2025:AHC:212689

AFR

Reserved on 19.11.2025
Delivered on 26.11.2025
Judgment uploaded on 26.11.2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 1624 of 2025

Prempal And 3 Others .....Petitioners(s)

Versus

State of U.P. and Another .....Respondents(s)

Counsel for Petitioners(s) : Shaheen Bano, Shahnawaz Khan
Counsel for Respondent(s) G.A.

Court No. - 82

HON'BLE PRAVEEN KUMAR GIRI, J.

1. The present Criminal Miscellaneous Application has been instituted under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) (corresponding to Section 482 of the Code of Criminal Procedure) with a **prayer** to the quash the impugned charge-sheet dated 05.10.2024 arising out of N.C.R. No. 178 of 2024, registered under Sections 115(2) and 352 of the BNS at Police Station Tilhar, District Shahjahanpur, along with the summoning order dated 11.12.2024 passed in Case No. 12922/2024 (State vs. Prempal).

2. The **brief fact** of case are that on the written information of the opposite party No.2 regarding the alleged incident dated 10.08.2024 occurred at 2.30 p.m., Non-cognizable Report as per section 174 Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023 (corresponding Section 155 Cr.P.C.) was registered as N.C.R. No. 178 of 2024, under sections 115(2)

Bharatiya Nyaya Sanhita (corresponding section 323 I.P.C.) and section 352 Bharatiya Nyaya Sanhita (corresponding section 504 I.P.C.) in Police Station-Tilhar, District-Shahjahanpur on 10.08.2024 against the alleged accused persons/applicants.

3. The allegation mentioned in the N.C.R. is that the opposite party No.2, Ramnath, and the applicants are neighbours, and the dispute relates to toilet waste drainage. It is alleged that applicants have received government funding to build a soak-pit toilet, but they constructed a waste - water flowing toilet through drainage in the wrong manner. Because of this, dirty waste- water from Prempal's toilet flows into the open drain and reaches in front of Ramnath's house. Ramnath had asked Prempal many times to repair it, but Prempal did nothing. On 10.08.2024 at about 02.30 p.m., a large amount of waste again came into the drain near Ramnath's house. When Ramnath complained about this, Prempal's son Shriram became angry and abused him. After hearing the noise, Prempal's wife, Premwati and his sons, Akhilesh and Neeraj, came there with sticks. They beat Ramnath and also abused him. When Ramnath's son Gautam alias Jaipal and his wife Rajkumar tried to save him, the accused persons beat them too and caused serious injuries.

4. Learned counsel for the applicants submits that the N.C.R. case lodged by opposite party No.2 is totally false, forged and concocted and has been filed only to harass the applicants. It is submitted that the opposite party No. 2 has deliberately made a false story regarding the flow of toilet waste towards his house. It is further submitted that the applicants never assaulted or abused anyone, and the entire narration made in the N.C.R. has been created only with the intention of harassing the applicants. The learned counsel further submits that the applicants have no criminal history. It is contended that the applicants are innocent and no offence is made out against them; therefore, the proceedings are liable to be quashed.

5. The learned counsel for the applicant also submits that the impugned cognizance-cum-summoning order is passed under Section 115 and 352 BNS in a non-cognizable offence punishable up to 2 years ignoring the provisions of Explanation to Section 2(1)(h) BNSS not treating the police report as complaint and took cognizance under Section 210(1)(b) BNSS rather than under Section 210(1)(a) BNSS amounts to abuse of process of Court or Code and liable to be quashed in the interest of justice.

6. Sri Prateek Tyagi, learned A.G.A. for the State, submits that the factual aspects of this matter cannot be seen at this stage. Therefore, the order impugned is in accordance with the law.

7. This Court has gone through the record of this case as well as provisions of law and law laid down by the Hon'ble Supreme Court and the High Courts, and thereafter proceeded in this case.

8. On the written complaint of the opposite party No.2, an N.C.R. was registered under Section 115(2), and Section 352 BNS as per the provisions of Section 174(1) BNSS and after obtaining order of investigation under Section 174(2) BNSS from the Judicial Magistrate, the investigating officer took investigation under Section 174(3) BNSS and proceeded and made charge sheet against the applicants.

The provisions of Section 115 and 352 of the BNS and Section 174 BNSS are delineated below:-

> *''**Section 115. Voluntarily causing hurt**.—(1) Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt".*
>
> *(2) Whoever, except in the case provided for by sub-section (1) of section 122 voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both.*
>
> ***Section 352. Intentional insult with intent to provoke breach of peace**.—Whoever intentionally insults in any manner, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to*

commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

"Section 174. Information as to non-cognizable cases and investigation of such cases.

(1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may by rules prescribe in this behalf, and,—

(i) refer the informant to the Magistrate;

(ii) forward the daily diary report of all such cases fortnightly to the Magistrate.

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable."

9. The investigation was received by the Investigating Officer (I.O.) under section 174(3) of the BNSS as an order of investigation was passed by the competent Judicial Magistrate under section 174(2) of the BNSS,2023, for investigation of the non-cognizable offence. (referred in the charge sheet dated 05.10.2024).

10. On 05.10.2024, as per section 193(3) of BNSS (corresponding Section 173(2) Cr.P.C.), after completion of the investigation, the Investigating Officer prepared and forwarded a police report i.e.charge sheet under sections 115(2) and 352 BNS disclosing commission of a non-cognizable offence punishable with the imprisonment up to two years to a Judicial Magistrate, District Shahjahanpur to take cognizance of the offence on the police report. In the police report, the Investigating Officer has also mentioned the

names of the accused persons and the witnesses to the incident, along with their full particulars.

The provision of section 193 BNSS is being delineated below:

