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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

CNR No. DLHC010357662026

+ **CRL.M.C. 5682/2026 & CRL.M.A. 23747/2026, CRL.M.A.
23748/2026**

MANISH MAHENDRA CHOKSI AND OTHERS.....Petitioners

Through: **Ms. Mevy Hussain, Mr. Nagendra
Singh and Mr. Hemant Uppal, Advs.**

versus

RC GUPTA AND BROTHERS HUF Respondent

Through: **Mr. Ghanshyam Sharma, Adv.**

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

% 18.08.2026

1. The present petition has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita 2023 ('**BNSS**') read with Section 482 of the Code of Criminal Procedure, 1973 (CrPC) seeking quashing of the summoning order dated 20.03.2026 passed by the JMFC-02/NI Act (SD), Saket, New Delhi ("**Impugned Order**") and all other consequential proceedings emanating therefrom.

2. The petitioner has raised an objection stating that the non-Executive Director of a company ought not to have been summoned without considering the decision passed by the Supreme Court in **Chintalapati**



Srinivasa Raju v. Securities and Exchange Board of India¹.

3. These submissions are strongly opposed by learned counsel appearing for the respondent who contends that in a complaint, the complainant has made necessary averments and, therefore, no interference is called for.

4. The Supreme Court recently in the case of ***Parvinder Singh v. Directorate of Enforcement***², emphasised that under Section 223(1) of BNSS, providing the accused an opportunity of being heard before taking cognizance is a mandatory and substantive right. The relevant para nos. 26-27 are extracted as under: -

“26. Section 223 of the BNSS deals with the examination of a complainant. The first proviso to Section 223(1) of the BNSS prohibits the Magistrate from taking cognizance of an offence, unless the accused is given an opportunity of being heard.

27. Though Chapter XVI of the BNSS lays down the procedural law dealing with complaints made to a Magistrate, we hold that the aforesaid proviso is substantive in nature, as it does not merely regulate the manner in which the proceedings are to be conducted, rather it confers a right upon the accused to be heard before taking cognizance which forms a part of the right of an accused to a fair trial enshrined under Article 21 of the Constitution of India, 1950. We further hold that the word “shall” occurring in the said proviso has to be construed to be mandatory in nature, which enures to the benefit of an accused. Resultantly, cognizance of an offence taken by a Court without due compliance of the aforesaid proviso would be void ab initio.”

(Emphasis Supplied)

5. The Supreme Court in ***Lalankumar Singh & Ors. v. State of Maharashtra***³, observed that issue of process requires judicial application of mind. The relevant para 28 is extracted as under:-

“28. The order of issuance of process is not an empty

¹ (2018) 7 SCC 443.

² 2026 INSC 519.

³ 2022 INSC 1061.



formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a prima facie case against the accused. No doubt, that the order need not contain detailed reasons. A reference in this respect could be made to the judgment of this Court in the case of Sunil Bharti Mittal vs. Central Bureau of Investigation, which reads thus:

‘51. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e. the complaint, examination of the complainant and his witnesses, if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.

52. A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.

53. However, the words “sufficient ground for proceeding” appearing in Section 204 are of immense importance. **It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect’.**

(Emphasis Supplied)

6. This Court, on perusal of impugned order, finds that the arguments



agitated by the parties requires to be adequately considered by the concerned Court before issuance of formal order of summon.

7. Bearing in mind the aforesaid aspect, and in light of ***Parvinder Singh (Supra) & Lalankumar Singh (Supra)***, it would be appropriate to set aside the impugned order and relegate the parties before the concerned Court for fresh adjudication on issuance of summons.

8. This order is only applicable *qua* the present petitioners.

9. All the rights and contentions of the parties are left open.

10. The petition stands disposed of. Pending applications, if any, also stand disposed of.

PURUSHAINdra KUMAR KAURAV, J

AUGUST 18, 2026

Ab/ad