IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Writ Petition No. 4153 of 2025

Sashidhar Jagdishan (Managing
Director and Chief Executive Officer
of HDFC Bank Ltd.)
office address at: HDFC Bank Limited,
HDFC Bank House, Senapati Bapat Marg,
Lower Parel (West), Mumbai 400013. … Petitioner.

V/s.

1. State of Maharashtra
Through Public Prosecutor,
Bombay High Court,

2. Lilavati Kirtilal Mehta Medical Trust
(represented by Mr. Prashant Mehta)
having office at 9 Diamond House,
Vatcha Gandhi Road, Gamdevi,
Mumbai 400007.

3. Prashant Mehta
Permanent Trustee of
Lilavati Kirtilal Mehta Medical Trust,
having office at 9 Diamond House,
Vatcha Gandhi Road, Gamdevi,
Mumbai 400007. … Respondents.

Mr. Ravi Kadam, Sr. Advocate a/w. Mr. Sudeep Passbola, Sr. Advocate a/w. Mr. Sandeep Singhi a/w. Mr. ChandanSingh Shekhawat a/w. Sanskruti Harode a/w. Rohin Chauhan i/b. Parinam Law Associates	Advocate for the Petitioners.

Mr. Aabad Ponda, Sr. Advocate, Mr. Monish Bhatia, Hemant Ingle, Minal Chandnani, Jyoti Ghag, Ankit Singhal i/b. Dua Associates	Advocates for Respondent Nos.2 and 3.
Mr. N.B. Paitil	APP for the State.

CORAM : S.M. MODAK, J

DATE : 05th August 2025.

ORAL ORDER :

Heard learned Senior Advocate Shri Kadam for the Petitioner-proposed accused and learned Senior Advocate Shri Ponda for Respondent Nos. 2 and 3. Also heard learned APP.

2. There is a private complaint filed by these two Respondents hereinafter referred to as Complainant before the JMFC, Girgaon. It was filed for an offence under Section 356(1), 356 (2), 356 (3) and Section 3(5) of the Bhartiya Nyay Sanhita, 2023 (for short 'B.N.S.'). Copy of complaint is on Page 40. On Page-1 there is one remark put up by the staff of the concerned Court. It reads thus:

> "This complaint is filed within the jurisdiction of this court and e-filing is done checked and verified."
>
> Dated 16th June 2025.

Two orders are pointed out to me. They are as follows:

(i) **Issue notice to the proposed accused under Section 223** of

the B.N.S.S. dated 16 June 2025.

(ii) **Order in Roznama** dated 16th June 2025 (Page 144). It reads thus:

> "Complainant present. Advocate for Complainant present. Filed. Exh.1 Complaint. **O-Issue notice to Proposed accused u/sec.223 of B.N.S.S..** Exh.2 V.P.Exh.3 Affidavit. O-Seen and filed. Case adj for till next date."

3. It is clarified on behalf of the Petitioner- proposed Accused that order which is challenged in this petition is the '*order of issuing notice to them'*. Though the issue which is canvassed before me is a narrow issue, considering the detailed submissions advanced by both the learned Senior Advocates, it requires a serious consideration by this Court. Both of them submitted on this issue, uptill now this Court has not given any authorative pronouncement. **The issue which is advanced before this Court is as follows:-**

(i) Whether the learned Magistrate was justified in issuing notice to proposed accused prior to recording of verification statement as per the proviso?

(ii) Whether recording the verification statement of the complainant and statement of witnesses, if any, is mandatory and at what stage?

Submissions

4. Learned Senior Advocate Shri Kadam relied upon the various

judgments of different High Courts on this aspect whereas according to learned Senior Advocate Shri Ponda the wordings of first part of Section 223 of Bhartiya Nagarik Suraksha Sanhita, 2023 (for short 'B.N.S.S.') talks about "*while taking cognizance of an offence*". He mean to say that a notice to proposed accused as per the proviso is required only prior to taking cognizance. According to him if the case is perused, it cannot be said that the learned Magistrate has taken cognizance and as such learned Magistrate was justified in issuing notice. When it can be said that the Court has taken cognizance? He has relied upon the various judgments given by this Court and by Hon'ble Supreme Court. In nutshell, **Mr. Ponda intends this Court** should read the proviso independent of initial paragraph of Section 223 of B.N.S.S., 2023. **This is disputed by Mr. Kadam.** According to him notice to proposed accused can be issued after verification but prior to taking cognizance.

