Reserved on :20.01.2026
Pronounced on :22.01.2026

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF JANUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.54 OF 2026

BETWEEN:

1 . MUDRA DEVELOPERS
A PARTNERSHIP FIRM,
HAVING ITS OFFICE AT
'SHREE', DOOR NO.3-W-6-608/4,
MANJUNATH COLONY,
KADRI, MANGALURU,
D.K. DISTRICT - 575 002
REPRESENTED BY ITS PARTNERS,
PETITIONER NO.2 AND 3.

2 . MR. VASUDEV K.,
S/O SRINIVAS BHAT.,
AGED ABOUT 51 YEARS,
R/AT 'SHREE'
DOOR NO.3-W-6-608/4,
MANJUNATH COLONY,
KADRI, MANGALURU,
D.K. DISTRICT - 575 002.

3 . DEEPA K.S.,
W/O . VASUDEV K.,
AGED ABOUT 43 YEARS,

R/AT 'SHREE'
DOOR NO.3-W-6-608/4,
MANJUNATH COLONY,
KADRI,
MANGALURU,
D.K. DISTRICT – 575 002.

... PETITIONERS

(BY SRI K.RAVISHANAKAR, ADVOCATE)

AND:

1 . M/S. AASHIRVAD INFRA DEVELOPERS
A PARTNERSHIP FIRM,
HAVING OFFICE AT
DOOR NO. 4-8-739/26,
SHOP NO.3, 1ST FLOOR,
DIVYA ENCLAVE, M.G. ROAD,
D.K. DISTRICT - 575 002
REPRESENTED BY ITS
MANAGING PARTNER
MR. P. KRISHNARAJ MAYYA,
S/O LATE KESHAVA MAYYA.

2 . MR. P. KRISHNARAJ MAYYA,
S/O LATE KESHAVA MAYYA,
AGED ABOURT 54 YEARS,
R/AT FLAT 206, MAHARAJA EXCELLENCY,
HAT HILL, M.G. CROSS ROAD, MANGALURU,
D.K. DISTRICT – 575 003.

... RESPONDENTS

THIS CRIMINAL PETITION IS FILED UNDER SECTION 528 OF B.N.S.S. ACT, 2023, PRAYING TO ALLOW THIS PETITION AND SET ASIDE THE ORDER DATED 04.12.2025 PASSED IN CRL.RP NO.71/2025 PASSED BY THE III ADDL. DISTRICT AND SESSIONS JUDGE, D.K.MANGALURU AS AGAINST THE PETITIONERS.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 20.01.2026, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioners/accused 1 to 3 are at the doors of this Court calling in question an order dated 04-12-2025 passed by the III[rd] Additional District and Sessions Judge, Dakshina Kannada, Mangalore in Criminal Revision Petition No.71 of 2025 rejecting the challenge to the order of taking cognizance by the Judicial Magistrate First Class, V[th] Court, Mangalore, Dakshina Kannada, in terms of his order dated 26-09-2024 and registering C.C.No.1310 of 2024.

2. Heard Sri K. Ravishankar, learned counsel appearing for the petitioners.

3. The skeletal facts are as follows:

The petitioners are the accused and respondents are the complainants. The petitioners are said to have issued a cheque in

furtherance of a transaction for ₹10/- lakhs. The cheque is the instrument in the *lis*. The cheque when presented is returned unpaid on the memorandum that the accused have stopped payment. This leads the complainants to initiate proceedings under the Negotiable Instruments Act, 1881 ('the Act' for short) for offences punishable under Section 138 thereof. The concerned Court, in terms of its order dated 26-09-2024, registers C.C No.1310 of 2024 after recording the sworn statement of the complainants and taking cognizance of the offence punishable under Section 138 of the Act. The petitioners/accused file a criminal revision petition before the Court of Session in Criminal Revision Petition No.71 of 2025, challenging the order of taking cognizance in C.C.No.1310 of 2024. The revisional Court dismisses the said challenge finding no error in the order passed by the learned Magistrate on 04-12-2025. It is therefore, the petitioners are before this Court.

4. The learned counsel appearing for the petitioner would contend that the learned Magistrate could not have deviated from the procedure prescribed under the BNSS, insofar as issuing notice

to the accused, hearing the accused and then taking cognizance of the offence. In the light of it being mandatory and deviation there from, the order of taking cognizance is vitiated, so is the order passed by the revisional Court. He would seek to place reliance upon several judgments of the Apex Court and coordinate Benches of this Court, in furtherance of his submission that the procedure cannot be deviated. He would further contend that Section 4 of the BNSS makes it clear that the procedure that is contemplated under the BNSS cannot by any means deviated by any Court. He would contend that there is no provision or procedure prescribed for taking cognizance under the Act. Therefore, the provisions of the Cr.P.C., were made applicable and the provisions of BNSS automatically would become applicable. The difference in the two is that, under Section 223 BNSS, the learned Magistrate/concerned Court has to issue notice to the accused, hear the accused and then take cognizance or refer the matter for investigation as the case would be. Since the issue is under the Act, taking of cognizance is what is questioned.

