



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

118

CRM-M-14743-2025**Reserved on : 05.04.2025****Pronounced on: 01.07.2025**

Navpreet Singh and others

... Petitioner(s)

Versus

State of Punjab

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. P.S. Ahluwalia, Advocate,
Ms. Bhavi Kapur, Advocate and
Mr. Prince Goyal, Advocate
for the petitioner(s).

Mr. Amandeep Singh, DAG, Punjab.

SANJAY VASHISTH, J.

1. By filing present petition under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for brevity, 'BNSS, 2023'), petitioners, i.e., (i) Inspector Navpreet Singh, (ii) HC Rajwinder Singh, (iii) SC Harjit Singh, (iv) SCT Jaswinder Singh Man, have challenged the order dated 18.02.2025, passed by Ld. Judicial Magistrate First Class-cum-Illaq Magistrate, Bathinda (in short, 'Ld. JMIC'), whereby, while taking cognizance u/s 210(1)(c) of BNSS, 2023 in CRM No.707, dated 18.02.2025, all the petitioners along with one SCT Gaganpreet Singh, have been summoned under Sections 103, 238, 340 r/w 190 of Bharatiya Nyaya Sanhita, 2023 (in short, 'BNS, 2023') (corresponding Sections 302, 201, 470/471 r/w 149 IPC).

Material Facts: -

2. On 17.10.2024, at about 11:45 PM, Inspector Navpreet Singh

69/IC, CIA.I, Bathinda deposits the dead body of deceased Bhinder Singh in the Civil Hospital, Bathinda, which is received by Dr. Rajat Sharma, MO, vide postmortem register entry No. 573 dated 17.10.2024. Subsequently, at about 4:43 AM, on 18.10.2024, Inspector Navpreet Singh enters DDR No. 03 Dated 18.10.2024, PS Thermal, Bathinda which reads as under:

"Insp. Navpreet Singh, IC, CIA.1, had received a secret information that Baljinder Singh @ Billa, an accused wanted in FIR No.191/2021, PS Civil Lines, Bathinda, had come present at the house of co-accused in the said FIR, Satnam Singh son of Darshan Singh, resident of Kothe Mehna Patti, Lakhi Jangle, District Bathinda. Accordingly, **Inspector Navpreet Singh alongwith HC Rajwinder Singh, No.622/BTI, S, CT Harjeet Singh, No.193, PHG4 Mahinder Singh, PHG Gurwinder Singh**, raided aforesaid house of Satnam Singh, but aforesaid Baljinder Singh @ Billa was not found there. Then they again contacted the police informer, who informed that brother of Satnam Singh, namely Bhinder Singh, who is required in other cases registered at PS Nehianwala, was seen going towards Bathinda, alongwith one person resembling Baljinder Singh @ Billa. Thereafter, Inspector Navpreet Singh alongwith the police party, tracing the said person reached near thermal plant lakes, where they saw in street lights, that at the roadside, one young man was sitting on the motorcycle and the other was standing near him, talking to each other. The person who was standing was Bhinder Singh @ Kaka Nihang son of Darshan Singh, resident of Kothe Mahana Patti, Lakhi Jangal. The inspector identified him as he was previously known to him. Seeing the police party, the young man, who was sitting on the motorcycle, ran away from the spot and Bhinder Singh son of Darshan Singh jumped into the water of the lake. Inspector with the help of the police party tried to rescue him and took him out of the water and taken to Civil Hospital, where he was declared

dead. The dead body of Bhinder Singh was deposited in the Mortuary of Civil Hospital, Bathinda."

3. On 18.10.2024, ASI Gurpreet Singh entered DDR No.25 dated 18.10.2024, PS Thermal, stating that the father and relatives of the deceased were present at CH Bathinda but refused to record statements and father of the deceased namely Darshan Singh verbally stated that he would talk to his other son Satnam Singh, who is lodged in Jail, before recording any statement. But newspapers dated 19.10.2024, namely '*Bhaskar*' and '*Punjabi Jagran*' and one online Public App reported that relatives of deceased Bhinder Singh had protested and alleged that police officials of CIA, tortured Bhinder Singh to death as they had picked him from the place near village Lakhi Jangal, on 17.10.2024, with the allegation of keeping illegal weapon and kept him in CIA Staff and had also searched their house at 10:00 PM, but did not find anything. They further alleged that the police tried to put pressure on them to settle the matter for Rs.20 Lac.