5. Learned Senior Advocate Shri Kadam relied upon following judgments:

(i) ***Basanagouda R. Patil v/s. Shivananda S. Patil***[1]

(ii) ***Prateek Agarwal v/s. State of U.P. through Addl. Chief Secrettary deptt. Home Lko and anr.***[2]

(iii) ***Suby Antony vs. Judicial First-Class Magistrate-III and others.***[3]

1 2024 SCC OnLine Kar 96
2 2024 SCC OnLine All 8212
3 2025 SCC OnLine Ker 532

(iv) ***Brand Protectors India Pvt. Ltd. v/s. Anil Kumar***[4]

(v) ***Rakesh Kumar Chaturvedi v/s. State of U.P. through Addl. Chief Secretary deptt. Of Home Lko and anr.***[5]

He has read over the relevant observations from those judgments. His submission is all the High Courts were unanimous in interpreting the provisions of requirement of notice prior to taking cognizance as per the proviso. Instead of considering the ratio laid down in those judgments (because they are unanimous), I prefer to cull out the principles which emerge from them:-

(1) Giving of an opportunity of hearing is not an empty formality.

(2) Such notice should be accompanied by copy of complaint, sworn statements of the complainant and witnesses if any

(3) Taking of cognizance under section 223 of B.N.S.S. would come only after recording of sworn statement.

(4) After filing the complaint, first stage will be to examine the complainant and the witnesses if any. On this background if the magistrate wants to proceed to take cognizance, opportunity of hearing should be afforded to the accused.

(5) The meaning of the word *'cognizance'* depends upon the facts and circumstances. When the Magistrate applies his mind for the purpose of proceeding under section 200, then it amounts to taking cognizance.

(6) In case of Brand Protectors India Pvt. Ltd. (Para-16) the

4 Crl. MC 1495/25 Delhi High Court
5 Application No.862/25 Allahabad High Court

observations of Hon'ble Supreme Court in case of ***Narayan Das Bhagwandas Madhavdas vs. State of West Bengal***[6] were reproduced. The purpose of recording statements prior to taking cognizance is only for ascertaining whether the *prime facie* case is disclosed.

6. For ready reference, the relevant portion of Section 223 of B.N.S.S., 2023 is reproduced:-

> "**223(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:
> …."

This proviso ensures substantive procedural safeguard to the accused and it was not on statute book earlier to enactment of B.N.S.S. According to Mr. Kadam even though all these judgments are given by different High Courts, certainly, it has got persuasive value.

7. Learned Senior Advocate Shri Ponda made submissions pre-

6 AIR 1959 SC 111

dominantly on following three grounds:

(i) He placed reliance on various observations in respect of taking of cognizance.

(ii) He justified passing of the order by learned Magistrate by submitting that the law interpreted by this Court and by Supreme Court " in respect of taking cognizance" is binding on all the Courts. He placed reliance on few of the judgments. According to him as per proviso, notice is mandatory prior to taking cognizance and which is not done in this case.

(iii) There is no error committed by the learned Magistrate and even if there is an error, it cannot be corrected by exercising supervisory jurisdiction as per the provisions of Section 227 of the Constitution. He placed reliance on another set of judgments.

8. **For deciding this issue following are the three parameters:-**

(1) What is meant by taking cognizance in a given set of facts?

(2) When the Complainant and witnesses need to be examined as per the provisions of section 223 of B.N.S.S.?

(3) At what stage notice to proposed accused is required?

Law of Precedent

9. On the point of law of precedent, Mr. Ponda relied upon another bunch of judgments. In fact the binding effect of the judgments the law is very clear. The judgment by the Apex Court

and by High Courts is certainly having the effect of binding. The judgments given by this Court is certainly binding on all the Courts of Magistrates. Just for reference I will quote few of the judgments which are read over by Mr. Ponda. They are:-

(1) *East India Commercial Company Ltd. Calcutta v/s. Collector of Customs Calcutta*[7]

In Para No.31 the Article 215 of the Constitution is quoted. As per Article 227 the High Court is having supervisory jurisdiction. Where there is a supervisory power, it is implicit that the judgments given by this Court is binding on all the Tribunals and all the Courts and disobedience is not justified because it is not conducive to the smooth working.

