

Order dt. 03.09.2025

Today is fixed for hearing.

Both sides have taken steps. Ld. Advocate for the respondent submits that as per provisions of section 223 of BNSS it is mandatory to give opportunity to the accused to be heard prior to taking cognizance for any offence against him. But in this case after filing of this case on 17.04.2025 at the Court of Ld. ACJM, Bidhannagar the record was transferred to this Court on 29.04.2025 and subsequently on 18.06.2025 the complainant was examined on SA under Section 200 of CrPC and on that day cognizance was taken against the OP under Section 138 of N.I. Act and notice was issued upon the respondent as accused of this case. In such situation, the Ld. Advocate for the respondent submits that the procedure should be dropped for procedural defect and necessary order may be passed. In this connection Ld. Advocate referred the citation of the case of Tutu Ghosh vs. Enforcement Directorate, CRR No.2072/2025 where it has been decided by the Hon'ble High Court at Calcutta that taking cognizance of the offences made out in the complaints against the petitioner under PMLA, being patently violative of the first proviso to section 223(1) of BNSS, since no pre-cognizance opportunity of hearing was given to the petitioners, is vitiated in law and a nullity in the eye of law and the impugned order was set aside.

Ld. Advocate for the complainant submits that this case has been filed by the complainant to get relief as per provisions of N.I. Act and only for the technical latches for proceeding, the complainant cannot loose or deprive from his legal right under this Special Law. Furthermore, the referred citation of the complainant is related with PMLA cases and this case is filed under provisions of N.I. Act.

After hearing submissions of both sides and perusal of case record it has been found that a procedural defect cannot restrain a litigant to seek relief before the Court of Law and necessary order may be passed to regularize the record.

Hence, it is,

Ordered

that the respondent of this case are hereby given opportunity for hearing in connection with taking cognizance of this case and not party will be prejudiced in it and no substantive loss will be made by any party of this case for this order, rather it will give the opportunity to both parties to clear their stands/ status in connection with this case.

Fix 25.11.2025 for hearing on the point of cognizance.