

ORDER SHEET
District North 24-Parganas
C. CASE NO. 633 OF 2024
In the Court of Additional Chief Judicial Magistrate, Barrackpore, North 24-Parganas
Present : Smt. Manika Chatterjee nee Saha (JO Code WB01065)
Additional Chief Judicial Magistrate, Barrackpor

Smt Jhunu Rajbanshi
Versus
Smt Maya rani Paul and others

Order dated : 02-07-24

The complainant has filed this complaint against accuseds named in the written complaint alleging offence punishable under the Bharatiya Nyaya Sanhita, 2023.

Court fees paid.

Vakalatnama and other documents also filed.

Perused the petition of complaint and the annexed documents.

According to the first proviso to Section 223 of Bharatiya Nagarik Suraksha Sanhita, 2023, no cognizance of the offence can be taken by the Magistrate without giving an opportunity to the prospective accused of being heard.

Section 212(1) of Bharatiya Nagarik Suraksha Sanhita, 2023 enshrines that Chief Judicial Magistrate may after taking cognizance, make over the case for enquiry or trial to any competent Magistrate, subordinate to her.

Section 13(2) of Bharatiya Nagarik Suraksha Sanhita, 2023, states that any Chief Judicial Magistrate may from time to time make rules or give special order consistent with Sanhita as to the distribution of business among the Judicial Magistrates, subordinate to him.

Section 212(2) of Bharatiya Nagarik Suraksha Sanhita, 2023 speaks that Chief Judicial Magistrate may empower any Magistrate of the First Class to take cognizance of an offence as also can empower him to make over the case to other competent Magistrate.

Analogy of the Section 212(1) of Bharatiya Nagarik Suraksha Sanhita, 2023 speaks that Chief Judicial Magistrate after taking cognizance, can transfer a case to any competent Magistrate for enquiry or trial. Pari Passu, analogy of section 13(2) of Bharatiya Nagarik Suraksha Sanhita, 2023 speaks that a Chief Judicial Magistrate can distribute business among the Judicial Magistrate, subordinate to him. Also, analogy of Section 212(2) of Bharatiya Nagarik Suraksha Sanhita, 2023 speaks that any Magistrate of the First Class may be empowered by the Chief Judicial Magistrate to take cognizance of an offence.

Section 10(2) of Bharatiya Nagarik Suraksha Sanhita speaks that Additional Chief Judicial Magistrate shall have all or any of the power of a Chief Judicial Magistrate under this Sanhita.

Considering the engagement of this Court in the first half, ladened with plenteous case records of the personal file and put up file, as fixing of this case to be heard on the point of taking cognizance in presence of the proposed accused by issuing notice upon proposed accused would not only make the functioning of this Court cumbersome but also might affect the case due to time constraints, drawing the analogy from the ratio and spirit of Sections 10(2), 13(2) and 212(2) of Bharatiya Nagarik Suraksha Sanhita, 2023, Ld. Judicial Magistrate, __3rd__ Court at Barrackpore, is empowered to take cognizance of the offence, if he thinks it aboveboard to take so, after adhering to the procedure so laid down in Section 223(1) of Bharatiya Nagarik Suraksha Sanhita, 2023 and the first proviso to Section 223 of Bharatiya Nagarik Suraksha Sanhita, 2023.

In view of the above deliberation, let the case record be registered as complaint case and be transferred to the Court of the concerned Learned Magistrate.

The Learned Transferee Court to proceed in accordance with the modalities so laid down in Bharatiya Nagarik Suraksha Sanhita, 2023.

To ____23-09-2024____ for appearance before the concerned Court and taking steps by the complainant.

Office to comply.

D/C by me.

ACJM, Barrackpore

ACJM, Barrackpore