5. I have given my anxious consideration to the submissions made by the learned counsel for the petitioners and have perused the material on record.

6. Before embarking upon consideration of the judgments relied on by the learned counsel appearing for the petitioners, I deem it appropriate to notice the statutory landscape of BNSS. Sections 4, 5, 223 and 531 of BNSS read as follows:

> **"4. Trial of offences under Bharatiya Nyaya Sanhita, 2023 and other laws**.—(1) All offences under the Bharatiya Nyaya Sanhita, 2023 shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.
>
> (2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.
>
> **5. Saving**.—**Nothing contained in this Sanhita shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.**
>
> …… …….. ……..
>
> **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 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 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.

…… …….. ……..

531. Repeal and savings.—(1) The Code of Criminal Procedure, 1973 (2 of 1974) is hereby repealed.

(2) Notwithstanding such repeal—

(a) if, immediately before the date on which this Sanhita comes into force, there is any appeal, application, trial, inquiry or investigation pending, then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), as in force immediately before such commencement (hereinafter referred to as the said Code), as if this Sanhita had not come into force;

(b) all notifications published, proclamations issued, powers conferred, forms provided by rules, local jurisdictions defined, sentences passed and orders, rules and appointments, not being appointments as Special Magistrates, made under the said Code and which are in force immediately before the commencement of this Sanhita, shall be deemed, respectively, to have been published, issued, conferred, specified, defined, passed or made under the corresponding provisions of this Sanhita;

(c) any sanction accorded or consent given under the said Code in pursuance of which no proceeding was commenced under that Code, shall be deemed to have been accorded or given under the corresponding provisions of this Sanhita and proceedings may be commenced under this Sanhita in pursuance of such sanction or consent.

(3) Where the period specified for an application or other proceeding under the said Code had expired on or before the commencement of this Sanhita, nothing in this Sanhita shall be construed as enabling any such application to be made or proceeding to be commenced under this Sanhita by reason only of the fact that a longer period therefor is specified by this Sanhita or provisions are made in this Sanhita for the extension of time."

(Emphasis supplied)

Section 200 of the Cr.P.C., reads as follows:

> **"200. Examination of complainant.**—A Magistrate 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, 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 192:
>
> Provided further that if the Magistrate makes over the case to another Magistrate under Section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them."

Sections 142 and 143 of the Act read as follows:

> **"142. Cognizance of offences.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—**
>
> **(*a*) no court shall take cognizance of any offence punishable under Section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;**

(*b*) such complaint is made within one month of the date on which the cause of action arises under clause (*c*) of the proviso to Section 138:

Provided that the cognizance of a complaint may be taken by the court after the prescribed period, if the complainant satisfies the court that he had sufficient cause for not making a complaint within such period.

(*c*) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under Section 138.

(2) The offence under Section 138 shall be inquired into and tried only by a court within whose local jurisdiction,—

(*a*) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(*b*) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.—For the purposes of clause (*a*), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.

…. …. ….

143. Power of court to try cases summarily.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under this chapter shall be tried by a Judicial Magistrate of the first class or by a

Metropolitan Magistrate and the provisions of Sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trials:

Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year and an amount of fine exceeding five thousand rupees:

Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record on order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code.

(2) The trial of a case under this section shall, so far as practicable, consistently with the interests of justice, be continued from day to day until its conclusion, unless the court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded in writing.

(3) Every trial under this section shall be conducted as expeditiously as possible and an endeavour shall be made to conclude the trial within six months from the date of filing of the complaint."

(Emphasis supplied)

7. **Section 200 of the Cr.P.C. was dealing with examination of the complainant prior to the learned Magistrate taking action in accordance with law. From 01-07-2024, the new Code i.e., BNSS is in place. Section 223 of the BNSS corresponds to Section 200 of the Cr.P.C..**

The newly added proviso to Section 223 of the BNSS provides for an opportunity of hearing to the accused before the Magistrate takes cognizance of the complaint. Section 531 deals with repeal and savings, which would not become applicable to the case at hand, as the complaint itself is made after the BNSS coming into force. Section 4 deals with trial of offences under the BNSS. It indicates that all offences under any law shall be investigated, enquired into and tried under the said enactment. Section 5 carves out an exception. Section 5 mandates that nothing contained in the BNSS shall in the absence of a specific provision to the contrary, affect any special or local law for the time being in force. The Act is a special law, is an undisputed fact. Section 143 of the Act holds that offences punishable under Section 138 of the Act to be summary proceedings. Taking of cognizance is dealt with under Section 142 of the Act itself. In the teeth of the proceedings being summary proceedings, whether the procedure stipulated under Section 223 of the BNSS is required to be followed for taking cognizance

of the offences under the Act or otherwise needs consideration.

