

(2025) 12 UK CK 0056

Uttarakhand HC

Case No: Criminal Miscellaneous Application No. 2148 Of 2025

Mohd. Majahir And Others

APPELLANT

Vs

Shabana

RESPONDENT

Date of Decision: Dec. 4, 2025

Acts Referred:

- Bharatiya Nyaya Sanhita, 2023 - Section 115(2), 351(3), 352
- Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 223

Hon'ble Judges: Pankaj Purohit, J

Bench: Single Bench

Advocate: Saurabh Kumar Pandey

Final Decision: Allowed

Judgement

Pankaj Purohit, J

1. By means of present C528 application, applicants have challenged the summoning order dated 10.11.2025 along with the prayer to quash the entire proceedings of Complaint Case No.51 of 2025, Smt. Shabana v. Mohd. Majahir and others pending before the Third Judicial Magistrate, Haridwar, whereby cognizance has been taken against the applicants and they have been summoned to face trial under Sections 115(2), 352, 351(3) of BNS 2023.

2. Learned counsel for the applicants has challenged the summoning order on the premise that the cognizance taken by the Magistrate is bad in the eyes of law; it was a complaint filed by the respondent-complainant and after examination of complainant and her witnesses, the Magistrate was under a legal duty to give opportunity of hearing to the applicants-accused before taking cognizance. In support of his submission, he has placed reliance upon the First Proviso attached to Section 223 of BNSS, 2023. For convenience sake, relevant portion of Section 223 of BNSS, 2023 along with the said Proviso is quoted hereinbelow: -

“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.

.....”

3. From a perusal of the impugned order, it nowhere transpires that before taking the cognizance, the accused-applicants were given opportunity of hearing as per law.

4. In such view of the matter, impugned summoning order dated 10.11.2025 passed by learned Third Judicial Magistrate, Haridwar in Complaint Case No.51 of 2025, Smt. Shabana v. Mohd. Majahir and others, deserves to be and is, accordingly, set aside. It is, however, clarified that the Magistrate concerned would be at liberty to pass a fresh order in accordance with law after giving opportunity of hearing to the applicants-accused as mandated in Section 223 of BNSS, 2023.

7. C528 application stands allowed accordingly.

8. Pending application, if any, stands disposed of.