4. On the same day i.e 18-10-2024 at 8:37 PM, an email complaint dt 18.10.2024 was made from email Id suryasingla429@gmail.com, to the Hon'ble Punjab and Haryana High Court, DGP and SSP, Bathinda, alleging that CIA-1, Bathinda police officials illegally detained a person, tortured him to death, covered up the matter, by proceeding u/s 174 Cr.P.C. (S.194 BNSS) and praying for autopsy by the Board of Doctors. An email was also sent to the Civil Surgeon Bathinda for constituting the board of doctors to conduct autopsy.

5. On 19.10.2024, Satnam Singh (brother of the deceased), lodged in Central Jail Ferozpur, made a written complaint dt. 19.10.2024, before Ld.

Sessions Judge, Ferozpur, during the jail inspection, alleging that on 17.10.2024 his brother Bhinder Singh was illegally detained, interrogated, and tortured to death by the police without any fault and prayed for justice. Said complaint was ultimately intimated to Ld. District & Sessions Judge, Bathinda, giving way to the inquiry.

6. Interestingly, on 19.10.2024, ASI Gurpreet Singh, No.632 PS Thermal, entered a DDR No. 29/19.10.2024/PS Thermal, stating that Darshan Singh, father of the deceased, suffered a statement that his son Bhinder Singh jumped in the thermal lake and died naturally. He doesn't want to take action against anyone. Accordingly, police proceeded u/s 194 BNSS. Ultimately on 20.10.2024, at 9:30 AM, police submitted papers u/s 194 BNSS before SMO, Bathinda, and at 9:45 AM, Dr. Rajat Sharma ENT Specialist in the Civil Hospital, conducted the postmortem vide PMR No.RS/82/CHBTI Dt.20.10.2024. No viscera was sent for chemical/histopathological examination. No diatom test was done. No videography was done. The final opinion on the cause of death was given on the same day as '**Cause of death is Asphyxia due to antemortem drowning**'.

7. It is on the basis of the complaint dated 19.10.2024 (moved from Central Jail by Satnam Singh B/o deceased Bhinder Singh) that Ld. District & Sessions Judge, Bathinda, gave way to initiate inquiry, and therefore, in compliance to the letter dated 22.10.2024, forwarded by Ld. ACJM, Bathinda, Ld. JMIC, Bathinda was appointed as an "Inquiry Officer" under Section 196 of BNSS, 2023 (Section 176 Cr.P.C.), for conducting thorough inquiry into the death of Bhinder Singh, who died under suspicious

circumstances.

After completion of inquiry, Ld. JMIC, Bathinda, submitted his report vide letter No.32, dated 07.02.2025, concluding that Bhinder Singh was in illegal custody of CIA-1, Bathinda on 17.10.2024, when he died under suspicious circumstances like water boarding with cause of death being Asphyxia due to ante mortem drowning. It was also concluded that the explanation given by the police party that Bhinder Singh jumped into Thermal Lake himself, seemed highly improbable.

8. After submitting the inquiry report, Ld. CJM, Bathinda, again entrusted the matter to Ld. JMIC-cum-Illaq Magistrate, Bathinda, for further proceedings with the observation that an appropriate action is required to be taken as per law by this Court **“being jurisdictional Magistrate”**.

It is how the matter reached back to the Court of Area Magistrate/Jurisdictional Magistrate, to proceed accordingly as per law on judicial side.

9. After discussing all the material facts, statements of the relatives of the deceased Bhinder Singh, also the now summoned accused, and other relevant witnesses, the statements of the Doctors, which were recorded during the course of inquiry, and also by taking into account the opinion of Forensic Expert, Jurisdictional Magistrate exercised his power under Section 210(1)(c) of BNSS, 2023 [Section 190(1)(C) Cr.P.C.] and took cognizance of the offence by noticing that there are sufficient grounds to proceed further as per Section 227 of BNSS, 2023 (Section 204 Cr.P.C.).

