

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT
SRINAGAR**

CrlM No. 72/2026 in
CRM(M) No. 36/2026

Aditya Dhar and Ors.

..... Appellant/petitioner(s)

Through: -

Mr. Syed Faisal Qadri, Sr. Advocate with Mr. Farman Ali Magrey, Advocate
Mr. Parag Khandhar, Advocate
Mr. Ibrahim Alam, Advocate
Ms. Chandrima Mitra, Advocate
Mr. Sikander Hayat Khan, Advocate

V/S

Ghulam Mohammad Shah

..... Respondent(s)

Through: -

CORAM:

HON'BLE MS JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

(ORDER)

06.02.2026

CrlM No. 72/2026

01. On the set of facts and grounds urged, coupled with the submissions made at Bar, the instant application is allowed and the requirement of placing on record the certified copy of impugned complaint and impugned order dated 30.12.2025 is dispensed with. However, the petitioners are directed to file the same within two weeks.

02. CM disposed of.

CRM(M) No. 36/2026

01. Petitioners herein, have invoked jurisdiction of this Court under Section 528 Bharatiya Nagarak Suraksha Sanhita, BNSS, 2023, thereby, challenging the complaint filed by the respondent along with order dated 30.12.2025 passed by the learned Forest Magistrate, Srinagar.

02. The petitioner No. 1 and 2 are engaged in the business of development and production of feature films for public consumption and for the said purpose have incorporated the petitioner No. 3, a private Company Limited by shares, under the provisions of the Companies Act, 2013.
03. It is the case of the respondent that the petitioners in one of feature films directed/co-produced by them, namely Article 370 have used a photograph allegedly that of the respondent, and depicted him as a terrorist in the context of the plot of the feature film, as a consequence thereof, harm has been caused to the reputation of the respondent. It is stated that the respondent has proceeded to file a complaint before the Magistrate, apparently in terms of Section 210, seeking to initiate prosecution against the petitioners.
04. The learned Magistrate has proceeded to issue pre-cognizance summons in respect to the offence punishable under Section 356 of BNS, 2023.
05. Learned senior counsel has stated that the Magistrate has not proceeded in accordance with law occupying the field. Learned Senior Counsel has referred to Sub Section 1 of Section 223 of BNSS, which is taken note of herein”-

“223. Examination of complainant- (1) a Magistrate having jurisdiction while taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that no cognizance of an offence 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.”

06. Learned senior counsel for the petitioners’ further states that the learned Magistrate is under an obligation to examine upon oath the complainant and the witnesses present and the substance of such examination has to be reduced to writing and signed by the complainant, witnesses and also by the Magistrate. Learned senior counsel has raised this legal ground though the same has not been pleaded in the petition, and has strengthened this submission based on judgments passed by various High Courts of India. He has relied upon the Judgment passed by the High Court of Allahabad, 2025 SCC Online All 4884. Paragraph 8 being relevant is taken note of:-

“ 8. In view of above, after filing of complaint under Section 210 BNSS, the learned Magistrate has to first examine upon oath the complainant and the witnesses, if any, and the substance of such examination is to be reduced in writing, which shall be signed by the complainant and the witnesses and also by the Magistrate as per Section 223(1) of BNSS, thereafter, after considering the same, if he finds that there is no sufficient ground to proceed, he shall dismiss the complaint under Section 226 BNSS and if he finds that it can not be dismissed as such, he shall afford opportunity to the accused for which the notice of being heard shall be issued at that stage and only thereafter he would take cognizance after affording him opportunity of hearing. It is because, if the complaint is dismissed under Section 226 BNSS, the accused may not be harassed unnecessarily of appearing and the opportunity of hearing may not be a mere formality and it should be with material, which is required to be considered for taking cognizance. Thus, after recording of the statement under Section 223 BNSS and upon consideration that some sufficient ground is made out to proceed, learned Magistrate shall issue notice to the accused.”

07. Learned senior counsel has also relied upon the Judgment passed by the High Court of Karnataka, dated 7th Day of March, 2025.

Paragraph 5 being relevant is taken note of:-

“ It is further contention of learned counsel that despite a specific order passed by this Court to comply with the provisions of Section 223 of BNSS, 2023, copies of the complaint, sworn statement and other relevant materials were not served on the petitioner. It is also contended that on perusal of Annexure-D, it is seen that the notice issued to the petitioner on the complaint filed by himself and thus, there is a flaw and error committed in the notice as the complainant and the accused shown in the notice are one and the same and the said notice is signed by the learned Presiding Officer. Therefore, he contends that the provisions of Section 223, BNSS though ordered to be strictly followed, has not been complied diligently and on the contrary, notice is issued which depicts that the complaint is filed by the petitioner and the same is issued to the petitioner himself as an accused in the said case, which itself clearly depicts that there is absolute non-application of mind. Hence, the order impugned is illegal and requires to be quashed.”

