

CNR No: PHHC011600462025
2028:PHHC:113810



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. CRM-M-56626-2025
Reserved on:-13.08.2026
Pronounced on: 18.08.2026
Uploaded on:- 19.08.2026

*Whether only operative part of the judgment is
Pronounced or the full judgment is pronounced:* *operative part/full judgment*

RAJINDER KAUR GILL
.....PETITIONER

VERSUS

NAVNEET KAPOOR GILL AND ANOTHER
.....RESPONDENTS

2. CRM-M-50967-2025

KAPOOR SINGH GILL
.....PETITIONER

VERSUS

NAVNEET KAPOOR GILL
.....RESPONDENT

CORAM: HON'BLE MS. JUSTICE MANDEEP PANNU

Present: Mr. Amandeep Singh Jawandha, Advocate,
Mr. Jaspreet Singh Sran, Advocate and
Mr. Sandeep Kaur Sahota, Advocate
for the petitioner.

Mr. Ishan Gupta, Advocate,
Ms. Muskan Gupta, Advocate and
Ms. Shivani Sahni, Advocate for the respondent(s).

MANDEEP PANNU, J (ORAL)

1. Both the above-mentioned petitions have been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, for quashing of the impugned complaint dated 27.09.2024 bearing No. COMI/102/2024, under Sections 318(1), 318(2), 318(3), 335, 336, 338, 339, 340 and 316 of the Bharatiya Nyaya Sanhita (BNS), 2023, along with the order dated 30.09.2024 and the subsequent order dated 09.05.2025 passed by the learned Judicial Magistrate 1st Class, SAS Nagar (Mohali), whereby notice of the complaint was issued to the petitioners and consequential proceedings arising therefrom.

2. Facts of the case in brief are that the marriage of petitioner Kapoor Singh Gill was solemnized with respondent No.1/Navneet Kapoor Gill on 05.02.2005 at Ludhiana and out of the said wedlock, two children were born. However, with the passage of time, differences cropped up between the parties, whereafter the petitioner-husband filed a petition under Section 13 of the Hindu Marriage Act for dissolution of marriage on 06.09.2022 before the learned Principal Judge, Family Court, SAS Nagar, Mohali. Thereafter, respondent No.1/complainant-wife filed a complaint against the petitioner-husband and his mother Rajinder Kaur Gill, who is the petitioner in CRM-M-56626-2025. Resultantly, FIR No.0007 dated 18.01.2023 under Sections 406, 498-A and 34 IPC was registered against both the petitioners. During the pendency of the said FIR, respondent No.1 entered into a compromise with the petitioner-husband on 23.02.2023, whereby certain terms and conditions were settled between the parties. In pursuance of the said compromise, the divorce petition filed by the

petitioner-husband was dismissed as withdrawn vide order dated 18.03.2023.

However, the criminal proceedings arising out of the aforesaid FIR were not brought to an end by respondent No.1 and challan under Section 173 Cr.P.C. was presented under Sections 406, 498-A and 34 IPC. Aggrieved by the inaction of respondent No.1 in getting the FIR quashed in terms of the compromise, the petitioners approached this Court by filing petitions under Section 482 Cr.P.C., one by the petitioner-husband and the other by his mother Rajinder Kaur Gill, wherein notice of motion was issued. Thereafter, differences arose between the parties with regard to the fulfillment of the terms and conditions of the compromise, with both sides levelling allegations against each other regarding non-compliance thereof.

3. In the aforesaid background, respondent No. 1 filed the impugned complaint bearing No. COMI/102/2024 under Sections 318(1), 318(2), 318(3), 335, 336, 338, 339, 340 and 316 of the Bharatiya Nyaya Sanhita, 2023, alleging that, pursuant to the compromise deed (Annexure C-3), Kapoor Singh Gill transferred his half share in the property in favour of the complainant on 21.03.2023, vide transfer deed (Annexure C-4). It was further alleged that, on the same day, the complainant discovered that the remaining half share had been fraudulently transferred in the name of her mother-in-law, Rajinder Kaur, through a purported registered Will after the demise of her father-in-law, and was subsequently transferred in favour of Kapoor Singh Gill, by resorting to forgery and fabrication of documents. On the said complaint, the learned Judicial Magistrate 1st Class, SAS Nagar (Mohali), issued notice to the petitioners vide order dated 30.09.2024 and passed a further order dated 09.05.2025. The impugned complaint is

annexed as Annexure P-12, whereas the orders dated 30.09.2024 and 09.05.2025 are annexed as Annexures P-13 and P-14, respectively.

