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

+ CRL.M.C. 3062/2025 & CRL.M.A. 13575/2025 (Stay)

DR. DILIP KUMAR GHOSHPetitioner

Through: Mr. T.N. Singh, Mr. Vikas Kumar
Singh and Mr. Sham Chand, Advs.

versus

DR. VAIBHAV KUMAR SINGHRespondent

Through: Appearance not given.

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+ CRL.M.C. 3063/2025 & CRL.M.A. 13577/2025 (Stay)

INDIAN PHYTOPATHOLOGICAL SOCIETYPetitioner

Through: Mr. T.N. Singh, Mr. Vikas Kumar
Singh and Mr. Sham Chand, Advs.

versus

VAIBHAV KUMAR SINGHRespondent

Through: Appearance not given.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

02.05.2025

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1. This hearing has been done through hybrid mode.

**CRL.M.A. 13576/2025 (Exemption) in CRL.M.C. 3062/2025 AND
CRL.M.A. 13578/2025 (Exemption) in CRL.M.C. 3063/2025**

2. Allowed, subject to all just exceptions. The applications are disposed
of accordingly.

**CRL.M.C. 3062/2025 & CRL.M.A. 13575/2025 (Stay) AND CRL.M.C.
3063/2025 & CRL.M.A. 13577/2025 (Stay)**

3. The present petitions under Section 528 of the BNSS (Section 482 of
the Cr.P.C.) seeks the following prayers:

“i) Allow the petition of the petitioners filed under Section 482
Cr.P.C./ 528 of BNSS, 2023;

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- ii) Quash or set-aside the impugned order dated 28.10.2024 passed by the Judicial Magistrate First Class-04, Patiala House Courts, New Delhi in CC No.41486 of 2024;
- iii) Remit the matter back to the Judicial Magistrate First Class-04, Patiala House Courts, New Delhi to make the exercise afresh under Section 223 BNSS, 2023 by following the procedure in the light of decisions of the Hon'ble High Courts of Karnataka and Kerala;"

4. Learned counsel appearing on behalf of the petitioners submits that *vide* impugned order dated 28.10.2024, the learned Metropolitan Magistrate issued summons to the petitioners even before recording the statements of the complainant and the witnesses as provided in Section 223 (1) of the BNSS. Reliance is placed on the judgment of the Hon'ble High Court of Karnataka (at Bengaluru) in CRL. PETITION NO. 7526/2024 dated 27.09.2024, titled as '**Sri Basanagouda R. Patil (Yatnal) vs. Sri Shivananda S. Patil**' on particular paragraph nos. 10 and 11, which reads as under:

"10. Therefore, the procedural drill would be this way:

A complaint is presented before the Magistrate under Section 223 of the BNSS; on presentation of the complaint, it would be the duty of the Magistrate / concerned Court to examine the complainant on oath, which would be his sworn statement and examine the witnesses present if any, and the substance of such examination should be reduced into writing. The question of taking of cognizance would not arise at this juncture. The magistrate has to, in terms of the proviso, issue a notice to the accused who is given an opportunity of being heard. Therefore, notice shall be issued to the accused at that stage and after hearing the accused, take cognizance and regulate its procedure thereafter.

11. The proviso indicates that an accused should have an opportunity of being heard. Opportunity of being heard would not mean an empty formality. Therefore, the notice that is sent to the accused in terms of proviso to sub-section (1) of Section 223 of the BNSS shall append to it the complaint; the sworn statement; statement of witnesses if any, for the accused to appear and submit his case before taking of cognizance. In the considered view of this Court, it is the clear purport of Section 223 of BNSS 2023."

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5. In the present case, the perusal of the impugned order dated 28.10.2024 reflects that without examining the complainant or the witnesses, notice has been issued to the petitioner.
6. Learned counsel appears on advance notice on behalf of the respondent and submits that he has no objection if the matter is remanded back to the learned Metropolitan Magistrate for following the procedure as provided under Section 223(1) of the BNSS for examination of the complainant and the witnesses and for hearing the petitioners before taking cognizance and issuing notice to the latter.
7. In view of the same, the impugned order dated 28.10.2024 is set aside and the matter is remanded back to the learned Trial Court to follow the procedure as envisaged under Section 223 of the BNSS for examining the complainant and the witnesses and thereafter, giving an opportunity to the petitioners for hearing before taking cognizance and summoning them, in accordance with law.
8. In view of the above, the present petitions are allowed and disposed of accordingly.
9. Pending application(s), if any, also stands disposed of.
10. Order be communicated to the learned Trial Court for necessary information and compliance.
11. Order be uploaded on the website of this Court *forthwith*.

AMIT SHARMA, J

MAY 2, 2025/kr/Pc

[Click here to check corrigendum, if any](#)