This is how, process of summoning has been issued u/s

227(1)(b) of BNSS, 2023, for causing the accused to be brought or to appear before it, vide its' impugned order dated 18.02.2025. Ld. Magistrate has issued summons to take cognizance of the offence(s) u/s 103, 238, 340 r/w 190 of BNS, 2023.

10. **Arguments raised by Ld. Counsel for the petitioners: -**

- (i) Ld. Area Magistrate has taken cognizance of the offence under Section 210(1)(c) of BNSS, 2023, and then simultaneously issued the process against the petitioners. It is argued by petitioners' counsel that in fact, the case was either to be treated as a complaint case, and thereupon, statements of witnesses were to be recorded under Chapter XVI (Section 223 to 226) of BNSS, 2023. In alternative, matter could have been remanded back to the police for investigation, and thereupon, cognizance was to be taken on the basis of police report, so submitted.

Broadly, the submission is that without there being any complaint before the Magistrate or a police investigation report before the Court, it cannot be considered that sufficient material/grounds are available on record to summon the petitioners/accused. Moreover, the material collected during the course of judicial inquiry, that too by the same Magistrate, cannot be looked into without same being reiterated or referred by the witnesses before the Court, if treated to be a complaint case. Thus, argues that taking cognizance directly and then summoning the petitioners/accused is bad in law.

- (ii) Second argument addressed by petitioners' counsel is that by

adhering to Chapter XV and taking cognizance under Section 210(1)(c) of BNSS, 2023 directly, the provision of Chapter XVII i.e. '*commencement of proceeding before the Magistrate*', couldn't be invoked.

- (iii) While referring to Section 227(2) of BNSS, 2023, Mr. Ahluwalia, counsel for the petitioners, submits that even there is no list of prosecution witnesses, and therefore, said provision of law negates the issuance of summons or warrants.
- (iv) It is also argued that in compliance to Section 231, copy of the statements and documents are to be supplied to the summoned accused (petitioners herein), as the offences are triable by the Court of Sessions. Once the process has been issued under Section 227 of BNSS, 2023, there has to be compliance of the said provision of law. In the absence of any complaint, there being no list of witnesses available on record, no such statement of the witnesses, there appears to be no material including the statements or documents, which could be supplied to them (petitioners herein). Therefore, merely based upon the inquiry report, prepared under Section 196 of BNSS, 2023, accused could not be summoned.

In support of his submissions, Ld. Counsel for the petitioners places reliance upon the following judgments: -

- (a) **Tmt. R. Kasthuri v. State by the District Collector, Cuddalore & District and others**, 2014(41) RCR (Criminal) 883 : Law Finder Doc Id # 654937 (DOD: 19.12.2014);

- (b) **Sushil Kumar Nayak v. State of Odisha**, 2017 SCC Online Ori 556 : : Law Finder Doc Id # 978413 (DOD: 21.08.2017);
- (c) **Sheetoshna Pugareya and others v. State of Madhya Pradesh and another**, M.Cr.C. No.16708 of 2015 and M.Cr.C. No.16221 of 2015 : Law Finder Doc Id # 1421675 (DOD: 27.01.2016);
- (d) **K. Shankaraiah, S.I. of Police, Proddatur I Town v. State of A.P.**, 1983 CriLJ 1296 : Law Finder Doc Id # 270272 (DOD: 22.11.1982); and
- (e) **People's Union for Civil Liberties v. State of A.P. & Anr.**, 1986(1) Scale 321 : Law Finder Doc Id # 534199 (DOD: 09.01.1986).

Further argues that no fresh material was collected before issuance of process. Rather, Ld. Magistrate has considered the statement of the summoned accused – Navpreet Singh, which was recorded during enquiry (referred in paragraph No.12 of the impugned order). Since prosecution cannot rely upon the statement of the accused recorded in the proceeding of same inquiry, it could not be made basis for summoning the same accused.

