

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 259 OF 2026

Kumble Amit Prabhu ...Applicant
Versus
State of Maharashtra and anr. ...Respondents

AND
CRIMINAL APPLICATION NO. 260 OF 2026

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Mr. Prashant Gawali, a/w Kanhiya Jha, i/b Ayush Kedia, for
the Applicant in all APL.

Mr. D. J. Haldankar, APP for the State – Respondent No.1

Mr. P. P. Chavhan, i/b Komal Punjabi, for the BMC –
Respondent No.2.

CORAM: N. J. JAMADAR, J.

DATED: 13th FEBRUARY, 2026

Order:-

1. Heard the learned Counsel for the applicant.
2. In these applications, the applicants take exception to identical orders passed by the learned Judicial Magistrate, 55th Court, Vile-Parle, Mumbai, thereby issuing process against the applicants for the offence punishable under Section 471 read with Section 328A of the Mumbai Municipal Corporation Act, 1888.
3. The learned Counsel for the applicants submitted that the orders of issuance of process are legally unsustainable as the learned Magistrate has straightaway issued the process on the private complaints without adhering to the mandate contained in the first proviso to Section 223 of the Bharatiya Nagarik Suraksha Sanhita, 2023, (“BNSS, 2023”).
4. The submission of the learned Counsel for the applicant appears well founded. From the perusal of the impugned orders it becomes abundantly clear that, after noting that the

complaints have been filed by the public servant, the learned Magistrate has straightaway issued the process recording the satisfaction that *prima facie* case has been made out. An opportunity of hearing to the accused, envisaged by the first proviso to Section 223 of the BNSS, 2023, was not provided by the learned Magistrate.

5. Mr. Chavhan, the learned Counsel for respondent No.2 - the Municipal Corporation, submitted that the impugned orders do not indicate the compliance of the mandate contained in Section 223 of the BNSS, 2023. The Court may, thus, direct the learned Magistrate to pass fresh order after compliance with the first proviso to Section 223 of the BNSS, 2023.

6. In the aforesaid view of the matter, the applications deserve to be allowed.

7. Hence, the following order:

: O R D E R :

- (i) The applications stand allowed.
- (ii) The order of issuance of process in each of the applications stand quashed and set aside.

- (iii) The learned Magistrate shall proceed afresh under Section 223 of the BNSS, 2023 after providing an opportunity of hearing to the accused as envisaged by the first proviso to Section 223 of the BNSS, 2023.

The applications stand disposed.

[N. J. JAMADAR, J.]