(2) *Commissioner of Income-tax v/s. Thana Electricity Supply Ltd.*[8] (Para No.10)

There is no provision in the Constitution just like Article 141 which says that the decision of the High Courts is binding., there is description in Para No.10 about the well accepted legal provision about binding effect of the judgment. When there is a power of supervision, it is implicit that such judgment will be binding on all the Courts.

10. Law on this issue is well settled that is why I have not referred to other judgments on this aspect. Mr. Ponda is right that the

7 1962 SCC Online SC 142
8 1993 SCC OnLine Bom 591

judgment on the point of meaning of '*taking cognizance'* given prior to enactment of B.N.S.S. will certainly be relevant for deciding the issue canvassed before me.

Taking Cognizance

11. On one hand Mr. Ponda has relied upon various judgments relating to meaning of '*taking of cognizance*' whereas on the other hand he has also read over the observations about taking cognizance made by various High Courts in judgments relied upon by Mr. Kadam.

12. I have gone through the judgments cited by Mr. Ponda on the point of meaning of '*taking cognizance*'. These judgments are as follows:-

(1) ***Mayur Bharat Gade vs. Babasaheb Anandro Gade and anr.***[9]

In that case the issue was once the learned Magistrate has put up the complaint **for recording of verification**, whether the learned Magistrate can pass an order under Section 156(3) of Cr.P.C.? It is held that once the complaint is kept for verification, it is a step taken in the direction of taking cognizance of the offence.

(2) ***Pinni Co-operative Housing SocietyLtd. v/s. Maruti Mathu Gaikwad and others***[10]

9 2016 SCC OnLine Bom 12861
10 2013 SCC Online Bom 731

In that case also the Magistrate has **kept the complaint for verification.** It was held as an order passed at the post cognizance stage and hence order under Section 156(3) was not held not permissible.

(3) ***Tusharbhai Rajnikantbhai v/s. Kamal Dayani and others.***[11]
Mr. Ponda has read over the observations in Para No.64. It was a contempt petition filed as per the provisions of Section 12 of the Contempt of Courts Act. The only permissible action as per the law after cognizance had been taken on a private complaint, would be to record the statement of complainant and his witnesses by taking recourse to the mandatory procedure prescribed under Section 200 and 202 of Cr.P.C.

Submission of Mr. Ponda is in a present set of facts. The learned Magistrate has not passed such type of orders which can be interpreted as taking cognizance and that is why he has issued a notice to the proposed accused. According to him, in a given set of facts, learned Magistrate was justified in issuing notice even without recording verification and sworn statement. **His focus is on reading proviso independently.** He placed heavy reliance on all these observations to support the order of issuance of notice by the learned Magistrate.

11 (2025) 1 Supreme Court Cases 753

(4) *Prakash v/s. Anup Pundlik Bhojane*[12]

Learned Magistrate has dismissed the complaint by invoking power under Section 256 of the Court when the case was fixed for return of summons and verification statement was already recorded.

(5) *Indra Kumar Patodia and anr. v/s. Reliance Industries Ltd. and others*[13]

On the point of prosecution under Section 138 of the N.I. Act, a different procedure is laid down under Section 142(a) of the N.I. Act. The Complaint has to be in writing and the Magistrate has to examine the Complainant on oath at the time of taking cognizance.

(6) *Hasan Mohd.v/s. Issak Maniyar v/s. Harun Gulab Maniyar and anr.*[14]

The issue was when the power under Section 156(3) of the Code can be invoked, it can be invoked at the pre-cognizance stage and not after recording the verification. (Para-12).

(7) *Trajano D'Mello v/s. State and others*[15]

The various options available before the learned Magistrate once the private complaint is filed are referred.