4. Learned counsel for the petitioner (mother-in-law of the complainant) (in CRM-M-56626-2025) contends that the entire dispute pertains to the transfer of the share in the shop on the basis of the Will executed by late Raghbir Singh Gill and, therefore, the respondent No. 1 ought to have approached the competent Civil Court instead of instituting the impugned complaint on the basis of false and frivolous allegations. He further contends that the dispute is essentially between the son and daughter-in-law of the petitioner, whereas the petitioner has been residing separately in rented accommodation with her ailing daughter and her late husband since the year 2022. It is further submitted that respondent No. 1 had voluntarily entered into a compromise with her husband, to which the present petitioner was not even a party. Learned counsel lastly contends that the impugned complaint amounts to an abuse of the process of law, particularly when the petitioner has neither derived any benefit nor gained anything from the alleged transactions between the parties.

5. Learned counsel for the petitioner (husband of the complainant) (in CRM-M-50967-2025) contends that the entire complaint is founded upon false and baseless allegations of harassment and torture levelled by respondent No. 1, whereas the petitioner has committed no act of cheating or fraud. It is further submitted that the property in question originally belonged to the father of the petitioner, and after his demise, the estate of late Raghbir Singh Gill devolved upon his legal heirs, namely, his wife, daughter and son, i.e. the present petitioner. On the above submissions,

learned counsel for the petitioner seeks quashing of the above-said complaint alongwith the impugned orders.

6. Learned counsel for respondent No.1/complainant-wife argued that the criminal complaint dated 27.09.2024, annexed as Annexure P-17, has been filed against the petitioners as both the petitioners, namely, the husband and his mother, had forged an application dated 02.11.2022 addressed to M/s Ansal Lotus Melange Projects Pvt. Ltd., whereby they got themselves shown as the new nominees in respect of the property in question. It was submitted that the said act of creating a false document amounts to forgery punishable under Section 335 read with Section 336 of the BNS and also constitutes cheating punishable under Section 318(1), (2) and (3) of the BNS. Learned counsel further argued that the petitioners forged the document after the demise of the father of petitioner-husband and, by such fraudulent act, sought to deprive respondent No.1 of her lawful rights in the estate/property in question. Therefore, the complaint has been rightly instituted and the learned Magistrate has correctly proceeded in accordance with law. It was further argued that a perusal of Section 223 of the BNSS would show that the present petitions are not maintainable, as the petitioners failed to comply with the mandatory requirement contained in the proviso to Section 223(1) of the BNSS and did not submit their replies to the notice issued to them. Accordingly, the notice having been validly issued by the learned Magistrate, no interference is warranted with the impugned orders.

7. I have heard learned counsel for the petitioners as well as

learned counsel appearing for respondent No.1/complainant and have gone through the record carefully.

8. Upon presentation of the aforesaid complaint, the learned Judicial Magistrate 1st Class, SAS Nagar (Mohali), passed the following order dated 30.09.2024, which reads as under:

“Complaint under Section 223 of BNSS presented today. It be registered. The present complaint has been filed under the provisions of BNSS. Accordingly, before proceeding any further, let notice to accused be issued for 10.12.2024 through ordinary process as well as through RC/AD on filing of PF, RC/AD.”

Thereafter, on 09.05.2025, the learned Judicial Magistrate 1st Class passed the following order:

“Notice to accused not issued by Ahlmad. Let fresh notice to accused be issued for 02.08.2025 through ordinary process as well as by way of RC, on depositing charges within 5 days. Dasti be also issued, if required.”

The aforesaid orders dated 30.09.2024 and 09.05.2025 are under challenge in the present petitions along with the impugned complaint.

9. The controversy in the present petitions, without entering into or expressing any opinion on the merits of the allegations contained in the complaint, essentially revolves around a short question of law, namely, whether the learned Judicial Magistrate was justified in issuing notice to the petitioners under the first proviso to Section 223(1) of the BNSS without first recording the statement of the complainant and the witnesses, if any, as contemplated by Section 223(1) of the BNSS.

