

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-71346-2025

Date of decision: 09.03.2026

Shiv Dutt

.....Petitioner

Versus

Pushpender

.....Respondent

CORAM: HON'BLE MS. JUSTICE AARADHNA SAWHNEY

Present: None for the petitioner.

AARADHNA SAWHNEY, J (ORAL)

1. By virtue of the instant petition under Section 528 of BNSS, the petitioner has sought for quashing of Complaint No.8 dated 22.01.2025 under Sections 138 and 142 of NI Act titled as “Pushpender vs. Shiv Dutt” and summoning order dated 17.03.2025 passed by the learned JMIC, Hodal and subsequent proceedings arising out of the aforesaid complaint.

2. Relevant facts as emerging from the documents be noticed hereinbelow:

On 22.01.2025, respondent-Pushpender filed a complaint under Section 138 & 142 of Negotiable Instrument Act read with Section 318 of BNS against the petitioner-Shiv Dutt. Based on the preliminary evidence led by the complainant, petitioner-Shiv Dutt was summoned to face trial under Section 138 of N.I. Act.

It is the order dated 17.03.2025 passed by the JMIC, Hodal that has been assailed by petitioner-accused in the present petition.

3. Despite the fact, the case was called over twice, none appeared on behalf of the petitioner.

4. A perusal of the petition goes to show that the order passed by the

requirement of Section 223 BNSS were not complied with before cognizance of the offence was taken.

Section 223 of BNSS reads as under:

“(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.”

5. It is thus clear that prior to passing of the summoning order, the Magistrate had to issue notice to the accused who had to be afforded an opportunity of being heard. Admittedly in the present case, the requisite procedure has not been followed. In view thereof, the matter is remanded back to learned Judicial Magistrate 1st Class, Hodal with a direction to follow/comply with the requirement of Section 223 of BNSS as also to hear the petitioner accused before proceeding further.

6. Parties are directed to appear before the Court of learned JMJC, Hodal on 25.03.2026. However, in case the parties do not appear on the stipulated date, let fresh notice be issued.

7. Petition is disposed of with the aforesaid observation. Pending application, if any, also stands disposed of.

8. A photocopy of this order be placed on the file of connected cases.

09.03.2026
manoj

(AARADHNA SAWHNEY)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No