

MHNG030213122025



Cri.M.A./3064/2025

Mrs Yamini Sachin Deshpande Vs. Mr Sachin Satish Deshpande

ORDER PASSED BELOW EXH.1

(Passed on 08/01/2026)

1. By the present Complaint the Complainant has sought issuance of process against Accused No.1 and 2 for Criminal Breach of Trust regarding Stridhan. The Complainant has alleged commission of offence punishable under Section 316 of Bharatiya Nyaya Sanhita, 2023.

2. Perused the entire material placed on record. Heard Complainant appearing in person. Perusal of record reveal that, the Complainant has recorded his verification statement below Exh.4. The record further reveal that, present Complaint is governed by Chapter XVI of BNSS, 2023. As per proviso appended to Section 223(1), the Magistrate after examining Complainant and his witnesses, in a private Complaint, is required to give opportunity of hearing to the accused before taking cognizance. Recently, the Hon'ble Apex Court in the case of *Kushal Kumar Agarwal v. Directorate of Enforcement*¹ has held as follows.

Enforcement Directorate filed a complaint under Section 44(1) (b) of the Prevention of Money Laundering Act, 2002 on 02/08/2024, against the appellant for money laundering offences. Complaint was filed after the Bharatiya Nagarik

Suraksha Sanhita, 2023 (BNSS) came into force on 01/07/2024, which replaced the earlier Code of Criminal Procedure, 1973. Special Court took cognizance of the offence without providing the appellant an opportunity of being heard, as mandated under the Proviso to Section 223(1) of the BNSS. Questions that arose for consideration were; whether cognizance of an offence under the PMLA can be taken without complying with the mandatory procedural requirement under Section 223(1) of the BNSS, which requires giving the accused an opportunity of being heard before taking cognizance, and whether this new procedural safeguard introduced in the BNSS applies to money laundering complaints filed by the Enforcement Directorate.

The proviso to sub-section (1) of Section 223 puts an embargo on the power of the Court to take cognizance by providing that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard. In this case, admittedly, an opportunity of being heard was not given by the learned Special Judge to the appellant before taking cognizance of the offence on the complaint. Only on that ground, the impugned order dated 20th April, 2024, will have to be set aside.

3. The Hon'ble Kerala High Court while referring to the aforesaid ratio in the case of **Saji John V/s Assistant Director ED²** has opined as follows.

10. Section 223(1) of the BNSS outlines the procedure for the examination of a complainant by a Magistrate when taking cognizance of an offence based on a complaint. It mandates that the Magistrate must examine the complainant and any witnesses present, record their statements under oath, and have these statements signed by all parties involved. A key addition in Section 223(1) of the BNSS is the requirement that the accused must be given an opportunity to be heard before the Magistrate takes cognizance of the offence.

11. Thus, the crucial aspect of Section 223(1) is the first proviso, which mandates that the Magistrate cannot take cognizance of the offence without first giving the accused an opportunity to be heard. This is a significant departure from



the provisions of the Cr.P.C, which did not mandate this pre-cognizance hearing for the accused.

4. Admittedly, the present case is filed as private Complaint. The provisions of Sections 223 of BNSS are squarely applicable to the present case. As stated above, the Magistrate is under obligation to hear Accused before taking cognizance on present Complaint. Therefore, I proceed to pass the following order.

ORDER

- 1) Issue notice to Accused No.1 and 2 as per proviso to Section 223(1) of the BNSS, 2023.
- 2) Complainant is directed to provide copy of the present complaint along with requisite documents.
- 3) S.O. to 03.02.2026.

Date 08/01/2026
Nagpur

(Kaustubh Nagesh Marathe)
Judicial Magistrate First Class,
Court No.1, Nagpur.