

INTERIM ORDER

The present complaint is filed by the Complainant U/Sec.223 of BNSS against the Accused persons for the offences punishable U/Sec.336, 338, 339, 340, 201 R/w. Sec.189 of BNS.

After filing this complaint, it was registered as PCR and matter was posted for sworn statement.

In the meantime the Complainant has filed memo reporting the death of Accused No.3. Therefore, the above case was abated against the Accused No.3 on 27-09-2025.

In the present case the Complainant has got examined 3 witnesses as CW-1 to 3 and got marked several documents as Ex.C-1 to 24.

Heard.

On perusal, the present complaint is filed U/Sec.223 of BNSS. For the sake of convenience the said provision of law is extracted here below.

*“223. Examination of Complainant. - (1)
A Magistrate having jurisdiction while taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:*

Provided that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard:

Provided further that when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses—

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 212:

Provided also that if the Magistrate makes over the case to another Magistrate under section 212 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

(2) A Magistrate shall not take cognizance on a complaint against a public servant for any offence alleged to have been committed in course of the discharge of his official functions or duties unless—

(a) such public servant is given an opportunity to make assertions as to the

*situation that led to the incident so alleged; and
(b) a report containing facts and circumstances of the incident from the officer superior to such public servant is received.”*

The above provision of law makes it clear that before taking cognizance of an offense an opportunity of being heard has to be given to the Accused persons and if the Accused is public servant then a report containing such facts and circumstances of the incident from the officer superior to such public servants has to be received. In the present case Accused No.2 to 4 are the public servants and therefore before proceeding to take cognizance it is necessary to issue notice to the Accused persons for giving opportunity of being heard.

Therefore, issue notice of this complaint to Accused No.1, 2, and 4.

Issue notice of this complaint to the District Commissioner of Belagavi District who is the officer superior to Accused No.2 to 4 seeking a report containing facts and circumstances of the incident, if proper steps taken.

R/by, 09.09.2026.

**(RAVINDRA S. HAVARGI)
I ADDL. CIVIL JUDGE & JMFC.,
ATHANI.**