11. While appearing on advance notice, learned State counsel defended the impugned order by submitting that power under Section 210(1)(c) of BNSS, 2023, is exclusive in nature, which has been lawfully exercised by Ld. Magistrate. Therefore, there is no reason to cause any interference with the impugned order.

Further argued that present petition has been filed prematurely, because the petitioners' right of raising objection has already been taken care of, by the legislation by incorporating Section 211 of BNSS, 2023. In fact,

whatever is being argued before this Court, requires to be submitted by the summoned accused before the summoning Court by filing objection application to the same Court, expressing the prejudices, likely to be suffered by them.

State counsel further argued that Ld. Magistrate applied its mind on the inquiry report, wherein, already sufficient information along with material was available to enable the Ld. Magistrate to exercise his *suo motu* power u/s 210(1)(c) of BNSS, 2023 for issuing process. Summoned accused would be entitled under Section 211 of BNSS, 2023, to seek the alleged offence(s) inquired into by some other Magistrate. Thus, submits that there being nothing wrong, the impugned order has been perfectly passed.

There can't be any dispute that alleged offense in the present case are triable by the Court of Sessions.

12. I have heard learned counsel for the petitioners, learned State counsel at length, and also gone through the petition as well as the impugned order, wherein, lot of material has already been discussed by the summoning Magistrate.

13. Legislation has made compartmentalization of the Act, keeping in view the objectivity of the Statute. Under Chapter XV, legislation laid down certain conditions, which are required for initiating the proceedings against the accused by the Judicial Magistrate. For taking cognizance of an offence by a Magistrate, under Chapter XV, three sources have been defined by the Statute, i.e., Section 210(1)(a), (b) & (c) of BNSS, 2023.

In the instant case, cognizance has been taken by the Magistrate

under third mode of taking cognizance, i.e., Section 210(1)(c) of the BNSS, 2023.

14. Just to avoid apprehension of causing prejudice to the either side, before dealing with the legal issue, i.e., taking cognizance of the offence(s) by a Magistrate u/s 210(1)(c), following provisions from BNSS, 2023 are required to be gone into: -

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CHAPTER XV
CONDITIONS REQUISITE FOR INITIATION OF PROCEEDINGS

210. Cognizance of offences by Magistrate. (1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Judicial Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence—

(a) upon receiving a complaint of facts, including any complaint filed by a person authorised under any special law, which constitutes such offence;

(b) upon a police report (recorded in any mode including digital mode) of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try

211. Transfer on application of accused. When a Magistrate takes cognizance of an offence under clause (c) of sub-section (1) of section 210, the accused shall, before any evidence is taken, be informed that he is entitled to have the case inquired into or tried by another Magistrate, and if the accused or any of the accused, if there be more than one, objects to further proceedings before the Magistrate taking cognizance, the case shall be transferred to such other Magistrate as may be specified by the Chief Judicial Magistrate in this behalf.

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212. Making over of cases to Magistrates.(1) Any Chief Judicial Magistrate may, after taking cognizance of an offence, make over the case for inquiry or trial to any competent Magistrate subordinate to him.

(2) Any Magistrate of the first class empowered in this behalf by the Chief Judicial Magistrate may, after taking cognizance of an offence, make over the case for inquiry or trial to such other competent Magistrate as the Chief Judicial Magistrate may, by

general or special order, specify, and thereupon such Magistrate may hold the inquiry or trial.

213. Cognizance of offences by Court of Session.*Except as otherwise expressly provided by this Sanhita or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Sanhita.*

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CHAPTER XVI

COMPLAINTS TO MAGISTRATES

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.

224. Procedure by Magistrate not competent to take cognizance of case. *If the complaint is made to a Magistrate who is not competent to take cognizance of the offence, he shall,—*

(a) if the complaint is in writing, return it for presentation to the proper Court with an endorsement to that effect;

(b) if the complaint is not in writing, direct the complainant to the proper Court.

225. Postponement of issue of process. (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 212, may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made,—

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 223.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Sanhita on an officer in charge of a police station except the power to arrest without warrant.

226. Dismissal of complaint. If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 225, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing.

