

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.79857 of 2025**

Arising Out of PS. Case No.-130 Year-2025 Thana- COMPLAINT CASE District-
Kishanganj

Manoj Kumar Dugar S/O Late Mr. Mal Chand Dugar R/O 100-B, Opposite
Raymonds, Ward No. 27, Dharamshala Road, P.O and P.S and District-
Kishanganj, Bihar- 855108.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Ladli Khatoon W/o Md. Ejaj R/O Ward No. 4, Panibagh, P.S and Distt.-
Kishanganj, Presently residing at Line Masjid, Chaprasi Mohalla, Ward
No.15, P.S and Distt.- Kishanganj.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Ravi Ranjan, Advocate.

For the Opposite Party/s : Mr. Ajit Kumar, APP.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL JUDGMENT

Date : 15-12-2025

Heard Mr. Ravi Ranjan, learned counsel appearing on
behalf of the petitioner and Mr. Ajit Kumar, learned APP for the
State.

2. The present application has been filed under
Section 528 of the BNSS, 2023 for quashing of the Summoning
Order dated 27.08.2025 and all consequential proceedings
arising out of the Complaint Case No. 130C/2025 (Ladli
Khatoon v Manoj Dugar & Anr.) pending before the Learned



JMFC-cum-Civil Judge (Jr. Div.)-II, Kishanganj, whereby and whereunder, the learned Magistrate erroneously took cognizance of offences and passed summoning order dated 27.08.2025 against the petitioner under Section 126(2), 115(2), 318(4), 352, read with Section 3(5) of the Bharatiya Nyaya Sanhita, 2023.

3. The prosecution story, in brief, is that the son of the complainant, namely, Md. Faiyaz alias Parvez, is a tailor running a shop on a footpath at Nemchand Road and had past business dealings with the petitioner's cloth shop, during which Rs. 4,000/- was allegedly due. On 22.02.2025, after completing stitching work, a dispute arose over payment and settlement of accounts. In the evening, the petitioner allegedly abused her son and later, at his shop, on the basis of incorrect calculations claimed Rs. 5,000/- due to be paid by the complainant's son. When his son protested, the petitioner, allegedly instigated his staff to assault him. The petitioner then allegedly called the owner of Raymonds Showroom and Councilor Manish Jalan, who arrived with several staff members and assaulted the complainant's son, causing injuries. One well wisher Bipul Aggarwal, who tried to mediate, was also assaulted. The complainant's son managed to escape and received treatment at Kishanganj Hospital. Due to fear, the complainant did not approach the police on the same day but lodged a written complaint on 23.02.2025 and informed senior police officials by



email. No action has allegedly been taken so far.

4. Learned counsel appearing on behalf of the petitioner submitted that the allegation alleged against the petitioner by the complainant is false and concocted in order to harass the petitioner and to save his skin from the F.I.R. being Kishanganj P.S. Case No. 99 of 2025 filed by the petitioner earlier to the present complaint.

5. Learned APP for the State submitted that there is no infirmity in the order taking cognizance dated 27.08.2025 passed by the learned Judicial Magistrate First Class-cum-Civil Judge (Jr. Div.)-II, Kishanganj in Complaint Case No. 130C/2025, as such, no interference is required by this Court.

6. Heard the parties.

7. The Bharatiya Nyaya Sanhita, 2023, the Bhartiya Nagarik Suraksha Sanhita, 2023 ("BNSS"), and the Bharatiya Sakshya Adhiniyam, 2023 became effective on July 1, 2024, repealing Indian Penal Code, 1860 (IPC), the Code of Criminal Procedure, 1973 ("CrPC"), and the Indian Evidence Act, 1872, respectively. The BNSS introduced substantive procedural reforms aimed at modernising and streamlining the criminal justice system. Among the most consequential changes is the replacement of Section 200 of the CrPC with Section 223 of the BNSS, signifying a new dimension to the criminal complaint process in India.



8. Under the Code of Criminal Procedure (Cr.P.C.), if the police fail to register a First Information Report ("FIR"), the complainant may approach any Magistrate under Section 190 of the CrPC to seek a direction for the police to investigate the complaint under Section 156(1). However, if the Magistrate finds that the allegations disclose a cognizable offence and forwarding the complaint to the police would not be just, then Section 200 of the CrPC becomes applicable.

9. Section 200 of the CrPC requires the Magistrate to examine the complainant and witnesses on oath before taking cognizance. 2) A bare reading of Section 200 indicates that, at this stage, the accused has no *locus standi* to put forth its case before the Magistrate. On finding sufficient grounds for proceeding, the Magistrate may issue summons or warrants under Section 204 of the CrPC, at which stage the accused has the right to appear, argue, and contest the case.