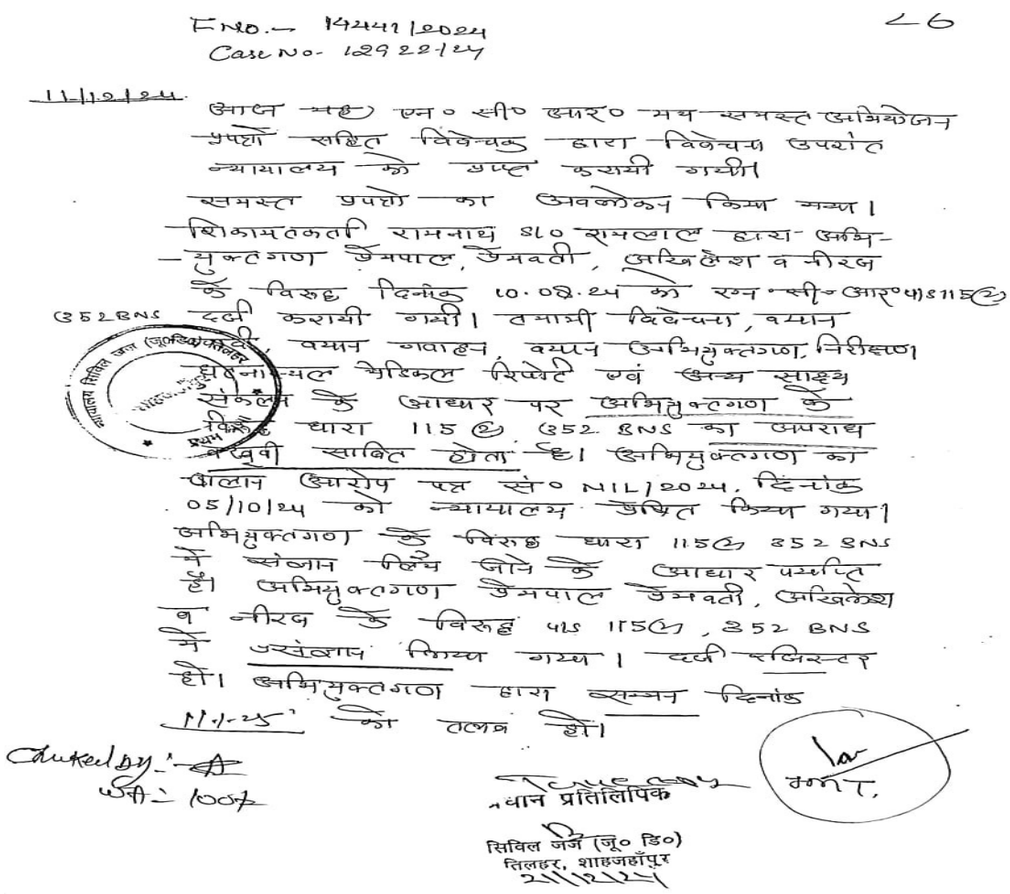
> ***Section 193. Report of police officer on completion of investigation.*** *—(1) Every investigation under this Chapter shall be completed without unnecessary delay.*
>
> ***(2)*** *The investigation in relation to an offence under sections 64, 65, 66, 67, 68, 70, 71 of the Bharatiya Nyaya Sanhita, 2023 or under sections 4, 6, 8 or section 10 of the Protection of Children from Sexual Offences Act, 2012 shall be completed within two months from the date on which the information was recorded by the officer in charge of the police station.*
>
> ***(3) (i) As soon as the investigation is completed, the officer in charge of the police station shall forward, including through electronic communication to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form as the State Government may, by rules provide, stating—***
>
> ***(a) the names of the parties;***
>
> ***(b) the nature of the information;***
>
> ***(c) the names of the persons who appear to be acquainted with the circumstances of the case;***
>
> ***(d) whether any offence appears to have been committed and, if so, by whom;***
>
> ***(e) whether the accused has been arrested;***
>
> ***(f) whether the accused has been released on his bond or bail bond;***
>
> ***(g) whether the accused has been forwarded in custody under section 190;***
>
> ***(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under sections 64, 65, 66, 67, 68, 70 or section 71 of the Bharatiya Nyaya Sanhita, 2023;***
>
> ***(i) the sequence of custody in case of electronic device;***
>
> ***(ii) the police officer shall, within a period of ninety days, inform the progress of the investigation by any means including through electronic communication to the informant or the victim;***
>
> ***(iii) the officer shall also communicate, in such manner as the State Government may, by rules, provide, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.***
>
> ***(4)*** *Where a superior officer of police has been appointed under section 177, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.*

> ***(5)*** *Whenever it appears from a report forwarded under this section that the accused has been released on his bond or bail bond, the Magistrate shall make such order for the discharge of such bond or bail bond or otherwise as he thinks fit.*
>
> ***(6)*** *When such report is in respect of a case to which section 190 applies, the police officer shall forward to the Magistrate along with the report—*
>
> > *(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;*
> >
> > *(b) the statements recorded under section 180 of all the persons whom the prosecution proposes to examine as its witnesses.*
>
> *(7) If the police officer is of opinion that any part of any such statement is not relevant to the subject matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.*
>
> ***(8)*** *Subject to the provisions contained in sub-section (7), the police officer investigating the case shall also submit such number of copies of the police report along with other documents duly indexed to the Magistrate for supply to the accused as required under section 230:*
>
> ***Provided*** *that supply of report and other documents by electronic communication shall be considered as duly served.*
>
> ***(9)*** *Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (3) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form as the State Government may, by rules, provide; and the provisions of sub-sections (3) to (8) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (3):*
>
> ***Provided*** *that further investigation during the trial may be conducted with the permission of the Court trying the case and the same shall be completed within a period of ninety days which may be extended with the permission of the Court."*

11. On 11.12.2024, the learned Judicial Magistrate, Tilhar, District Shahjahanpur, took **cognizance** of the offences mentioned in the charge sheet against the applicants **under section210(1)(b)** BNSS (corresponding section 190(1)(b) Cr.P.C.), treating it as a police case/state case rather than as a complaint case under section **210(1)(a) BNSS** (corresponding section 190(1)(a) Cr.P.C.). Thereafter, the case was registered as Case No. 12922 of 2024 (State Vs Prempal) in the Court of the

Judicial Magistrate, and the accused applicants were summoned to appear before him on 11.01.2025.

12. The learned Judicial Magistrate has also observed in the **cognizance-cum-summoning** order dated 11.12.2024 that he had perused all the evidence collected by the Investigating Officer and found that offences of Section 115(2) and 352 BNS are sufficiently proved against the accused applicants. Therefore, the cognizance is taken of the offences against the accused applicants, and they are also summoned. **The Judicial Magistrate Tilhar Shahjahanpur has also not mentioned his name, post and ID at the place of his signature on the cognizance-cum-summoning order dated 11.10.2024, which is also against the circulars dated 23.08.2018 and 19.07.2023 issued by the High Court.** The attached cognizance-cum-summoning order dated 11.10.2024 is pasted herein below for perusal:



CNR No.- 14444/2024
Case No.- 12922/24

11/10/24

आज वाद एन० सी० आर० मय समस्त अभिलेखन प्रपत्रों सहित विवेचक द्वारा विवेचना उपरांत न्यायालय को प्राप्त कराये गये।

समस्त प्रपत्रों का अवलोकन किया गया।

शिकायतकर्ता रामनाथ s/o रामलाल द्वारा अभियुक्तगण हेमपाल, हेमवती, अखिलेश व नीरज के विरुद्ध दिनांक 10.08.24 को एन०सी०आर० धारा 115(2) 352 BNS दर्ज कराई गयी। तत्पश्चात विवेचना, बयान वादी, बयान गवाहान, बयान अभियुक्तगण, निरीक्षण घटना स्थल मेडिकल रिपोर्ट एवं अन्य साक्ष्य संकलन के आधार पर अभियुक्तगण के विरुद्ध धारा 115 (2) 352 BNS का अपराध भली भाँति साबित होता है। अभियुक्तगण का चालान आरोप पत्र सं० NIL/2024, दिनांक 05/10/24 को न्यायालय उपस्थित किया गया। अभियुक्तगण के विरुद्ध धारा 115(2) 352 BNS में संज्ञान लिये जाने के आधार पर्याप्त हैं। अभियुक्तगण हेमपाल हेमवती, अखिलेश व नीरज के विरुद्ध धारा 115(2), 352 BNS में संज्ञान लिया गया। वादी रजिस्टर्ड है। अभियुक्तगण हाजा समन दिनांक 11-1-25 को तलब हों।

Checked by
फीस 100/-

अधीन प्रतिलिपिक

सिविल जज (जू० डि०)
तिलहर, शाहजहाँपुर

13. The provision of taking **cognizance** of the offence has been mentioned under section 210 BNSS, and provision of summoning an accused has been mentioned under section 227 BNSS.

The provisions of section 210 BNSS is being delineated below:

> ***"Section 210. Cognizance of offences by Magistrate.***—*(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any 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*** *(submitted in any mode including electronic 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.*

14. **Before issuing a summons to an accused in a complaint case**, the Judicial Magistrate must first satisfy the following prerequisites.