CHAPTER XVII

COMMENCEMENT OF PROCEEDINGS BEFORE MAGISTRATES

227. Issue of process. (1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be

(a) a summons-case, he shall issue summons to the accused for his attendance; or

(b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint: Provided that

summons or warrants may also be issued through electronic means.

(4) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this section shall be deemed to affect the provisions of section 90

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231. Supply of copies of statements and documents to accused in other cases triable by Court of Session. *Where, in a case instituted otherwise than on a police report, it appears to the Magistrate issuing process under section 227 that the offence is triable exclusively by the Court of Session, the Magistrate shall forthwith furnish to the accused, free of cost, a copy of each of the following:—*

(i) the statements recorded under section 223 or section 225, of all persons examined by the Magistrate;

(ii) the statements and confessions, if any, recorded under section 180 or section 183;

(iii) any documents produced before the Magistrate on which the prosecution proposes to rely:

Provided that if the Magistrate is satisfied that any such document is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through an advocate in Court:

Provided further that supply of documents in electronic form shall be considered as duly furnished.”

15. Chapter XVI exclusively deals with the complaint cases, cognizance in which is taken by the Magistrate u/s 210(1)(a) of BNSS, 2023. It does not deal with any other mode of taking cognizance, i.e., upon police report or upon information received from any person or upon Magistrate’s own knowledge. Therefore, reliance placed by the petitioners’ counsel based upon the judgments cited before this Court, would not be directly applicable to the situation of taking cognizance falling u/s 210(1)(c) of BNSS, 2023.

It also requires to be understood that Magistrate’s power to take cognizance u/s 210(1)(c) is exclusive, independent and of holistic value. To

remove any doubt or apprehension of biasness of the summoned accused, legislation has inserted Section 211 making it obligatory over the Magistrate to apprise the summoned accused of his right to file objection and then to proceed as per the consequential directions issued by the Chief Judicial Magistrate in that behalf. Actually, in the present case, petitioners have assumed that without following the procedure given under Chapter XVI, they could not have been summoned by the Magistrate. Whereas, from the bare reading of the provisions, it is clear that power to take cognizance u/s 210(1)(c) is exclusive and independent, however, on summoning of the accused, it would be subject to the mandatory compliance of Section 211 of BNSS, 2023. Obligation over the Magistrate and entitlement of the summoned accused u/s 210(1)(c) are that; -

- (i) just on appearance of the summoned person/accused first time in response to the issuance of process and before taking any evidence, Magistrate shall inform about the entitlement to the summoned accused to seek inquiry or trial from any other Magistrate.
- (ii) if any of the accused objects for further proceedings by the same Magistrate, who took cognizance, it shall be apprized to the Chief Judicial Magistrate.
- (iii) considering the objections of the summoned accused, Ld. CJM shall transfer the proceedings to some other Magistrate, before whom proceedings of inquiry or trial may commence, if there is any such demand by the summoned accused.

Petitioners in the present case have filed the instant petition,

challenging the summoning order directly before this Court, without availing the remedy of seeking inquiry/fresh inquiry, which is available to them u/s 211 of BNSS, 2023.

16. It would not be left unnoticed that petitioners have been issued the process u/s 227(1)(b) of BNSS, 2023, which says that even in warrant cases, if Magistrate thinks it appropriate, accused can be summoned to be brought before it for the purpose of appearance only. Undoubtedly, before resorting to the stage of issuing process, as in the present case also, it is obligatory over the concerned Magistrate to have enough material before it for satisfying itself of happening of the offence(s) to resort to its power.

Apprehension of the petitioners that there is no statement or document to be supplied to them seems to be unfounded, because the impugned order, which is detailed one, clearly suggests that there was enough material before the Magistrate while taking cognizance on judicial side and it is entirely on the basis of Magistrate's satisfaction that process has been issued for commencement of the proceedings.