8. This issue has been interpreted by the Apex Court and different High Courts, including this Court in plethora of cases.

8.1. The interpretation by this Court is in the case of **SRI BASANAGOUDA R. PATIL (YATNAL) v. SRI SHIVANANDA S.PATIL[1],** wherein this Court delineated the procedural drill for consideration of a private complaint. Therein it is held as follows:

> "…. …. ….
>
> 7. The registration of the private complaint for offences punishable under Section 356(2) of the BNSS is not in dispute. The fulcrum of the compliant was that the petitioner made a defamatory speech against the respondent at an election rally. The issue that is brought before the Court, at this juncture, is not on the merit of the matter. The complaint is filed by the respondent invoking Section 223 of the BNSS, which is Section 200 in the earlier regime - Cr.P.C. The moment complaint is registered, a notice is issued to the accused. Issuance of notice to the accused has driven the petitioner to this Court, in the subject petition, contending that it is contrary to the procedure to be adopted in law. Therefore, it becomes germane to notice certain provisions of the BNS 2023. Filing of the private complaint is dealt with under Section 223 of the BNSS, which was Section 200 of Cr.P.C., it reads as follows:

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[1] **Criminal Petition No.7526 of 2024 decided on 27-09-2024**

*"**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 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 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)

Proviso to sub-section (1) of Section 223 of the BNSS mandates that a Magistrate while taking cognizance of an offence, on a complaint, shall examine upon oath, the complainant and the

witnesses present if any and reduce it into writing. The proviso further mandates that no cognizance of an offence shall be taken by the Magistrate without giving an opportunity to the accused of being heard. Section 227 of the BNSS deals with issuance of process which is akin to Section 204 of the Cr.P.C. This stage is yet to arrive in the case at hand.

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."**
>
> (Emphasis supplied)

The procedural drill that this Bench had directed was considering the offence punishable under Section 500 of the IPC which was a defamatory speech in an election rally.

8.2. This judgment is followed by a coordinate Bench of this Court in the case of **HANUMESH v. JAY PRAKASH PATIL KYADIGERI**[2]. This is followed even for an offence under the Act. The coordinate Bench holds as follows:

"…. …. ….

> 4. Learned counsel for the petitioner submits that before taking cognizance of the alleged offence, the trial Court ought to have heard the accused as provided under Section 223 of BNSS, 2023 and since the said exercise has not been done in the present case, the order of taking cognizance for the alleged offence is bad in law.
>
> 5. The contention urged by the learned counsel for the petitioner has been considered by the co-ordinate Bench of this

[2] **Criminal Petition No.201604 of 2024 decided on 11-02-2025**

Court in Criminal Petition No.7526/2024, disposed of on 27.09.2024 and in paragraph Nos.8 to 11 of the said order, it has been observed as follows:

> 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
>
> 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."
>
> 6. Under the circumstances, the order passed by the trial Court taking cognizance of the alleged offence without complying the requirement of Section 223 of BNSS, 2023, cannot be sustained Accordingly, the following order:
>
> **ORDER**
>
> (i) The criminal petition is partly allowed;
>
> (ii) The impugned order dated 23.09.2024 passed by the trial Court in P.C.No.307/2024 taking cognizance of the alleged offence and directing the Registry to register a criminal case as against the accused/petitioner is quashed and the matter is remanded to the trial Court to redo the exercise afresh from the stage of recording the sworn statement of the complainant, in the light of the order passed by the co-ordinate Bench of this Court in Criminal Petition No.7526/2024."

8.3. A subsequent coordinate Bench of this Court refuses to follow the afore-quoted judgments, notwithstanding the fact that the judgment of the coordinate Bench in **HANUMESH** *supra* was rendered for the offences punishable under the Act. The subsequent coordinate Bench of this Court in the case of **ASHOK v. FAYAZ AAHMAD[3],** holds as follows:

> "**The question that arises for consideration is that the procedure of hearing accused at the stage of taking**

[3] **2025 SCC OnLine Kar 490**

cognizance as prescribed in the first proviso to Section 223 of Bharatiya Nagarik Suraksha Sanhita 2023 [hereinafter referred to as 'BNSS' for short] apply to the complaints for offence under Section 138 of Negotiable Instruments Act, 1881.

