



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR**

S.B. Criminal Misc(Pet.) No. 4503/2025

Jogendra Pal S/o Manohar Lal, Aged About 54 Years, Resident Of  
Mnl Clav Colony, Near Ajay Hotel, Bhadra, Tehsil Bhadra, District  
Hanumangarh (Raj.)

-----Petitioner

Versus

1. State Of Rajasthan, Through Public Prosecutor
2. Muskan Bano D/o Rqfiq Qureshi, Resident Of Ward No. 9,  
(Old Ward No. 14), Bhadra, Tehsil Bhadra, District  
Hanumangarh

-----Respondents

For Petitioner(s) : Mr. Moti Singh  
For Respondent(s) : Mr. N.S. Chandawat Dy.G.A.  
Mr. Manjeet Godara

**HON'BLE MR. JUSTICE FARJAND ALI**

**Order**

<b>DATE OF CONCLUSION OF ARGUMENTS</b>	<b>11/02/2026</b>
<b>DATE ON WHICH ORDER IS RESERVED</b>	<b>11/02/2026</b>
<b>FULL ORDER OR OPERATIVE PART</b>	<b>Full Order</b>
<b>DATE OF PRONOUNCEMENT</b>	<b>06/04/2026</b>

**REPORTABLE**

**BY THE COURT:-**

1. By way of the instant Misc. Petition, the petitioner has laid a challenge to the order dated 06.05.2025 passed by the learned Additional Chief Judicial Magistrate, Bhadra, District Hanumangarh, in Criminal Complaint No.82/2025, whereby the learned Magistrate, instead of directing registration of an FIR and investigation in the manner sought by the petitioner, has proceeded to adopt the course of inquiry permissible under law



and has sought assistance of the police for the limited purpose of facilitating such inquiry.

2. The facts of the case are that upon presentation of the complaint, the learned Magistrate proceeded to examine the complainant under Section 223 of the *Bharatiya Nagarik Suraksha Sanhita, 2023* (hereinafter referred to as "the BNSS"). It is noteworthy that the complainant did not choose to produce any supporting witnesses or documentary evidence at that stage.

2.1. In the backdrop of the allegations made in the complaint, and upon preliminary satisfaction, the learned Magistrate vide order dated 06.05.2025, deemed it appropriate to forward the complaint to the concerned police authority for the purpose of conducting a limited investigation and to submit a report, so as to assist the Court in forming an opinion as to whether sufficient grounds exist for proceeding further in the matter. The case was accordingly posted for further consideration on 13.06.2025.

2.2. Aggrieved by the said course adopted by the learned Magistrate, the petitioner has approached this Court contending that the prayer for registration and investigation of the FIR has been erroneously declined. Hence the instant Misc. Petition.

3. I have given my thoughtful consideration to the submissions advanced and upon perusal of the impugned order, this Court finds that the learned Magistrate has scrupulously adhered to the statutory framework envisaged under the BNSS.





4. Before advertng to the merits of the controversy, it is apposite to delineate the statutory architecture governing complaints before a Magistrate under the BNSS.

4.1. Section 223 BNSS embodies the foundational requirement that while taking cognizance of an offence on a complaint, the Magistrate shall examine the complainant and the witnesses present, if any, upon oath, and the substance of such examination shall be reduced into writing. This provision serves as a preliminary judicial filter, ensuring that frivolous, vexatious or untenable complaints do not proceed unchecked. The said stage assumes significance as it marks the point where the Magistrate applies judicial mind and assumes seisin over the matter.

4.2. A significant and progressive departure introduced under the BNSS is the incorporation of a participatory safeguard, whereby the proposed accused is accorded a limited right of hearing at the pre-process stage. This innovation seeks to infuse procedural fairness and to prevent mechanical issuance of process without due application of mind, thereby strengthening the balance between the rights of the complainant and the proposed accused.