17. It is also settled proposition of law that accused has no *locus standi* at this stage, where Magistrate has to take a decision, as to whether process is required to be issued to the accused or not. Therefore, in the opinion of this Court for taking cognizance u/s 210(1)(c) of BNSS, 2023 and to issue process, it is not obligatory over the Court to record statements of the witnesses or even to call for the aggrieved party. Bare reading of the provision is entirely based upon the satisfaction of the Magistrate, who comes to know of happening of some offence, on his own or even upon information from any person, other than the police officer. Not only this,

Magistrate can take cognizance entirely on the basis of his own knowledge also for committing an offence, and thereupon, no specific procedure is required to be adopted or followed before issuance of process vis-à-vis the suspect. However, even in a warrant case, if thinks fit, Magistrate can direct the accused to be brought before it simply by issuing summon for appearance by virtue of Section 227(1)(b) of BNSS, 2023.

18. To have a comparative study of entitlement of accused to raise objection u/s 211 with that of first proviso to Section 223 of BNSS, 2023, it can now be safely understood that legislation has already taken notice of the false acquisition, if any, because in both the situations summoned person/accused has been granted opportunity of hearing in advance to proceed further.

Recently, Kerala High Court in its decision dated **22.01.2025**, passed in **CRL.MC No.508 of 2025**, titled as, “**Suby Antony v. Susha and others**”, dealt with the first proviso of Section 223 of BNSS, 2023, and held that actual cognizance by Magistrate would be taken for the purpose of regulating the procedure, after giving an opportunity of hearing to the accused. Para No.7 and 8 of the same, reads as under: -

“ 7. Indeed, a radical change in procedure is brought about by the proviso to Section 223(1) of BNSS. Pertinently, in spite of the proviso to Section 223(1) making it mandatory to provide opportunity of hearing to the accused before taking cognisance, Section 226 does not reckon the accused's objection at the stage of taking cognisance as a relevant factor for dismissing the complaint. Being guided by the precedents on Sections 200 and 202 of the Code and the plain language of the proviso to Section 223(1) of the BNSS, this Court is of the opinion that , after the complaint is filed, the Magistrate should first examine the complainant and witnesses on

oath and thereafter, if the Magistrate proceeds to take cognisance of the offence/s, opportunity of hearing should be afforded to the accused. I am also in complete agreement with the following procedural drill delineated by the High Court of Karnataka in Basanagouda's case (supra);

“9. To steer clear the obfuscation, it is necessary to notice the language deployed therein. The Magistrate while taking cognizance of an offence should have with him the statement on oath of the complainant and if any witnesses are present, their statements. The taking of cognizance under Section 223 of the BNSS would come after the recording of the sworn statement, at that juncture a notice is required to be sent to the accused, as the proviso mandates grant of an opportunity of being heard.

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.”

8. In the result, the Crl.M.C is allowed and the impugned order dated 26.10.2024 is quashed. The court below is directed to examine the complainant and his witnesses, if any, upon oath. The accused, though issued with notice from the court below, shall be afforded opportunity of hearing if the Magistrate decides to take cognisance of the offences mentioned in the complaint after such examination.

Having found that notice could not have been issued to the prospective accused before taking cognisance, notice to respondents 2 to 10 in this Crl.MC is dispensed with.”

In case, said proposition, as recently observed by the Kerala High Court (supra) is applied while interpreting the conjoint reading of Section 210(1)(c), 211 & 212 of BNSS, 2023, it would be clear that

provision of granting opportunity of hearing of seeking inquiry or trial by another Magistrate, is there with the summoned person by submitting his grounds in the objection application. Immediately, on issuance of process and his appearance on the basis of issued summons of his appearance only, he or she (summoned person) can put up the plea of his/her side in the objection application and simultaneously can seek inquiry, which obviously includes fresh inquiry also.

Therefore, this Court does not find any such situation, whereby, any of the right of the accused including the right of defense gets prejudiced or infringed in any manner.

19. Still, as already observed by the Hon'ble Apex Court in **Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi and others**, [(1976) 3 SCC 736] and **A.R. Antulay v. Ramdass Sriviniwas Nayak and another**, [(1984) 2 SCC 500], this Court finds that at this stage, accused have no *locus standi* to raise objection to the magisterial power of taking cognizance under Section 210(1)(c) of BNSS, 2023.

