



Serial No.02
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Cr1.Petn.No.34/2025

Date of Order: 12.02.2026

1. Shri Frank Kenneth Lyngdoh

2. Miss Elsie Labannie Lyngdoh

3. Shri K.K. Wahlang Petitioners

Vs.

Miss Dona Mary Sohpdang Respondent

Coram:

Hon'ble Mrs. Justice Revati Mohite Dere, Chief Justice

Appearance:

For the Petitioners : Mr. K. Paul, Sr.Adv with
Mr. S. Thapa, Adv
Mr. B. Snaitang, Adv

For the Respondent : Mr. S. Jindal, Adv with
Ms. A. Nongbri, Adv
Ms. W. Rymbai, Adv

JUDGMENT: (Oral)

Heard learned Senior counsel for the petitioners and
learned counsel appearing for the respondent.

2. Rule. Rule is made returnable forthwith with the
consent of the parties and is taken up for final disposal.

3. By this petition, the petitioners have impugned the
order dated 28th April, 2025, passed by the learned



Judicial Magistrate First Class, Nongpoh, issuing summons to the petitioners, in a complaint filed by the respondent, alleging therein, the offences punishable under Sections 316, 317, 318, 335 and 336 of BNS, 2023.

4. Quashing is sought on the premise that the learned Magistrate has not complied with the mandate of Section 223 of the BNSS, i.e., has not heard the petitioners before taking cognizance of the offence.

5. Learned counsel for the sole respondent does not dispute the fact, that Section 223 has not been complied with.

6. Perused the papers, Section 223 of the BNSS reads thus:

“223. Examination of complaint.–(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 under this section 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.” (emphasis supplied)

7. From a perusal of the aforesaid provision, it is clearly evident that prior to taking cognizance, it is mandatory for the Court to hear the proposed accused. 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 affording an opportunity to the accused of being heard.

8. Admittedly, in this case an opportunity of being heard was not given by the learned Magistrate to the petitioners, before taking cognizance of the offence on the complaint.

9. Considering the aforesaid, the impugned order cannot be sustained, and as such, the impugned order dated 28th April, 2025, passed by the learned Judicial Magistrate First Class issuing summons to the petitioners is quashed and set aside, solely on the ground of non-compliance with the proviso of sub-section (1) of Section 223 of the BNSS.

10. The matter is remitted back to the trial court to enable the Court to comply with the provision of Section 223 of the BNSS.



11. The petition is allowed and Rule is made absolute on the aforesaid terms. Petition is accordingly disposed of .

12. It is made clear, that this Court has not gone into the merits of the complaint and as such, all contentions of all parties on merits are kept open.

(Revati Mohite Dere)
Chief Justice

Meghalaya
12.02.2026
"*Lam* DR-PS"