10. The Apex Court in *Chandra Deo Singh v. Prokash Chandra Bose & Anr*, reported in 1963 SCC OnLine SC 4, observed that, since the very question for consideration under Section 200 of the CrPC is whether the accused should be called upon to face the accusations/allegations made in the complaint, an accused does not have the right to take part in the proceedings nor can the Magistrate permit him to do so, till process has been issued to him. At this stage, only the intrinsic



quality of the statements made before the Magistrate, i.e, the complaint, the statement on oath made by the complainant and the statements made before him by persons examined at the instance of the complainant, are to be considered. Recently also while interpreting Sections 200 to 204 Cr.P.C.

11. The procedure to be followed on filing of the Complaint under Section 200 Cr.P.C. (now Section 223 BNSS) was discussed by the Apex Court in *A.R. Antulay vs. Ramdas Srinivas Nayak reported in 1984 2 SCC 500*. It was explained that when a private complaint is filed, the complainant has to be examined on oath except when it is a public servant. After examining the complainant on oath and the witnesses present, it would be open to the Court to judicially determine whether the case is made out for issuing process. When it is said that the Court issues process, it means that the Court has taken cognizance of the offence and has decided to initiate the proceedings and as a visible manifestation of taking cognizance, process is issued which means that the accused is called upon to appear before the Court. Similar view has been taken recently by the Apex Court in the case of *Sarla Gupta Vs. Directorate of Enforcement, reported in 2025 INSC 645*.

12. Short question involved in the present application filed under Section 528 BNSS is, whether the Magistrate was required to consider the application filed by the petitioner



pursuant to the notice issued to him under Section 223 (1)

BNSS. Sections 223 and 224(1) BNSS reads as follows:

“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. **(emphasis supplied)**

Section 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.”



13. Before Section 223 of the BNSS, in private complaint cases, the accused had no role until process was issued under Section 204 of the CrPC. Under Section 200 of the CrPC, it was intended solely to assess whether sufficient evidence supporting the complaint justified the issuance of process, and not to conduct a full-fledged trial at that stage. This framework ensured a clear separation between the complainant's duty to establish a prima facie case and the accused's right to defend, which began only after the Magistrate took cognizance of the case and issued process.

14. The proviso to Section 223(1) of the BNSS provides "*that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard*". Therefore, unlike Section 200 of the CrPC, Section 223(1) of the BNSS mandates that the accused shall be afforded opportunity to be heard at the preliminary stage, before cognizance is taken by the Magistrate.

15. Though Section 223 of the BNSS is substantially built upon the procedural framework of the Section 200 of the CrPC but is distinct in that it retains the core requirement of examining the complainant and witnesses before cognizance, but goes further by incorporating certain additional procedural safeguards giving opportunity to the accused.

16. In ***D. Lakshminarayana Reddy Vs. V. Narayana***



Reddy, reported in AIR 1976 SC 1672, it is observed that, what is meant by "taking cognizance of an offence" by the Magistrate within the contemplation of Section 190? Broadly speaking, when on receiving a complaint, the Magistrate applies his mind for the purposes of proceeding under Section 200 and the succeeding sections in Chapter XV of the Code of 1973, he is said to have taken cognizance of the offence within the meaning of Section 190(1)(a), which corresponds to Section 210 BNSS. If, instead of proceeding under Chapter XV, he has in the judicial exercise of his discretion, taken action of some other kind, such as issuing a search warrant for the purpose of investigation, or ordering investigation by the police under Section 156(3), he cannot be said to have taken cognizance of any offence.

17. Earlier, the Magistrates were required to consider only charge sheet and evidences which were collected in course of investigation for taking cognizance in respect of the police case and the complaint and the procedure prescribed in Chapter XV of the Cr.P.C., which corresponds to Chapter XVI of the BNSS by laying down condition in Section 223.

18. In the present case, it appears that the learned Magistrate in a very mechanical manner without exercising its jurisdiction in the manner prescribed under Sections 223 and 210 BNSS, has passed the order dated 27.08.2025.



19. Record reveals that petitioner has filed an application dated 21.07.2025, in which he has given information that prior to lodging of the present complaint, he had filed Kishanganj P.S. Case No. 99 of 2025 against the complainant under various sections of BNS.

20. I have perused the materials which were produced before the Magistrate on behalf of the petitioner which don't find any reference of any of the evidence produced on behalf of the petitioner. The order dated 27.08.2025 in connection with Complaint Case No. 130(C)/2025 is hereby quashed and set aside.

21. It is made clear that this Court has not gone into the merits of the complaint and its contents.

22. The quashing application stands disposed of.

(Purnendu Singh, J)

mantreshwar/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	25.12.2025
Transmission Date	25.12.2025