Broadly, it is culled out that magisterial power to take cognizance of the offence(s), on reaching to a tentative conclusion by satisfying itself of happening of some offence, such Magistrate is empowered to issue process as per the prevailing proceeding or situation before it, either u/s 210(1)(a) or (b) or (c) of BNSS, 2023, and at that stage, summoned person/accused has no say to challenge the power of taking cognizance. Undoubtedly, such a power is expected to be exercised after acknowledging of happening of some offence and on having a reasonable satisfaction based on some material already before it.

Therefore, plea of the petitioners that without recording of any fresh evidence on oath etc., Magistrate is barred to take cognizance u/s 210(1)(c), who himself conducted inquiry u/s 196 of BNSS, 2023, is misconceived and misplaced. Undoubtedly, impugned order deals with enough material already available before the Magistrate.

Once Section 210(1)(c) authorizes the Magistrate to take cognizance of the offence(s), without there being any special procedure prescribed, next required step is to issue process of causing appearance through *summons* or *warrant*, as the case may be, and by applying its own discretion to that effect, irrespective of the nature of offence.

There is no doubt that in the present case, petitioners who would appear in pursuance to the summons issued to them u/s 227(1)(b) of BNSS, 2023, shall be afforded an opportunity of filing objection, as prescribed u/s 211 of BNSS, 2023.

On filing of objections, if any, to the issuance of process, same would be decided at the first instance and thereon, proceeding would commence in view of Section 212 of BNSS, 2023.

20. In reference to the petitioners' argument of non-compliance of Section 231 of BNSS, 2023, it needs to be clarified that material and documents, on which the prosecution is likely to rely [Section 231(iii) of BNSS, 2023] is already available on record in the shape of complete inquiry report u/s 196 of BNSS.

While examining the impugned summoning order, it is noticed that in paragraph 10, a list of the relatives of the deceased and the number of their depositions is mentioned. It includes description of the statements

made by four relatives of the deceased. Statements of 12 witnesses, i.e., police officials, Advocate Surya Kant Singla, three Medical Officers, one Forensic Expert, two newspaper reports, and three Nodal Officers have also been recorded.

Before reaching to the stage of Section 231 of BNSS, 2023, it can' be assumed that on reaching to an appropriate stage, provision of law would not be complied with. As of now, it appears that prosecution would definitely rely upon the statements recorded and material collected by the Judicial Magistrate during the course of inquiry. But in the present case, the accused have not even waited to reach to that stage and has approached this Court prematurely without having any alleged grievance for violation mentioned under Section 231(iii) of BNSS, 2023.

21. It is necessary to bear in mind that during the course of judicial inquiry, statements of the witnesses have been recorded on oath, and this part is so understood by this Court from the description of the statements, which is given under para No.10 of the impugned order, where the Magistrate has used the word “**deposition**” made by the witnesses.

In the midst of dictation, photocopies of some of the statements of the witnesses, recorded before the Ld. Judicial Magistrate (JMJC, Bathinda) during judicial inquiry, were called for, and same were received through official e-mail Id on 29.04.2025. Thereupon, it is found that respective witnesses got recorded their statements as ‘solemnly affirm (on S.A.)’ and have also signed the same as ‘RO&AC’.

22. While proceeding further, it is also required to remind ourselves that in the present case, cognizance has been taken on the basis of

the judicial inquiry conducted by the Magistrate u/s 196(2), which has a wider scope than the one u/s 194(1) of BNSS, 2023. To support this view, paras No.23 & 25 of the **Tmt. R. Kasthuri's case** (*supra*), say as under: -

“23. But, in sub-section (1A) a different language has been consciously used by the legislature. Here the legislature has not confined the inquiry only into the cause of the death or cause for the disappearance or cause for rape while in custody of the police. The qualifying words like “inquiry into the cause of the death” as it is found in sub-section (1) of Section 176 of the Code have been consciously omitted in sub-section (1A) of Section 176 of the Code thereby indicating that the inquiry by a Judicial Magistrate under sub-section (1A) is not confined only to the cause of death or cause for the disappearance or cause for rape. Thus, this inquiry has got a wider scope. As per sub-section (2) of Section 176 of the Code, the Magistrates, both the Executive Magistrate as well as the Judicial Magistrates / Metropolitan Magistrates, shall record evidence on oath. Sub-section (5) of section 176 of the Code is more elaborate which states that the Judicial Magistrates / Metropolitan Magistrates or the Executive Magistrates or Police Officers holding an inquiry or investigation, as the case may be, under sub-section (1A) shall, within twenty-four hours of such death, forward the body for post-mortem.