> ***(i)*** *whether the Magistrate has* ***jurisdiction*** *to try the case or notas per section 197 BNSS (corresponding section 218 of Cr.P.C);*
>
> ***(ii)*** *whether the case is* ***time barred or not*** *as per section 514 BNSS (corresponding section 468 of Cr.P.C.);*
>
> ***(iii)*** *whether the magistrate has taken cognizance under section 210 (1)(a) as a* ***complaint case or not.***
>
> ***(iv)*** *whether the alleged accused resides within the jurisdiction of the Magistrate or not and* ***if the accused resides*** *at a place* ***beyond the area*** *in which he exercises his jurisdiction, he shall* ***conduct an enquiry*** *or direct for* ***investigation*** *as per Section 225(1) of BNSS (corresponding section 202(1) Cr.P.C.) to ascertain as the alleged incident occurred in his jurisdiction.*

(v) *whether the Magistrate has given an* ***opportunity of hearing*** *to the alleged* ***accused*** *or not, as per Section 223(1) first proviso of the BNSS (no corresponding provision in the Cr.P.C.).*

(vi) *whether the* ***list of prosecution witnesses*** *has been filed by the complainant or not as per section 227(2) of BNSS (corresponding section 204(2) Cr.P.C.)*

(vii) *whether the complainant is a* ***public servant*** *or not and if the complainant is a public servant and for* ***discharging of his official duties,*** *he has made a written complaint before the judicial magistrate, then* ***no need to record the statement*** *of the* ***complainant*** *as well as* ***the witnesses*** *as per section 223(1) Second Proviso (a) of BNSS (corresponding section 200(1) First Proviso (a) Cr.P.C.).*

(viii) *If a complaint is filed against a public servant, the magistrate shall not take cognizance without providing opportunity of hearing to the public servant as the offence is committed in course of the discharge of his official duty as per provision of section 223(2)(a) of BNSS, 2023.*

(ix) *If charge-sheet (police report) has been made in a non-cognizable offence, the charge-sheet (police report) shall be deemed to be complaint as per Explanation to Section 2(1)(h) BNSS (corresponding section 2(d) Explanation Cr.P.C.) and took cognizance under Section 210(1)(a) BNSS (corresponding section 190(1)(a) Cr.P.C.).*

(x) *Before summoning, the learned Magistrate has to take care whether a* ***previous sanction*** *is required for taking* ***cognizance*** *of the offence as required under Section 217 BNSS (corresponding Section 196 Cr.P.C.) and 218 BNSS (corresponding Section 197 Cr.P.C.).*

(xi) *Before summoning any person as an accused, the judicial magistrate has to ascertain whether* ***cognizance*** *of the offences has been taken* ***except on complaint*** *in writing as*

required under Sections 215 BNSS (corresponding Section 195 Cr.P.C.), 219 BNSS (corresponding Section 198 Cr.P.C.), 220 BNSS (corresponding Section 198-A Cr.P.C.), 221 BNSS (corresponding Section Cr.P.C.198-B) and 222 BNSS (corresponding Section 199 Cr.P.C.).

The provisions of section 197, 514, 210(1)(a), Section 223(1) First Proviso, Section 223(1) Second Proviso (a), 215, 217, 218, 219, 220, 221 &222 of BNSS are being delineated below:

*"**Section 197. Ordinary place of inquiry and trial.**—Every offence shall ordinarily be inquired into and t**ried by a Court within whose local jurisdiction** it was committed.*

***Section 514. Bar to taking cognizance after lapse of period of limitation.—(1)** Except as otherwise provided in this Sanhita, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the* expiry of the period of limitation.

(2) The period of limitation shall be—

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.

***Explanation.**—For the purpose of computing the period of limitation, the relevant date shall be the date of filing complaint under section 223 or the date of recording of information under section 173.*

*"**Section 210. Cognizance of offences by Magistrate.**—(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any 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;*

***Section 223 (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**—*

Section 223 (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.*

Explanation to Section 2(1)(h) of BNSS :- *A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant;*

Section 215. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.—*(1)* ***No Court shall take cognizance*** *—*

(a) (i) of any offence punishable under sections ***206*** *to* ***223*** *(both inclusive but excluding section* ***209****) of the Bharatiya Nyaya Sanhita, 2023; or*

(ii) of any abetment of, or attempt to commit, such offence; or

(iii) of any criminal conspiracy to commit such offence,

except on the complaint in writing *of the public servant concerned or of some other public servant to whom he is administratively subordinate or of some other public servant who is authorised by the concerned public servant so to do;*

(b) (i) of any offence punishable under any of the following sections of the Bharatiya Nyaya Sanhita, 2023, namely, sections ***229*** *to* ***233*** *(both inclusive),* ***236, 237, 242 to 248*** *(both inclusive) and 267, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court; or*

(ii) of any offence described in sub-section (1) of section ***336****, or punishable under sub-section (2) of section* ***340*** *or section* ***342*** *of the said Sanhita, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court; or*

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii),

except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.

Section 217. Prosecution for offences against State and for criminal conspiracy to commit such offence.—*(1)* ***No Court shall take cognizance of*** *—*

(a) any offence punishable under Chapter VII or under section ***196****, section* ***299*** *or sub-section (1) of section* ***353*** *of the Bharatiya Nyaya Sanhita, 2023; or*

(b) a criminal conspiracy to commit such offence; or

(c) any such abetment, as is described in section 47 of the Bharatiya Nyaya Sanhita, 2023, ***except with the previous sanction*** *of the Central Government or of the State Government.*

(2) ***No Court shall take cognizance of****—*

(a) any offence punishable under section ***197*** *or sub-section (2) or sub-section (3) of* ***section 353*** *of the Bharatiya Nyaya Sanhita, 2023; or*

(b) a criminal conspiracy to commit such offence, except with the ***previous sanction of the Central Government*** *or of the State Government or of the District Magistrate.*

(3) ***No Court shall take cognizance*** *of the offence of any criminal conspiracy punishable under sub-section (2) of section* ***61*** *of the Bharatiya Nyaya Sanhita, 2023, other than a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards,* ***unless the State Government or the District Magistrate*** *has* ***consented in writing to the initiation of the proceedings****:*

Provided that where the criminal conspiracy is one to which the provisions of section 215 apply, no such consent shall be necessary.

(4) The Central Government or the State Government may, before according sanction under sub-section (1) or sub-section (2) and the District Magistrate may, before according sanction under sub-section (2) and the State Government or the District Magistrate may, before giving consent under sub-section (3), order a preliminary investigation by a police officer not being below the rank of Inspector, in which case such police officer shall have the powers referred to in sub-section (3) of section 174.

Section 218*.* ***Prosecution of Judges and public servants.****—(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty,* ***no Court shall take cognizance*** *of such offence except with the* ***previous sanction save as*** *otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014)—*

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted:

Provided further that such Government shall take a decision within a period of one hundred and twenty days from the date of the receipt of the request for sanction and in case it fails to do so, the sanction shall be deemed to have been accorded by such Government:

Provided also that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 64, section 65, section 66, section 68, section 69, section 70, section 71, section 74, section 75, section 76, section 77, section 78, section 79, section 143, section 199 or section 200 of the Bharatiya Nyaya Sanhita, 2023.

(2) ***No Court shall take cognizance*** *of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.*

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

(4) Notwithstanding anything contained in sub-section (3), no Court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(5) The Central Government or the State Government, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.

