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2025:PHHC:121412



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

**CRM-M-28033-2025
DECIDED ON: 21.05.2025**

SACHIN ANAND AND OTHERS

.....PETITIONERS

VERSUS

NARESH KAUSHALL

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Harlove Singh Rajput, Advocate
for the petitioners

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked Section 528 read with 529 of the Bharatiya Nagarik Suraksha Sanita, 2023 seeking quashing of the Impugned Order dated 24.03.2025 (Annexure P-2) passed by Ld. JMIC, Chandigarh in CRL MISC- 845 of 2025 dated 24.03.2025 titled as "*Naresh Kaushall Vs. Pavitar Singh and Ors.*" and all subsequent proceedings arising out of the same whereby the mandatory procedure us 223 BNSS has been violated and keeping in view the facts and circumstances and in the interest of justice.

2. The present petition came up before this Court assailing the order dated 24.03.2025 (Annexure P-2) vide which the trial Court issued a pre-cognizance notice to the petitioners-accused for 02.06.2025.

3. The facts, which would be material to test the order dated 24.03.2025 (Annexure P-2) can be culled out to the effect that a complaint was registered before the Judicial Magistrate 1st Class, Chandigarh on 24.03.2025 under Section 223 of BNSS, 2023 alleging commissioning of offence under Sections 308, 316, 318, 351 and 61(2) of BNS, 202. The said complaint is alleged to have been filed on 21.03.2025 for selling of a house No.596 (i.e., property in dispute), Prem Street, Guru Harkrishan Nagar, Khanna, District Ludhiana for which an amount of Rs.20 lac was paid by the petitioner No.2 to the respondent vide cheque No.270189 dated 20.11.2024.

4. However, according to the version in the complaint, the said earnest money was returned back by the respondent to the petitioner No.2 on his assurance to return back the same but has not been done as such so far which is being delayed for one or the other reason, the complaint came to be filed after the petitioner No.1 and 3 were allegedly visited the respondent at Chandigarh and caused threat.

5. The Judicial Magistrate 1st Class, Chandigarh after having got registered the aforesaid complaint has issued notice to the petitioners examining the respondent/complainant.

6. It is under these circumstances the instant petition came to be heard by this Court after the order dated 24.03.2025 (Annexure P-2) is assailed by the petitioners-accused.

7. Mr. Harlove Singh Rajput, learned Advocate for the petitioners vehemently argued that the Judicial Magistrate 1st Class, Chandigarh has failed to appreciate Section 223 of BNSS, 2023 and its spirit while passing the impugned order which mandates to firstly examine the complainant on

oath and after recording of evidence, it would be the next steps to issue notice.

8. Mr. Rajput further submits that the Court below has proceeded against the petitioners without even having a statement of complainant on oath and any cogent evidence in support of the averments made in the complaint. He relies upon the judgments rendered by the Apex Court in *Rekha Sharad Ushir Vs. Saptashruni Mahila Nagari Sahkari Patsansta Ltd., Criminal Appeal No. 724 of 2025 dated 26.03.2025 & by the Karnataka High Court in BASANAGOUDA R PATIL (YATNAL) AND Shivananda S Patil, Criminal Petition No.7526 of 2024.*

9. Lastly it is pressed into argument on behalf of the petitioners that the impugned order dated 24.03.2025 (Annexure P-2) has been passed in a stereotype and mechanical manner, which is liable to be dismissed alongwith consequential proceedings arising out of the same.

10. No other arguments have been raised by the petitioners.

Discussions:-

11. After examination of the record available on the file as well as submissions of the learned counsel for the petitioners, it can be in short summarized that the respondent-complainant filed a complaint under Section 223 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, which was registered before the learned Judicial Magistrate First Class, Chandigarh, on 24.03.2025. In the said complaint, it was alleged that an agreement to sell was executed between the complainant and petitioner No.2 on 11.11.2024, for a total sale consideration of ₹2.15 crore in respect of a residential property comprising five bedrooms, being a single-storey unit situated at

House No.596, Prem Street, Guru Harkrishan Nagar, Khanna, District Ludhiana.

12. Pursuant to the said agreement, a sum of ₹20 lakhs was paid as earnest money by Shri Pavitar Singh (petitioner No.2) through Cheque No.270189 dated 20.11.2024. The amount was duly credited to the complainant's bank account via RTGS, which is an admitted fact.

13. However, as per the averments in the complaint, the said earnest money was returned by the complainant to petitioner No.2 upon his request, as he was allegedly facing financial constraints in connection with his business, with an assurance that the amount would be repaid later. The complaint further indicates that petitioner No.2 continued to express his willingness to purchase the said property and gave repeated assurances to fulfil the terms and conditions of the agreement to sell dated 11.11.2024.

