



CRM-M-26004-2026 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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CRM-M-26004-2026 (O&M)

Date of decision : 01.07.2026

MANISHA AND OTHERS

... PETITIONERS

Versus

STATE OF HARYANA AND ANOTHER

... RESPONDENTS

CORAM : HON'BLE MR. JUSTICE H.S.GREWAL

Present:- Mr. Sahil Dahiya, Advocate and
Dr. Ajayveer Pundir, Advocate for the petitioners.

Mr. Vijay Kumar, AAG, Haryana.

Mr. Akashdeep Singh, Advocate for respondent No.2.

H.S. Grewal, J.(Oral)

1. This petition has been filed under Section 528 of BNSS, 2023 (corresponding to Section 482 Cr.P.C.) for quashing of FIR No.88 dated 19.02.2023 registered under Sections 384, 388 and 34 IPC (corresponding to Sections 308(2), 308(7) and 3(5) of BNS, 2023) and subsequently added Sections 406 and 420 IPC (corresponding to Sections 316(2) and 318(4) of BNS, 2023), at Police Station Sector-50, Gurugram (Annexure P-3), along with all consequential proceedings arising therefrom including the impugned order dated 07.04.2026 (Annexure P-7) passed by the learned Judicial Magistrate First Class, Gurugram, whereby the cancellation report has been rejected, the protest petition has been allowed, and the petitioners have been summoned to face trial.



2. The brief facts of the case are that petitioner No.1 is the daughter-in-law of respondent No.2, whereas petitioner Nos.2 and 3 are her parents. The marriage between petitioner No.1 and the son of respondent No.2 was solemnized on 29.04.2013. During the subsistence of the matrimonial relationship, certain financial transactions took place between the parties as part of family arrangements. Subsequently, matrimonial disputes arose between petitioner No.1 and her husband, leading to the filing of divorce proceedings in the year 2020. Thereafter, respondent No.2 submitted a complaint before the Commissioner of Police, Gurugram regarding the alleged monetary transactions. Upon enquiry, no material was found against the petitioners. However, on the basis of an application filed under Section 156(3) Cr.P.C., aforesaid FIR No.88 dated 19.02.2023 was registered against the petitioners.

3. Upon completion of investigation, the investigating agency submitted a cancellation report dated 16.09.2023 (Annexure P-4) concluding that no cognizable offence was made out against the petitioners. Thereafter, respondent No.2 filed the protest petition which was dismissed by the trial Court vide order dated 15.04.2025 (Annexure P-5). Aggrieved thereagainst, respondent No.2 filed a revision petition which was disposed of vide order dated 03.02.2026 (Annexure P-6) with a direction to the trial Court to re-consider the matter afresh.

4. In consequence thereto, the learned Judicial Magistrate 1st Class, Gurugram, vide the impugned order dated 07.04.2026 (Annexure P-7), rejected the cancellation report, allowed the protest petition and the petitioners have been summoned for offences punishable under Sections 384, 388, 406 and 420 IPC.



5. Learned counsel for the petitioners submits that the present FIR is the result of monetary transactions between family members and due to matrimonial dispute between the parties, a purely civil dispute has been given a criminal colour. It is submitted that the allegations relate to the year 2016, whereas the FIR was registered only in the year 2023 after an unexplained delay of about seven years. It is further submitted that after conducting a detailed investigation, the police had filed a cancellation report holding that no cognizable offence was made out against the petitioners. Thereafter, no fresh material came on record to justify their summoning. However, despite this, the learned Magistrate passed the impugned summoning order (Annexure P-7) without appreciating that the Revisional Court had only remanded the matter for fresh consideration and had not recorded any finding that any offence had been committed. It is also submitted that the mandatory procedure prescribed under Section 223 of BNSS, 2023, was not followed as neither the petitioners nor their counsel were served with any notice before passing the impugned order. It is further pointed out that Mr. Sahil Dahiya, Advocate was representing the petitioners before both the Revisional Court as well as the Trial Court, yet no notice was issued to him. Learned counsel, therefore, prays that the impugned FIR, the summoning order dated 07.04.2026 and all consequential proceedings arising therefrom may be quashed.