2. Section 223 of BNSS deals with examination of complainant which reads thus;

> *"**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 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 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 the 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."

3. Section 223 of BNSS corresponds to Section 200 of Cr. P.C. Section 223 of BNSS makes a departure from the earlier provision contained in Section 200 Cr. P.C., 1973, since under the proviso to Sub-Section (1) of 223, the Magistrate cannot take cognizance of an offence, without giving the accused an opportunity of being heard.

4. The said provision was not there in repealed Section 200 of Cr. P.C. **In view of the change in law and as contemplated in the first proviso to Section 223(1) of the BNSS, it is necessary to examine as to whether the Magistrate empowered to adjudicate complaint under Section 138 r/w Section 142 of the N.I. Act is also required to comply with the above said first proviso to Section 223(1) of the BNSS or not.**

5. The Madurai Bench of Madras High Court in Criminal OP(MD) No. 19778/2022 and other connected matters between *Ultimate Computer Care v. S.M.K. Systems* decided on 12.02.2025 has held as under;

> ***"Having regard to the fact that the N. I. Act has prescribed a special procedure, it is a Special Law within the meaning of Section 5 of the BNSS, 2023. Hence, the procedure of hearing the accused at the stage of taking cognizance as prescribed in the proviso to Section 223 BNSS shall not apply to complaints under Section 138 of the N.I. Act, 1881."***

6. The BNSS, 2023 came into force with effect from 01.07.2024.

> **Section 5 of the Act deals with the heading "Saving". It provides that nothing contained in BNSS shall, in the absence of a specific provision to the contrary, affect any special or Local Law for the time being in force, prescribed by any other**

law for the time being in force. (Corresponding to Section 5 of the CrPC, 1973).

Chapter XVI of BNSS, 2023, deals with heading "Complaints to Magistrate" (Sections 223 to 226) (Corresponding to Sections 200 to 203 of the CrPC, 1973).

Chapter XVII of Negotiable Instruments Act, 1881, deals with "penalties in case of dishonour of certain cheques for insufficiency of the funds in the accounts of the drawer" (Sections 138 to 148).

7. Section 138 of NI Act reads thus;

"138. Dishonour of cheque for insufficiency, etc., of funds in the account.— *Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both:*

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.— For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability."

8. Section 142 of NI Act reads thus;

***"142. Cognizance of offences**.—(1) Notwithstanding anything contained in the Criminal Procedure Code, 1973 (2 of 1974)—*

(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138:

Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period.

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.

[(2) The offence under section 138 shall be inquired into and tried only by a court within whose local jurisdiction,—

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the

branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.— For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.]"

9. The Negotiable Instruments Act is Special Statute. The Hon'ble Apex Court in *Mohd. Abdul Sammad v. The State of Telangana* [(2024) INSC 506] observed in the context of Section 125 of the Cr. P.C. that provisions of special law prevail over general law.

10. In ***Suresh Nanda v. CBI*** **[(2008) 3 SCC 674]** the Supreme Court observed that the Passport Act is a Special Law whereas Cr. P.C. is a General Law**. It is well settled that the special law prevails over General Law.**

11. The Apex Court in ***P. Mohan Raj v. Shah Brothers Ispat Pvt. Ltd.*** **[(2021) 6 SCC 258 : AIR 2021 SC 1308],** observed that **provisions contained in Section 138 of the NI Act is really a hybrid provision to enforce payment under a bounced cheque, if it is otherwise enforceable in Civil Law. On a bare reading of Section 142 of the NI Act, the procedure under the Cr. P.C. has been departed from. First and foremost, no Court is to take cognizance of an offence punishable under Section 138 of the NI Act except on a complaint made in writing by the payee or the holder in due course of the cheque – the victim. By Section 147 of the NI Act, offences under the NI Act are compoundable without any intervention of the Court as is required by Section 320(2) of the Cr. P.C. (Section 359 of BNSS). Section 138 NI Act proceedings can be said to be a "Civil Sheep" in a "criminal wolf's" clothing, as it is interest of the victim that is sought to be protected, the larger interest of the State being subsumed in the victim alone moving a Court in cheque bouncing cases.**

12. The Hon'ble Apex Court in ***M. Abbas Haji v. P.N. Channakeshava*****[(2019) 9 SCC 606]** held that **proceedings under Section 138 of the NI Act are quasi-criminal proceedings. The principles, which apply to acquittal in other criminal cases, cannot apply in the cases under Section 138 of the NI Act.**

13. The Apex Court **in Re *: Expeditious trial of cases under Section 138 of NI Act in suomotu Writ Petition (Criminal) No. 2/2020*** **[2021 INSC 257]** by order dated 16.04.2021 laid down guidelines for early disposal of complaints filed under Section 138 of the NI Act."