14. It is further alleged in the complaint that despite repeated requests, the complainant had to chase petitioner No.1 as well as the property dealer (allegedly introduced by the petitioners) to ensure fulfillment of their part as per the agreed terms, but the matter kept getting delayed on one pretext or another, without any justifiable reason.

15. It is relevant to note that as per the agreement to sell, the sale deed was scheduled to be executed and registered on 10.05.2025.

16. In paragraphs 10 and 11 of the complaint dated 21.03.2025 (Annexure P-1), the complainant has also alleged that petitioners No.1 and 2 pressurised him to execute the sale deed against cash payment, to which he did not consent. It is further alleged that on this account, the complainant was threatened with dire consequences. Additional allegations of blackmail

and extortion have also been levelled, and the complainant sought the registration of a criminal case under Sections 308, 316, 318, 351, and 51(2) of the Bharatiya Nyaya Sanhita (BNS), 2023.

17. The complaint was registered on 24.03.2025 and Judicial Magistrate 1st Class, Chandigarh, passed the following order:-

“Fresh complaint presented today. It be checked and registered. This happens to be a fresh complaint so filed under Section 223 of the Bhartiya Nagrik Suraksha Sanita, 2023. Since the proviso thereof bars the Court from taking any cognizance of the offence(s), without giving an opportunity of being heard to the accused, let a pre- cognizance notice to the accused be issued in this matter for 02.06.2025.

This I have ordered in view of the fact that as per Section 223 of the Bhartiya Nagrik Suraksha Sanita, 2023, the examination of the complainant and the witnesses thereof shall have implied this Court having taken the cognizance of the offences complained of in the matter.

Meanwhile, the report of the concerned Police Station be called for the date fixed.”

18. Before proceeding further on the clinching issue it would be imperative to have a glance at the provision of Section 223 BNSS, 2023 to understand the intent of legislature, which is reproduced hereinbelow:-

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.

19. A bare reading of the legislation in Section 223 of BNSS, 2023 in clear terms stipulates that while taking cognizance of an offence on a complaint, a Magistrate shall examine upon oath the complainant and witness, if any in support thereof. If such examination is made same shall be reduced in writing and signed by the complainant and the witnesses as well as the Magistrate.

20. However, there is an exception created by a proviso to the effect that when the complaint is made in writing the Magistrate need not to examine the complainant and the witnesses. Moreover, no cognizance of an

offence be taken without giving the accused an opportunity of being heard. In the earlier Code, the later two provisions was not there but same has been incorporated in the new legislation vide Section 223 of the BNSS, 2023. The sole purpose and motive of such induction of proviso is that the criminal law be not set in motion until the accused is heard by taking cognizance which ensures that there is substance in the complaint to proceed further against the accused and in case the accused appears and makes out the defence on the facts of the complaint which either might have been concealed or purely mis-stated having no truth in that, the accused can be saved of such criminal prosecution which ends up with years of prosecution of the accused. Such undue harassment and any kind of embarrassment in facing of criminal prosecution which can be avoided at the first instance itself by providing an opportunity of being heard to the accused is the essence of Section 223 of BNSS, 2023.

21. Coming back to the case in hand, the petitioners, who are accused in the complaint (Annexure P-1) have challenged the order dated 24.03.2025 (Annexure P-2) alleging the same to be against the law and in violation of Section 223 BNSS 2023 itself.

22. The present petition is under wrong surmise and is mis-placed whereby the petitioners have assumed the impugned order as if the Magistrate has taken the cognizance of the complaint, whereas the language of the order in itself is crystal clear as the notice has been issued at a pre-cognizance stage. In addition to that a report from the police station has also been called for by the Magistrate, who is taking due caution before taking cognizance and summoning of the petitioners as accused but by no stretch of imagination, the order dated 24.03.2025 can be termed to be a summoning

order as if the Magistrate has already taken the cognizance in the complaint filed by the respondents.

23. In the light of above, this Court is of the considered view that the alleged impugned order is in compliance to the statutory proviso to Section 223 of BNSS, whereby the accused is required to be provided opportunity of being heard before taking cognizance in the matter and summoning him to face trial.

24. From the impugned order dated 24.03.2025 (Annexure P-2) it is abundantly clear that a pre cognizance notice has been issued and a report from the concerned Police station has been called for after which the Magistrate will examine the material before it as to whether the cognizance has to be taken or not in the matter, which would be the basis to decide whether the petitioners are liable to the summoned as accused.

25. In view of the above discussions based on the facts and the law, there is no illegality and infirmity in the impugned order 24.03.2025 (Annexure P-2). Hence this Court refrain from interference and the petition is hereby ordered to be dismissed with no order as to costs.

21.05.2025

Meenu

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No