Section 219. Prosecution for offences against marriage.*—(1)* ***No Court shall take cognizance*** *of an offence punishable under sections* ***81 to 84 (both inclusive)*** *of the Bharatiya Nyaya Sanhita, 2023* ***except upon a complaint*** *made by* ***some person aggrieved*** *by the offence:*

Provided that—

(a) where such person is a child, or is of unsound mind or is having intellectual disability requiring higher support needs, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf;

(b) where such person is the husband and he is serving in any of the Armed Forces of the Union under conditions which are certified by his Commanding Officer as precluding him from obtaining leave of absence to enable him to make a complaint in person, some other person authorised by the husband in accordance with the provisions of sub-section (4) may make a complaint on his behalf;

(c) where the person aggrieved by an offence punishable under section 82 of the Bharatiya Nyaya Sanhita, 2023 is the wife, complaint may be made on her behalf by her father, mother, brother, sister, son or daughter or by her father's or mother's brother or sister, or, with the leave of the Court, by any other person related to her by blood, marriage or adoption.

(2) For the purposes of sub-section (1), no person other than the husband of the woman shall be deemed to be aggrieved by any offence punishable under section 84 of the Bharatiya Nyaya Sanhita, 2023.

(3) When in any case falling under clause (a) of the proviso to sub-section (1), the complaint is sought to be made on behalf of a child or of a person of unsound mind by a person who has not been appointed or declared by a competent authority to be the guardian of the child, or of the person of unsound mind, and the Court is satisfied that there is a guardian so appointed or declared, the Court shall, before granting the application for leave, cause notice to be given to such guardian and give him a reasonable opportunity of being heard.

(4) The authorisation referred to in clause (b) of the proviso to sub-section (1), shall be in writing, shall be signed or otherwise attested by the husband, shall contain a statement to the effect that he has been informed of the allegations upon which the complaint is to be founded, shall be countersigned by his Commanding Officer, and shall be accompanied by a certificate signed by that Officer to the effect that leave of absence for the purpose of making a complaint in person cannot for the time being be granted to the husband.

(5) Any document purporting to be such an authorisation and complying with the provisions of sub-section (4), and any document purporting to be a certificate required by that sub-section shall, unless the contrary is proved, be presumed to be genuine and shall be received in evidence.

(6) ***No Court shall take cognizance*** *of an offence under section 64 of the Bharatiya Nyaya Sanhita, 2023, where such offence consists of sexual intercourse* ***by a man with his own wife****, the* ***wife being*** *under* ***eighteen years of age****, if more than* ***one year has elapsed*** *from the date of the commission of the offence.*

Section 220. Prosecution of offences under section 85 of Bharatiya Nyaya Sanhita, 2023.*— **No Court shall take cognizance** of an offence **punishable** under **section 85** of the Bharatiya Nyaya Sanhita, 2023 **except upon a police report** of facts which constitute such offence **or upon a complaint** made by **the person aggrieved** by the offence or by her **father**, **mother**, **brother**, **sister** or by her father's or mother's brother or sister or, with the leave of the Court, by any other person related to her by blood, marriage or adoption.*

Section 221. Cognizance of offence.*— **No Court shall take cognizance** of an offence punishable under **section 67** of the Bharatiya Nyaya Sanhita, 2023 where the persons are in a marital relationship, except upon prima facie satisfaction of the facts which constitute the offence **upon a complaint** having been filed or made by the wife against the husband.*

Section 222. Prosecution for defamation.*—(1) **No Court shall take cognizance** of an offence punishable under **section 356** of the Bharatiya Nyaya Sanhita, 2023 except **upon a complaint** made by some **person aggrieved** by the offence:*

Provided that where such person is a child, or is of unsound mind or is having intellectual disability or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf.

> *(2) Notwithstanding anything contained in this Sanhita, when any offence falling under section 356 of the Bharatiya Nyaya Sanhita, 2023 is alleged to have been committed against a person who, at the time of such commission, is the President of India, the Vice-President of India, the Governor of a State, the Administrator of a Union territory or a Minister of the Union or of a State or of a Union territory, or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions, a Court of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor.*
>
> *(3) Every complaint referred to in sub-section (2) shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him.*
>
> *(4) **No complaint** under sub-section (2) shall be made by the Public Prosecutor **except** with the **previous sanction**—*
>
> *(a) of the State Government,—*
>
> *(i) in the case of a person who is or has been the Governor of that State or a Minister of that Government;*
>
> *(ii) in the case of any other public servant employed in connection with the affairs of the State;*
>
> *(b) of the Central Government, in any other case.*
>
> *(5) No Court of Session shall take cognizance of an offence under sub-section (2) unless the complaint is made within six months from the date on which the offence is alleged to have been committed.*
>
> *(6) Nothing in this section shall affect the right of the person against whom the offence is alleged to have been committed, to make a complaint in respect of that offence before a Magistrate having jurisdiction or the power of such Magistrate to take cognizance of the offence upon such complaint.*

15. The Learned Judicial Magistrate must treat a case involving a **non-cognizable offence** as a complaint case, and is not required to record the statement of the Investigating Officer—who is **deemed to be the complainant**—nor of the witnesses named in the charge sheet, in accordance with Section 223(1) read with the Second Proviso (a) of the BNSS (corresponding to Section 200, First Proviso (a) of the Cr.P.C.).

The provision of section 223(1) BNSS is delineated below:

> *"**Section 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."*

16. **With effect from July 1, 2024,** the Judicial Magistrate is required to **afford the accused an opportunity of hearing** prior to the issuance of summons in a complaint case, in compliance with the First Proviso to Section 223(1) of the BNSS.

17. Thereafter, as per section 225 BNSS (corresponding section 202 Cr.P.C.), the learned Judicial Magistrate has to verify the matter either by enquiry or investigation.

The section 225 BNSS is delineated below:

> ***"Section 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."***

18. As per Section 225 of the BNSS, the learned Judicial Magistrate has to record his satisfaction in respect of the commission of an offence where the **accused resides beyond his jurisdiction.**

19. As per section 226 BNSS (corresponding section 203 Cr.P.C.) and Section 227 BNSS (corresponding section 204 Cr.P.C.), if after considering the statement on oath (if the complainant is not a public servant as per section 223 BNSS) of the complainant and of the witnesses and the result of enquiry or investigation (if accused resides beyond jurisdiction of the Magistrate where cause of action arises) under section 225 BNSS, the Magistrate is of the opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint under section 226 BNSS and if there is sufficient ground to proceed, he shall issue summons to the accused for his attendance under section 227 of BNSS.

The provisions of Sections 226 and 227 of BNSS are delineated below:-

> *"**Section 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."*
>
> ***Section 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:*
>
> *Provided that summons or warrants may also be issued through electronic means.*

> ***(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) s****hall be accompanied by a copy of such complaint****.*
>
> *(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."*

20. As per the **Explanation to Section 2(1)(h) of BNSS**, if a police report i.e. **charge sheet disclosing commission of a non-cognizable offence** made before the Magistrate then the charge sheet/police report shall be **treated as complaint** and the police officer i.e. **Investigating Officer shall be treated as complainant** and other witnesses of the police report/charge sheet shall be treated as witnesses to the complaint case.

21. It is a fundamental principle of modern law that **all criminal offences are considered wrongs against the State (or Society as a whole)** rather than an individual victim.

22. It is presumed that the offence is always against society and not against the individual because it disturbs the peace as well as the tranquility of society. Thus, in other words, it is said that the offence is always against the State.

23. The **definitions of complaint/police report, cognizable offence, and non-cognizable** have been mentioned in the Bartiya Nagaraik Suraksha Sanhita, 2023 (BNSS). They are delineated below:-

> ***"Section 2(1)(h) "complaint"*** *means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Sanhita, that some person, whether known or unknown, has committed an offence, but does not include a police report.*
>
> ***Explanation.—A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer***

by whom such report is made shall be deemed to be the complainant;

Section 2(1)(t) "police report" *means a report forwarded by a police officer to a Magistrate under sub-section (3) of section 193;*

Section 2(1)(g) "cognizable offence" *means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant;*

Section 2(1)(o) "non-cognizable offence" *means an offence for which, and "non-cognizable case" means a case in which, a police officer has no authority to arrest without warrant;"*

24. The offences mentioned in the **charge-sheet** of this case are non-cognizable, bailable and triable by any magistrate as per the **First Schedule** of the BNSS, 2023.