14. Section 143 of NI Act reads thus;

> ***143. Power of Court to try cases summarily****.— (1) Notwithstanding anything contained in the Criminal Procedure Code, 1973 (2 of 1974), all offences under this Chapter shall be tried by a Judicial Magistrate of the first class or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trials:*
>
> *Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year and an amount of fine exceeding five thousand rupees:*
>
> *Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code.*
>
> *(2) The trial of a case under this section shall, so far as practicable, consistently with the interests of justice, be continued from day to day until its conclusion, unless the Court finds the adjournment of the trial beyond the*

following day to be necessary for reasons to be recorded in writing.

(3) Every trial under this section shall be conducted as expeditiously as possible and an endeavour shall be made to conclude the trial within six months from the date of filing of the complaint.

15. Section 144 of NI Act reads thus;

144. Mode of service of summons. —
(1) Notwithstanding anything contained in the Criminal Procedure Code, 1973 (2 of 1974) and for the purposes of this Chapter, a Magistrate issuing a summons to an accused or a witness may direct a copy of summons to be served at the place where such accused or witness ordinarily resides or carries on business or personally works; for gain, by speed post or by such courier services as are approved by a Court of Session.

(2) Where an acknowledgment purporting to be signed by the accused or the witness or an endorsement purported to be made by any person authorised by the postal department or the courier services that the accused or the witness refused to take delivery of summons has been received, the Court issuing the summons may declare that the summons has been duly served.

16. Section 145 of NI Act reads thus;

145. Evidence on affidavit.— *(1) Notwithstanding anything contained in the Criminal Procedure Code, 1973 (2 of 1974), the evidence of the complainant may be given by him on affidavit and may, subject to all just exceptions be read in evidence in any enquiry, trial or other proceeding under the said Code.*

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any person giving evidence on affidavit as to the facts contained therein.

17. Before issuing process, the Magistrate is not bound to call upon the complainant to remain present before the Court and to examine him on oath. As a rule the Magistrate may rely upon affidavit filed by the

complainant in support of complaint, which shall be treated as a sworn statement, to issue process.

18. While following the summary trial procedure, where the accused does not plead guilty, the Court is required to record the substance of evidence followed by judgment containing a brief statement of reasons for the finding. The summary procedure has to be followed except, where exercise of power under second proviso to Section 143 of NI Act becomes necessary, where sentence of one year may be awarded to the accused and compensation under Section 395 of BNSS is considered by the Court as not adequate, having regard to amount of cheque, financial capacity and conduct of the accused or any other attendant circumstances. If the Magistrate feels it necessary to convert a summary trial into a summons case, the Magistrate must record an order to the said effect as required under second proviso to Section 143 of NI Act. Sub-Section (3) of Section 143 provides that trial to be concluded within six months. The Hon'ble Apex Court in the case of *J.V. Baharuni v. State of Gujarat* [(2014) 10 SCC 494] has held that the Magistrate has to take steps to complete the proceedings before the time limits under Sub-Section (3) of Section 143 of NI Act.

19. In view of NI Act prescribing a special procedure, procedure of hearing the accused at the stage of taking cognizance as prescribed in the first proviso to Section 223 of BNSS shall not apply to the complaints for offence under Section 138 of NI Act.

20. The Co-ordinate Bench of this Court in the case of *Basanagouda R. Patil (Yatnal) v. Shivananda S. Patil* [2024 SCC OnLine Kar 96] dealt with the legal issue involved in the matter of application of proviso to Section 223(1) of BNSS before issuance of process by the Magistrate in pursuance of complaint lodged by the complainant under Section 223 of BNSS. The Court observed in the contest of the complaint filed before the Magistrate under Section 223 of BNSS that upon presentation of the complainant, the Magistrate is duty bond to examine the complainant on both [sworn

statement by the complainant] and examine the witnesses, if any, the substance of such examination be reduced in writing. The Court added that the question of taking cognizance would not arise at that juncture. The Magistrate has to, in terms of the cognizance issue a notice to the accused who is given an opportunity to be heard. Notice shall be issued to the accused, at that stage, and after hearing the accused, the Court shall take cognizance and regulates its procedure thereafter. The Court further held that the accused should have an opportunity of being heard. Copy of complaint, sworn statement of the complainant, statement of witnesses, if any, shall be offended by the Court along with the notice of the Court to the accused under Section 223(1) of BNSS to enable the accused to appear and submit his case before taking cognizance by the Court. In the said case, the offences alleged are under IPC, tried not by summary procedure as provided for offence punishable under Section 138 of NI Act. Therefore, the said decision cannot be applied to the present case on hand.

