

Order Dated : 09.07.2026

Today is fixed for hearing.

Both the parties are present and files hazira.

Record is now taken up for hearing for taking cognizance against the accused.

Ld. Advocate for the accused submitted that the case is not maintainable and liable to be dismissed.

Ld. Advocate for the complainant raised vehement objection.

Perused the complaint, SA and other materials on record.

Heard both the sides.

It is pertinent to mention here that the Hon'ble Calcutta High Court has recently discussed the scope of a court's inquiry at the pre-cognizance stage in ***Kaberi Dey v. Sourav Bhattacharjee***. The court referred to the oft-quoted principle in Indian law that a court takes cognizance of an offence, and not of the offender. Relying on this principle, the Hon'ble Calcutta High Court made the following observations:

- At the time of taking cognizance, the criminal court must only examine whether *prima facie* an offence has taken place.
- In the pre-cognizance hearing, the accused can either raise technical issues (such as jurisdictional error, issues of limitation, etc.) or argue that the allegations contained in the complaint are preposterous and no offence is made out for taking cognizance.
- An offender's individual role would not be considered at the pre-cognizance stage.

The Hon'ble High Court's reasoning builds upon the limited nature of inquiry that a court undertakes at the stage of cognizance. At this stage, a court is not required to examine the truthfulness of allegations made in a complaint or the role of each accused person. The court only needs to be broadly satisfied that the complaint requires further action. The stage of cognizance is followed by the stage of issuance of process to accused persons. It is at this latter stage that the court identifies the persons against whom a *prima facie* case is made out and summons them to face proceedings. The Calcutta High Court has re-affirmed the distinction between the stage of cognizance and the stage of issuance of process in *Kaberi Dey's* case.

The ambit and scope of hearing the proposed accused at the pre-cognizance stage can be said to be extremely limited in the sense that the court, at that stage, cannot consider, one way or other, the merits of the allegations in the complaint or the defence, if any, put up by the accused. Keeping this aspect in mind, the nature of the pleas that could be raised by the proposed accused at the pre-cognizance stage may be stated as follows: (i) the court lacks jurisdiction to take cognizance of the offences alleged in the complaint (ii) the complaint is filed by a person who is not competent in law to do so (iii) the complaint or the offences alleged in the complaint are barred by limitation (iv) the court cannot take cognizance of the offence without sanction from a competent authority as prescribed by any law (v) the allegations in the complaint, even if accepted as true in its entirety, do not disclose the ingredients of any offence (vi) when there are more than one person arrayed as accused, the allegations in the complaint, even if accepted as true in entirety, do not disclose commission of any offence by one or more of them. This list is not exhaustive. Similar technical objections regarding the maintainability of the complaint may be raised at the pre-cognizance stage.

Having considered the aforesaid facts, I find that there exists *prima facie* materials to proceed against the accused persons for committing the offence punishable u/s.318(4)/316(2)/3(5) BNS.

Issue process u/s.318(4)/316(2)/3(5) BNS against the accused persons.

To **24.09.2026** for SR.

Typed & Printed be me,

J.M, 3rd Court, Barrackpore.

J.M, 3rd Court, Barrackpore.