

IN THE COURT OF JUDICIAL MAGISTRATE AT TRAL

File No.	:-	Complaint 40 of 2025
CNR NO	:-	JKPL-04000323-2025
Date of Institution	:-	29.07.2025
Date of Order	:-	07.08.2026

IN THE CASE OF;

Kiranjeet Kour D/O: Surinder Singh W/o Popinder Singh
Resident of Chatrogam, Tral Distt Pulwama.

(...Aggrieved Person)

THROUGH: - Mr. Bhat Wahid and Mrs.Roomi Jan (Advocate)

Vs

1. Popinder Singh Son of Trilok Singh
2. Joginder Kour W/o Trilok Singh
3. Manmeet Kour D/o Trilok Singh
4. Gursharan Singh S/o Trilok Singh.

R/o Mehjoornagar, Rose Lane Colony, BSNL Tower,
Near Athwas centre No1831

(...Respondents)

THROUGH:- Mr. Owais Qadir (Advocate)

IN THE MATTER OF:-

Complaint under section 318,314,85 and 61 of BNS

CORAM: - MR. AMAAN NISSAR (J. O. CODE. JK00322)
CIVIL JUDGE JD MUNSIFF JMIC TRAL

ORDER

07-08-2026

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1. This complaint has been filed under Section 223 BNSS, 2023, alleging commission of offences under Sections 318, 314, 85 and 61 of the Bharatiya Nyaya Sanhita, 2023, by the accused persons, arising out of the matrimonial relationship between the complainant and accused No.1. For reasons recorded below, this Court finds that the facts alleged, so far as they concern

the retention of the complainant's stridhan, disclose the ingredients of Section 316(2) BNS, 2023 (criminal breach of trust) and not Section 314 BNS, 2023 as invoked in the complaint; court taking cognizance is not bound by the label the complainant has affixed to the offence and must proceed on the offence actually disclosed by the facts.

2. Upon presentation of the complaint, the complainant was examined. Considering that further scrutiny was called for, this Court postponed issue of process and directed an inquiry under Section 225 BNSS, in the course of which the complainant's evidence on affidavit, reiterating and elaborating the averments of the complaint, was recorded and taken on record.
3. In compliance with the first proviso to Section 223(1) BNSS, which mandates that no cognizance of an offence shall be taken without affording the accused an opportunity of being heard, as authoritatively explained by the Hon'ble Supreme Court in *Kushal Kumar Agarwal v. Directorate of Enforcement*, and by the Hon'ble Karnataka High Court in *Basanagouda R. Patil v. Shivananda S. Patil*, notice was caused to the accused persons. They have entered appearance through counsel and filed detailed objections, raising, inter alia: a preliminary objection as to territorial jurisdiction; a plea that the complaint is a counterblast to their own application under Section 175(3) BNSS pending before the Court of Chief Judicial Magistrate, Srinagar, concerning the very gold ornaments in question; a denial of the allegation of impotency, supported by an annexed semen analysis report; and a detailed counter-narrative alleging the complainant's involvement in a fraudulent scheme.
4. Heard. Perused the complaint, the affidavit of the complainant and the documents annexed thereto, and the objections filed on behalf of the accused persons.

5. **Scope of the present exercise**

The standard for issuing process upon completion of an inquiry under Section 225 BNSS remains the same as at the complaint stage, namely, whether the material on record discloses sufficient ground for proceeding. The Magistrate is not required, at this stage, to weigh the evidence as if conducting a trial, but only to see whether the allegations, taken at their face value, disclose the commission of an offence. Reference is made to *Chandra Deo Singh v. Prokash Chandra Bose*, AIR 1963 SC 1430, and *Nagawwa v. Veeranna Shivalingappa Konjalgi*, (1976) 3 SCC 736. At the same time, the issuance of process is not a mechanical act and the order must reflect application of mind, though it need not be a detailed judgment; reference is made to *Pepsi Foods Ltd. v. Special Judicial Magistrate*, (1998) 5 SCC 749, and *Mehmood Ul Rehman v. Khazir Mohammad Tunda*, (2015) 12 SCC 420.

6. As regards the hearing afforded to the accused under the proviso to Section 223(1) BNSS, the same is confined to testing whether the complainant's own version, together with the material produced by the complainant, discloses sufficient ground to proceed; it is not an occasion for the accused to lead his own evidence in rebuttal or to establish a defence, which would collapse the distinction the Sanhita draws between the pre-cognizance stage and the trial that follows the issue of process. Accordingly, while the objections filed by the accused persons have been perused, the semen analysis report annexed thereto, the detailed counter-narrative regarding an alleged fraudulent scheme, and the assertion that the complaint is a counterblast, being matters that require proof and go to the defence properly so called, are not weighed at this stage and are left open to be urged at trial. What is examined below is confined to whether the complainant's own version discloses sufficient ground to proceed

7. Territorial jurisdiction

The preliminary objection as to territorial jurisdiction is not sustainable at this stage. The complainant is admittedly a resident of Chatrogam, Tral, within the territorial jurisdiction of this Court, and it is settled, per *Rupali Devi v. State of U.P.*, (2019) 5 SCC 384, that in offences of cruelty against a married woman, the courts at the place where she takes shelter, temporarily or permanently, after leaving or being driven away from the matrimonial home also have jurisdiction to entertain the complaint, the mental trauma suffered at that place being treated as a continuing consequence of the cruelty. The objection, being in any event a mixed question of fact, remains open to the accused to press further at the appropriate stage