21. The Hon'ble Apex Court in the case of ***Kaushalya Devi Massand v. RoopkishoreKhore*** **[(2011) 4 SCC 593 : AIR 2011 SC 2566]** observed that, **the gravity of a complaint under the NI Act cannot be equated with an offence under the provisions of IPC or other Criminal offences. An offence under Section 138 of NI Act is almost is in the nature of civil wrong which has been given criminal overtones.**

22. The co-ordinate Bench of this Court in the case of *Hanumesh S/o. SharanappaKaranagi v. Karanagi Brothers Enterprise* in Criminal Petition No. 201604/2024 decided on 11.02.2025 has relied upon the decision in *Basanagouda R. Patil (Yatnal)* supra and held that before taking cognizance of offence under Section 138 of NI Act, the Magistrate shall comply the requirement of Section 223 of BNSS. In the said case, the Court has not considered that the Negotiable Instrument Act is special statute and procedure provided for offence punishable under Section 138 of NI Act for trial is a summary procedure and Section 5 of BNSS.

> **23. Since Negotiable Instrument Act, 1881 is special enactment and in view of Section 5 of BNSS r/w. Section 143 of NI Act as far as the cases tried by the learned Magistrates under Section 138 of NI Act, there is no need for the Magistrate to give an opportunity of being heard to the accused before taking cognizance on the complaint of payee/holder in due course of cheque for offence punishable under Section 138 of NI Act."**
>
> (Emphasis supplied)

With this being the law before this Court and the subsequent coordinate Bench of this Court in **ASHOK** *supra*, holding that proceedings under Section 138 and 142 of the Act being summary in nature as obtaining under the statute itself i.e., Section 143 of the Act, the procedure under Section 223 of the BNSS of issuing notice to the accused, hearing the accused and then taking cognizance is not a step that is necessary in law.

8.4. The Apex Court in the case of **SANJABIJ TARI v. KISHORE S. BORCAR**[4], notices the judgment, of the coordinate Bench of this Court in **ASHOK** *supra,* and observes that there is no requirement of issuing summons to the accused under Section 223

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[4] 2025 SCC OnLine SC 20692

of the BNSS at the pre-cognizance stage. The Apex Court holds as follows:

> "**36.** Keeping in view the massive backlog of cheque bouncing cases and the fact that service of summons on the accused in a complaint filed under section 138 of the Negotiable Instruments Act, continues to be one of the main reasons for the delay in disposal of the complaints as well as the fact that punishment under the Negotiable Instruments Act, is not a means of seeking retribution but is more a means to ensure payment of money and to promote credibility of cheques as a trustworthy substitute for cash payment, **this court issues the following directions :**
>
> ....
>
> **(E) Recently, the High Court of Karnataka in *Ashok v. Fayaz Aahmad* [2025 SCC OnLine Kar 490.] has taken the view that since the Negotiable Instruments Act, is a special enactment, there is no need for the magistrate to issue summons to the accused before taking cognizance (under section 223 of the Bhartiya Nagarik Suraksha Sanhita) of complaints filed under section 138 of the Negotiable Instruments Act. This court is in agreement with the view taken by the High Court of Karnataka. Consequently, this court directs that there shall be no requirement to issue summons to the accused in terms of section 223 of the Bhartiya Nagarik Suraksha Sanhita, i.e., at the pre- cognizance stage.**
>
> (F) Since the object of section 143 of the Negotiable Instruments Act is quick disposal of the complaints under section 138 by following the procedure prescribed for summary trial under the Code, this court reiterates the direction of this court in *Expeditious Trial of Cases under section 138 of NI Act, 1881, In re* [(2021) 16 SCC 116; 2021 SCC OnLine SC 325.] that trial courts shall record cogent and sufficient reasons before converting a summary trial to summons trial. To facilitate this process, this court clarifies that in view of the judgment of the Delhi High Court in *Rajesh Agarwal v. State* [(2010) 159 Comp Cas 13 (Delhi); 2010 SCC OnLine Del 2511.] , the trial court shall be at liberty (at the initial post cognizance stage) to ask questions, it deems appropriate, under section

251 of the Code of Criminal Procedure/section 274 of the Bhartiya Nagarik Suraksha Sanhita, 2023 including the following questions :

(i) Do you admit that the cheque belongs to your account ? Yes/No
(ii) Do you admit that the signature on the cheque is yours ? Yes/No
(iii) Did you issue/deliver this cheque to the complainant ? Yes/No
(iv) Do you admit that you owed liability to the complainant at the time of issuance ? Yes/No
(v) If you deny liability, state clearly the defence :
(a) Security cheque only;
(b) Loan repaid already;
(c) Cheque altered/misused;
(d) Other (specify).
(vi) Do you wish to compound the case at this stage ? Yes/No"

(Emphasis supplied)

8.5. Several other High Courts have also considered this very issue of a notice being issued at a pre-cognizance stage for an offence under the Act. The High Court of Delhi in **MOHIT JUNEJA v. STATE GOVERNMENT OF NCT OF DELHI**[5], has held as follows:

"…. …. ….