Relevant portion of The **First Schedule** of The BNSS, 2023, is delineated below :-

"THE FIRST SCHEDULE

OFFENCES UNDER THE BHARATIYA NYAYA SANHITA

Section	***Offence***	***Punishment***	***Cognizable or Non-cognizable***	***Bailable or Non-bailable***	***By what court triable***
1	*2*	*3*	*4*	*5*	*6*
115(2)	*Voluntarily causing hurt*	*Imprisonment for 1 year or fine of 10,000 rupees, or both*	***Non-cognizable***	***Bailable***	***Any Magistrate***
352	*Insult intended to provoke breach of the peace*	*Imprisonment for 2 years, or fine, or both*	***Non-cognizable***	***Bailable***	***Any Magistrate***

25. A **non-cognizable offence** is **treated as a summons- case**. Therefore, the **definition of summon case** has been mentioned under section 2(1)(x) of the BNSS (corresponding section 2(w) Cr.P.C.) and clarity shall come in respect of summon case after going through the provision of section 2(1)(z) BNSS (corresponding section 2(x) Cr.P.C.) as a warrant case that is the term of punishment is not exceeding two years.

Section 2(1)(x) and section 2(1)(z) of BNSS are being delineated below:

> ***"Section 2(1)(x) "summons-case"*** *means a case relating to an offence, and not being a warrant-case;*
>
> ***Section 2(1)(z) "warrant-case"*** *means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years."*

26. **After issuing a summon to an accused person in a summons-cases instituted on complaint,** the learned Judicial Magistrate has to bear in mind that the proceedings of the trial of the summons-cases instituted on complaint shall be conducted in accordance with sections 274 to 280, 289, 290, 400 and 401 of the BNSS.

Sections 274 to 280, 289, 290, 400 and 401 of the BNSS, trial for summons-cases are delineated below: -

> ***"Section 274. Substance of accusation to be stated****.—When in a summons-case the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked whether he pleads guilty or has any defence to make, but* ***it shall not be necessary to frame a formal charge****:*
>
> *Provided that if the Magistrate* ***considers the accusation as groundless****, he shall, after recording reasons in writing,* ***release the accused and such*** *release shall have the* ***effect of discharge****.*
>
> ***Section 275. Conviction on plea of guilty.****—If the accused pleads guilty, the Magistrate shall record the plea as nearly as possible in the words used by the accused and may, in his discretion, convict him thereon.*
>
> ***Section 276. Conviction on plea of guilty in absence of accused in petty cases.—****(1) Where a summons has been issued under section 229 and the accused desires to plead guilty to the charge without appearing before the Magistrate, he shall transmit to the Magistrate, by post or by messenger, a letter containing his plea and also the amount of fine specified in the summons.*
>
> *(2) The Magistrate may, in his discretion, convict the accused in his absence, on his plea of guilty and sentence him to pay the fine specified in the summons, and the amount transmitted by the accused shall be adjusted towards that fine, or where an advocate authorised by the accused in this behalf pleads guilty on behalf of the accused, the Magistrate shall record the plea as nearly as possible in the words used by the advocate and may, in his discretion, convict the accused on such plea and sentence him as aforesaid*
>
> ***Section 277. Procedure when not convicted.****—(1) If the Magistrate does not convict the accused under section 275 or section 276, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution, and also*

to hear the accused and take all such evidence as he produces in his defence.

(2) The Magistrate may, if he thinks fit, on the application of the prosecution or the accused, issue a summons to any witness directing him to attend or to produce any document or other thing.

(3) The Magistrate may, before summoning any witness on such application, require that the reasonable expenses of the witness incurred in attending for the purposes of the trial be deposited in Court.

***Section 278. Acquittal or conviction.**—(1) If the Magistrate, upon taking the evidence referred to in section 277 and such further evidence, if any, as he may, of his own motion, cause to be produced, finds the accused not guilty, he shall record an order of acquittal.*

(2) Where the Magistrate does not proceed in accordance with the provisions of section 364 or section 401, he shall, if he finds the accused guilty, pass sentence upon him according to law.

(3) A Magistrate may, under section 275 or section 278, convict the accused of any offence triable under this Chapter, which from the facts admitted or proved he appears to have committed, whatever may be the nature of the complaint or summons, if the Magistrate is satisfied that the accused would not be prejudiced thereby.

***Section 279. Non-appearance or death of complainant.**—(1) If the summons has been issued on complaint, and on the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, after giving thirty days' time to the complainant to be present, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks it proper to adjourn the hearing of the case to some other day:*

***Provided** that where the complainant is represented by an advocate or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may, dispense with his attendance and proceed with the case.*

(2) The provisions of sub-section (1) shall, so far as may be, apply also to cases where the non-appearance of the complainant is due to his death.

***Section 280. Withdrawal of complaint.**—If a complainant, at any time before a final order is passed in any case under this Chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint against the accused, or if there be more than one accused, against all or any of them, the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused against whom the complaint is so withdrawn.*

***Section 289. Application of Chapter.**—(1) This Chapter shall apply in respect of an accused against whom—*

(a) the report has been forwarded by the officer in charge of the police station under section 193 alleging therein that an offence appears to have been committed by him other than an offence for which the punishment of death or of imprisonment for life or of

imprisonment for a term exceeding seven years has been provided under the law for the time being in force; or

(b) a Magistrate has taken cognizance of an offence on complaint, other than an offence for which the punishment of death or of imprisonment for life or of imprisonment for a term exceeding seven years, has been provided under the law for the time being in force, and after examining complainant and witnesses under section 223, issued the process under section 227,

but does not apply where such offence affects the socio-economic condition of the country or has been committed against a woman, or a child.

(2) For the purposes of sub-section (1), the Central Government shall, by notification, determine the offences under the law for the time being in force which shall be the offences affecting the socio-economic condition of the country.

***Section 290. Application for plea bargaining.**—(1) A person accused of an offence may file an application for plea bargaining within a period of thirty days from the date of framing of charge in the Court in which such offence is pending for trial.*

(2) The application under sub-section (1) shall contain a brief description of the case relating to which the application is filed including the offence to which the case relates and shall be accompanied by an affidavit sworn by the accused stating therein that he has voluntarily preferred, after understanding the nature and extent of punishment provided under the law for the offence, the plea bargaining in his case and that he has not previously been convicted by a Court in which he had been charged with the same offence.

(3) After receiving the application under sub-section (1), the Court shall issue notice to the Public Prosecutor or the complainant of the case and to the accused to appear on the date fixed for the case.

(4) When the Public Prosecutor or the complainant of the case and the accused appear on the date fixed under sub-section (3), the Court shall examine the accused in camera, where the other party in the case shall not be present, to satisfy itself that the accused has filed the application voluntarily and where—

(a) the Court is satisfied that the application has been filed by the accused voluntarily, it shall provide time, not exceeding sixty days, to the Public Prosecutor or the complainant of the case and the accused to work out a mutually satisfactory disposition of the case which may include giving to the victim by the accused the compensation and other expenses during the case and thereafter fix the date for further hearing of the case;

(b) the Court finds that the application has been filed involuntarily by the accused or he has previously been convicted by a Court in a case in which he had been charged with the same offence, it shall proceed further in accordance with the provisions of this Sanhita from the stage such application has been filed under sub-section (1).