4.3. At this juncture, it becomes necessary to reproduce Section 225 BNSS (corresponding to Section 202 CrPC), which governs postponement of issue of process and the scope of inquiry/investigation at this stage:

***"BNSS Section 225 – Postponement of issue of process***

*(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him*





*under section 212, may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:*

*Provided that no such direction for investigation shall be made,—*

*(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or*

*(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 223.*

*(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:*

*Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.*

*(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Sanhita on an officer in charge of a police station except the power to arrest without warrant."*

4.4. A plain reading of Section 225 BNSS makes it abundantly clear that the Magistrate is vested with discretion to postpone issuance of process and either conduct an inquiry himself or direct an investigation for the limited purpose of determining whether sufficient grounds exist to proceed. The concluding words of sub-section (1), namely, "*for the purpose of deciding whether or not there is sufficient ground for proceeding*", unmistakably circumscribe the scope of such investigation.

4.5. It is equally well-settled, both on principle and precedent, that prior to invoking the jurisdiction under Section 225 BNSS, the





Magistrate is ordinarily required to comply with the mandate of Section 223 by examining the complainant and the witnesses present, if any, upon oath, except in cases where the complaint is preferred by a Court or falls within statutorily recognized exceptions. This requirement is not a mere procedural formality but constitutes a substantive safeguard intended to lend authenticity and credibility to the complaint at its very inception. The examination under Section 223 serves to crystallize the allegations, enables the Magistrate to test the veracity and consistency of the complainant's version, and facilitates an informed exercise of discretion at the subsequent stage. It is only upon such preliminary satisfaction, derived from sworn statements, that the Magistrate may consider it appropriate to postpone issuance of process and resort to the mechanism under Section 225. In the present case, this foundational requirement stands duly complied with, thereby rendering the subsequent course adopted by the learned Magistrate procedurally sound and in consonance with the statutory scheme.

4.6. It is of seminal importance to appreciate that the expression "investigation" occurring in Section 225 BNSS (corresponding to Section 202 CrPC) does not connote or import a full-fledged police investigation of the nature contemplated upon registration of an FIR under the provisions governing cognizable offences. The investigation under Section 225 is of a markedly restricted, circumscribed and facilitative character, intended solely to assist the Magistrate in the limited domain of inquiry at the pre-process





stage. It is essentially inquisitorial and preliminary in nature, devoid of the trappings of a regular police investigation, and is not aimed at collection of evidence for prosecution in the strict sense. Such investigation neither authorizes the exercise of coercive powers such as arrest, nor does it culminate in the submission of a charge-sheet or final report in the conventional sense under Section 193 BNSS. Rather, it results in a discreet report or factual input meant to aid the Magistrate in forming a tentative, prima facie opinion as to whether sufficient grounds exist for proceeding further. The legislative intent is thus clear that the "investigation" under Section 225 operates in a narrow compass, functioning as an ancillary tool in aid of judicial satisfaction, and cannot be equated with, or elevated to, the status of a substantive police investigation that triggers the full rigour of criminal prosecution.

4.7. In contradistinction, Section 175 BNSS (corresponding to Section 156 CrPC), falling within Chapter XIII of the Sanhita, delineates the powers of police officers to investigate cognizable offences. The said provision reads as under:

**"BNSS Section 175 – Police officer's power to investigate cognizable case**

(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIV:

Provided that considering the nature and gravity of the offence, the Superintendent of Police may require the Deputy Superintendent of Police to investigate the case.





(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one in which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 210 may, after considering the application supported by an affidavit made under sub-section (4) of section 173, and after making such inquiry as he thinks necessary and submission made in this regard by the police officer, order such an investigation as above-mentioned.

(4) Any Magistrate empowered under section 210, may, upon receiving a complaint against a public servant arising in course of the discharge of his official duties, order investigation, subject to—  
(a) receiving a report containing facts and circumstances of the incident from the officer superior to him; and

(b) after consideration of the assertions made by the public servant as to the situation that led to the incident so alleged.”