3. Learned counsel for both the parties are *ad idem* that the impugned order dated 30.01.2025 is liable to be set aside in view of the judgment of the Hon'ble Supreme Court in ***Sanjabij Tari v. Kishore S. Borcar&Anr. (Crl.A. 1755/2010)***, wherein it was held that **as proceedings under the NI Act arise from a special enactment, the Magistrate is not required to**

[5] **CRL.M.C. 2282 of 2025 and connected cases decided on 11-11-2025**

issue summons prior to taking cognizance. The relevant portion of the said judgment is reproduced hereinbelow:

> **"E. Recently, the High Court of Karnataka in Ashok Vs. FayazAahmad, 2025 SCC OnLine Kar490 has taken the view that since NI Act is a special enactment, there is no need for the Magistrate to issue summons to the accused before taking cognizance (under Section 223 of BNSS) of complaints filed under Section 138 of NI Act. This Court is in agreement with the view taken by the High Court of Karnataka. Consequently, this Court directs that there shall be no requirement to issue summons to the accused in terms of Section 223 of BNSS i.e., at the pre cognizance stage."**

4. A Coordinate Bench of this Court in Crl.M.C.2202/2025 titled as *Neeti Sharma vs. Saranjit Singh* decided on 02.04.2025, has reiterated the aforesaid legal position while examining the applicability of the provisions of the BNSS to complaints under the NI Act. The Court observed as under:

> **"21. Therefore, in cases under Section 138 of the NI Act, the Magistrate is not bound to examine the complainant and witnesses on oath before issuing notice under the first proviso to Section 223(1) of the BNSS. The requirement of a pre-cognizance hearing now statutorily introduced under the BNSS is a distinct and additional procedural step, but it does not alter the established position that, for offences under the NI Act, reliance on affidavits and documentary material suffices for taking cognizance. In this light, the Petitioner"s contention, that the Magistrate erred in issuing notice under Section 223 without first examining the complainant and witnesses on oath, does not merit acceptance. The challenge to the Impugned notice is, therefore, misconceived and without legal basis."**

5. In view of the foregoing, the impugned order dated 30.01.2025 is set aside. The petitions stand allowed and disposed of, along with pending application(s), if any."

(Emphasis supplied)

8.6. The High Court of Madras in **M/S.ULTIMATE COMPUTER CARE v. M/S. S.M.K. SYSTEMS[6],** has held as follows:

"…. …. ….

II. ISSUANCE OF PROCESS

- Before issuing process, the Magistrate is not bound to call upon the complainant to remain present before the Court and to examine him upon oath. As a rule, the Magistrate may rely upon the verification in the form of affidavit filed by the complainant in support of the complaint, which shall be treated as a sworn statement, to issue process. In exceptional cases, such as where the Court entertains a genuine doubt about the veracity of the statements made in the complaint etc., it may summon the complainant and witnesses, if any and examine them on oath.

- Where the accused or some of them reside outside the territorial jurisdiction of the Court, the Magistrate shall conduct an inquiry as mandated by Section 225 BNSS, 2023 and proceed against such accused only upon being satisfied that there are sufficient grounds to proceed against him/them. The requisite satisfaction must be demonstrable from the order issuing process.

- Section 225(2) of the Code is inapplicable to complaints under Section 138 in respect of examination of witnesses on oath. The evidence of witnesses on behalf of the complainant shall be permitted on affidavit. If the Magistrate holds an inquiry himself, it is not compulsory that he should examine witnesses. In suitable cases, the Magistrate can examine documents for satisfaction as to the sufficiency of grounds for proceeding under Section 225.

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[6] **[CRL.OP (MD) Nos. 19778/2022 and connected cases decided on 12.02.2025]**

- The Court should adopt a pragmatic and realistic approach while issuing process. In cases of juristic entities, except in cases where the Director/Partner etc is a signatory to the cheque, in respect of other accused who are sought to be roped in with the aid of Section 141 of the N.I Act, 1881, the Magistrate shall not issue process unless he is satisfied about the complicity of such accused having regard to the express averments in the complaint as to how and in what manner such person/accused is involved in the day to day affairs/Management of the company.

