



**HIGH COURT OF TRIPURA
AGARTALA**

Crl.P.No.33 of 2026

1.Sri Dipankar Majumder, Age-51

S/o- Late Sunil Chandra Majumder,
Resident of Chandrapur, A.A. Road,
Opposite Rajarshi Motors,
Agartala-799007, Tripura West.

2.Smt. Maitri Majumder, Age-42

S/o- Dipankar Majumder,
Resident of Chandrapur, A.A. Road,
Opposite Rajarshi Motors,
Agartala- 799007, Tripura West.

.....The Petitioner(s)

Versus

1. The State of Tripura,

2. Kotak Mahindra Bank Ltd.

Represented by its authorized Person
Having its Branch address at 22, Camac Street
5th Floor, Kolkata-700016.

.....The Respondent(s)

For Petitioner(s)	:	Mr. Kushal Deb, Adv.
For Respondent(s)	:	Mr. Soumyadeep Saha, Addl. P.P.
Date of Hearing	:	01.09.2026
Date of delivery of Judgment and Order	:	07.09.2026
Whether fit for Reporting	:	YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This petition under Section 528 of BNSS is filed for quashing of the order dated 12.07.2024 passed by Ld CJM, Agartala, West Tripura in CR 209 of 2024 on the ground of non-compliance of Section 223 of BNSS.

02. Heard Learned Counsel, Mr. K. Deb appearing on behalf of the petitioner and also heard Learned Addl. P.P. appearing on behalf of the State-respondent. Although one Learned Counsel on 10.07.2026 appeared on behalf of the respondent No.2. But at the time of hearing, none appeared on behalf of respondent No.2.

03. Taking part in the hearing, Learned Counsel for the petitioners submitted that the complainant, Kotak Mahindra Bank Limited filed one complaint-petition before the Court of Learned CJM, West Tripura, Agartala on 12.07.2024 against the present petitioners and others under Sections 61(2)/314/316/318/320/321/323/324 of BNS. But Learned CJM on that day without affording any opportunity to the respondent-accused persons directly took cognizance of offence against the present petitioners and others which was impermissible in view of the provision provided under Section 223 of BNSS.

It was further submitted that on the same day Learned Trial Court also transferred the case to the Court of Learned J.M. 1st Class, Court No.3, Agartala, West Tripura. So, according to Learned Counsel for the petitioners the order passed by Learned CJM suffers from illegality and the same needs to be interfered with. In support of his contention, Learned Counsel relied upon one citation of the Hon'ble Supreme Court of India in Kushal Kumar Agarwal vs. Directorate

of Enforcement dated 09.05.2025 reported in (2025) Supreme (SC) 919 and submitted that in view of the judgment of the Hon'ble Supreme Court the order needs to be interfered with and set aside.

04. On the other hand, Learned Addl. P.P. appearing on behalf of the State-respondent submitted that there was no irregularity and illegality in the said order passed by Learned CJM as because Learned CJM did not record the statement of the complainant and witnesses rather transferred the case to another Court for disposal. So, at this stage, there is no scope to interfere with the said order passed by Learned CJM and urged for dismissal of this petition. In support of his contention, Learned Counsel also relied upon two citations of the Hon'ble Supreme Court in Raghubans Dubey vs. State of Bihar reported in (1967) SC OnLine SC 3 and also relied upon another citation of the Hon'ble Supreme Court in State of West Bengal vs. Manmal Bhutoria and Others reported in (1977) 3 SCC 440 and submitted that in view of the judgments of the Hon'ble Apex Court there was no illegality in the order passed by Learned CJM.

Considered.

05. The Criminal Procedure Code has been repealed by the Bharatiya Nagarik Suraksha Sanhita (hereinafter, referred to as BNSS) which came into force on 1st July, 2024. The present

complaint-petition was filed before the Court of Learned CJM on 12.07.2024 i.e. after the introduction of the new enactment on 01.07.2024. Now, before answering to the relevant questions regarding cognizance of offence let us narrate herein below the erstwhile provision of Cr.P.C. or relevant provision of the BNSS to give a clear idea about the subject matters in issue. Chapter-XV of Cr.P.C. deals with 'complaints to Magistrate'. Now for the sake of convenience, let us reproduce herein below the relevant provision of Section 200 of Cr.P.C. which provides as under:

200. 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.

From the aforesaid provision, it appears that after receipt of the complaint the Magistrate would take cognizance of offence on complaint directly and shall examine upon oath the complainant and the witnesses' present and shall record their statements and this examination part has been excluded if the complaint was in writing, if any public servant in discharging of his official duties files any complaint or a Court has makes over

the complaint for enquiry on trial to another Magistrate under Section 192. But from the aforesaid provision, nowhere we find that there is/was any scope for hearing the accused before taking cognizance of offence. As already stated Cr.P.C. was repealed by the new enactment of BNSS which came into force on 01.07.2024. Now in Chapter-XVI of BNSS deals with the 'Complaints to Magistrate'. For the sake of convenience, let us reproduce herein below the relevant provision of Section 223 of BNSS which reads as under:

"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."

From the aforesaid provision it appears that in the said provision the following words have been inserted by the legislature before taking cognizance of offence:

"Provided that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard", meaning thereby, it shall be mandatory for the Magistrate before taking cognizance of offence on any complaint to hear the accused and thereafter shall either proceed to take cognizance of offence upon examination of the complainant and his witnesses, if any present. Further, Section 2(h) of the BNSS defines the term 'complaint' which means and includes:

"(h) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Sanhita, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Explanation.- A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to a complaint; and the police officer by whom such report is made shall be deemed to be the complaint;"

From the above definition of complaint further it appears that complaint may be made orally or in writing also. So, the Magistrate concerned when the complaint is made orally or in writing at the time of taking cognizance of offence on complaint shall examine upon oath the complainant and the witnesses present, if any. But as per the new enactment the

Magistrate before taking cognizance of offence shall give an opportunity to the accused concerned of being heard. This proviso part has been newly introduced in the new enactment of BNSS which came into being w.e.f. 01.07.2024.