(8) *The State of Maharashtra v/s. Mohd. Yusuf Noormohammed*

12 2024 SCC OnLine Bom 4026
13 (2012) 13 Supreme Court Cases 1
14 2014 SCC OnLine Bom 11
15 2018 SCC OnLine Bom 947

and others[16]

Mr. Ponda has read the observations in Para No.8 wherein the process would be issued after recording the verification statement. His emphasis is once the verification statement is recorded, it amounts to taking cognizance.

(9) ***Kiran Patel and ors. v/s. State of Maharashtra***[17]

(Coram: S.M.Modak, J)

He read over the observations in Para No.7 while refusing the investigation under Section 156(3) of the Code, the learned Magistrate has fixed the case for verification. This order was taken as an exception. It was observed if the verification is now recorded, the act of taking cognizance was not complete.

Consideration

13. The judgments on the point of meaning of taking cognizance were on the issue about mode to be adopted by the Magistrate when the private complaint is to be filed. That is to say ordering an investigation under Section 156(3) of the Code at a pre-cognizance stage or deciding to proceed in the direction of taking cognizance and then record verification and to issue process or an enquiry is conducted by himself or ordering an enquiry by any other person and thereby postponing the issuance of process. But the law is well settled. Once the Magistrate has decided to proceed for taking of the cognizance, he cannot go back and order an investigation under

16 1988 SCC OnLine Bom 379
17 2024 SCC OnLine Bom 2717

Section 156(3) of the Code. Taking cognizance is nothing but applying the judicial mind by the Magistrate.

14. It is difficult to crystalise when it can be said that the Magistrate has taken cognizance or proceeded in the direction of taking cognizance but when verification is recorded or Magistrate has directed the Complainant to give verification, it certainly amounts to proceeding in the direction of taking cognizance. The issue of '*taking cognizance*' may occur in different contingencies. It may occur at the time of issuance of process. It may occur when there is a prayer for default bail as per Section 167 of the Code. Depending upon the issue involved, the Courts have interpreted what is meant by taking cognizance.

15. **In the present case the meaning of taking cognizance has to be considered in a different set of facts.** It has to be considered for deciding at what stage notice to the proposed accused is justified. That is to say prior to verification or only after verification. When I heard submissions of both the learned Senior Advocates, what I gather is:

(a) **According to Mr. Kadam**, notice to proposed accused cannot be issued unless and until the verification and statement of the witnesses, if any, are recorded.

(b) **Whereas according to Mr. Ponda**, the act of issuing a notice is justified simply for the reason the learned Magistrate has

not taken cognizance and that is why even though verification statement is not recorded, learned Magistrate was justified in issuing notice.

This submission is made on the premise that proviso of Section 223 of B.N.S.S., 2023 has to be read independently.

16. **The interpretation which Mr. Ponda wants to assign needs to be considered by reading the provisions of Section 223 itself.** It is no doubt true in any of the judgments relied upon by Mr. Kadam from different High Courts, this issue is not agitated in the manner in which it is agitated before me. On this background when the provisions of Section 223 of B.N.S.S. are perused, what we find is if the Magistrate has to take cognizance of an offence, he is expected to examine the Complainant on oath and witnesses. The purpose is after examining the Complainant and witnesses, if any, the Magistrate gets an idea whether to proceed further by issuing a process. The legislatures have incorporated the proviso for the purpose of giving right of audience to the proposed accused. The stage at which such notice is contemplated can be discerned from the wordings of the proviso to Section 223. It contemplates "***No cognizance shall be taken without giving accused an opportunity of being heard***."

17. So the word 'cognizance' is used at 2 places:-

(a) **Firstly**, in the opening para of Section 223 and

(b) **Secondly**, in the proviso.

18. The wordings are little bit different. In the first part legislatures have used '**while taking cognizance**' whereas **in the proviso** there is a bar on taking cognizance without hearing the accused. Certainly, this hearing can be earlier to taking cognizance. There cannot be any dispute about this proposition. The dispute as reflected from the submission is "**when the learned Magistrate has not taken cognizance, whether he was justified in issuing notice without recording the verification.**"? I am afraid this submission of Mr. Ponda can be accepted.