24. xxx xx xxx xx

25. *As I have already pointed out, the inquiry held by the Judicial Magistrate or Metropolitan Magistrate, cannot be , at any stretch of imagination equated to an investigation by the police. During investigation, the police officer shall enjoy enormous powers and skill to thoroughly investigate the matter and he has got lot of tools also to investigate; whereas the Judicial Magistrate or Metropolitan Magistrate may not have such tools. In this regard, we may refer to the judgment of the Hon'ble Supreme Court in Radha Mohan Singh alias Lal Saheb vs. State of U.P. (2006) 2 SCC 450. In that case, the Hon'ble Supreme Court was concerned with the inquiries under sub-sections (1) and (2) of Section 174 of the Code. In para 14 of the said*

judgment, the Hon'ble Supreme Court, after having analyzed the power of the police to investigate into a crime vis a vis the power of the Executive Magistrate to hold inquest, held as follows:-

"14. The language of the aforesaid statutory provision is plain and simple and there is no ambiguity therein. An investigation under Section 174 is limited in scope and is confined to the ascertainment of the apparent cause of death. It is concerned with discovering whether in a given case the death was accidental, suicidal or homicidal or caused by animal and in what manner or by what weapon or instrument the injuries on the body appear to have been inflicted. It is for this limited purpose that persons acquainted with the facts of the case are summoned and examined under Section 175. The details of the overt acts are not necessary to be recorded in the inquest report. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted or who are the witnesses of the assault is foreign to the ambit and scope of proceedings under Section 174. Neither in practice nor in law it is necessary for the person holding the inquest to mention all these details."

Once it is observed that judicial inquiry carries wider scope than the inquiry conducted u/s 194 of BNSS, 2023, allegation of the petitioners that the Magistrate, who conducted judicial inquiry could not himself exercise the power of taking cognizance u/s 210(1)(c) of BNSS, 2023, is also found to be baseless. Moreover, summoned accused would be free to express his apprehension of any bias in the objection application, if any, is thought to be filed u/s 211 of BNSS, 2023.

In view of this, such an apprehension or even submission is not even addressable before this Court at this stage.

Other judgments relied upon by the petitioners' counsel would not be applicable for simple reason that petitioners have challenged the order at premature stage, under misconception of recording of no statement, under Chapter XVI, and also without even availing their right under Section 211 of the BNSS, 2023.

23. In view of all the aforementioned discussion, I do not find any irregularity in the order passed by the Ld. Magistrate, and therefore, observe that the impugned order has been passed perfectly as per law.

24. Therefore, applying the aforesaid reasonings and getting support from the observations made by Kerala High Court in Suby Antony's case(*supra*), as well as the Apex Court in Smt. Nagawwa's case (*supra*) and A.R. Antulay's case(*supra*), it is observed that petitioners may opt to exercise their right under Section 211 of the BNSS, 2023. If such right is not exercised despite being apprised by the Court, the learned Magistrate may proceed further, treating it as an indication that the summoned accused have no objection to face proceedings before the same Magistrate.

Accordingly, it is held that there is no infirmity in the impugned order dated 18.02.2025, which appears to have been passed in accordance with the provisions of the BNSS, 2023. Therefore, **the instant petition is dismissed** with the above observations and with the liberty as mentioned here-above.

Pending misc. application(s), if any, also stand disposed of.

Since, proceedings before the Court of Area Magistrate were ordered to be kept in abeyance, while reserving the order on 05.04.2025, information in regard to the final decision be forwarded.

(SANJAY VASHISTH)
JUDGE

July 01, 2025

J.Ram

Whether speaking/reasoned: Yes/~~No~~

Whether Reportable: Yes/~~No~~