***Section 400. Order to pay costs in non-cognizable cases.—**(1) Whenever **any complaint of a non-cognizable offence** is made to a Court, the Court, **if it convicts the accused**, may, **in addition to the penalty imposed** upon him, **order him to pay to the complainant**, in whole or in part, the cost incurred by him in the prosecution, and*

may further order that in default of payment, the accused shall suffer simple imprisonment for a period not exceeding thirty days and such costs may include any expenses incurred in respect of process-fees, witnesses and advocate's fees which the Court may consider reasonable. (2) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

*"**Section 401. Order to release on probation of good conduct or after admonition.**—(1) When any person not under twenty-one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond or bail bond to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct, and in the meantime to keep the peace and be of good behavior:*

***Provided** that where any first offender is convicted by a Magistrate of the second class not specially empowered by the High Court, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class, forwarding the accused to, or taking bail for his appearance before, such Magistrate, who shall dispose of the case in the manner provided by sub-section (2).*

(2) Where proceedings are submitted to a Magistrate of the first class as provided by sub-section (1), such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and, if he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken.

(3) In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any offence under the Bharatiya Nyaya Sanhita, 2023, punishable with not more than two years' imprisonment or any offence punishable with fine only and no previous conviction is proved against him, the Court before which he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentencing him to any punishment, release him after due admonition

(4) An order under this section may be made by any Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) When an order has been made under this section in respect of any offender, the High Court or Court of Session may, on appeal when there is a right of appeal to such Court, or when exercising its powers of revision, set aside such order, and in lieu thereof pass sentence on such offender according to law:

Provided that the High Court or Court of Session shall not under this sub-section inflict a greater punishment than might have been inflicted by the Court by which the offender was convicted

(6) The provisions of sections 140, 143 and 414 shall, so far as may be, apply in the case of sureties offered in pursuance of the provisions of this section.

(7) The Court, before directing the release of an offender under sub-section (1), shall be satisfied that an offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the Court acts or in which the offender is likely to live during the period named for the observance of the conditions.

(8) If the Court which convicted the offender, or a Court which could have dealt with the offender in respect of his original offence, is satisfied that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.

(9) An offender, when apprehended on any such warrant, shall be brought forthwith before the Court issuing the warrant, and such Court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned on his appearing for sentence and such Court may, after hearing the case, pass sentence.

(10) Nothing in this section shall affect the provisions of the Probation of Offenders Act, 1958 (20 of 1958), or the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016) or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders."

27. The **Sections 274 to 281 of BNSS deal with the trial of summons-cases by** a Magistrate, and there is no specific provision regarding the framing of charges in summons cases and summary trials. **Formal framing of charges is required only in warrant cases. In summons cases and summary trials, the accused** is informed of the particulars of the offence at the commencement of the trial, but no formal charge is framed.

28. The learned Judicial Magistrate has also to bear in mind that in **trial of summons cases, instituted on complaint**, if the complainant does not appear in the complaint/trial proceedings, then **due to non-appearance** or non-appearance even due to death of the complainant,

the **accused shall be acquitted** as per the provisions of **Section 279 BNSS** (corresponding Section 256 Cr.P.C.).

29. **In trial of summons-cases, instituted as a complaint**, the **complaint may be withdrawn by the complainant** before a final order is passed as per **section 280 BNSS** (corresponding to section 257 Cr.P.C.), and the accused shall be acquitted.

30. **Where the proceedings have been instituted on a complaint in non-cognizable offence, Sections 279, 280** and 400 of the BNSS are **only applicable in the trial of summons-cases** instituted on complaint as cognizance is taken under Section 210(1)(a) BNSS.

Sections 279, 280 and 400 of BNSS are quoted below for ready reference:-

> *"**Section 279. Non-appearance or death of complainant.**—(1) If the **summons has been issued on complaint**, and on the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the **complainant does not appear,** the Magistrate **shall**, after giving **thirty days'** time to the **complainant** to be **present**, notwithstanding anything hereinbefore contained, **acquit the accused**, unless for some reason he thinks it proper to adjourn the hearing of the case to some other day:*
>
> ***Provided** that where the complainant is represented by an advocate or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may, dispense with his attendance and proceed with the case.*
>
> ***(2) The provisions of sub-section (1) shall**, so far as may be, **apply** also to cases where the **non-appearance of the complainant is due to his death**.*
>
> ***Section 280. Withdrawal of complaint.**—If **a complainant**, **at any time before a final order** is passed in any case under this Chapter, satisfies the Magistrate that there are sufficient grounds for **permitting him to withdraw his complaint against the accused**, or if there be more than one accused, against all or any of them, the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused against whom the complaint is so withdrawn.*
>
> ***Section 400. Order to pay costs in non-cognizable cases.**—(1) Whenever **any complaint of a non-cognizable offence** is made to a Court, the Court, **if it convicts the accused**, may, **in addition to the penalty imposed** upon him, **order him to pay to the complainant**, in whole or in part, the cost incurred by him in the prosecution, and may further order that in default of payment, the accused shall suffer simple imprisonment for a period not exceeding thirty days*

> *and such costs may include any expenses incurred in respect of process-fees, witnesses and advocate's fees which the Court may consider reasonable. (2) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision."*

(2) **Where the proceedings have been instituted on police report in non-cognizable offence, Section 281 of BNSS** is only applicable in the trial of summons-cases instituted on police report in which cognizance is taken under Section 210(1)(b) BNSS.

Section 281 of BNSS is quoted below for ready reference:-

> *"**Section 281. Power to stop proceedings in certain cases**.—In any summons-case instituted otherwise than upon complaint, a Magistrate of the first class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal, and in any other case, release the accused, and such release shall have the effect of discharge."*

31. **The differences between trial of summons-cases instituted on a complaint and on a police report :-**

There is a **mandatory provision** under **Explanation** to Section 2(1)(h) BNSS, that a **police report** made by a police officer in a case which discloses, after investigation, the commission of a **non-cognizable offence** shall be **deemed to be a complaint** i.e. if a police report is treated as a complaint as per mandatory provision under Explanation to Section 2(1)(h) BNSS, the judicial magistrate has to **take cognizance of the offences under Section 210(1)(a), as the case is instituted on complaint** rather than under Section 210(1)(b) BNSS as the case is instituted on police report. In such a case, for summoning an accused under Section 227 BNSS, there is **no need to record the statement of the complainant and witnesses as exempted by the second proviso of Section 223(1) BNSS** and proceed as per provisions mentioned in the BNSS for summoning the accused under Section 227 BNSS or dismissal of the complaint under Section 226 BNSS, after providing opportunity of hearing to the

accused under Section 223(1) 1st Proviso of BNSS for the trial of summons-cases by Magistrates instituted on complaint rather than police report;

32. In the trial of summons-cases instituted on a complaint, there are also mandatory provisions in the BNSS, such as:-

(i) Due to non-appearance of the complainant on the date fixed in trial proceedings or in case of death of the complainant, the Judicial Magistrate, as per provisions of **Section 279** of the BNSS, shall **acquit** the accused. **This provision is not applicable in the trial of summons-cases instituted on a police report.**

(ii) The complainant may withdraw the complaint at any time before a final order is passed as per the provisions mentioned under Section 280 BNSS, in a trial of summons-case instituted on complaint and after granting permission to withdraw the complaint, the Judicial Magistrate shall **acquit the accused** of the complaint. **This provision is not applicable if a trial of summons-cases instituted on police report.**