19. Mr. Ponda's emphasis is on 'proviso'. It is true that if we read proviso independently, cognizance cannot be taken unless notice is given. But if we read 'First part and proviso' together, **Mr. Ponda's submission cannot be accepted.** Ultimately this proviso is nothing but an exception to what is stated in opening part of Section 223. It is the one of the principle of interpretation that "*the main provision and the proviso*" has to be read together. The purpose of legislatures behind inserting proviso is there should be check on frivolous complaints at the first stage itself. Section 223 does not say hearing to be given prior to "recording verification". If that could have been the intention of legislatures then could have said "notice needs to be given prior to recording verification". However, that was not intended by the legislatures.

20. It is also true that from the record of the case there is nothing

to suggest that the learned Magistrate has passed some order which suggests that he has taken cognizance. This part of the submission of Mr. Ponda is right. He has argued vociferously to convince me to take a view that notice is required prior to recording verification. He was as forceful in his submissions as usual. He has also used all his persuasive skills to convince me to take that view. But unfortunately I cannot put a nod to his arguments for the reason that was not the intention of legislature.

21. As interpreted by various High Courts and rightly so the stage of taking cognizance would occur only after examining the Complainant and witnesses and not earlier immediately on filing of complaint. So if we consider the chronology, it shows that after filing of complaint there has to be verification of the Complainant and witnesses and when prior to decision on taking cognizance is taken, the accused needs to be heard. Hearing the accused cannot be interpreted prior to recording the verification and the statement of witnesses if any. **For these reason I am unable to accept the submission of Mr Ponda.**

Supervisory Jurisdiction

22. Mr. Ponda is having one additional submission to make. According to him even though there is a an error, it is not amenable to the jurisdiction under Article 227 of the Constitution. **He has placed reliance on the following judgments:-**

(1) *Waryam Singh and anr. v/s. Amarnath and anr.*[18]

It is observed the power of superintendence cannot be exercised for correcting mere errors. It has to be exercised sparingly. That was a case involving a proceeding before the Rent Controller and he refused to pass ejectment order.

(2) *Sadhana Lodh v/s. National Insurance Co. Ltd. And anr.*[19]

The supervisory jurisdiction is entrusted on High Court under Article 227 for ascertaining whether the trial Courts are acting within the parameters. There is no power of review or reweigh the evidence which was considered by the inferior courts while passing the orders. There is no jurisdiction to correct an error apparent on the face of the record much less of an error of law. When there is right of appeal provided, there cannot be a writ petition which can be entertained under Article 227.

(3) *Khimji Vidhu vs. Premier High School*[20]

The jurisdiction under Article 227 has to be exercised sparingly. When there were findings of facts by trial Court and appellate Court (about use of passage) by the Respondents, such findings cannot be interfered in a supervisory jurisdiction.

(4) *Mohd. Shafiq vs. Mirza Mohd. Husain and others*[21]

18 (1954) 1 Supreme Court Cases 51
19 (2003) 3 Supreme Court Cases 524
20 (1999) 9 Supreme Court Cases 264
21 (2002) 9 Supreme Court Cases 460

The delay was condoned by the Court of Additional District Judge. The High Court set aside the order. It was held the High Court has taken too technical view in upsetting the finding by the Court of Additional Sessions Judge. The reason is the said order was passed in exercise of discretionary jurisdiction.

(5) *Puram Ram v/s. Bhaguram and anr.*[22]

Wherein the High Court has rejected an application for amendment of the plaint, when it was allowed by the trial Court. When there was no 'ground of want of jurisdiction or perversity or arbitrary exercise of power', the power under article 227 of the Constitution cannot be exercised.

(6) *The Sarpanch, Lonand Grampanchayat v/s. Ramgiri Gosavi and anr.*

Unless and until the action is capricious or perverse or ultra vires, it cannot be interfered with as per the power under Article 227 of the Constitution. (Para-5).

(7) *Roshan Deen vs Preeti Lal*[23]

Just by picking some error of law through academic angle, exercise of power under Article 227 is not permissible. The Court has to see whether there is an injustice on account of an erroneous interpretation of law. If justice became the by-

22 (2008) 4 Supreme Court Cases 102
23 (2002) 1 Supreme Court Cases 100

product of an erroneous view of law the High Court is not expected to erase such injustice in the name of correcting the error of law. The power under Article 227 is to advance cause of justice and not to thwart it.