10. For appreciating the aforesaid issue, Section 223(1) of the BNSS is required to be noticed. The provision mandates that a Magistrate having jurisdiction, while taking cognizance of an offence on a complaint, shall examine on oath the complainant and the witnesses present, if any, and the substance of such examination is required to be reduced into writing and signed by the complainant, the witnesses and the Magistrate. The first proviso thereafter provides that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard. The subsequent proviso carves out limited exceptions where, despite the complaint being in writing, examination of the complainant and witnesses is not necessary, namely, where the complaint has been made by a public servant acting in discharge of official duties or by a Court, or where the Magistrate makes over the case to another Magistrate under Section 212 of the BNSS.

11. A conjoint reading of the aforesaid provision makes the procedural sequence quite clear. The requirement of examination of the complainant and the witnesses present, if any, is the ordinary rule under Section 223(1) of BNSS. The first proviso does not dispense with this requirement. Rather, it introduces an additional safeguard by mandating that, before cognizance is taken, the proposed accused must be afforded an opportunity of being heard. Thus, the two requirements operate at different stages and are required to be harmoniously given effect to. The subsequent proviso cannot be invoked in the present case as the complaint in question is a private complaint and has neither been made by a public servant in

discharge of official duties nor by a Court, nor has the case been made over to another Magistrate under Section 212 of the BNSS.

12. The legal position has also been explained by the Courts while interpreting the newly introduced first proviso to Section 223(1) of the BNSS. The Magistrate is required, upon presentation of the complaint, to first examine the complainant on oath and the witnesses present, if any, and reduce their statements into writing. Thereafter, if the material discloses sufficient ground to proceed, the accused is required to be given an opportunity of being heard before cognizance is taken. The opportunity of hearing contemplated by the first proviso is therefore not a substitute for the examination contemplated under the main provision, rather, it is an additional procedural safeguard before cognizance.

13. In the present case, the order dated 30.09.2024 clearly shows that immediately upon presentation of the complaint, the learned Magistrate directed that notice be issued to the accused under the proviso to Section 223 of the BNSS. There is nothing in the said order to indicate that the statement of the complainant was recorded on oath or that any witness present was examined and such statement was reduced into writing. Thus, the learned Magistrate proceeded to issue notice to the petitioners at the threshold, without first completing the exercise contemplated under the substantive part of Section 223(1) of BNSS. The subsequent order dated 09.05.2025 merely directed issuance of fresh notice and, therefore, does not cure the fundamental procedural irregularity committed at the initial stage.

14. It is also pertinent to observe that the expression “opportunity of being heard” occurring in the first proviso necessarily contemplates a

meaningful opportunity to the proposed accused. For such opportunity to be meaningful, the material on the basis of which the Magistrate proposes to consider taking cognizance has to be available. The interpretation of Section 223 of BNSS is that the notice at the pre-cognizance stage is to follow the recording of the sworn statement of the complainant and witnesses, and the accused is thereafter to be heard before cognizance is taken.

15. Thus, this Court is of the considered view that the learned Magistrate has not followed the procedure prescribed under Section 223 of the BNSS. The error is procedural in nature and, at this stage, this Court is not expressing any opinion on the merits of the allegations made in the complaint or on the defence sought to be raised by the petitioners. The impugned orders, therefore, cannot be sustained in their present form.

16. Accordingly, the orders dated 30.09.2024 and 09.05.2025 passed by the learned Judicial Magistrate 1st Class, SAS Nagar (Mohali), in complaint No.COMI-102-2024, are set aside. The matter is remanded to the learned Magistrate to proceed afresh in accordance with law. The learned Magistrate shall first follow the procedure contemplated under Section 223(1) of the BNSS by examining the complainant and the witnesses present, if any, upon oath and reducing the substance of their examination into writing. Thereafter, if the learned Magistrate finds sufficient ground to proceed, the petitioners shall be afforded an opportunity of being heard in terms of the first proviso to Section 223(1) of the BNSS and the matter shall thereafter be proceeded with in accordance with law.

17. With the aforesaid observations, both these petitions stand disposed of.

18. It is clarified that this Court has not expressed any opinion on the merits of the complaint or the defence of the petitioners.

19. It is further clarified that, if after following the aforesaid procedure the learned Magistrate takes cognizance of any offence against the petitioners, it shall be open to the petitioners to avail themselves of such remedy as may be available to them in law against the said order.

20. All pending miscellaneous application(s), if any, stands disposed of.

18.08.2026
Poonam Negi

(MANDEEP PANNU)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>