- **Having regard to the fact that the N.I Act has prescribed a special procedure, it is a special law within the meaning of Section 5 of the BNSS, 2023. Hence, the procedure of hearing the accused at the stage of taking cognizance as prescribed in the proviso to Section 223 BNSS shall not apply to complaints under Section 138 of the N.I Act, 1881.**

…. …. ….

VI TRIAL

- **Procedure for trial of cases under Chapter XVII of the Act must, in the first instance, be summary in nature.** Under the first proviso to Section 143, the Magistrate may pass a sentence of imprisonment for a term not exceeding one year and impose a fine exceeding five thousand rupees. However, the Magistrate may also exercise discretion under the second proviso to Section 143, to hold that it is undesirable to try the case summarily. This course of action is, however, the exception and the Magistrate may bear in mind that apart from the sentence of imprisonment, the court has jurisdiction under Section 395 BNSS to award suitable compensation. As such, a sentence of more than one year may not be required in all cases. (See **Meters and Instruments (P) Ltd. v. Kanchan Mehta, (2018) 1 SCC 560).**

- **While following the summary trial procedure, where the accused does not plead guilty, the Court is only required to record the substance of the evidence followed by a judgment containing a brief statement**

of the reasons for the finding. Copious extracts from judgments on well settled aspects like presumption under Section 139 NI Act etc must be avoided.

- **The statutory scheme is to follow summary procedure except where exercise of power under second proviso to Section 143 becomes necessary**, where sentence of more than one year may have to be awarded and compensation under Section 395 BNSS is considered inadequate, having regard to the amount of the cheque, the financial capacity and the conduct of the accused or any other attendant circumstances.

- **Should it become necessary to convert a summary trial into a summons case, the Magistrate must record an order to that effect as required by the second proviso to Section 143 of the N.I Act.**

- Upon the appearance of the accused, the Court shall pass an order fixing dates for examination of defense witnesses, if any, after hearing the parties or their counsel. Such order will be furnished to the counsel or the parties free of cost and must be simultaneously uploaded by the trial courts. It will be the duty of all concerned to stick to the schedule, and adjournments/re-scheduling of dates shall not be granted unless for strong and exceptional reasons, and that too upon imposition of costs.

- **The Court concerned must ensure that examination-in-chief, cross examination and re-examination of the complainant must be conducted within three months from the date of commencement of trial.**

- As pointed out by the Supreme Court in ***V. Baharuni v. State of Gujarat, (2014) 10 SCC 494*** "all the subordinate courts must make an endeavour to expedite the hearing of cases in a time-bound manner which in turn will restore the confidence of the common man in the justice-delivery system. When law expects something to be done within prescribed time-limit, some efforts are required to be made to obey the mandate of law." Accordingly, every effort shall be taken to complete the proceedings

> within the time frame fixed under Section 143(3) of the Negotiable Instruments Act, 1881."
>
> (Emphasis supplied)

Therefore, the law becomes crystal clear that for a summary trial, for offences under the Act as is ordained in Section 143 of the Act, there is no warrant of following the procedure under Section 223 of the BNSS. I am in respectful agreement with what is observed by the coordinate bench of this Court in **ASHOK v. FAYAZ AAHMAD** *supra* and the High Courts of Delhi and Madras and would hold that the procedure under Section 223 of the BNSS need not be followed for offences punishable under the Act.

9. The learned counsel for the petitioners have placed reliance upon the judgment of the Apex Court in **REKHA SHARAD USHIR v. SAPTASHRUNGI MAHILA NAGARI SAHKARI PATSANSTA LIMITED** – [**2025 SCC OnLine SC 641]**. The said judgment was considering whether a sworn statement of the complainant should be recorded or otherwise under Section 223 of the BNSS. The Apex Court holds that under Section 200 of Cr.P.C., which is replaced by Section 223 of BNSS, the sworn statement of the complainant must be recorded. The Apex Court nowhere directs

that the accused should be heard under Section 223(1) prior to the Court taking cognizance. Therefore, the said judgment is inapplicable to the facts of the case.

10. Finding no warrant to interfere with the order of taking of cognizance and the order of the revisional Court, the petition lacking in merit stands ***rejected.***

Consequently, I.A.No.1 of 2025 also stand disposed.

This Court places its appreciation to the able assistance rendered by Miss. Sai Suvedhya R., and Miss. Samriddhi N. Shenoy, Law Clerk cum Research Assistants attached to this Court.

Sd/-
(M.NAGAPRASANNA)
JUDGE

Bkp
CT:MJ