(8) *M/s. India Pipe Fitting Co. v/s. Fakruddin M. A. Baker and anr.*[24]

It is held the power under article 227 has to be exercised more sparingly and only in an appropriate case in order to keep subordinate Courts within the bounds of their authority and not for correcting mere errors. Therein the Supreme Court has differentiated in between the supervisory power and appellate Court. By exercising the power, the findings of fact cannot be upset.

(9) Santosh De and anr. vs. Archana Guha and others[25]

Wherein it is held that unless a grave illegality is committed, superior Courts shall not interfere. In fact they should allow the Court seized of the matter to go on with it. Such error can be considered by resorting to the provisions of Section 465 of Cr.P.C. and it should to be a ground for interference.

23. According to Mr Kadam the observations in none of the judgments are applicable and according to him there is a bar on taking cognizance without hearing the accused. This is a part of

24 (1977) 4 Supreme Court Cases 587
25 (1994) 2 Supreme Court Cases 420

jurisdictional requirement and if there is a non compliance, it goes to the root of the matter and certainly amenable to the supervisory jurisdiction under Article 227 of the Constitution.

24. From the above, there are certain judgments which deal with the controversy arisen after full fledged trial and majority of them deal with interpretation of civil law (not involving criminal law). There cannot be any dispute about proposition "minimum interference when there are findings on facts." The ratio is "High Court (under the garb of exercising supervisory jurisdiction) is not justified in upsetting the findings."

25. But in a case before this Court, the issue raised has cropped during preliminary hearing before the trial Court. Furthermore, the grievance raised is not about improper/wrong exercise of jurisdiction but about total non-compliance/over looking the proviso.

26. I am not agreeing to the submissions made by learned Senior Advocate Shri Ponda. The proviso requires hearing of the accused prior to taking cognizance. Even though this is a procedural requirement, still unless and until the verification is recorded, the stage of hearing of accused will not come. As said above, there is a purpose of recording the verification. It gives an opportunity to the Magistrate to ascertain whether to proceed further or not. When the accused is recognised with a right of audience, they have got every right to insist on the compliance of the procedure regarding

verification. **Certainly error committed by the learned Magistrate can be corrected by resorting to the provisions of Article 227 of the Constitution.**

27. By way of additional circumstances Mr Ponda submitted that in fact after issuance of a notice, the HDFC Bank as one of the proposed accused has appeared before the trial Magistrate and filed a Misc. Application under section 223(1) of B.N.S.S. They have sought right of audience while hearing an application under Section 96 of B.N.S.S. moved by the complainant for issuance of a search warrant. However, there cannot be estoppel against the party if they insist on adherence to provisions of law.

28. **For the above discussion, in fact instead of staying the impugned order, I am inclined to set it aside.** Even Mr. Ponda submitted that this Court has elaborately dealt with the matter. Let trial Court may record their verification and of the witnesses, if any and the order of issuance of notice may be set aside. Shri Passbola submitted that they have something to say about the complaint and their prayer is for quashing of the complaint.

29. I am not agreeable to the submission of Mr.Passbola. The rights of the proposed accused can be protected in other manner. Because when both the sides have argued for sufficient length of time and this Court has also given sufficient time, the petition need to be disposed of finally. It is made clear that still the proposed accused

will get a chance to challenge any order passed by the learned Magistrate after the verification is recorded before appropriate forum. Further more they will be given a right of audience before the Magistrate after verification is recorded. This is sufficient protection of the rights to the proposed accused.

30. It is also made clear that I have not expressed any opinion about the contentions raised in the petition about the allegations in the complaint. With these observations following order is passed:

ORDER

(i) The Writ Petition is partly allowed.

(ii) The order of issuance of notice to proposed accused dated 16th June 2025 is quashed and set aside.

(iii) The Court of JMFC is at liberty to proceed with the matter by recording the verification of the Complainant and all witnesses, if any and then pass the appropriate order.

(S.M. MODAK, J.)