2026:AHC:211155

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 40533 of 2026

Hridayanarayan Mishra

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Ramesh Chandra Pathak
Counsel for Opposite Party(s)	:	G.A.

Court No. - 76

HON'BLE SAURABH SRIVASTAVA, J.

1. Heard learned counsel for the applicant and learned AGA for State.

2. The instant application has been preferred for challenging the charge-sheet dated 12.04.2026, cognizance/summoning order dated 02.07.2026 passed by learned Judicial Officer, Gram Nyayalaya, Tehsil Harriya, District Basti as well as entire proceedings of Case No. WSCC-27 of 2026 (State vs. Hridayanarayan Mishra) arising out of Case Crime No.45 of 2026, under sections 356, 352, 351(2) BNS, P.S. Gaur, District- Basti.

3. Learned counsel for the applicant submits while taking cognizance of offence vide order dated 02.07.2026 although case has been registered in pursuance to sections 356, 352, 351(2) BNS under section 2(1)h BNSS as complaint case, but at the same time learned court of Judicial Officer, Gram Nyayalaya, Tehsil Harriya, District Basti has not complied mandatory provisions of section 223 BNSS, through which notice is mandatory to be issued to the applicant being implicated in Case Crime No.45 of 2026, which has been registered as Case No.WSCC-27 of 2026.

4. For ready reference **section 223 BNSS** is reproduced herein below :-

> ***"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."

5. Although learned AGA vehemently opposed the prayer sought through instant application and rebutted the stand taken up by learned counsel for the applicant, but he did not dispute the mandatory provisions of section 223 BNS, which ought to be complied by every court of law, which is taking cognizance of offence in pursuance to report submitted by concerned Investigating Officer/police authority, where the case has been registered as complaint case under section 2(1)h BNSS.

6. After hearing rival submissions extended by learned counsel for the parties, it is crystal clear that the mandatory provisions of section 223 BNSS is integral part of the procedure which has been adhered by every court of law, who is competent to take cognizance when the matter has been registered as complaint case in pursuance to section 2(1)h BNSS and as such order dated 02.07.2026 is liable to be set-aside.

7. Since legal issue has been raised by learned counsel for the applicant and as such process to issue notice to opposite party no.2 is hereby dispensed with.

8. In view of aforementioned facts and circumstances of the case, the impugned cognizance/summoning order dated 02.07.2026 is hereby set-aside. Learned Judicial Officer, Gram Nyayalaya, Tehsil Harriya, District Basti is hereby directed to take fresh cognizance of offence, if required, after compliance of mandatory provisions as defined under section 223 BNSS.

9. Accordingly, the instant application is **party allowed**.

October 8, 2026
Saif

(Saurabh Srivastava,J.)

Digitally signed by :-
SHAIKH SAIF ABDIN
High Court of Judicature at Allahabad