



**IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO.26 OF 2026**

**ROYCE SAVIO PEREIRA
VERSUS
THE STATE OF GOA AND ANOTHER**

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Mr. Pavithran A. V. and Mr. Prasad Kholkar, Advocates for Petitioner.
Ms. Swati Kamat Wagh, Additional Public Prosecutor for Respondent
No.1/State.

Mr. Vibhav Amonkar and Mr. Raj Chodankar, Advocates for
Respondent Nos.2.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 05th OCTOBER, 2026.**

FINAL ORDER:-

1. The Petitioner impugns order dated 08.09.2025 passed by Judicial Magistrate First Class 'F' Court, Mercas, Goa in Criminal Case No.IPC/117/2024/F, thereby allowing application dated 21.07.2025 filed by respondent no.2 granting liberty to file detailed reply to complaint before taking cognizance in terms of Section 223 of BNSS, 2023.

2. The petitioner filed complaint in Criminal Case No.IPC/117/2024/F before Judicial Magistrate First Class against respondent no.2 alleging commission of offence in terms of Section 356 of BNSS, 2023. The learned JMFC recorded petitioner's verification and issued notice to respondent no.2 in terms of Section 223 of BNSS, 2023 affording opportunity of being heard. The respondent no.2 caused his appearance and filed application seeking leave to tender written reply to complaint. The learned Magistrate allowed said application vide impugned order dated 08.09.2025.

3. Mr. Pavithran, learned Advocate appearing for petitioner submits that Section 223 of BNSS, 2023 prescribes for examination of complainant and his witnesses on oath. However, Proviso is added that '*no cognizance of an offence shall be taken by Magistrate without giving accused an opportunity of being heard*'. However, by impugned order learned Magistrate misconstrued Proviso and treated same as stage of mini trial at pre-cognizance stage. The learned Magistrate not only permitted respondent to file his written objection to complaint, but also observed that respondent can produce documents in support of his contentions. As such, order impugned is *ultra vires*. In support of his contentions he relies upon observations of Supreme Court in case of ***Kushal Kumar Agarwal Vs. Directorate of Enforcement***¹ and judgment of Calcutta High Court in case of ***Kaberi Dey and Others Vs. Sourav Battacharjee***².

4. Per contra, Mr. Vibhav Amonkar, learned Advocate appearing for respondent no.2 supports impugned order relying upon observations of Supreme Court in case of ***Parvinder Singh Vs. Directorate of Enforcement***³ and judgment of Single Judge of High Court of Karnataka in case of ***Basanagouda R. Patil Vs. Shivananda S. Patil***⁴.

5. Having considered submissions advanced by learned Advocates appearing for respective parties and upon perusal of record tendered into

¹ 2025 SCC OnLine SC 1221.

² 2025 SCC OnLine Cal 5928.

³ 2026 SCC OnLine SC 903.

⁴ 2024 SCC OnLine Kar 96.

service, question appears for consideration of this Court is as regards to scope of opportunity of hearing to be given to accused at pre-cognizance stage in light of provision contemplated under Section 223 of BNSS, 2023. It is apposite to refer wordings of Section 223 for ready reference:

“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 under this section 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:

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.”

6. Chapter XVI of BNSS, 2023 deals with Complaints to Magistrates. The scheme under Chapter XVI prescribes that Magistrate having jurisdiction shall first record his satisfaction after considering statement of complainant or his witnesses or result of enquiry or investigation as to sufficiency of grounds for proceeding with

complaint. Once Magistrate records his satisfaction regarding sufficiency of grounds for proceeding, he is under obligation to grant opportunity of being heard to accused before taking cognizance of offence. In case of **Kushal Kumar Agarwal** (supra), Supreme Court observed that *‘provision contained under Chapter XVI are applicable to complaints under Section 44 of PMLA, particularly embargo on power of Court to take cognizance only by providing opportunity of being heard to accused’*.

7. In case of **Kaberi Dey and Others** (supra), Single Judge of Calcutta High Court observed as under:

“At the cost of repetition it can be said that at the stage of taking cognizance, the role of an individual accused is not germane for consideration. Therefore, the scope and ambit of hearing proposed accused at the pre cognizance stage is extremely limited. No defence of an accused can be taken into consideration at this stage. The words ‘giving the accused an opportunity of being heard’ is confined only to take an exception by the proposed accused to the taking of cognizance to the extent of jurisdictional error, taking of cognizance on a time barred complaint without condoning delay, taking of cognizance without obtaining sanction in a given case and/or taking of cognizance by a court not competent to take cognizance on account of existence of special court or on the issue of locus and/or inherent or technical defect in the complaint etc. A proposed accused can also demonstrate that the allegations in the complaint are so pre-posteriors obnoxious and outrageous that no semblance of offence is made out for taking cognizance. However in order to demonstrate that no offence has been disclosed, the proposed accused would not be entitled to produce any document or lay his defence beyond the complaint because the pre cognizance enquiry is offence-centric and not offender-centric. Naturally at this stage accused is not supposed to argue that no process should be

issued against him as the inquiry of this stage is offence-centric inquiry and not the offender-centric inquiry and since the scope of examination at the stage of cognizance is extremely narrow and therefore no detailed hearing can be afforded to a proposed accused.”

8. Similarly, Single Judge of High Court of Karnataka in case of ***Basanagouda R. Patil*** (supra) observed in paragraph no.11 as under:

“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.”

9. In light of aforesaid exposition of law, it is discernible that introduction to Proviso under Section 223 BNSS, 2023 requiring grant of opportunity of hearing to accused before taking cognizance is not empty formality. Similarly, it cannot be stretched to level of mini trial. The Magistrate is required to concentrate on contents of complaint and material tendered into service suggesting commission of alleged offence by accused. However, if at that stage accused is in position to dislodge allegation in complaint by producing impeccable material or by putting certain material that takes away jurisdiction of Magistrate to take cognizance, Magistrate is bound to exercise powers under Section 226 of BNSS, 2023 and dismiss complaint. Needless to state here that accused would not be entitled to rely upon any material, which requires

recording of evidence or trial or in depth enquiry at pre-cognizance stage.

10. In present case, impugned order merely permits respondent/accused to place on record his reply to contents of complaint alongwith supporting documents. However, Magistrate would be bound to refer only to that part of reply, which cannot be disputed by complainant or which refers documents that are impeccable in nature and worthy of acceptance without demur. In light of aforesaid observations, there is no merit in Writ Petition.

11. In result, Writ Petition stands dismissed.

(S. G. CHAPALGAONKAR)
JUDGE