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

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**CRM-M No.36975 of 2025
Date of Decision: 08.09.2025**

Deepak Kedia and another

... Petitioners

Versus

Ramesh Chander Khanna

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Manuj Nagrath, Advocate,
for the petitioner.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (For short “BNSS”) seeking quashing of complaint bearing COMI/20/2025 titled as *Ramesh Chander Khanna v. Anand Rathie Share and Stocks Brokers Ltd. and others* and the order dated 11.06.2025 passed by the learned Jurisdictional Magistrate, Jalandhar in the said case whereby an application filed by the petitioner No.1 for recalling summons issued against him as a witness was dismissed.

2. At the outset, it may be mentioned that though prayer in this petition is made for quashing of the complaint as well as the order dated 11.06.2025 but during the course of arguments, learned counsel for the

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petitioners has restricted his argument to the extent of challenge to the order dated 11.06.2025 only. Therefore, this Court also confines its findings with regard to the validity of the order dated 11.06.2025.

3. Brief facts relevant for the purpose of disposal of this petition are that the respondent has filed the aforementioned complaint against the present petitioner No.2 and others making allegations that petitioner No.2- Company through its CEO and DCEO had been managing and regulating the account of the respondent whereby he had invested huge amount of money, on representations made to him that such investments would yield high profits. The complaint was initially filed against the petitioner No.2 through its CEO and DCEO as well as National Stock Exchange (NSE) and Securities & Exchange Board of India (SEBI). However, on 28.05.2025, the complainant withdrew the complaint as against SEBI and NSE.

4. It is further alleged that huge financial loss has been caused to him by the petitioner No.2 and he has been cheated and also subjected to criminal misappropriation of his money. A perusal of record reveals that the aforementioned complaint had been presented before the Chief Judicial Magistrate and had been transferred by him to the Court of Judicial Magistrate, First Class, who received it on 27.01.2025 and posted the case for producing preliminary evidence. The name of petitioner No.1 was cited in the list of witnesses and he was ordered to be summoned in preliminary evidence of the respondent. This petitioner is compliance officer of petitioner No.2 Company. He moved an application for recalling the order of summoning him as a witness. The said application has been dismissed by the

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concerned Magistrate vide order dated 11.06.2025 and aggrieved from the same, this petition has been filed.

5. It is argued by learned counsel for the petitioners that the impugned order as passed by the Magistrate concerned is liable to be quashed as no prima facie case for commission of offences for which the petitioner No.2 is proposed to be summoned as an accused, is made out and the allegations in the FIR cannot be stated to be sufficient for this purpose. It is further submitted that the learned Magistrate has committed an illegality by summoning the petitioner No.1 as a witness as this order amounts to his summoning as an accused without taking cognizance of the matter. Learned counsel while referring to the provisions of Section 223 of BNSS has submitted that no cognizance of any offence could be taken by the Magistrate without giving opportunity of being heard to the petitioners and no notice could be issued to the petitioners without recording preliminary evidence on record.

6. It is further argued that summoning of the petitioner No.1 as a witness amounts to non-compliance of the procedural requirements under Section 223 of BNSS and renders the impugned order totally erroneous and illegal. It is, therefore, urged that the impugned order is liable to be quashed. In support of his contention, learned counsel for the petitioners has placed reliance upon **Parteek Agarwal v. State of U.P. and another**, 2024 NCAHC-LKO 78272, wherein the High Court of Allahabad had observed that before issuing notice to the accused, the Magistrate in a complaint case must record the sworn statement of the complainant as well as witnesses and

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issuance of notice to accused without recording sworn statements of the complainant and witnesses results in procedural aberration; and **Suby Antony v. Susha and others**, Law Finder Doc Id # 2688582, wherein the High Court of Kerala had observed that the Magistrate must examine complainant and witnesses on oath and only then notice to accused can be issued in a complaint.

7. This Court has heard the submissions as made by learned counsel for the petitioner and has gone through the record carefully.

8. On a perusal of the record, it has been revealed that during the course of recording preliminary evidence, summons were issued to the petitioner No.1 whose name was cited as a witness in the list of witnesses. He is compliance officer of the petitioner No.2 Company which is sought to be summoned as an accused in the complaint as filed by the complainant. The complaint before the learned Magistrate is at the stage of producing preliminary evidence and it is not that any process to the petitioner No.2 as accused has been issued. Rather summons have been issued by the Magistrate to the petitioner No.1 as a witness seeking production of certain record. Learned counsel for the petitioners has tried to convince this Court that issuance of summons to petitioner No.1 amounts to issuing summons to the petitioner No.2-Company which cannot be permitted under the law. However, this Court does not consider this contention to be correct at all in view of the fact that the respondent-complainant in order to make out a case for issuing process against the persons/entities named as accused therein, is obviously required to produce evidence and for that purpose, he has chosen

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to summon an official of the petitioner No.2 with certain record. No wrong can be stated to have been committed by the respondent or the learned trial Court in this regard.

9. No doubt, as per Section 223 (1) of BNSS, a Magistrate is required to examine the complainant as well as his witnesses on oath and only then notice to accused can be issued and thereafter by providing an opportunity of hearing to the accused, cognizance of an offence can be taken and this is so what has been observed in the citations relied upon by learned counsel for the petitioners. However, that does not mean that the complainant in a case cannot summon any record in possession of the proposed accused rather he has right to do the same. This is what exactly has been done by the respondent-complainant in this case by summoning the petitioner No.1. This petitioner cannot be considered as an accused and the act of issuance of notice to him as a witness cannot be equated with issuance of notice to an accused. More so, at this stage, the proposed accused has no locus standi to appear and raise any objection and such opportunity will be available to him only if the petitioner No.2 is summoned as an accused and after taking cognizance of the matter by the Magistrate under Section 223(1) of BNSS. As such, this Court finds no reason to allow this petition. The same is, accordingly, dismissed.

08.09.2025
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(MANISHA BATRA)
JUDGE

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