(iii) In case of conviction of an accused in a trial of **summons-case instituted on complaint of a non-cognizable offence**, in addition to the penalty, the Court of Magistrate may **order to the accused to pay the complainant the cost** incurred by him in prosecution as per Section 400 of the BNSS. **This provision is not applicable in a trial of summons-cases instituted on police report.**

33. **So far as the trial of summons-cases instituted on police report is concerned, as per the provision of Section 281** of BNSS, A first class Magistrate or any Judicial Magistrate, **with the previous sanction of Chief Judicial Magistrate**, may **stop the proceedings** at any stage without pronouncing any judgment and **release the accused** and such release shall **have the effect of discharge** and whereas such stoppage of proceedings is made after the **evidence of the principal witnesses** has been recorded, pronounce a **judgment of acquittal.**

34. It is important to note that Section 281 of the BNSS does not contain any provision similar to Section 279. Under Section 279, in a trial of summons-case instituted on a complaint, if the complainant is absent or has died, the accused must be acquitted. However, in a trial of summons-case based on a police report, Section 281 does not provide for stopping the proceedings or for discharging or acquitting the accused on such grounds. Therefore, any discharge ordered in such a situation cannot be treated as an acquittal. This legal position has been clearly affirmed by the Supreme Court in ***Ravinder Kaur v. Anil Kumar*, (2015) 8 SCC 286**. The relevant portion of the judgment is reproduced below:-

> *"8. Having perused Section 300, we are satisfied, that the submission advanced at the hands of the learned counsel for the respondent, namely, that Section 300 of the Criminal Procedure Code, will be an embargo to obstruct the right of the appellant to file a second complaint against the respondent, is not justified. Our above determination is based on the fact, that the respondent had not been tried, in furtherance of the previous complaint made by the appellant, under Section 376 of the Penal Code. The contention of the learned counsel for the appellant, that the respondent had been discharged in furtherance of the complaint made by the appellant, without any trial having been conducted against him (the respondent), was not disputed.*
>
> *9. Based on the above factual contention, the learned counsel for the appellant had placed emphatic reliance on the Explanation under Section 300 of the Criminal Procedure Code. The Explanation relied upon, clearly mandates that the dismissal of a complaint, or the discharge of an accused, would not be construed as an acquittal, for the purposes of this section. In this view of the matter, we are in agreement with the contention advanced at the hands of the learned counsel for the appellant. We are of the considered view, that proceedings in the second complaint would not be barred, because no trial had been conducted against the respondent, in furtherance of the first complaint. Having so concluded, it emerges that it is open to the appellant, to press the accusations levelled by her, through her second complaint, referred to above."*

35. If the trial is conducted as per Explanation to Section 2(1)(h) of BNSS and the complainant is not turning up to proceed in the matter on several dates and if a date is fixed specifically for his appearance after 30 days in case of absence of the complainant, the accused shall be acquitted as per provisions contained under Section 279 of BNSS.

This will have the effect of reducing/curbing the pendency of the trial of summons-cases instituted on complaint.

36. Section 281 BNSS confers powers and authority upon the Judicial Magistrate, subject to obtaining prior permission of the Chief Judicial Magistrate, to stop the proceedings at any stage before pronouncing the judgment. Further, the provision contemplates two distinct consequences depending upon the stage of the trial:-

(i) where the evidence of the principal witnesses has already been recorded, the Magistrate may pass an order of acquittal; and

(ii) in all other situations, the Magistrate may direct discharge of the accused; since a discharge is only a preliminary assessment and not a full decision on merits, it does not bar future proceedings or trigger double jeopardy protection. Consequently, an order of discharge under Section 281 cannot be equated with acquittal and does not attract the protection of double jeopardy under Article 20(2) of the Constitution or Section 337 BNSS (corresponding Section 300 Cr.P.C.). Thus, the pendency of the Trial Court will remain even if the informant is not interested in appearing before the Trial Court to prove the version of the First Information Report or document/evidence.

37. In the trial of summons cases instituted on complaint, the Trial Court of Magistrate has the power under Section 279 BNSS to acquit the accused, if the complainant is absent or has passed away, but under Section 281 BNSS, in the Trial of summons cases instituted on police report, the trial court of Magistrate does not have such power to acquit the accused in case of non-appearance of complainant or his death. However, if the informant is not turning up for years, or in the event of his death, the accused may approach the High Court to invoke the **inherent jurisdiction under Section 528 BNSS** (Corresponding to Section 482 Cr.P.C.). The High Court, for the ends of justice, may quash the proceedings as **the trial of a summons-case instituted on police report is pending for a long time, i.e. more than three**

years, the period/limit prescribed for taking cognizance. The same principle may be applied here for approaching the High Court by invoking its inherent jurisdiction to quash the proceedings of a summons-case instituted on a police report, which has been pending for a long time due to the absence of the complainant or the death of the complainant, and this will have the effect of reducing/curbing the pendency of trial of summons-cases instituted on police reports. The provision of Section 528 BNSS (Corresponding Section 482 Cr.P.C.) is quoted below:-

> ***"528. Saving of inherent powers of High Court**.—Nothing in this Sanhita shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Sanhita, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."*

38. The law does not support **unnecessary delay in legal proceedings.** The principle *"lex dilationes abhorret"* means that justice delayed amounts to justice denied. The Supreme Court has repeatedly stressed this point. In the case of **Sirajul v. State of Uttar Pradesh (2015) 9 SCC 201,** the Court observed that long delays in trials defeat the very purpose of justice. If cases remain pending for years without valid reason, it affects the **fundamental rights** of the accused enshrined in **Article 21** of the Constitution of India and weakens public trust in the justice system. Therefore, it is the duty of the courts to ensure that cases are decided within a reasonable time so that justice remains meaningful and effective.

39. There is a **distinction between a trial of summons-case instituted on a complaint and a trial of summons-case instituted on a police report**, i.e. in a trial of summons-case instituted on a complaint, the procedure prescribed under Sections **279 and 280** of the BNSS is applicable, whereas in a trial of summons-cases instituted otherwise than on a complaint (police report), the procedure mentioned under **Section 281** of the BNSS is applicable.

40. In the **trial of summons-cases** also, the provision of **plea of bargaining** has been provided **under section 289 to 300 BNSS** (corresponding section 265-A to 265-L Cr.P.C.) and the application of the accused for plea of bargaining may be decided by the Magistrate as per the sections 289 to 300 BNSS, if the offence is punishable with imprisonment not exceeding seven years.

41 In case of trial of summons-cases instituted on complaint, if the Court has reached to a conclusion to convict any person, then in that event the Court may also pass such order as to the **payment of costs to the victim** from the accused person as per section **400 BNSS** (corresponding section 359 Cr.P.C.).

42. In the trial of **summons cases,** either instituted upon complaint or police report, the trial court i.e. Judicial Magistrate, may also **release the accused on probation** as per the provisions contained there under **Section 401 BNSS** (corresponding section 360 Cr.P.C.), as the trial in summons cases, the offences are punishable up to two years.

43. In a catena of judgments, the High Court as well as Apex Court directed that the trial should be conducted in accordance with law, as provided in the Code of Criminal Procedure (now Bharatiya Nagarik Suraksha Sanhita, 2023).

