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IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

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CRM-49753-2025 in/and  
CRM-M No.15137 of 2025  
Date of Decision: 09.12.2025

Ajay Kumar and another ... Petitioners

Versus

Subey Singh ... Respondent

**CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Mr. Johan Kumar, Advocate,  
for the applicant-petitioners.

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**MANISHA BATRA, J. (Oral)**

**CRM-49753-2025**

The application is allowed, as prayed for and statement of witnesses as Annexures P-4 to P-8 are taken on record.

**Main Case**

1. The instant petition has been filed by the petitioners under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (For short “BNSS”) (*which is pari materia with Section 482 of Cr.P.C.*) seeking quashing of criminal complaint No.COMI 447 of 2017 titled as **Subey Singh v. Ajay and others** as well as the order dated 05.12.2023 passed by the Judicial Magistrate First Class, Faridabad whereby the petitioners had been ordered to be summoned as accused to face trial for commission of offence punishable under Section 323 read with Section 34 of IPC and

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all the consequential proceedings having emanated therefrom.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned complaint has been filed by the respondent-complainant Subey Singh who is father of the petitioners on the allegations that on 15.10.2016, he had gone to his house at Faridabad to take some documents but the petitioners and Banarsi Devi wife of the respondent-complainant used abusive language towards him. They also opened an assault upon him thereby causing injuries to him by giving fist blows and kicks. On clamour being raised, Anil younger son of the complainant had reached at the spot and had rescued the respondent-complainant who was taken to hospital. The petitioners had also extended threats to kill him. After presentation of complaint, the learned trial Court had recorded statements of witnesses by way of preliminary evidence and vide order dated 05.12.2023, the petitioners along with their mother were ordered to be summoned to face trial for commission of offences punishable under Section 323 read with Section 34 of IPC. Their mother Banarsi Devi had, however, died during the pendency of the complaint.

3. It is argued by learned counsel for the petitioners that they have been falsely implicated and wrongly summoned in the aforementioned complaint on the same facts and allegations. Proceedings under Section 107 read with Section 151 of Cr.P.C. had been initiated against them and once the same were initiated, they could not have been summoned in this case. No prima facie case for issuing process had been made out against them.

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However, the learned trial Court while passing the impugned summoning order ignored this fact. With these broad submissions, it is urged that the petition deserves to be allowed, the impugned complaint and the summoning order are liable to be set aside.

4. I have heard learned counsel for the petitioners at considerable length and have gone through the material placed on record.

5. At the outset, it is to be considered as to whether, the prayer made by the petitioners for quashing of complaint can be considered by this Court in a petition filed under Section 528 of BNSS. The Hon'ble Supreme Court has laid down certain conditions whereby the complaint can be quashed by invoking the powers under the above mentioned Section in a case reported as ***Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and others (1976) 3 SCC 736*** which are as follows:-

(1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same, taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or

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inadmissible; and

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

6. Further, the question as to whether the order passed by the Magistrate of issuing summons, can be interfered with, in exercise of powers under Section 482 of Cr.P.C. had also been considered by Hon'ble Supreme Court in *Bhushan Kumar and another Vs. State (NCT of Delhi) and another (2012) 5 SCC 424* and in *Pepsi Foods Ltd. and another v. Special Judicial Magistrate and others, (1998) 5 Supreme Court Cases 749*, wherein it was observed that a petition filed under Section 482 of Cr,P,C, for quashing an order summoning the accused is maintainable.

7. Similarly, in a recent judgment dated 22.02.2024 titled as '*Vikas Chandra Vs. State of Uttar Pradesh and another 2024 INSC 261*', the Hon'ble Supreme Court reiterated the position that the order of issuance of summons could be interfered with by the High Court in exercise of powers under Section 482 of Cr.P.C.

8. In view of the above discussed proposition of law, it is explicit that a complaint can be quashed and an order of issuance of summons can be interfered with by this Court by invoking powers under Section 528 of BNSS, however at the same time, it is also to be kept in mind that the inherent jurisdiction under Section 528 of BNSS is to be exercised sparingly and with caution only when such exercise is justified by the test specifically laid down in the section itself. It is well settled proposition of law that an

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appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of this power and the inherent powers so vested do not confer any arbitrary jurisdiction upon the High Court to act according to whims and caprices.

9. On applying the afore discussed proposition of law to the facts of the present case, it is to be seen as to whether the complaint filed by the respondent and the impugned summoning order are liable to be quashed or not. The main thrust of the argument as raised by learned counsel for the petitioners is that since preventive action under Sections 107 and 151 of Cr.P.C. had been taken against the petitioners and, therefore, they could not be summoned by passing the impugned order. However, on going through the record, this Court is of the considered opinion that the contention as raised by learned counsel for the petitioners has no substance. Annexure P-3 is copy of Kalandra filed under Sections 107 and 151 of Cr.P.C. by the police showing that on the basis of a complaint filed by the respondent, preventive action was taken as against the petitioners and they were directed to furnish bonds. Annexure P-1 is copy of complaint filed by the complainant showing that specific allegations that the petitioners had assaulted the respondent and had criminally intimidated him were levelled and action was called against them by invoking the provisions of Indian Penal Code. It cannot be stated that the remedy as claimed by the respondent was barred due to filing of the aforementioned Kalandra. The copies of statements of witnesses recorded during the course of preliminary evidence

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have also been placed on record as Annexures P-4 to P-8 respectively and on a persual of the same, it is revealed that sufficient evidence had been produced on record for proceeding and issuing process as against the petitioners. The learned Magistrate after considering the preliminary evidence produced on record and by forming opinion under Section 227 of BNSS (*which is pari materia with Section 204 of Cr.P.C.*) observed that there are sufficient grounds for proceeding and issuing summons for procuring the attendance of the petitioners as accused. The Magistrate was not required to examine the merits and demerits of the case at this stage. Test to be applied is as to whether the allegations in the complaint as they stand without adding or detracting the complaint *prima facie* establish the ingredients of the offence alleged. It is well settled that the Court at the stage of issuing process cannot test the veracity of allegations nor for that matter can it proceed in the manner that a judge conducting a trial would, on the basis of the evidence collected during the course of the trial. As such, the contention as raised by the petitioners cannot be accepted.

10. The Magistrate, after applying her mind and on due consideration and appraisal of the evidence produced on record and on being *prima facie* satisfied, passed the impugned order dated 05.12.2023. In view of the discussion as made above, no error had been committed by the learned trial Magistrate as there was sufficient material on record to summon the petitioners to face trial in the aforementioned complaint. As such, no ground has been made out to quash the complaint as well as the impugned order

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passed there. Accordingly, finding no merit, the petition is dismissed.

11. Since as per the report of the Registry, the original paper book is not traceable, therefore, as and when the same is traced out, this order be kept on record of the original file.

09.12.2025  
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(MANISHA BATRA)  
JUDGE

Whether speaking/reasoned  
Whether reportable

Yes/No  
Yes/No