वारा अधिवक्ता प्रस्तुत किया गया। परिवाद का अवलोकन किया। परिवाद दर्ज रजिस्टर हो। परिवादी द्वारा यह परिवाद अपने पदीय कर्तव्यों के निर्वाहन में दाखिल किया गया है। अतः बयान अंधारा 223 व 225 बी०एन०एस० की आवश्यकता नहीं है। परिवाद के अवलोकन से अभियुक्त के विरुद्ध प्रथम दृष्टया अपराध का होना पाया जाता है। अभियुक्त के विरुद्ध अंधारा 14 (2) राष्ट्रीय राजधानी क्षेत्र और आस-पास के क्षेत्रों में वायु गुणवत्ता प्रबंधन आयोग अधिनियम 2021 में संज्ञान लिया जाता है। अभियुक्त के विरुद्ध सम्मन जारी हो। परिवाद वास्ते सुनवाई दिनांक 06.5.25 को पेश हो।"

12. A perusal of first proviso to sub-section (1) of Section 223 BNSS would reveal that before taking cognizance, the Court has put to notice the accused and to hear at pre-cognizance stage, the said issue is no more *res integra* as in **Prateek Kumar Agarwal (supra)**, this court held as under:

"8. Proviso of Sub Section (1) of Section 223 of the B.N.S.S. 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 B.N.S.S. deals with the issuance of process which is akin to Section 204 of the Cr.P.C.

9. Relevant part of the order dated 27.9.2024 passed in Criminal Petition No.7526 of 2024 (Sri Basanagouda R. Patil Vs. Sri Shivananda S. Patil) passed by High Court of Karnataka is as under:-

"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.

12. Swinging back to the facts of the case the concerned Court has passed the following order:

"This complaint is filed against the Accussed alleging the offence P/U/Sec.356(2) of BNS, 2023.

Issue notice to the Accused as per proviso to section 223 of BNSS, 2023.

For hearing.

Call on 13.08.2024."

The moment complaint is filed, notice is issued to the accused. This procedure is erroneous. Therefore, the petition deserves to succeed on this short ground of procedural aberration and the matter is to be remitted back to the hands of the concerned Court to redo the exercise from the beginning, bearing in mind the observations made in the course of the order.

13. For the aforesaid reasons the following:

ORDER

(i) Criminal Petition is allowed.

(ii) Impugned order dated 16-07-2024 passed by the XLII Additional Chief Judicial Magistrate, Bengaluru in PCR No.9136 of 2024 stands quashed.

(iii) Matter is remitted back to the learned Magistrate to redo the exercise afresh, from the stage of entertainment of the complaint, bearing in mind the observations made in the course of the order.

(iv) The said exercise shall be undertaken within 4 weeks from the date of receipt of the copy of this order.

Consequently, I.A.No.2 of 2024 stands disposed."

10. In view of the above facts and discussions, present application is allowed. The impugned order dated 15.10.2024 is in violation of the provision of Section 223 of B.N.S.S., and therefore, the same is hereby set aside."

13. The Hon'ble Apex Court in the case of *Ms. J.M. Laboratories (supra)*, para 9 whereof is quoted hereinunder.-

"9. In the present case also, no reasons even for the namesake have been assigned by the learned Magistrate. The summoning order is totally a non-speaking one. We therefore find that in light of the view taken by us in criminal appeal arising out of SLP (Crl.) No. 2345 of 2024 titled "INOX Air Products Limited Now Known as INOX Air Products Private Limited and Another v. The State of Andhra Pradesh", and the legal position as has been laid down by this Court in a catena of judgments including in the cases of Pepsi Foods Ltd. and another Vs. Special Judicial Magistrate and others, Sunil Bharti Mittal Vs. Central Central Bureau of Investigation, Mehmood U Rehman Vs. Khazir Mohammad Tunda and others and Krishna Lal Chawla and others Vs. State of Uttar Pradesh and another, the present appeal deserves to be allowed."

14. A close reading of the summoning order would reveal that no exercise as mandated under first proviso to Section 223 of the BNSS has been resorted too. Since the applicant at a pre-cognizance stage being an accused was to be put to notice and was to be heard and the said exercise is lacking, thus the orders impugned cannot be sustained, accordingly, the applications decided in the following manner:

(a) The summoning orders dated 24.03.2025 passed by Chief Judicial Magistrate Gautam Buddha Nagar in complaint Case No.45454/2025, (UPPCB Vs. M/S Door Devices Manufacturing) is set aside.

(b). The matters stand remitted back to pass fresh order strictly in accordance with law.

15. For facilitating early disposal, the party shall furnish the certified copy of the orders before the court below by 07.10.2025 and the court below shall proceed to decide the said proceeding with most expedition.

16. Needless to point out that the Court has not adjudicated upon the merits of the case.

17. Accordingly, the applications stand **disposed of**.

(Vikas Budhwar,J.)

September 19, 2025

A. Prajapati