08. Learned senior counsel states that in terms of provisions of Section 223 of BNSS, 2023, copies of complaint, sworn statement and other relevant material was also to be provided to the petitioners, so that they could defend their case before the learned Magistrate, however, no such material has been provided to the petitioners. Record was called from the Court of learned Forest Magistrate, Srinagar, its perusal would reveal that the Court has not proceeded in accordance with law. The pre-cognizance notice has been issued to the petitioners on 30.12.2025, they have been directed to appear on 07.02.2026, but there is nothing on record to show that the statement of the complainant or those of the witnesses have been recorded.

09. It would be profitable to reproduce the paragraphs 8 to 11 of the Judgment delivered by Allahabad High Court, reported as 2025 SCC Online All 4884 herein:-

“ 8. *In view of above, after filing of complaint under Section 210 BNSS, the learned Magistrate has to first examine upon oath the complainant and the witnesses, if any, and the substance of such examination is to be reduced in writing, which shall be signed by the complainant and the witnesses and also by the Magistrate as per Section 223(1) of BNSS, thereafter, after considering the same, if he finds that there is no sufficient ground to proceed, he shall dismiss the complaint under Section 226 BNSS and if he finds that it can not be dismissed as such, he shall afford opportunity to the accused for which the notice of being heard shall be issued at that stage and only thereafter he would take cognizance after affording him opportunity of hearing. It is because, if the complaint is dismissed under Section 226 BNSS, the accused may not be harassed unnecessarily of appearing and the opportunity of hearing may not be a mere formality and it should be with material, which is required to be considered for taking cognizance. Thus, after recording of the statement under Section 223 BNSS and upon consideration that some sufficient ground is made out to proceed, learned Magistrate shall issue notice to the accused.*

9. *A co-ordinate Bench of the High Court of Karnataka has examined the legal position with regard to Section 223 BNSS and held that the Magistrate while taking cognizance of an offence should have with him the statement on oath of the complainant and if any witnesses are present, their statements. The taking of cognizance under Section 223 of the BNSS would come after the recording of the sworn statement, at that juncture a notice is required to be sent to the accused, as the proviso mandates grant of an opportunity of being heard. The relevant paras are being extracted hereinbelow:-*

"8. The obfuscation generated in the case at hand is with regard to interpretation of Section 223 of the BNSS, as to whether on presentation of the complaint, notice should be issued to the accused, without recording sworn statement of the complainant, or notice should be issued to the accused after recording the sworn statement, as the mandate of the statute is, while taking cognizance of an offence the complainant shall be examined on oath. The proviso mandates that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard.

9. To steer clear the obfuscation, it is necessary to notice the language deployed therein. The Magistrate while taking cognizance of an offence should have with him the statement on oath of the complainant and if any witnesses are present, their statements. The taking of cognizance

under Section 223 of the BNSS would come after the recording of the sworn statement, at that juncture a notice is required to be sent to the accused, as the proviso mandates grant of an opportunity of being heard.

10. Therefore, the procedural drill would be this way:

A complaint is presented before the Magistrate under Section 223 of the BNSS; on presentation of the complaint, it would be the duty of the Magistrate / concerned Court to examine the complainant on oath, which would be his sworn statement and examine the witnesses present if any, and the substance of such examination should be reduced into writing. The question of taking of cognizance would not arise at this juncture. The magistrate has to, in terms of the proviso, issue a notice to the accused who is given an opportunity of being heard. Therefore, notice shall be issued to the accused at that stage and after hearing the accused, take cognizance and regulate its procedure thereafter.

11. *The proviso indicates that an accused should have an opportunity of being heard. Opportunity of being heard would not mean an empty formality. Therefore, the notice that is sent to the accused in terms of proviso to sub-section (1) of Section 223 of the BNSS shall append to it the complaint; the sworn statement; statement of witnesses if any, for the accused to appear and submit his case before taking of cognizance. In the considered view of this Court, it is the clear purport of Section 223 of BNSS 2023."*

10. *A co-ordinate Bench of this Court has taken similar view and after considering the aforesaid judgment of the Karnataka High Court, has allowed petition filed under Section 482 Cr.P.C. in the case of Prateek Agarwal (Supra). Similar view has been taken by the High Court of Kerala at Ernakulam in the case of Suby Antony S/o Late P.D. Antony (Supra).*

11. *Adverting to the facts of the present case, it is apparent that notices have been issued to the applicant without recording the statements of the complainant and witnesses, which is against the prescribed procedure under the the BNSS, therefore, this Court is of the view that the impugned order is not sustainable in the eyes of law. It is also noticed that the notice issued to the applicant, contained as Annexure No.1 is a blank notice without filling the blanks and mentioning the name of the applicant only, whereas notice should have been issued properly after filling all the relevant blanks and the concerned Court shall ensure that such notice is not issued in future.*

10. Notice to the respondent.

11. List on 23.03.2026.

12. In the meantime, subject to objections of other side and till next date of hearing before the Bench, the proceedings in the complaint filed by respondent, shall stay.
13. Alteration, modification or vacation on motion.
14. The record is returned back to the learned trial Court.

(MOKSHA KHAJURIA KAZMI)
JUDGE

SRINAGAR

06.02.2026

“Mohammad Yasin Dar”

Whether the order is reportable: Yes/No.

Whether the order is speaking: Yes/No.