8. Pendency of cross-application

The pendency of the accused persons' own application under Section 175(3) BNSS before the Court of Chief Judicial Magistrate, Srinagar, concerning the same gold ornaments, does not by itself furnish a ground to dismiss or decline cognizance of the present complaint. Both proceedings, arising as they do from rival versions of the same underlying dispute, may proceed on their own merits; the existence of a cross-version goes, at best, to credibility, which is a matter for trial

9. Sufficiency of grounds qua accused No.1 and accused No.2

The complaint and the affidavit allege, specifically as against accused No.1 and accused No.2 (the husband and the mother-in-law), repeated taunting of the complainant for not conceiving, coercion to bring cash and a vehicle from her parental home as dowry, threats to commit suicide or to kill the complainant if she disclosed accused No.1's physical condition, and being made to live like a servant in the matrimonial home. These allegations, if

taken at face value, disclose the ingredients of cruelty within the meaning of Section 85 BNS, 2023.

10. The complaint further alleges that accused No.1 and his family members, at the time of marriage, represented accused No.1 to be fit and capable of discharging matrimonial obligations, which representation is alleged to have been false to the knowledge of the accused, and upon which the complainant relied in consenting to the marriage and, subsequently, in parting with gold ornaments and valuables. It is settled, per *Hridaya Ranjan Pd. Verma v. State of Bihar*, AIR 2000 SC 2341, that dishonest intention at the inception of the transaction is the touchstone of cheating; the complaint's version, taken at face value, discloses inducement at the very inception, namely, at the time of marriage itself. This discloses, prima facie, the ingredients of cheating under Section 318 BNS, 2023, as against accused No.1, and, given the specific attribution of a joint representation made by "the accused and his family members" at the time of marriage, also as against accused No.2.

11. As to the allegation of retention of stridhan, the complainant's stridhan, including gold ornaments valued at approximately Rs.7,00,000/-, is alleged to have been entrusted to and to remain in the custody of accused No.1, despite demand. It is settled, per *Pratibha Rani v. Suraj Kumar*, (1985) 2 SCC 370, that stridhan entrusted to the husband or his relatives remains the exclusive property of the wife, and its wrongful retention despite demand constitutes criminal breach of trust, irrespective of the subsistence of matrimonial ties or the pendency of civil remedies. It is significant that *Pratibha Rani* itself proceeded on Sections 405 and 406 IPC, the ingredient of *entrustment* being what takes wrongful retention of stridhan out of simple misappropriation and into criminal breach of trust. The corresponding provision under the present code is accordingly Section 316(2) BNS, 2023

(criminal breach of trust), and not Section 314 BNS, 2023 (dishonest misappropriation of property), the latter being confined to property that comes into a person's possession otherwise than through entrustment. Although the complaint invokes Section 314 BNS, cognizance is of the offence disclosed by the facts and not of the label given to it by the complainant, and this Court accordingly proceeds on the footing that the facts alleged disclose, prima facie, the ingredients of criminal breach of trust under Section 316(2) BNS, 2023, as against accused No.1, in whose alleged custody the stridhan is stated to lie.

12. A common design between accused No.1 and accused No.2, discernible from the joint representation at the time of marriage and the sustained, coordinated harassment that followed, discloses, prima facie, the ingredients of criminal conspiracy under Section 61 BNS, 2023, as against the two of them.

13. Accused No.3 and Accused No.4

As against accused No.3 (Manmet Kour) and accused No.4 (Gurcharan Singh), neither the complaint nor the affidavit attributes any specific overt act; the references are confined to omnibus expressions such as "family members" and "in-laws". It is well settled that courts must be circumspect before summoning collaterally named relatives in matrimonial complaints in the absence of specific, particularised allegations against them individually. Reference is made to *Preeti Gupta v. State of Jharkhand*, (2010) 7 SCC 667, *Kans Raj v. State of Punjab*, (2000) 5 SCC 207, and *Geeta Mehrotra v. State of U.P.*, (2012) 10 SCC 741. No sufficient ground is presently made out to summon accused No.3 and accused No.4

14. Conclusion

In view of the foregoing, sufficient ground exists for proceeding against accused No.1 (Popinder Singh) for offences under Sections 318, 316(2), 85 and 61 BNS, 2023, and against accused No.2 (Joginder Kour) for offences under Sections 318, 85 and 61 BNS, 2023. Process shall issue against them accordingly under Section 227 BNSS.

15.No sufficient ground being made out against accused No.3 (Manmet Kour) and accused No.4 (Gurcharan Singh) on the material presently on record, process shall not issue against them at this stage; the complaint proceeds against accused No.1 and accused No.2 alone, and this order does not operate as, and shall not be treated as, a dismissal of the complaint under Section 226 BNSS, that provision being confined to dismissal of the complaint in its entirety. Nothing herein shall preclude this Court from proceeding against accused No.3 and accused No.4 under Section 358 BNSS, should evidence emerging in the course of trial disclose their complicity.

16.Issue summons to accused No.1 and accused No.2 for their appearance on **31.08.2026**, along with copy of the complaint and the affidavit of the complainant.

Announced in open court today on 07th of August, 2026.

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JUDICIAL MAGISTRATE FIRST CLASS
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