

1. I have heard the learned APP for the State and have taken the relevant provisions of the law into my consideration.
2. In present matter the accused is charged only with the offence under Section 223 of the Bharatiya Nyaya Sanhita, 2023. The provisions of Section 215 of BNSS, 2023 reads as under.

"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.

(2)Where a complaint has been made by a public servant or by some other public servant who has been authorised to do so by him under clause (a) of sub-section (1), any authority to which he is administratively subordinate or who has authorised such public servant, may, order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3)In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central or State Act if declared by that Act to be a Court for the purposes of this section.

(4)For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the Principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate:

Provided that-

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed."

3. Thus, looking to the above provisions it is very much clear that this Court cannot take cognizance of an offence punishable under Section 223 of the BNS, 2023 except in cases where complaint in writing is filed by the public servant concerned or by some other public servant to whom he is administratively subordinate or by some other public servant who is authorized by the concerned public servant. This Section 2(h) of the BNSS, 2023 defines the term "complaint" which reads as under.

(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.

4. Thus, from the above provisions it is very much clear that this Court has no jurisdiction to take cognizance of the present case against the accused person in this matter as this matter is not instituted by a complaint filed by the public servant or any of his superior or by any person authorized by him in this behalf. This is the case instituted on the basis of police report filed after completion of investigation which clearly does not fall within the definition of term "complaint". In view of the all the discussions made above I pass the following final order.

ORDER

1. The proceeding of this case is hereby stopped under Section 281 of the BNSS, 2023.
2. This order will not preclude the concerned public servant or any other public servant mentioned in above mentioned Section 215 of the BNSS, 2023.

Pronounced in the open court today.

Date :- 11/07/2026

Place :- Rajula

Rakeshkumar Vasantlal Soni

Principal Senior Civil Judge, Rajula

Judge Code No. GJ01193