4.8. The investigation contemplated under Section 175 BNS is qualitatively and fundamentally distinct in its nature, scope, sweep and legal consequences from the limited inquiry envisaged under Section 225 BNS. An investigation under Section 175 is set into motion upon the registration of information disclosing the commission of a cognizable offence and is carried out by the police in exercise of their statutory powers under Chapter XIII of the Sanhita. Such investigation is comprehensive, adversarial in character and directed towards collection of legally admissible evidence with a view to ascertain the truth of the allegations and to identify the culpability of the persons involved. It clothes the investigating agency with wide-ranging powers, including the authority to examine witnesses, conduct searches and seizures, effect arrests in accordance with law, and employ other coercive processes sanctioned by statute. The process is not merely





exploratory or assistive, but is determinative in its potential outcome, inasmuch as it culminates in the submission of a final report under Section 193 BNSS (corresponding to Section 173 CrPC), either in the nature of a charge-sheet indicting the accused or a closure report. The consequences flowing from such investigation are thus grave and far-reaching, as they may set the criminal law into full motion against the accused, exposing them to prosecution and possible penal consequences. It is, therefore, manifest that the legislative scheme draws a clear and conscious distinction between an investigation under Section 175 BNSS, which is a substantive step in the criminal process having serious legal and penal ramifications, and the limited, preliminary and facilitative inquiry under Section 225 BNSS, which is merely intended to aid the Magistrate in forming an informed opinion at the threshold stage without triggering the coercive machinery of the State.

4.9. The provisions contained in Chapter XIII (police investigation) and Chapter XVI (complaint procedure) operate in entirely distinct spheres. While both may be triggered by a complaint, their procedural trajectories diverge significantly. Even where a Magistrate directs investigation under Section 175(3) BNSS, such direction is issued at a pre-cognizance stage. However, once cognizance is taken, the Magistrate is bound to proceed under Chapter XVI, and the mechanism under Section 225 alone becomes applicable.





4.10. Thus, the investigation under Section 225 BNSS is merely an extension of the Magistrate's inquiry and not a substitute for police investigation under Section 175 BNSS. It is exploratory and ancillary in nature, and may be conducted not only by a police officer but also by any other person such as a revenue, tax or administrative officer, as deemed fit by the Magistrate. The purpose remains confined to assisting the Magistrate in concluding the inquiry.

4.11. In the course of investigation under Section 175 BNSS, the police may arrest the accused and submit a charge-sheet. However, in proceedings under Section 225 BNSS, no such coercive steps are contemplated. The report submitted is only to aid and assist the Magistrate, and the ultimate decision whether to issue process rests solely with the Court upon independent application of mind.

4.12. In the present case, the learned Magistrate, after examining the complainant under Section 223 BNSS and noticing the absence of supporting material, has consciously chosen not to direct the registration of an FIR, but instead to invoke Section 225 BNSS in order to conduct an inquiry himself, to deliberate upon the question of cognizance, and thereafter either to issue process against the proposed accused or to dismiss the complaint. In the course of such inquiry, he may seek the assistance of the police to arrive at a conclusion. Such an approach reflects judicial prudence and due application of mind.





4.13. The contention of the petitioner that the learned Magistrate ought to have directed registration of an FIR is devoid of merit. The law does not mandate that every complaint must culminate in such direction. The choice of procedure, whether to proceed under the complaint mechanism or to direct investigation, is vested in the sound judicial discretion of the Magistrate, depending upon facts and circumstances of each case.

4.14. No perversity, illegality or jurisdictional error is discernible in the impugned order. On the contrary, the course adopted by the learned Magistrate is in consonance with the statutory scheme and settled legal principles, ensuring that neither frivolous complaints are entertained nor genuine grievances are prematurely stifled.

4.15. The concerned police officer is expected to comply with the directions issued by the learned Magistrate and to complete the limited investigation expeditiously, and to submit a comprehensive report before the learned Magistrate on the date already fixed or any subsequent date as may be assigned.

4.16. In view of the foregoing discussion, this Court is of the considered opinion that the impugned order does not suffer from any infirmity warranting interference.

5. Accordingly, the Misc. Petition, being devoid of substance, is hereby dismissed. The stay petition as well as all pending applications stand disposed of.

**(FARJAND ALI),J**

37-Mamta/-