6. *Per Contra*, learned State counsel, while referring to the reply filed by way of an affidavit of Mr. Amit Bhatia, HPS, Assistant Commissioner of Police, East, Gurugram, submits that a fair and thorough investigation was conducted in the matter, pursuant to which a cancellation report was presented before the competent Court. It is submitted that the allegations raised by the



petitioners involve disputed questions of fact, which cannot be adjudicated in proceedings under Section 528 of the BNSS, 2023. It is further submitted that the petitioners have an effective remedy to raise all their pleas before the Trial Court during the course of the proceedings. Therefore, no ground is made out for quashing of the FIR, the summoning order or the consequential proceedings, and the present petition deserves to be dismissed.

7. Mr. Akashdeep Singh, Advocate has put in appearance on behalf of respondent No.2 and filed the Power of Attorney in the Court, which is taken on record. He has vehemently opposed the present petition and submitted that the impugned FIR and the summoning order have been passed in accordance with law and do not warrant any interference by this Court. However, on a specific query put by the Court, learned counsel for respondent No.2 did not dispute the fact that the mandatory compliance of Section 223 of BNSS, 2023, had not been made before passing the impugned summoning order.

8. I have heard learned counsel(s) for the parties and perused the material available on record.

9. The primary issue that arises for consideration in the present petition is whether the learned Magistrate could have summoned the petitioners without complying with the mandatory requirement of Section 223 of BNSS, 2023 (corresponding to Section 200 of Cr.P.C.) which specifically provides that before taking cognizance on a complaint, the Magistrate shall give the accused an opportunity of being heard. Before proceeding in the matter, it would be relevant to refer to Section 223 of BNSS, 2023 (erstwhile Section 200 of Cr.P.C.) which reads as under:-



“223. 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:

Provided also 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.

(2) A Magistrate shall not take cognizance on a complaint against a public servant for any offence alleged to have been committed in course of the discharge of his official functions or duties unless-

(a) such public servant is given an opportunity to make assertions as to the situation that led to the incident so alleged; and

(b) a report containing facts and circumstances of the incident from the officer superior to such public servant is received.”

10. In the present case, it is not disputed that after the matter was remanded by the Revisional Court, the learned Trial Court rejected the cancellation report, allowed the protest petition and summoned the petitioners vide order dated 07.04.2026 (Annexure P-7), without issuing any notice to them or affording them an opportunity of hearing.

11. It is well settled that where the law requires an opportunity of hearing to be granted before taking cognizance on a complaint, such requirement is mandatory and cannot be dispensed with. Compliance with the principles of natural justice is not an empty formality but a statutory safeguard. Therefore, any order passed in violation of such mandatory procedure is unsustainable under the law.



12. In light of the above and without expressing any opinion on the merits of the case, this Court is of the considered opinion that the impugned order dated 07.04.2026 (Annexure P-7) deserves to be set aside on the ground of non-compliance with the mandatory provisions of Section 223 of the BNSS, 2023 (erstwhile Section 200 Cr.P.C.)

13. Consequently, the impugned summoning order dated 07.04.2026 (Annexure P-7) passed by the learned Judicial Magistrate First Class, Gurugram is hereby set aside and the matter is remanded to the learned Trial Court for fresh consideration. The learned Trial Court shall afford due opportunity of hearing to all concerned parties, strictly comply with the requirements of Section 223 of the BNSS, 2023, and thereafter pass a fresh, speaking order in accordance with law.

14. The parties are directed to appear before the learned Trial Court on **13.07.2026 at 10:00 A.M.**

15. With these observations, the present petition is partly allowed.

16. Pending application, if any, shall stand disposed of accordingly.

01.07.2026
Sonia

(H.S.GREWAL)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No