Here in this case, it appears that without affording any opportunity to the accused being heard, there was no scope on the part of the Magistrate directly to cognizance of offence. Hon'ble the Supreme Court in Kushal Kumar Agarwal vs. Directorate of Enforcement reported in **(2025) Supreme (SC) 919** in para Nos.4, 6, 7 and 10 observed as under:

4. Section 223 of the BNSS correspondence to Section 200 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the CPC'). However, a proviso similar to the proviso to sub-section (1) of Section 223 does not find place in Section 200 of the CrPC.

"6. The proviso to sub-section (1) of Section 223 puts an embargo on the power of the Court to take cognizance by providing that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard.

7. In this case, admittedly, an opportunity of being heard was not given by the learned Special Judge to the appellant before taking cognizance of the offence on the complaint. Only on that ground, the impugned order dated 20th April, 2024, will have to be set aside.

10. The impugned order dated 20th November, 2024, is set aside only on the ground of non-compliance with the proviso to sub-section (1) of Section 223 of the BNSS."

From the aforesaid observation of the Hon'ble Supreme Court it appears that without affording any opportunity there was no scope to take cognizance of offence by the Magistrate without affording any opportunity of being heard to the accused.

06. Learned Addl. P.P. as already stated at the time of hearing relied upon one citation of the Hon'ble Supreme Court of India reported in **(1967) SCC OnLine SC 3** in **Raghubans Dubey vs. State of Bihar** wherein in para No.9 Hon'ble the Apex Court observed as under:

"9. Mr Sachthey, the learned counsel for the respondent brought to our notice some decisions which have taken the same view The Calcutta High Court in Saifar v. State of West Bengal (AIR 1962 Cal 133) following the Full Bench decision of the Judicial Commissioners, Sind, in Mehrab v. Emperor (AIR 1924 Sind 71) held that when a Magistrate takes cognizance under Section 190(1)(b) on a police report he takes cognizance of the offence and not merely of the particular persons named in the charge-sheet, and therefore, the Magistrate is entitled to summon additional accused against whom he considers that there was good evidence, after perusal of the statements recorded by the police under Section 161 and the other documents referred to in Section 173 even without examination of witnesses in court."

Further, in another case **State of West Bengal vs. Manmal Bhutoria & Ors.** dated 14.07.1972 reported in **(1977) 3 SCC 440** wherein in para No.17 Hon'ble the Supreme Court also observed under:

"17. It is true that Section 21 IPC enumerates various classes of public servants who are or who happen to be in office. That is, however, not the true test in determining the present controversy. The crucial date for the purpose of attracting the provisions of the Act as well as those of the Bengal Act is whether the offence has been committed by a public servant within the definition of Section 21. The date for determining the offence is the date of the commission of the offence when the person arraigned must be a public servant. Section 6 of the Act provides that no Court shall take cognizance of an offence specified in that section alleged to have been committed by a public servant except with the previous sanction. The section itself makes a clear distinction between cognizance of an offence

and alleged commission of an offence. Sanction refers to the date when after submission of a report or a complaint the Court takes cognizance of the offence. That date is necessarily subsequent to the date of commission of the offence and sometimes far remote from that date. Retirement, resignation, dismissal or removal of a public servant would not wipe out the offence which he had committed while in service. Under Section 6(1) of the Act, as in the case of Section 190(1) CrPC the Court takes cognizance of an offence and not an offender (see *Raghubans Dubey v. State of Bihar* [AIR 1967 SC 1967 : (1967) 2 SCR 423, 428 : 1967 Cri LJ 1081]). The crucial date, therefore, for taking cognizance in this case is the date when the case was received by the Special Court on being allotted by the State Government under Section 4(2) of the Bengal Act."

07. I have gone through the citations referred by Learned Counsel of the parties. As already stated the BNSS came into force w.e.f. 01.07.2024, so, on and after 01.07.2024 whenever any complaint is filed before any Magistrate in that case, the Magistrate shall before taking cognizance of offence shall hear the accused and after hearing both the sides affording opportunity to the accused, only thereafter the Magistrate shall proceed to take cognizance of offence on examination of the complainant and his witnesses present, if any and since by the aforesaid provision of Section 223 of BNSS, it has been obligated upon the Magistrates to follow the said process before taking cognizance of offence. So, an order passed on any complaint after 01.07.2024 directly taking cognizance of any offence without hearing the accused would amount to bad in law and also abuse of the process of the Court and without jurisdiction.

The citations as referred by the Learned Addl. P.P. do not match with the factual position of the present petition. As such those cannot be applied in this case.

08. In the result, this present petition filed by the petitioners is hereby allowed. The order dated 12.07.2024 passed by Learned CJM, West Tripura, Agartala is hereby set aside. The matter is remanded back to the Learned CJM, West Tripura, Agartala to rehear the matter afresh and also to proceed with the matter in accordance with the provision of Section 223 of BNSS on the complaint filed by the respondent No.2.

With this observation, this present petition stands disposed of.

Both the parties are asked to appear before the Court of Learned CJM, West Tripura, Agartala on 22.09.2026.

Send down the record to the Learned Trial Court along with the copy of this judgment/order.

Circulate copy of this order to all the Criminal Courts across the State.

Pending application(s), if any, also stands disposed of.

JUDGE