44. This Court in **Anurag Yadav and others vs. State of U.P. and others, 2020: AHC: 39811** has held as under:-

> *"Upon hearing learned counsel for the parties and perusal of record, I find that it may not be disputed that offences under Sections 323 & 504 I.P.C. are bailable and non-cognizable and so the provisions of explanation to Section 2(d) are applicable to the case. The Magistrate has taken cognizance without considering the provisions of Section 2(d) Cr.P.C. and its explanation clause. Undoubtedly in view of the provisions of Section 2(d) Cr.P.C., the Magistrate was required to adopt the procedure of a complaint case as provided.*
>
> *In view of the discussions made above, this Court came to the conclusion that impugned order of cognizance and summoning order dated 25.01.2019 upon charge-sheet in a case arising out of NCR in respect of bailable and non-cognizable offences is wrong and incorrect and is liable to be quashed."*

45. The Hon'ble Supreme in the case of **"Keshav Lal Thakur vs. State of Bihar" reported in 1996 (11) SCC 557,** has held :-

> *"3. We need not go into the question whether in the facts of the instant case the above view of the High Court is proper or not for the impugned proceeding has got to be quashed as neither the police was entitled to investigate into the offence in question nor the Chief Judicial Magistrate to take cognizance upon the report submitted on completion of such investigation. On the own showing of the police, the offence under Section 31 of the Act is non-cognizable and therefore, the police could not have registered a case for such an offence under Section 154 Cr. P.C, Of course, the police is entitled to investigate into a non-cognizable offence pursuant to an order of a competent Magistrate under Section 155(2) Cr. P.C. but, admittedly, no such order was passed in the instant case. That necessarily means, that neither the police could investigate into the offence in question nor submit a report on which the question of taking cognizance could have arisen. While on this point, it may be mentioned that in view of the proviso to Section 2(d) Cr. P.C., which defines 'complaint', the police is entitled to submit, after investigation, a report relating to a non-cognizable offence in which case such a report is to be treated as a 'complaint' of the police officer concerned, but that explanation will not be available to the prosecution here as that relates to a case where the police initiates investigation into a cognizable offence - unlike the present one - but ultimately finds that only a non- cognizable offence has been made out"*

46. In the case of **Dr. Rakesh Kumar Sharma vs. State Of U.P. and another , 2007 (9) ADJ 478** originally the F.I.R. was registered under section 307 I.P.C. but after investigation the investigating officer came to the conclusion that no offence under section 307 I.P.C was made out and only a case under section 504 I.P.C was made out against the appellant. Therefore, the charge sheet submitted for offence punishable under section 504 I.P.C. was held to be a complaint under section 2(d) of Cr.P.C.

47. This Court in case of **Ghansyam Dubey @ litile and others vs. State of U.P. and another , 2013 (4) ADJ 474** has observed as under:

> *''3. It is to be seen that the charge sheet has been submitted under Sections 323, 504, 506 I.P.C. The offences under Sections 323, 504, 506 I.P.C. were all non-cognizable and bailable, but the offence under Section 506 I.P.C. was made cognizable and non-bailable vide, the U.P. Government Notification No. 777/VIII-94(2)-87 dated July 31, 1989. However, this notification was held to be illegal and ultra-vires by a Division Bench judgment of this Court in the case of 'Virendra Singh and others Vs. State of U.P. and others'. So now the legal position is that the offence under Sections 323, 504, 506 I.P.C. are bailable and non-cognizable.*

> *4. It has been provided in the explanation to section 2(d) of the Criminal Procedure Code that a report made by the police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant. In view of this explanation, the charge-sheet submitted by the police in the above case under Sections 323, 504, 506 I.P.C. could not be treated to be police case, but it would be deemed to be a complaint and the police officer who submitted the charge-sheet is to be deemed to be the complainant. As such, the order passed by the learned Magistrate for taking cognizance on the charge-sheet as a state case is illegal and is liable to be set aside."*

48. In the case of **Alok Kumar Shukla vs. State of U.P**. passed by this Court vide order dated 26.11.2023 passed in Application u/s 482 Cr.P.C. No. 42698 of 2013, held that charge sheet submitted in non-cognizable offence without order of the magistrate, under section 155(2) Cr.P.C. by the police was held to be complaint under section 2(d) of Cr.P.C.

49. In **Hemant Tiwari & Ors. v. State of U.P. & Anrs. (2022)01ILR A257** and **Smt. Geeta & Ors. v. State of U.P. & Another (Application U/S 482 No. 1230 of 2022)**, relying on the judgment of the Hon'ble Supreme Court in **Vijay Dhanuka & Ors. v. Najima Mamtaj & Ors., (2014) 14 SCC 638**, the Allahabad High Court observed that under the provision of Section 225 BNSS (corresponding Section 202 Cr.P.C.), it is mandatory for the Magistrate to conduct an inquiry or direct investigation to be conducted before issuing process where the accused resides beyond his territorial jurisdiction. Omission to do so would defeat the very object of the said provision.

50. This Court in catena of judgments directed that in case charge sheet is submitted in non cognizable offence, the trial court shall take cognizance on the charge-sheet as a complaint and proceed the trial as trial of summons-case instituted on a complaint and follow the provisions, those have been mentioned for trial of summons-cases instituted on complaint.

51. Having gone through the record of this case, the Court finds that it is a case of violation of Article 21 of the Constitution of India.

The Article 21 is quoted below:-

"Article 21. Protection of life and personal liberty.-No person shall be deprived of his life or personal liberty except according to procedure established by law."

52. Based on the foregoing deliberation, I proceed to examine the validity and correctness of the impugned order, in the case at hand, the Judicial Magistrate erroneously passed cognizance-cum-summoning order under Section 115(2) and 352 BNS for a non-cognizable offence in derogation of the provisions of Bharatiya Nagarik Suraksha Sanhita, 2023. In essence, the Judicial Magistrate has neither converted the charge sheet/police report disclosing 'non-cognizable offence' into 'complaint' as per the provision of Explanation to Section 2(1)(h) of BNSS nor took cognizance under Section 210(1)(a) BNSS to proceed as 'trial of summons-case' instituted on complaint but took cognizance under Section 210(1)(b) BNSS and summoned the applicant without providing him an opportunity of hearing provided under 1st provisio of Section 223(1) BNSS, and also erroneously proceeded as trial of summons-case instituted on police report rather than complaint.

53. In view of the foregoing discussion, the impugned **cognizance-cum-summoning order** dated 11.10.2024 passed by learned Judicial Magistrate is hereby **quashed and set aside**. The matter is **remanded** to the learned Judicial Magistrate, who shall **pass a fresh order** in conformity with the Explanation to Section 2(1)(h) of the Bharatiya Nagarik Surksha Sanhita, 2023 (BNSS). The Magistrate shall treat the police report (charge-sheet), insofar as it discloses the commission of a non-cognizable offence, as a "complaint," and shall thereafter proceed strictly in accordance with law and in terms of the observations made by this Court in the preceding paragraphs. (Emphasis on paragraph nos.14 and 26)

54. This Court further finds that the explanation submitted by the learned Judicial Magistrate to be satisfactory to some extent; however,

the Magistrate is directed to exercise greater caution in future while passing summoning orders. The Magistrate shall bear in mind that the act of summoning an accused constitutes merely the taking of judicial notice of the material placed before the Court in the form of a charge-sheet or complaint, and does not amount to any determination of guilt or innocence.

55. Further, all Magistrates/Presiding Officers shall scrupulously comply with the directions issued by this Court, particularly those mandating that their name, designation, and judicial ID be clearly mentioned below their signatures on every order passed by them, in conformity with the Circulars dated 23.08.2018 and 19.07.2023 issued by the Registrar General of this High Court pursuant to orders passed in judicial proceedings.

56. With the aforesaid observations, the present application stands disposed of.

(Praveen Kumar Giri,J.)

November 26, 2025.
DKS